

No. 14549 $\frac{1}{2}$

Supreme Court of Illinois

Welch

vs.

Lewis

71641  7

100
STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division

No. 53

Welch

Law

1863

1457

1/2

THE OFFICE OF THE CLERK OF THE SUPREME COURT OF ILLINOIS, CHICAGO, ILL. 60601

Supreme Court of Illinois,
THIRD GRAND DIVISION.

APRIL TERM, A. D. 1863.

THOMAS WELCH,
vs.
JOHN LOUIS, ET AL.

}
} ERROR TO TAZEWELL.
}

BRIEF OF PLAINTIFF IN ERROR.

1. This suit is for trespass in tearing down fences, &c., on the N. W. fr 12, T. 25, N. R. 5 W. 3d Meridian, and plaintiff below having established, *prima facie*, the ownership of said land in himself, by undisputed paper title, and proved the trespass complained of, was entitled to recover, unless the claim of superior title, set up by defendants, was sustained.

2. The claim of prior and *continued* possession, being much relied on by defendants, the declarations of Jean Florent Louis, their ancestor, at the time he removed his fences, were proper, to show *abandonment* of such possession, and should have been admitted for that purpose. These declarations were *res gestae*, and were further admissible, as being *against the interest* of the party making them, and in *derogation of his title*. Greenl. Ev. Secs, 109, 147 and books *passim*.

3. The deed of April 8, 1852, from Menard, as commissioner in chancery, to John and Margaret Louis, was not admissible in evidence.

1ST. Because the order of April —, 1842, authorizes no such conveyance of land in said N. W. 12, as is covered by said deed—nor does said deed conform, in other respects, with the orders and decrees under which it purports to be made.

2ND. Because of ^{2a p 32} ~~loss~~ of time and subsequent disposal of the case. The order appointing said commissioner, was made at the April term 1842, and re

quired him to report at the next term. At the September term 1842, (the next term, in course,) the cause was stricken from the docket, and thus remained out of court for nearly ten years, before the deed is made or any further action had in it. This, it is submitted, rendered the proceeding stale, and authorized defendant to regard it as entirely abandoned, and the subsequent action, *without notice* to parties in interest, was irregular and void.

3d. Because, by the death of both original parties, it became impossible to execute the order as it stood, and new proceedings, and a new order were requisite to give the commissioner power to act. This was the more necessary, as said original order is itself, confused, unintelligible, and clearly vicious, for mistake apparent on its face.

The proceedings at the April term 1852, of said court, *in name of Jean Florent Louis vs. Francis Clement*, were simply void, and should not have been allowed in evidence. Because 1st, without notice to parties in interest; and 2nd, because both parties, plaintiff and defendant, were at the time dead. Judicial proceedings cannot be carried on in the name of a dead man—nor against a dead man. *Brown vs. Parker* 15 Ills. 310.

5. The record of the deed from Menard, as such commissioner, to the heirs of Francis Clement, deceased, was improperly admitted in evidence. There was no evidence that said heirs, or Welch, ever knew of it, much less accepted or claimed under it. There should have been some excuse for not producing the original—^{as}, that it was destroyed or lost, or in possession of said heirs, or Welch; and, if the latter, some call on them for it. For reasons before given likewise, the deed itself was unauthorized and void.

6. The motion of plaintiff, to exclude said chancery proceedings and commissioner's deeds, should have been allowed. And this, as well for reasons already stated, as because the proceedings in the name of the heirs of said Jean F. Louis vs. said Clement heirs, instituted by these defendants, and read in evidence by plaintiff, revived said original suit, and showed that said suit had been dismissed, and the acts of said commissioner thereunder, set aside and annulled.

7. For reasons indicated, instructions 3, 6, 7 and 9, asked by plaintiff should have been given. So, of instruction ~~5~~ ⁵ which is clearly law. And as there was, in fact, upon the proof, no consideration for the agreement referred to, the instruction was pertinent, and should have been given.

8. Defendants' instruction No. 1, was improperly given. It was for the court, and not the jury, to say whether said decree did or did not direct Menard to convey to Jean F. Louis "the land in question." So also, whether "*pursuant to said decree*," said Menard conveyed said land to said heirs, was a question of *law* rather ^{than} ~~fact~~. Both, it is submitted, were matters of *construction* of records, which fell to the court and not the jury to decide.

This instruction further directs the jury to find for defendants, in case they find that Menard conveyed said land to the heirs of Jean F. Louis, and that de-

defendants are his heirs—while the proof is that one of the trespasses complained of was committed at a point confessedly always in possession of the plaintiff or his grantors, not covered by said Menard deed, and to which neither the defendants nor their ancestor ever claimed to have title.

Instruction 2, given for defendants, is bad for irrelevancy, and as calculated to mislead the jury. Because the heirs of Clement deeded the S. half of said N. E. 12 to Welch, it did not follow that they claimed title through said commissioner's deed. The direct contrary is indeed apparent from the face of the two papers, if agreement in description of the land conveyed in each, be the thing intended. And that this is the point made by the instruction, is plain from its whole tenor. The instruction, ^{moreover} ~~however~~, assumes what is untrue, viz: That there is "a deed from a commissioner conveying said S. half of said quarter duly recorded." No such commissioner's deed was before that jury.

10. For reasons stated, the application of plaintiff below, for a new trial, should have been granted.

COOPER & MOSS,
For Plff. in Error.

53
Welch vs Lewis & Co.
Plffs Brief =

Filed April 27th 1883
L. Leland
Clerk

State of Illinois,
SUPREME COURT.

} Third Grand Division,
APRIL TERM, A. D. 1863.

THOMAS WELCH

vs.

JOHN LOUIS ET AL.

ERROR TO TAZEWELL.

BRIEF AND ARGUMENT FOR DEFENDANTS IN ERROR.

Clement
his This was a suit in trespass by Welch vs. Louis et al, for damages done on the northwest quarter of section 12, town 25 north, range 5 west 3d P. M. And the record and evidence show that Louis, the ancestor of defendants in this case, and ~~claimant~~ *Clement*, the ancestor of the grantor of plaintiff in 1834, settled, respectively, and made improvements on the N. E. and N. W. frac. quarters of section 12 aforesaid, then government land; and that they soon afterwards entered of the United States, jointly, the N. E. quarter. One Casey having entered the 14 acre fractional N. W. quarter, he in 1836 conveyed it to ~~Clement~~ *Clement*; and ~~Clement~~ *Clement*, on some consideration or inducement from Louis, by his agreement under seal, covenanted with Louis to convey to him all his improvement on the said northwest quarter and northeast quarter, and also divide equally between them the northeast quarter, then owned by them jointly, Louis also covenanting to convey to ~~Clement~~ *Clement*, *his* ~~claimant's~~ improvement on the northwest quarter, and also divide the northeast quarter equally between each, having regard to the improvements of the other on the whole tract, and each quarter. This agreement is under seal, and the evidence shows Louis then had possession of the very part of the tract, in cultivation, where the trespass is alleged to have been committed. See the article of agreement, record, page 30, 31; the plat and report of Lewis Prettyman, page 38, and the testimony of Hammond as to the possession, in 1848, page 52.

The record also shows that ~~an~~ application to the circuit court of Tazewell county, in 1841, entered a decree, each to convey to the other the land, as the same had been agreed to be conveyed, having regard to each other's improvements on the whole tract, and caused it to be surveyed and plotted, to enable them to do so the more correctly. See Decree, page 34 and 35 of record; and also plat of survey, page 38.

And said court, (Record, page 40,) expressly decreed that Peter Menard convey the land as described in the plat and divided by the surveyor, unto the parties respectively. This decree was never appealed from, and is still in full force; and according to which, (the parties to the suit having deceased before the execution of the deed,) the said Peter Menard executed and delivered the conveyances so required to be executed, unto the heirs of said parties, respectively; and by this deed, the land so described and set apart, and on which the trespass is alleged to have been committed, was conveyed to these defendants, whose ancestors were possessed of it, and had it under improvement in 1836, which is admitted by the agreement of claimant, above referred to—and plaintiff is estopped from denying that fact—and who was also possessed by improvement on it in 1848, as shown by

Hammond's testimony; and who, with defendants, used it for a wood yard and timber lot, for fire-wood and other purposes, at all times claiming it as their own, from the year 1836 to the present time. They have at all times lived immediately adjoining it; their only access to the river was over it; they used it personally, individually, and daily, and claimed right and title, and had actual possession of it, as is admitted by the record, page 31; plaintiff's grantor, ~~Clement~~, there agreed that it should be set off and apart to Louis as his own, under his hand and seal.

It is true there are some errors in description, in those of record referred to, and the whole transaction is remote. All parties to it are dead, and plaintiff now insists on the proof of the consideration of the agreement, which is under seal, and imports a consideration. But if it did not, thirty years' possession, improvement, and claim of title, with the decree of the court ordering a conveyance to him, should raise a presumption of consideration, rather than a doubt; and the fact of the possession of it by Louis, and use of it, sometimes by actual inclosure and improvement of the land; sometimes by using it in cutting timber and keeping a wood yard on it; and always by the personal use and enjoyment of it by himself and his family—it lying immediately between his house and the river, only a few rods off—should raise a presumption the jury might well settle in defendants' favor.

The facts that the grantors of plaintiff, (~~the~~ ~~Clement~~), except for the deed from Menard to them, were the owners in full of but the undivided half of the northeast quarter, which is admitted; and the further fact that, after the deed from Menard to them, they sold by warrantee deed to plaintiff the whole of the south half of said northeast quarter of section 12, is significant, and from it the jury might well infer that they had accepted the deed so made and reported to them by said Menard, and without which they could have conveyed but one undivided half; and altogether it well warranted the jury in finding the defendants not guilty of the trespass charged, and also warranted the court in giving the 2d instruction of defendants complained of.

The reason for objection to the testimony of John Moshan, on being recalled, was, that he had been fully examined by plaintiff as his witness in chief, and had been turned over to the defendants for cross-examination; and that defendants had not cross-examined, or asked defendants upon or about anything upon which plaintiff asked to re-examine, and that, by the law, it was a matter in the discretion of the court to allow a party to recall and re-examine a witness which had been previously examined by the party in chief; and the ruling of the court was therefore correct, and could not be assigned for error.

And as to said first instruction of defendants complained of, the objections to it are untenable, but if really sustainable when alone, it is fully neutralized and explained by plaintiff's 2d and 4th instructions which were given, and plaintiff is not prejudiced by it. Louis had long possessed the land under claim of title; the records of the county showed it, and plaintiff knew it; and this court will not disturb a verdict when substantial justice has been done. *Smith vs. Shultz*, 1 Scam., R. 420. There is, in this record, clearly some evidence on which the jury might find for the defendants, and such cases, "in trespass, and where the evidence is usually circumstantial, the court will rarely, if ever, disturb a verdict, when there is anything in the record tending to support the finding of the jury." *Young vs. Silkwood*, 11 Ills, 36.

And it is plain from all the evidence, that the trespass complained of was the most trifling and insignificant, merely nominal, under full belief of right; and this cause, when decided, does not effect the title to the land in either party. Apparent justice has been done; and even conceding (which we do not) all that plaintiff complains of, yet, "if this court is satisfied that justice has been done, it will not charge a new trial, even though the jury find against the weight of evidence; against the instructions of the court, or through misdirection of the court in point of law." Leigh vs. Hodges, 3 Scam., R. 18, and Allen vs. Smith, 3 Scam., 27. Bloom vs. Denman, 12 Ills., 240; Gillett vs. Sweat, 1 Gill., 475; Low vs. Orr, 1 Gill., 70; and Young vs. Silkwood, 11 Ills., 36.

When a question is fairly and intelligibly submitted to a jury, their determination ought not to be set aside without the most substantial reasons. Kincaid vs. Turner, 2 Gillman, R. 618. Wherefore, this judgment ought to be affirmed.

B. S. PRETTYMAN,
Attorney for Defendants.

85-100

Welch

Louis

Depts & Agents of
Depts

Filed May 4, 1863

S. Leland c/w

Thomas Welch } In the Supreme Court =
vs. } April Term A.D. 1863 =
John Louis & al. } Error to Lazenelle =
 Trespass to N.W. 12, 25 N. 5 W.
Additional Argument for plaintiff in Error =

As indicated in remarks made orally to the Court, this suit is prosecuted, less because of the damage actually done by the specific trespasses proved under the declaration, than for the purpose of determining the right, & securing to the ^{plaintiff} undisturbed enjoyment of the locus in quo, for the future = The proof shows that these defendants have long disputed with the plaintiff, and his grantors, the right of occupancy to this land; And that, while they seem not themselves to have exercised such palpable acts of ownership over it, as to make it quite safe for plaintiff to bring ejectment, & try the title in that way, they yet continually harass & prevent him from enclosing or occupying the land to any useful purpose = Their policy is one of resistance, by force, in the hope of extorting, in this way, some concession from the plff that may give them the land = Hence, when the plaintiff goes upon the premises & cuts poles or timber, or exercises any other act of ownership over the land, they do not resort to legal remedies to try the question of right; but the moment plaintiff undertakes to enclose the ground, or any part of it, so as to reduce it into an qualified possession, they interpose by violence & prevent him = So that it is not merely a question of pulling down a few fences, however vexatious that may be, but goes to the enjoyment

or practical exclusion, for all useful purposes, from the land itself = The trespasses proved on the trial, are of this character = The plaintiff was engaged in repairing & resetting his fence along the North side of his field, on the South part of this tract, when the Old Woman, Margaretta Louis, one of the dependants, came & tore the fence down in two places. One, at the North East corner, next the road, and the other, down toward the River, ~~where~~ at which latter place, plff was setting the fence a little further North than it had before stood. And it was doubtless this circumstance that incited the Old Woman to the act; as it appears that when plff set the fence back again where it had before stood, it was not further meddled with =

So, again, just before suit brought, plff had prepared materials, partly taken from the land in dispute, and was in the act of enclosing the entire premises, ^{whereby} John Louis, the other dependant, his sister, Sonisa Hammond, came & tore it down & put a stop to the work. See Test. of Quinlin & Patrick Welch, p. p. 243 of Abstr. =

As to the proof of these trespasses, there is understood to be no controversy. There is no conflict in the proof, nor anything to ~~be~~ cast suspicion upon it. And indeed, the acts were brought to be justified on the trial, as the record pretty plainly indicates. For One of them (that at the corner of the field next the road,) no excuse was or could be offered. This field was the undisputed property of the plaintiff, and had been in the actual & undisturbed possession of him & his grantors for nearly 30 years; and, at this point, the fence stood where it was originally placed, and had always remained. See test.

3.

Sam^e B. Davis, p. 1, Welch, p. 2, & George Sux & John P. Houlston
p. 3, of Aketh. = As to this trespass therefore, the verdict
& judgment should have been for the plff, against
one of the defendants; and must have been, had
not the jury entirely overlooked or disregarded the
proof = On this account, if no other, the new
trial asked for should have been granted =

The case, we think, is little less clear as to the
other trespasses = There being no question as to the fact
of their commission, the controversy turns wholly on
the point of title = As to one of them, Mr. Prettyman,
in his printed argument, says ~~it was~~ "the evidence
"shows Louis then" (to wit July 26/36, the date of the agree-
"ment referred to) "had possession of the key part of the
"tract, in cultivation, where the trespass is alleged
"to have been committed" = We presume Mr. P. alludes
here, to the tearing down of the new fence just before
suit was t, by John Louis & his sister, when
Welch was about ^{fencing in} ~~enclosing~~ the whole unenclosed
part of the tract - (For it will not be pretended that
Louis ever had in cultivation that part across
toward the River, and on the North side of Welch's
field, where the old woman pulled the fence
down the year before) And as to this, we remark.
1st, It is not very definitely fixed by the proof just
at what point this last trespass was com-
mitted - 2nd - The statement that Louis had
any part of the tract, in cultivation, in 1836,
is not borne out by the proof = The only
over

Witnesses who had means of knowing about this
are Samuel B. Davis & John P. Mouchon -
The former says - (p. 1 of abstr.) - "I have known" this
tract "for 25 years & reside about 2 1/2 miles from
"it -" And - "Neither old man Lewis, nor his family
"ever had any improvements on said N.W. q., nor west
"of said road, since I have known the premises."
And Mouchon says - (p. 3 abstr.) he has known
the premises since 1832 - That his father settled
on them in that year & made improvements, which
he sold out to Clement in 1834 - That Lewis came
to live with them & settled on the hill fraction - (the
N.E. q.), and made a small enclosure, (p. 4), of an
acre or an acre & a half, on the west side of the road,
when he first came, and cultivated it one year -
That the water washed most of the fence off the next
year - That he then removed the remainder, and never
had any improvements on that side of the road
since - It is pretty clear that all this occurred
prior to, or not later than 1834 - As it must have
been prior to that year that Lewis came to live
with old Mouchon - Another is really the
whole extent of cultivation or actual possession
that Lewis or his family ever made or had on
any part of this N.W. 12 - As to their crossing it
for water, washing on the River Bank, or selling
wood there occasionally, to boats; it is futile
to speak of these as giving them title, by posses-
sion, as against Clement, when all the

X
time Clement disputed that possession, Claimed the land for himself (Test. of Davis, 1, 2 of Abstract) and exercised repeated acts of ownership over it: But as continued occupancy, coupled with the cultivation of this little patch, was made a point in the case by the defendants, plaintiff offered to prove an abandonment of possession by Davis, by his declarations, made at the time he removed his fence, which the Court refused to let him do:

This, we think, (for reasons named in printed brief,) was error - The evidence was certainly competent & applicable to the case - And so Mr. Prethman appears now to think - as he attempts to justify the refusal on quite different grounds - To wit - That it was in the discretion of the Court to permit or refuse the recall of a witness who had been dismissed, and who had "not been cross-examined, or asked by defendants upon or about the thing which plaintiff asked to re-examine him" - The only trouble about this is, that it is founded wholly in mistake: The witness was not recalled; but was still on the stand - And the re-examination attempted, was strictly cross-examination, (that by the plff) upon ^{new} matter called out for the first time by the defendants, upon general cross-examination, as will be seen by reference to the testimony of this witness, set out on p. p. 3 & 4 of the Abstract =

Two other pieces of proof are referred to by Mr. Prethman, in his printed argument, about which we wish to say only

a word - One is the article of agreement, purporting to be executed by the parties in July 1836 (see p. 4 of Abstract, in which, in a marginal entry, each party is made to "agree to convey to the other the improvements each may have on a fraction of 14 acres," &c. And the other is the plat report of Lewis Bettyman (p. 38, of Record.) In regard to the former, we remark, that it was distinctly denied by Clement in his answer to the Bill, that this was any part of the original agreement, or even ^{upon the Washington} put ~~there~~ with his consent. And the denial not overcome by any proof. And the same is besides not consistent with ~~the allegations~~ ^{a recital in} of the Bill filed by Sonis to which the same is attached, which sets out expressly that Clement was then the owner of the entire North-West fraction, and, of course, could not be benefitted by, nor want any conveyance from Sonis, of the improvement he (Clement) had on said tract. As to the Report, ~~it was made at least 5 years after~~ of said Bettyman, it is enough to say that ~~it was made~~ his survey was made as much as five years, or more, after the time when this improvement was to be found to have existed. And as the Surveyor was clothed with no authority to take proofs, his report could not, in the nature of things, be very good evidence of the fact. Besides it will be seen by reference to the decree of April 1841, appointing him, and under which ^{he} makes his survey Report, that, as to said 14 acre piece, the surveyor is not, in fact, directed to fix Sonis' improvements

on that, at all - but merely to measure the whole tract & describe it by miles & bounds = But not to dwell longer on this matter of occupancy (to which we have perhaps already given too much space,) we turn to the matter of title = And here again there is no room for question, as to our prima facie right = It was admitted that on the 30th of May 1837, John W. Casey was the owner in fee of said S. W. 12, & title regularly deduced from the United States - (see Record p. 21) = Plff then read to the jury 1st, Deed from said Casey to Francis Clement, dated said May 30/37.

2nd Power of atty from Freeman, Agnes & Margaret Clement to Alexander Wynd, authorizing him to sell & convey said land, date Nov. 30/57 =

3^d - Deed from said Freeman, Agnes & Margaret, & their said atty, and from said Alexander & Frances Emma, his wife, in their own right, to plff, dated Feb. 5/58, all duly executed & acknowledged,

and proved that the grantors in said deed were the only heirs at law of said Francis Clement, dec^d, and that said Frances Emma, was the wife of said Alexander Wynd - see Record 22 to 26, inclusive - Test. John P. Moushon p. 3 of Abstract.

It was also in proof that Francis Clement died as early as 1848 - This made plff's case - To rebut this, and show title out of plff, defendants were allowed to read to the jury, against objection & exception of plff, the Chancery Records, proceedings and

deeds set out on p. 27 to 52, inclusive, of Bee's
ord, and for which see Abstract 4 to 6 =

On these papers & proceedings we deem it necessary
here to do little more than ask the attention of the
court to the points made in printed Brief of self
in error, except as to one or two particulars, which per-
haps are not quite sufficiently noted in said Brief =

1st $\frac{11}{11}$ = The decree of April 1841, (which seems to be the basis of
the several orders in the case, the previous one being
set aside), is about as nearly unintelligible jargon
as such a thing can well be made, and is hardly wor-
thy of being counted a muniment of title. But be
this as it may, it don't find that Louis is entitled
to any part of this N.W. fractional 12, nor direct
any portion of it to be set off to him. It simply
directs Pettigman to "Run the second described 14
"acres, measure the land, and describe the same
"by metes & bounds."

2nd $\frac{11}{11}$ = The Report of Pettigman, presented at the Sept. Term
1841, finds that this so called 14 acre piece, con-
tains 21 acres, and that, in 1836, Louis had an
improvement of $2\frac{52}{100}$ acres, on the East side of
the North part of the same. (See abstr. p. 8, for ex-
pression.) This is noteworthy, as fixing the utmost
limit to which Louis, or his heirs could claim.
There is no pretence that they were ever entitled to any
more, or different part, of this N.W. fraction, than this
 $2\frac{52}{100}$ acres. And in the decree taken at the April Term
1842, (under which Peter Howard, as commissioner

appears to come to the respective parties) it will be seen that said Commissioner is referred to said partition, division or survey... "made by said Pettyman", &c, as defining the description of the lands to be conveyed. So that, if there was any authority whatever for his deeding any portion of this tract to anybody, it did not extend beyond the conveyance of this $2\frac{52}{100}$ acres, to Louis; and the deeds, which it appears he subsequently made, of $8\frac{10}{100}$ acres of this tract, to the Louis Heirs, and $12\frac{90}{100}$ acres to the Heirs of Clement, were volunter performances on his part, quite unwarranted by the authority under which he professed to act =

3^d - The deed of Menard, as Commissioner, at the time they were really made, had, for other reasons, no sufficient support = In the first place - some ten years had elapsed since the order appointing him - the case had been nearly all that time out of Court - the parties to the suit were both dead - and neither they, nor their heirs or representatives, after them, as the Report ~~was~~ ^{was} subsequently entered, and nothing in the Record to show who were the parties entitled to take - it may have been heirs - it may have been devisees, or it may have ^{been} other parties entirely, who had succeeded to the title - ^{for reasons named in printed Brief,} ~~Provis~~ ^{Provis} is the matter helped at all, by the subsequent proceedings in the names of these dead people =

One or two remarks further relative to the ^{Record of} deed from said Commissioner to the Clement Heirs, which sects were allowed to read in evidence. This was read for the purpose of binding plff's grantors, by

assumed ~~agreement~~ acceptance under it, and con-
sequent acquiescence in these chancery proceedings
or commissioners deeds. This was objected to for the reason
that there was no proof that either the Clement Hens or
Welch knew that such a deed was ever made, or had ac-
cepted or claimed under it; and for the further reason
that no proper foundation was laid = The case of *Stor*
vs. The People, 25 Ill. 82, is believed to be in point.
There, the original Record of a deed from the prisoner
to one George J. Stor, was admitted in evidence, against
the prisoner = The Court say, page 86. "No sufficient
foundation was laid for the introduction of second-
ary evidence of the contents of that deed. The pre-
sumption is that it was in the hands of the grantee
or in the Recorder's office where the party left it.
Search should have been made in both places, be-
fore any presumption could arise that it was
lost or destroyed. Again, we have decided that
the statute does not make the record of the
deed evidence of its contents, without proof
that it was a true copy. No such proof
was given." = So here, there was no attempt to
trace this deed to the hands of the plaintiff or his grantors,
- no call made upon either for it, nor any search
made anywhere, nor proof that the record was
a true copy - Welch could not therefore be
legally bound by its contents =

The motion of plaintiff to exclude these commissioners

Chancery proceedings, should have been
allowed = After depts closed, plff read in evidence
the Chancery proceedings covering p.p. 53 to 67 of Record.
(Abstr. 647) = These proceedings showed that a Bill was
filed to the April Term 1850, of said circuit court, by the
dependants, ^{Daughters} a series of Jean F. Louis dec'd, against
the heirs of said Francis Clement, dec'd, to remove the
obscure, which had abated by the death of both
parties. Another Bill & amended Bill, after setting
out the death of parties to the obsuit, and that the de-
crees entered therein had never been carried into effect,
and that said former decree, by reason of mistakes in
the same, (see Record, Am. Bill, p.p. 59, 60, 61), could not
be properly executed, ask that the same be corrected
&c. - These proceedings remained pending in Court
till the May Term 1853, when they were dis-
missed at the costs of the complainants, and
the Report of said Menard, as Commissioner, set
"aside, and wholly esteemed for naught." p.p.
66, 67, of Record = This, we think, disposed of
both the old & the new suits, and wholly annul-
led every order & proceeding therein, or act done
pursuant thereto =

We have perhaps sufficiently commented on the instructions given & refused, in Pointed Brief, and shall trouble the Court with no further remarks on them here =

As to Chief suggestion of Mr. Bethman, that "When a question is fairly & intelligibly submitted to a jury their determination ought not to be set aside without the most substantial reasons," our reply is, that this case was not fairly & intelligibly submitted, and that the reasons are substantial. =

Cooper & Mayo
for appellant =

53 = Welch
no. =
Lewis & Son

Argument for
appellant =

Filed May 11, 1863

L. Leland cwr

Thomas Welch } In the Supreme Court =
 vs. } Third Grand Division =
 John Louisdale } April Term A.D. 1862 =
 Error to Zagerelle County

Benjamin F. Pethyman being first sworn, says that he is of counsel for said defendants in said cause, in this Court, and also assisted, as attorney for the same defendants, in the trial below. And affiant states that from his knowledge of the proceedings in said suit below, he believes a Bond in the sum of One Hundred dollars would amply cover & secure all the costs made therein. Affiant further says that he is well acquainted with Alexander Wynd of said Zagerelle County, and with his pecuniary circumstances, and that said Wynd would be entirely satisfactory as security in such Bond. That said Wynd is probably good for five thousand dollars - and further affiant saith not.

Subsd. & sworn to
 before me May 1. 1862
 L. H. Land
 Clerk

R. P. Pethyman

Thomas Welch } In the Supreme Court =
 vs. } Third Grand Division =
 John Louisdale } April Term A.D. 1862 =
 Error to Zagerelle County

Benjamin F. Pethgum being first sworn, says that he is of counsel for said defendants in said cause, in this Court, and also assisted, as attorney for the same defendants, in the trial below. And affiant states that from his knowledge of the proceedings in said suit below, he believes a Bond in the sum of One Hundred dollars would amply cover & secure all the costs made therein. Affiant further says that he is well acquainted with Alexander Wynd of said Zagerelle County, and with his pecuniary circumstances, and that said Wynd would be entirely satisfactory as security in such Bond. That said Wynd is probably good for five thousand dollars - and further affiant saith not.

Subsd. & sworn to
 before me May 1. 1862
 L. H. Land
 Clerk.

R. B. Pethgum

207-
Thomas Welch

no. -
John Lewis Wells
affidavit -

Filed May 2^d 1862
L. Deland
Clk.

1 . . . 1

SUPREME COURT OF ILLINOIS.

Third Grand Division at Ottawa—April Term, 1862.

THOMAS WELCH, <i>Plaintiff in Error</i> , 234	vs.	Error to Circuit Court of Tazewell County.
JOHN LEWIS, <i>et al.</i> , <i>Defts. in Error</i> .		

ABSTRACT OF RECORD.

- 1 Plaintiff in Error, sued Defendants in Error to September Term, 1861, of said Court, in trespass *vi et armis*. Summons issued August 22, 1861. Damages claimed \$500.
- 2-3 Declaration alleges that Defendants on the 1st of June, 1860, and on divers other days since, trespassed on the close of Plaintiff, situate on frac. N.W. 12, 25 N., 5 W., in said County, by breaking fences, destroying crops, and cutting and carrying off timber, &c.
- 4-5 1st. Plea not guilty.
2d. Special plea denying allegations in declaration.
- 6 Issue joined on first plea and replication to second.
- 7-8 Cause tried September 5th, 1861, before said Court and a jury. Verdict and judgment for defendants. Motion for new trial made and overruled.
- 8-9 Bill of Exceptions filed September 10, 1861, shows that Plaintiff, to sustain the issues on his part, called first, Samuel B. Davis, who swears: I know frac. N.W. 12, 25 N., 5 W., in said County. Have known it for 25 years and reside about two and a half miles from it. Knew Francis Clement and John Florent Louis, in their life time. They have both been dead a number of years. Think since 1847 or 1848. Both lived and their families after them on the N.E. 12, and on the east side of the road, which here runs N. & S., or pretty near the line between said N.E. and N.W. quarter. Clement had a field enclosed, which he cultivated, on said N.W. quarter, and between the road and the river, from the time I first knew the premises. His family lived on the old place and cultivated this field after his death until they sold out to Plaintiff, Welch, some four years since. Welch still occupies and cultivates said field. Neither old man Louis nor his family, ever had any improvements on said N. W. qr. nor west of said road, since I have known the premises. The Clements and Welch have a stable west of the road—this has been there a long time. The north part of said fractional quarter, above Welch's field, has never been cleared off, though the big trees have been pretty much cut out. Old Clement in his life-
10 time, and his family afterwards, always claimed the whole of said N. W. quarter, and had frequent suits with Louis on account of trespasses committed by the latter

on the ground north of the field. This part has never been inclosed or cultivated.

Cross-Ex. Louis also claimed the unenclosed part of said N. W. quarter. He lived on his improvements east of the road, as early as 1836, and had a field which extended to the road on that side. There are paths leading to the river west of Louis' improvements on the N. E. quarter, and I have seen the family carry water from a spring on the river north of the house. This spring is 50 or 60 rods north of Louis' house, and on land north of said northwest quarter. There was a wood yard on the river, west from Louis' house, where wood was kept some 12 years ago. Have not seen much there since.

Andrew J. Towne called, said: I have lived in the neighborhood about 16 years, and before the old people died. Knew the ground in dispute. Have seen wood cut there, but don't know who cut it. Never saw any improvements on the N. W. quarter, above Clement's field and west of Louis's improvements. Don't know who owns this land. Pretty much all of the land on this quarter overflows. The land in the field on the south side is tilled in dry seasons.

Cross Examination.—The north part of this quarter was formerly more free from timber than now. Young trees have grown up. Never knew about the wood yard spoken of. There was no road across the land. Louis carries his water from above. Have seen a kettle for washing across at the river west of Louis' field.
11 Don't know who it belonged to. Have seen Louis' daughter there.

M. Quinlin called, said: I know parties to this suit, and the land in dispute. Was helping Plaintiff to build fence on it west of Louis' house, and north of Welch's field in August. About three weeks since. John Louis and his sister came and tore it down. It was a pale fence. Welch cut some of the poles for the fence on this land. We had put up a number of pannels when it was torn down.

Patrick Welch called, said: Am son of Plaintiff, who has lived three or four years where he now does. He bought of Clements. Some three or more weeks since father undertook to build a fence on the fraction lying west of the road and Louis' house. We were building this fence when John Louis came and tore it down. We were making this fence of poles and stakes driven into the ground and intended to enclose all the unenclosed part of said quarter. Father has a field on part of this quarter, and has cut wood on the part north of the field, and was cutting poles and stakes for the fence he was building on this piece. Last year the old woman Margaretta Louis tore down the fence on the north side of the field on this quarter in two places. This was late in the spring, just before we ploughed the land for corn. We were repairing the fence where it had been washed away. The field overflows every spring and we are always late getting corn in it. One place where the old woman tore the fence down was towards the river, at which place we were setting the fence, a little north of where it had been, when she came and tore it down. She then went to the North East corner at the road and tore it down, taking down several pannels at each place. The part she tore down next the road was the old fence, and stood where it had always stood, as far as I know. When I first saw the fence it was old and seemed to have stood there a long time. We put up the fence again at the road, putting it in the old place, but next the river set it back. Father has paid the taxes on this quarter since he has been there. I never saw John Louis cut any trees on this quarter.

Cross-Examination.—Mrs. Louis lives on the East side of the road. There is an old road across this quarter West of Louis' field. I have seen the family of Louis gather wood from this land.

Re-called, said : It was some time in June, 1860, think about the middle, that old Mrs. Louis tore this fence down. It was only a little before harvest. The water lies on this land in the spring, so that it is generally late before we can get it ploughed. The present season it is pretty dry.

Plaintiff next offered and read in evidence receipts for taxes of 1850, 1851, 1855, 1856, 1857, 1858, 1859 and 1860, on all said fractional N.W., 12, 25 N. 5W., paid by Clements and Plaintiff.

George Lux called, said : I know the land in controversy. It lies between the road and the river. I helped the County Surveyor run the lines and know them. Have lived near and known the land 13 or 14 years, but never knew either of the old men, Clement or Louis. They died before I came there. Freeman Clement had a field on the South side of said N.W. quarter, between the road and the river, cultivated it, and lived there till he sold to Plaintiff about four years ago, and Plaintiff has cultivated it ever since. The fence on the north side of this field, next the road, stands where it has stood ever since I knew it, but the field has been extended toward the river. The land North of this field is open, and unimproved. Both parties claim it, and have done so ever since I knew them. The land in the field, there has never been any dispute about. It has been held by the Clements. I never noticed any road across this open part, but have crossed it frequently as the public generally have. Saw Welch cutting poles on it this spring. Clement had possession of it before Welch came there. About an acre or something more, part of the N.E. quarter of said section, lies West of the road, which runs on the line between the N.E. and N.W. qrs., until near the south side of Louis' field on said N. E. quarter, and then veers to the E., so as to leave a narrow strip of said N.E. quarter, between the road and the line. There has never been any improvements on said N.W. qr. north of Welch's field since I came to the neighborhood. About three-fourths of said tract is in Welch's field. The whole quarter, except the N.E. corner, overflows, and it is always late before it can be planted. Corn in other places is generally up high enough to plough before it is planted here, but being rich, warm ground, it comes on fast. I have known it planted the last of June or first of July and do well. Don't know just when it was planted in 1860, but it was late.

John P. Moushon called, said : I have known these premises ever since 1832. My father settled on said N.E. and N.W. quarters in that year, and made some improvements. We first made a small field on said N.W. quarter, which has been enlarged towards the river. On the North side, the fence at the N.E. corner is just where we set it, but down towards the river it may have been set a little farther North. Father sold his improvements to Clement in 1834. We had a field and stable on said N.W. quarter, which Clement occupied after us, until he died, some 13 years ago, and his family occupied it until they sold to Welch. Clement left four children, Freeman, Agnes, Margaret and Alice, but Alice died. Agnes married Alexander Wynd. Don't know who paid taxes on this quarter.

Cross-Examination.—We built our house on the S.E. side of the road, but we made a field on the West side. Louis came to live with us and settled on the hill fraction. Louis used to cross the small fraction to the river and wash there, and

so did the Indians. Louis had a small enclosure of about an acre or an acre and a half on the West side of the road, which he made when he first came and cultivated it one year. The next year the water washed most of the fence off. He then removed the remainder and used the rails in making a fence round a field on the east side of the road, and has never had any improvements on that side of the road since. I have seen wood at a place on the bank of the river, on the small fraction.

Re-Examination. Plaintiff's counsel asked witness, "What Louis said when he took away his fence from the west side of the road" for the purpose of proving an abandonment of possession. To which Defendants objected—objection sustained Plaintiff's excepted. Plaintiff then read to the jury a quitclaim deed from John W. Casey, to Francis Clement, dated May 30, '37, and recorded August 2, '37, for the N. fractional half of said Sec. 12, 25 N., 5 W., and it was admitted by Defendants, that when Casey made said deed he owned said land in fee.

Plaintiff next read in evidence a power of attorney from Freeman, Agnes and Margaret Clement to Alexander Wynd, dated Nov. 30, '57, and recorded February 15, '58, authorizing him to sell and convey by general warranty, or otherwise dispose of all real estate belonging to them, situate in Tazewell County, Ills. Next a deed of general warranty dated February 5, '58, from Alexander Wynd and Francis Emma, his wife in her own right, and said Freeman, Agnes and Margaret Clement, by their said attorney to Plaintiff for said fractional N. W. qr. of Sec 12, 25, 5, and other property recorded Feb. 26, '58. Plaintiff here rested.

Defendant then read in evidence against the objections of Plaintiff. The proceedings in Chancery in a cause brought to the September term of 1839 of the Tazewell Circuit Court, wherein Jean Florent Louis is Complainant and Francis Clement is Defendant.

The bill sets out that Clement and Louis had settled on and were entitled to enter the N. E. qr. of Sec 12, 25, 5 in said County on the 26th of July, 1836, with the understanding that Louis was to have the N. half and Clement the S. half thereof, and that if either party should be found, when the tract was surveyed, to have improvements on the part agreed to be conveyed to the other, the party having such improvements was to have his improvement, and convey an equal portion of unimproved land to the other in lieu thereof—also that said Clement is the owner of the fractional N. W. qr. of said section, and that he agreed to convey to Louis all of said N. W. qr. which Louis should be found to have improved. That Louis was ready to comply ~~with~~ on his part, but Clement refused—prays for ^especific performance and for partition and relief.

Exhibit 'A' attached, sets out that said parties have a certificate of purchase from the Receiver of the land office at Springfield for said N. E. qr. that Clement is to convey to Louis the N. half of said N. E. qr. and that Louis is to convey to Clement the south half, each to have his improvements, and if on the other's, to convey unimproved land in lieu thereof. By an entry on the margin, each party is made to agree to convey to the other the improvements each may have on a fraction of 14 acres attached to the said N. E. qr. Date of this instrument, July 26th, 1836.

Decree taken at September term, 1839.

April term 1840, this decree on motion of Defendant set aside.

By a decree rendered at the April term, 1841, it is ordered that said N. E. 12

and the 14 acres attached be surveyed and that the N.hf. of said N.E. 12 be set off to Louis and the S. hf. thereof to Clement and that each party have his improvements on said N. E. 12, and the surveyor is to find how much land Louis had under improvement in 1836, and the intention of the parties under the agreement. Said Surveyor is then ordered to survey said 14 acre piece, measure the same and describe it by metes and bounds. Louis Prettyman appointed surveyor and to report to next term.

86-37. — At the September term, 1841, said Surveyor presented his report, and thereupon a decree is entered directing Defendant to convey to complainant the N. hf. of said N. E. 12, and $6\frac{1}{10}$ acres out of the S. hf. of same, and Complainant to convey to Defendant the same N. hf. and a certain private cartway, and cause continued. Said report finds that the 14 acre piece, so called, contained 21 acres and that in 1836, Louis had an improvement of $2\frac{5}{10}$ acres on the east side of the N. part of same.

At the April Term 1842, it is further decreed, "This cause coming on again to be heard upon the report of the Surveyor to survey and divide said N. E. 12 between the parties and they having refused to convey to each other their separate portions according to said contract contemplated, it is decreed that Peter Menard, Jr. be appointed a Commissioner to make deeds to each of said parties of said land having reference to said partition, division or survey of said land made by said Prettyman and now on file and that he make report to the next term of court.

September Term, 1842, cause stricken from Docket.

April Term, 1852, Peter Menard filed report, showing that the original parties to said suit were both dead, and that he had conveyed to the heirs of said deceased certain parts of said N. E. 12, also to the heirs of said Louis, $8\frac{1}{10}$ acres off the N. side of said fractional N. W. 12, and to the heirs of Clement $12\frac{9}{10}$ off the S. side of said N. W. 12.

October Term 1853, motion by Defendant's Solicitors to set aside said report.

April Term 1852, decree, taken in names of said original parties, sets out that said commissioner had failed to execute the former decree therein and that said original parties had both died since said decree, and directed said commissioner to make deeds to their heirs and report to the present term of said Court. To the reading of all which to the jury, Plaintiff objected—objection overruled and Plaintiff excepted.

Defendant then offered a deed from Peter Menard as Commissioner, to John and Margaret Louis, dated April 8, '52, conveying to them as heirs of said Jean Florent Louis, part of said N. E. 12, and 8 and $\frac{1}{10}$ acres off the North side of said fractional N.W. 12. To the reading of which Plaintiff objected—objection overruled and Plaintiff excepted.

Defendant next offered to read to the Jury from the books of the Recorder of said Co., a deed from said Menard to Freeman Clement, Margaret Clement, Agnes Clement and Francis Wynd, formerly Francis Clement, children and heirs of Francis Clement deceased, conveying to them part of said N.E. 12, also 12 and $\frac{9}{10}$ acres off the South side of said fractional N. W. 12. To the reading of which in evidence

Plaintiff objected, unless shown that said heirs procured said deed to be made, or recorded, or it had been delivered to, and accepted by them, as also because the original was not produced. Objection overruled and Plaintiff excepted.

5.3 William Hammond then called by Defendant, swears "Defendants have occupied the land in dispute since 1848. John Louis had a wood yard on a part of this land North of the field on the river bank. There was a road through the land to the river and Louis and his family have washed at the river.

Cross-Examination. Louis and Clement had lawsuits about this land. No part of that in dispute is cultivated. Defendants rested.

Plaintiff then read in evidence the proceeding in a suit in Chancery, wherein John Louis et als, the heirs and widow of Jean F. Louis deceased, are Complainants, and Freeman Clement and others, the heirs and widow of Francis Clement deceased, and Peter Menard are Defendants, brought to the April Term 1850, of said Court. The bill filed, claims that Jean Florent Louis and Francis Clement entered said fractional N. E. 12, and were jointly entitled to both said N. W. and N. E. qrs., and agreed to divide the same equally between them having respect to each others improvements. That said Francis Clement afterwards refused to comply with said agreement, refers to proceedings herein-before set out and makes them part of said bill, states that the Commissioner appointed to deed to the parties their respective shares had neglected to do so immediately, and that when the deeds were made, the parties to said original suit were 5.6 both dead and the deeds not delivered to them nor their heirs—that said Louis and Clement both died in 1848—that the said Commissioner had not reported as required and that Defendants still claim to hold, own and occupy, and have since enclosed a large part of the land set off by the Surveyor to Louis—that Defendants continually sue and harass Complainants for all acts of ownership they exercise over any part 5.7 thereof, also that Defendants fraudulently procured said cause to be stricken from the Docket—calls for answer to bill, and asks that said Commissioner be decreed to convey to the heirs of Louis and Clement the parts respectively set off to them—that Complainants have the benefit of proceedings in said cause of Louis and Clement, and that the heirs of Clement be bound thereby.

5.9 September Term 1850, leave given to amend said Bill.

September Term 1851, cause continued.

6.0 The amended Bill filed to this term, charges sundry mistakes in decree in original suit, Louis vs. Clement, among others, that the Court designed to decree that Clement should convey to Louis all the improved land Louis had on said fractional 6.1 N. W. 12, and prays that the decree be amended so that the parties to this bill, representing the parties to said former suit, may have and hold in severalty, the parts by the Surveyor set off to said Louis and Clement respectively, and that a Commissioner be appointed to make deeds to the heirs accordingly. 6.2

6.3 April Term, 1852. Report of Commissioner presented to be approved if not objected to by next term.

6.4 September Term 1852, report approved and entered, *non pro tem.* Said report sets out that Menard as Commissioner had made deeds to the heirs of Louis and Clement, certain parts of said N. E. 12, also, to said Louis' heirs, 8 and $\frac{1}{16}$

acres off the North side of said N. W. 12, and to the Clement heirs 12 and $\frac{9}{100}$ off
 65 of the South side of said N. W. 12.

66 May Term '53, this cause dismissed at Complainant's cost, and it is ordered that said
 67 report be set aside and for naught esteemed. Plaintiff thereupon moved the Court to
 exclude from the Jury, all the papers and proceedings in said Chancery suits read
 by either party, also the Commissioner's deed made pursuant thereto. Motion
 overruled and Plaintiff excepted.

For plat used by both parties showing situation &c., of the land in question
 see p. 68. Witness Hammond also stated that where he understood the N. E. corner
 67 of the $12\frac{99}{100}$ acres to be, as marked in Surveyor's report, Welch's field, toward
 the river, would extend a little north of a due west line from that corner, and that
 68 the field had been gradually enlarged that way. This was all the evidence.

Plaintiff asked instructions substantially as follows :

69 1st. That title in fee to the land in question being admitted in John Casey
 on the 30th of May 1837, the Plaintiff has shown title in himself to said land if it is
 proved that Francis Clement died prior to Nov. 30th, 1857, the date of the power
 of Attorney to Alexander Wynd, and that Frances E. Wynd is the wife of said Alex
 ander, and that she and said Freeman, Agnes and Margaretta Clement are the only
 heirs at law of said deceased.

2d. If the Jury find that Plaintiff is the owner of said N. W. 12, and was
 such owner on, and prior to June 1st 1860, and that since June 1st 1860, and prior
 to commencement of this suit, said John and Margaretta Louis, or either of them,
 committed the trespasses, or either of them in said declaration mentioned, they will
 find for Plaintiff against Defendants, or the one committing such trespass, and assess
 his damages at such sum as the evidence shows he has sustained thereby, unless
 they shall believe, from the evidence such trespasses were committed under a license
 from Plaintiff or title superior to Plaintiff.

3rd. Defendants have not shown title in themselves, to said land, or any
 part thereof, as against Plaintiff.

4th. If the Jury believe from the evidence that at the time of the trespasses
 complained of, Plaintiff was in actual possession of a part of said fractional N. W.
 12, under paper title to the whole such possession of part is, in law, possession of
 the whole, and any trespass committed on any part of it, by any one not showing
 better title, entitles the Plaintiff to an action therefor.

5th. An agreement to convey land to be valid, must be founded upon a
 consideration good or valuable in law, and if there be no such consideration, the
 agreement is void, and cannot be enforced in equity or at law.

6th. That all the proceedings in Chancery in the names of Jean Florent Louis
 and Francis Clement, after their decease, are void, and not in evidence before the
 jury.

7th. That the proceedings in the name of the heirs of Jean Florent Louis,
 against the heirs of Francis Clement, revived and continued the former suit brought
 by said Jean, against said Francis, and the dismissal of said last named suit, at the

costs of Complainant, determined both suits, and all orders and decrees and other proceedings therein, or pursuant thereto, are thereby annulled, and not to be considered by the jury in making their verdict.

72 8th. Where land is conveyed by metes and bounds, or any general description, known to the law, the number of acres named in the deed is not material, and the grantee will take all the land within the limits mentioned, though a less number of acres be named in the deed.

9th. The mere execution and recording of the deed from Menard to the Clement heirs, is not of itself sufficient to prove delivery to, or acceptance, or recording, by them of said deed, and unless the jury believe from the evidence, that said deed was delivered to, and accepted by, said grantees, they are not bound by said deed, and the jury should not consider said deed as in evidence for any purpose.

Of which said instructions, the Court gave the 1st, 2d, 4th and 8th, and refused the 3d, 5th, 6th, 7th and 9th, and Plaintiff excepted.

The Court then instructed the jury for the Defendants.

73 1st. That if Plaintiff claims under title derived from Francis Clement, and has shown no other title, and if they believe from the evidence, that at the April Term, 1842, of this Court, a decree was entered in favor of Jean F. Louis *vs.* Francis Clement, ordering Peter Menard, Jr., to convey the land in question to Jean F. Louis, and if they further believe, from the evidence that said Jean F. died before conveyance, and that Menard pursuant to said decree, conveyed said land to the heirs of said Jean, and that the Defendants are the heirs of said Jean, they will find for Defendant.

2. If the jury believe from the evidence that Louis and Clement owned the N.E. fractional quarter jointly, and that Clement during his life occupied the South half of the N.E. quarter of sec. 12, and that the heirs of Clement in conveying, by their deed to Welch, purported to convey the South half of the fractional N. E. 12, when, but for the decree referred to in the first instruction, said Clement's heirs would only have been entitled to an undivided half of said quarter, and that a deed from a Commissioner, conveying said South half of said quarter, is duly recorded, they may from such facts presume that they claim under said Commissioners deed.

74 To the giving of which Plaintiff excepted.

The jury then found for the Defendant, and Plaintiff moved for new trial, Because :

- 1st. The Court refused proper evidence offered by Plaintiff.
- 2d. The Court admitted improper evidence for Defendants.
- 3d. Overruling motion of Defendant to exclude the record evidence, before admitted, against objection of Plaintiff.
- 4th Refusal of proper instructions asked by Plaintiff.
- 5th Giving improper instructions for Defendants.
- 75 6th & 7th. The verdict is against the law and evidence, and instructions of the Court.

Motion overruled. Judgment for Defendants and Plaintiff excepted.

And now comes the said Thomas Welch, plaintiff in error herein, and says that in the record, proceedings and judgment of said Circuit Court, in said cause, manifest error hath intervened to his prejudice in this, to wit :

1st. Said Court erred in refusing to admit proper evidence offered by Plaintiff.

2d. Said Court erred in the admission of improper evidence on the part of the Defendant.

3d. Said Court erred in overruling the motion of said Plaintiff to exclude from the jury the Chancery record and proceedings, including reports and deed of Commissioner thereunder, before given in evidence against the objections of the Plaintiff.

4th. Said Court erred in refusing to give instructions, numbered, 3, 5, 6, 7 and 9, asked by Plaintiff.

6th. Said Court erred in the instructions given the jury on the part of said Defendants.

5th. Said Court erred in admitting Defendants to read in evidence from the books of the Recorder of Tazewell County the copy of deed, from Peter Menard, as Commissioner to the heirs of Francis Clement, without first showing the delivery of said deed, or that said heirs had accepted, and procured it to be made of record, and also because said Defendants did not produce the original of said deed, nor prove notice on Plaintiff, or show any reason for its non-production.

7th. Said Court erred in overruling motion of Plaintiff for new trial.

8th. Said Court erred in rendering judgment in favor of Defendants on said verdict.

9th. Said Court erred in not rendering judgment for Plaintiff.

Wherefore and for other manifest errors appearing in said record, Plaintiff prays that the judgment of said Circuit Court may be reversed, and annulled, and wholly for naught esteemed.

COOPER & MOSS,
For Plaintiff in Error.

Assignment of Errors.

1st. In refusing proper evidence offered by Plaintiff.

2d. In admitting improper evidence for Defendant.

3d. In overruling Plaintiff's motion to exclude from the jury the proceedings in the suit in Equity of Louis vs. Clement, and Commissioner's deed thereunder, before given in evidence.

4th. In permitting the record of deed from Peter Menard, as Commissioner, to the heirs of Francis Clement to be read to the jury.

5th. In refusing instructions, 3, 5, 6, 7 and 9, asked by Plaintiff.

6th. In the instructions given for the Defendants.

7th. In overruling Plaintiff's motion for new trial.

8th. In rendering judgment for Defendant.

9th. In not rendering judgment for Plaintiff.

COOPER & MOSS,
For Plaintiff in Error.

234 53

Walch

vs

Lewis

Abstract

Filed April 23-1862

L. Leland

Clark

State of Illinois, } Third Grand Division,
SUPREME COURT. } APRIL TERM, A. D. 1863.

THOMAS WELCH

vs.

JOHN LOUIS ET AL.

ERROR TO TAZEWELL.

BRIEF AND ARGUMENT FOR DEFENDANTS IN ERROR.

This was a suit in trespass by Welch vs. Louis et al, for damages done on the northwest quarter of section 12, town 25 north, range 5 west 3d P. M. And the record and evidence show that Louis, the ancestor of defendants in this case, and ~~claimant~~, the ancestor of the grantor of plaintiff in 1834, settled, respectively, and made improvements on the N. E. and N. W. frac. quarters of section 12 aforesaid, then government land; and that they soon afterwards entered of the United States, jointly, the N. E. quarter. One Casey having entered the 14 acre fractional N. W. quarter, he in 1836 conveyed it to ~~claimant~~; and ~~claimant~~, on some consideration or inducement from Louis, by his agreement under seal, covenanted with Louis to convey to him all his improvement on the said northwest quarter and northeast quarter, and also divide equally between them the northeast quarter, then owned by them jointly, Louis also covenanting to convey to claimant, claimant's improvement on the northwest quarter, and also divide the northeast quarter equally between each, having regard to the improvements of the other on the whole tract, and each quarter. This agreement is under seal, and the evidence shows Louis then had possession of the very part of the tract, in cultivation, where the trespass is alleged to have been committed. See the article of agreement, record, page 30, 31; the plat and report of Lewis Prettyman, page 38, and the testimony of Hammond as to the possession, in 1848, page 52.

The record also shows that ~~On~~ application to the circuit court of Tazewell county, in 1841, entered a decree, each to convey to the other the land, as the same had been agreed to be conveyed, having regard to each other's improvements on the whole tract, and caused it to be surveyed and plotted, to enable them to do so the more correctly. See Decree, page 34 and 35 of record; and also plat of survey, page 38.

And said court, (Record, page 40,) expressly decreed that Peter Menard convey the land as described in the plat and divided by the surveyor, unto the parties respectively. This decree was never appealed from, and is still in full force; and according to which, (the parties to the suit having deceased before the execution of the deed,) the said Peter Menard executed and delivered the conveyances so required to be executed, unto the heirs of said parties, respectively; and by this deed, the land so described and set apart, and on which the trespass is alleged to have been committed, was conveyed to these defendants, whose ancestors were possessed of it, and had it under improvement in 1836, which is admitted by the agreement of claimant, above referred to—and plaintiff is estopped from denying that fact—and who was also possessed by improvement on it in 1848, as shown by

Hammond's testimony; and who, with defendants, used it for a wood yard and timber lot, for fire-wood and other purposes, at all times claiming it as their own, from the year 1836 to the present time. They have at all times lived immediately adjoining it; their only access to the river was over it; they used it personally, individually, and daily, and claimed right and title, and had actual possession of it, as is admitted by the record, page 31; plaintiff's grantor, ~~Clement~~, there agreed that it should be set off and apart to Louis as his own, under his hand and seal.

It is true there are some errors in description, in those of record referred to, and the whole transaction is remote. All parties to it are dead, and plaintiff now insists on the proof of the consideration of the agreement, which is under seal, and imports a consideration. But if it did not, thirty years' possession, improvement, and claim of title, with the decree of the court ordering a conveyance to him, should raise a presumption of consideration, rather than a doubt; and the fact of the possession of it by Louis, and use of it, sometimes by actual inclosure and improvement of the land; sometimes by using it in cutting timber and keeping a wood yard on it; and always by the personal use and enjoyment of it by himself and his family—it lying immediately between his house and the river, only a few rods off—should raise a presumption the jury might well settle in defendants' favor.

The facts that the grantors of plaintiff, (~~the Clement~~), except for the deed from Menard to them, were the owners in full of but the undivided half of the northeast quarter, which is admitted; and the further fact that, after the deed from Menard to them, they sold by warrantee deed to plaintiff the whole of the south half of said northeast quarter of section 12, is significant, and from it the jury might well infer that they had accepted the deed so made and reported to them by said Menard, and without which they could have conveyed but one undivided half; and altogether it well warranted the jury in finding the defendants not guilty of the trespass charged, and also warranted the court in giving the 2d instruction of defendants complained of.

The reason for objection to the testimony of John Moshan, on being recalled, was, that he had been fully examined by plaintiff as his witness in chief, and had been turned over to the defendants for cross-examination; and that defendants had not cross-examined, or asked defendants upon or about anything upon which plaintiff asked to re-examine, and that, by the law, it was a matter in the discretion of the court to allow a party to recall and re-examine a witness which had been previously examined by the party in chief; and the ruling of the court was therefore correct, and could not be assigned for error.

And as to said first instruction of defendants complained of, the objections to it are untenable, but if really sustainable when alone, it is fully neutralized and explained by plaintiff's 2d and 4th instructions which were given, and plaintiff is not prejudiced by it. Louis had long possessed the land under claim of title; the records of the county showed it, and plaintiff knew it; and this court will not disturb a verdict when substantial justice has been done. *Smith vs. Shultz*, 1 Scam., R. 420. There is, in this record, clearly some evidence on which the jury might find for the defendants, and such cases, "in trespass, and where the evidence is usually circumstantial, the court will rarely, if ever, disturb a verdict, when there is anything in the record tending to support the finding of the jury." *Young vs. Silkwood*, 11 Ills, 36.

And it is plain from all the evidence, that the trespass complained of was the most trifling and insignificant, merely nominal, under full belief of right; and this cause, when decided, does not effect the title to the land in either party. Apparent justice has been done; and even conceding (which we do not) all that plaintiff complains of, yet, "if this court is satisfied that justice has been done, it will not charge a new trial, even though the jury find *against the weight of evidence*; against the instructions of the court, or through misdirection of the court in point of law." Leigh vs. Hodges, 3 Scam., R. 18, and Allen vs. Smith, 3 Scam., 27. Bloom vs. Denman, 12 Ills., 240; Gillett vs. Sweat, 1 Gill., 475; Low vs. Orr, 1 Gill., 70; and Young vs. Silkwood, 11 Ills., 36.

When a question is fairly and intelligibly submitted to a jury, their determination ought not to be set aside without the most substantial reasons. Kincaid vs. Turner, 2 Gillman, R. 618. Wherefore, this judgment ought to be affirmed.

B. S. PRETTYMAN,
Attorney for Defendants.

⁵³
Welch

Louis Welch

Prof & Argum by
Defts

Filed May 4, 1863

L. L. L. C. W. R.

Heas

To a Term of the Circuit Court
begun and held at the Court House in
Pekin within and for the County of
Tazewell and State of Illinois, on the
first Monday of the month of September
A.D. 1861. Present Hon James Harriott
Judge of the 21st Judicial Circuit
of the State of Illinois, composed of
the Counties of Mason, Tazewell &c

Be it remembered, that on the 22^d day of August
A.D. 1861. a summons was issued from the office
of the Clerk of the Circuit Court of Tazewell
County Illinois, in the words and figures following:
To wit, in

"State of Illinois } The People of the State of Illinois
"Tazewell County } To the Sheriff of said County, Greeting:
"We command you that you summon John
Louis, Margaretta Louis & Mary Louis Hammond,
"if they shall be found in your County, personally
"to be and appear before the Circuit Court of said
"Tazewell County, on the first day of the next
"Term thereof, to be holden at the Court House in
"Pekin, in said Tazewell County, on the first Monday
"of September 1861. to answer unto Thomas Welch, in
"a plea of Trespass vi et armis, to the damage of
"said Plaintiff as he says in the sum of Five
"Hundred Dollars, and you have there and there
"this writ, with an indorsement thereon, in what
"manner you shall have executed the same.

Witness George H. Harlow, Clerk of our
said Court, and the Seal thereof, at
Pekin. aforesaid, this 22^d day of August
A.D. 1861.

Geo. H. Harlow Clerk
per A. P. Griswold deputy

Which summons was returned on the 21st day
of August 1861. with the following endorsement to wit:-
State of Illinois }
Tazewell County) I have duly served the within by
reading the same to the within named John Louis,
Margaretta Louis, & Mary Louisa Hammond
as I am therein commanded.

C. Williamson Sheriff.
per W. H. Bibbert Deputy

And now afterwards, to wit:- on the said 22^d day
of August A.D. 1861. a declaration was filed in
said cause in the words and figures following. To wit:-

State of Illinois } In the Circuit Court
Tazewell County) Of the Sept. Term 1861.

Thomas Welch the plaintiff in this suit
complains of John Louis, Margaretta Louis and
Mary Louisa Hammond, the defendants in this
suit, of a plea of trespass vi et armis. For that
the said defendants on the first day of June
A.D. 1860, and on divers other days and times,
between that day and the commencement of this
suit, with force and arms & broke and entered
a certain close of the said plaintiff situate on

„ The North West fractional quarter of Section number
 „ Twelve (12) in Township number Twenty five, Range
 „ number Five West of the third principal meridian
 „ in Tazewell County aforesaid, and then and there
 „ broke down, tore up and destroyed the fences there-
 „ on of great value, to wit: of the value of Two hundred
 „ Dollars. and with feet in walking trod down, trampled
 „ upon, and spoiled the corn and grass of said plaintiff
 „ of great value, to wit: of the value of One hundred Dollars,
 „ then then growing and being, and with cattle, to wit:
 „ horses, mares, geldings, cows, oxen, and sheep, eat
 „ up and depastured the grass and corn of the said
 „ plaintiff then growing and being in the said close
 „ of great value, to wit: of the value of One hundred
 „ Dollars, and with the feet of the said horses, mares,
 „ geldings, oxen, cows & sheep, tore up, subverted,
 „ damaged and spoiled the earth and soil of the
 „ said close damaging it to the extent of \$100 -
 „ and also cut down, prostrated and destroyed the
 „ trees & saplings of the said plaintiff, situated on
 „ said tract of land. on the day and year aforesaid
 „ and at divers days since then and before the
 „ commencement of this suit, to wit: one hundred
 „ trees, consisting of Pecan, Poplar, Elm, and various
 „ other kind, the name of which is not known, of great
 „ value, to wit: of the value of Four hundred Dollars
 „ and the timber, wood and branches thereof, coming
 „ and arising, to wit: Thirty loads thereof of the said
 „ plaintiff, of great value, to wit: of the value of One hundred
 „ Dollars, took and carried away, and converted and
 „ disposed thereof, to their own use, And other wrongs to
 „ the said Plaintiff at the time above mentioned
 „ to wit: on the day and year aforesaid, and at divers

4 times since then and before the commencement of
this suit, against the peace of the Country, and to the
damage of the said plaintiff of \$500. and therefore
he brings his suit &c

Cooper & Moss
Plffs Attys

And now afterwards, to wit: on the 4th day of
September A. D. 1861. the defendants filed their plea
in said cause, in the words and figures following,
To Wit:

State of Illinois }
Barzwell County } In Circuit Court
September Term 1861.

John Louis et al
vs
Thomas Welch }

1 And the said defendants by
Pettymann & Roberts their attorneys come and
defend the force and injury, when & say
that they are not guilty of the said supposed
trespasses above laid to their charge, or any or either
of them, or any part, in manner and form as the
said Plaintiff hath above thereof complained
against them, and of this the said defendants put
themselves upon Country &c

And Plff doth the like
Cooper & Moss attys

2 And for a further plea in this behalf as to
the breaking and entering of said close in which
&c in the said declaration mentioned, and
then and there breaking down and destroying the

51

fences thereon, and with feet in trampling, treading
down and trampling upon and spoiling the corn
and grass, and with cattle, horses, mares, geldings,
oxen, cows and sheep, in eating up and depastur-
ing the corn and grass growing and being upon
said close, and with the feet of said horses, mares,
geldings, oxen, cows and sheep in tearing up and
spoiling the earth of said close, and in destroying
the trees and saplings, timber, wood & branches
being and growing in and upon said close, and
taking and carrying the same away, and in
converting the same to defendants use. From and
out of said close, the ^{said} defendants say that said
plaintiff ought not to have and maintain his
aforesaid action thereof against them, because
they say that the said close in said declaration
mentioned at the said time, when it was the
close soil and freehold of them the said defend-
ants, to wit: at Tazewell County aforesaid, wherefore
said defendants in their own right at the said
when in said declaration mentioned, broke
and entered the said close and destroyed the fences
thereon and with feet trod down the corn and
grass, growing and being thereon, and with cattle,
horses, geldings, oxen, sheep and cows eat up and
depastured the grass growing upon said close, and
took the wood, trees, branches and timber being
growing thereupon, and carried away and converted
the same, which are the same trespasses in the
introductory part of this plea mentioned, and of
which the said plaintiff hath complained against
said defendants. And this they are ready to verify,
wherefore they pray Judgment &c

Puttymann & Roberts
for Defendants

And now afterwards, to wit: on the 5th day of September A.D. 1861. the Plaintiff filed his replication in the said cause, in the words and figures following. To wit:-

Thomas Welch } In the Circuit Court, Tazewell
County Ills. of the September Term
1861. vs John Louis et al } In Trespass =

And said plaintiff for replication to the plea of the said defendants, by them ^{and} above pleaded, says, precludi non. Because he says that the said close, soil & freehold in said declaration mentioned, at the time when ~~he~~ were not the close, soil & freehold of the said Defendants, as in said plea is alleged, but of the said plaintiff, and this the said plaintiff prays may be enquired of by the country - Wherefore

Cooper & Mop
for Plaintiff

And now afterwards, to wit: at a Term of the Circuit Court begun and held at the Court House in Pekin, within and for the County of Tazewell and State of Illinois on the first Monday of the month of September A.D. 1861. Present Hon James Harriott, Judge of the 21st Judicial Circuit of the State of Illinois, Chapman Williamson Sheriff and George A. Harlow Clerk, the following proceedings were had, to wit:-

7

1st Day Monday September 2^d 1861
Hugh Fullerton States Attorney being
absent. the Court appointed Caleb J. Dilworth
States attorney for the present Term of this Court

4th Day Thursday September 5th 1861

Thomas Welch

^{vs.}
John Louis, Margaretta Louis
& Mary Louisa Hammond

Trespass vi et armis

Now comes as well
the Plaintiff by his attorney Cooper, as the said
Defendants by their attorneys Roberts & Puttymann
whereupon came a Jury of 12 good and lawful
men, to wit:— A. B. Seybold, H. J. Kampman,
A. Lord Esq., J. V. Porter, Martin Broyhill, Richard
Chaw, David Talor, James Wilson, J. W. Robinson,
Franklin Gurby, Curtin Harding & Henry Young
duly elected, tried and sworn. Whereupon
the Plaintiff dismisses his suit as to Mary
Louisa Hammond, and the said Jury are dis-
charged from consideration of their verdict until
tomorrow

5th Day Friday September 6th 1861

Thomas Welch

^{vs.}
John Louis & Margaretta Louis

Trespass vi et armis

Now comes as well the
Plaintiff by his attorney, as the said Defendants
by their attorneys, as also the Jury heretofore empanelled

8

in this cause, who having heard the allegations and proofs of parties, and argument of counsel thereon, retired to consider of their verdict

6th Day

Saturday September 7th 1861

Thomas Welch

^{vs.}
John Louis & Margaretta Louis

} *Interp. et armis*

Now come as well the parties by their attorneys as also the Jury empanelled in this cause, who, for Verdict say. We the Jury find the Defendants not guilty. Whereupon the Plaintiff moves the Court for a new trial, which motion the Court overruled. It is therefore ordered and adjudged by the Court that the defendants have and recover of the plaintiff the costs and charges by them about their defence expended and that execution issue therefor

Be it remembered, that on the 10th day of September A.D. 1861. a Bill of Exceptions was filed in said cause, in the words and figures following, To wit:

Thomas Welch

^{vs.}
John Louis
Margaretta Louis

} In the Circuit Court
Hazewell County Ills
September Term 1861.

Be it remembered that on the coming on of this cause for trial before the Court & a Jury, the plaintiff to maintain the

9

issues on his part, called first, Samuel B. Davis who testified that he knew the A. W. fractional 12, T25, A. R. 5 W in said County, and had knowledge of the situation of said premises for 25 years. That he first sawed there in 1836, and that he resides about 2 1/2 miles from said land. Witnesses knew Francis Clement & John Florent Louis in their life time - they have both been dead a number of years. I think they were both dead as early as 1847, or 1848. = Both Louis & Clement lived, and their families after them, on the N.E. quarter of said Section 12, and on the East side of the road, which here runs North & South on, or pretty near the line between said North East & North West quarter. Clement had a field enclosed which he cultivated on said North West quarter and between the Road & the River, = from the time I first knew the premises - His family lived at the old place & cultivated this field after his death until they sold out to the plff Welch some four years since, and Welch still occupied and cultivated said field = Neither old man Louis, in his lifetime, nor his family since, have ever had any improvement on said North West quarter, or West of said road since I have known the premises - The Clements & Welch have a stable on the West of the road - This has been there for a long time = The North part of said fractional quarter above Welch's field has never been cleared off, though the big trees have been pretty much cut out = Old Clement in his lifetime, and his family afterwards, always claimed the whole of said North West quarter

and had frequent suits with Louis on account of trespasses committed by the latter on the ground North of the field. = This part of the land has never been enclosed or cultivated. = On Crop Examination Witness stated, Louis also claimed the unenclosed part of said N. W. quarter = He, Louis, lived on his improvement East of the road, as early as 1836. = He had a field on the east side which extends to the road on that side, = There are some paths leading to the river West of Louis' improvement on the North east quarter, and I have seen the family carry water from a Spring on the river North of the house. = This Spring is 50 or 60 rods North of Louis' house, and on land North of said North West quarter. = There was a wood-yard on the River West from Louis' house, where some wood was kept, some 12 years ago = I have not seen much wood there since.

Andrew J. Fourn, next called - said I have lived in the neighbourhood about 16 years = and before the old people died, and know the ground in dispute = Have seen wood cut there, but don't know who cut it = I never saw any improvements on the North West quarter above Clements' field - and West of Louis' improvement = don't know who owns this land = pretty much all the land on this quarter overflows = the land in the field on the South side is tilled in dry seasons. = Crop Examination = The North part of this quarter has been more free from timber formerly, than now, young trees have grown up = never knew anything about the wood yard spoken of = There was road

11
across the land = Louis carries his water from above =
Have seen a kettle for washing across at the River
West of Louis' field. But don't know who it belonged
to = Have seen Mrs Louis' daughter there =

M. Quinlin next called, said - I know the parties
to this suit, and the land in dispute = I was helping
the Plaintiff to build a fence on the land in question
West of Louis' house, and North of Welch's field =
This was in August, about three weeks since, John
Louis and his sister came and tore the fence down =
It was a pole fence = Welch cut some of the
poles for the fence on this land = We had put up
a number of panels when the fence was torn down =

Patrick Welch next called, said - I am the son of
the plaintiff = Father has lived three or four years
where he now does = He bought of the Clements =
some three or more weeks since, father undertook
to build a fence on the fraction of land lying
West of the road and Louis' house, We there building
this fence on the open ground on said tract North
of our field on the West side of said Road & between
that & the River, when John Louis came & tore
it down = We were making this fence of poles &
stakes driven into the ground & intended to
enclose all that remained open of said fractional
quarter, but were prevented by Louis = Father has
a part of this quarter fenced, and a field on it =
He has cut wood on the part North of the field, and
got some of the poles & stakes for the fence he was
building from that part = Last year the old woman
Margaretta Louis, tore down the fence along the North

side of the field on this quarter referred to, in two places. This was late in the spring, just before we ploughed the land for corn planting. We were repairing and putting up this fence where it had been washed away by the high water. The field overflows every spring, and we are always late getting it ploughed and getting the corn in. One of the places where the old woman tore down this fence was toward the river. At this place we were setting the fence a little north of where it had been before, when she came and tore it down. She then went up to the north east corner, at the road, and tore the fence down there. She took down several panels at each place. At the part next the road where she took down the fence, it was the old fence, and stood on the line where it had always stood, so far as I know. When I first saw the fence, it was then old, and seemed to have stood there a long time. We put up the fence again at both places where Mrs. Louis took it down, setting it next the road, where it stood before, but down next the river, we set it back. Father has paid the taxes on this quarter since he has been there. I never saw John Louis cut any trees on any part of this tract.

Crop Examination = Mrs. Louis lives in the house on the East side of the Road. There is an old road across this quarter, West of Louis' field. I have seen the family of Louis gather up Wood from this land.

On being recalled, this Witness stated = It was some time in the month of June, I think toward the middle of June 1860, that old Mrs. Louis tore

13

these fences down - It was only a short time before harvest - The water lies on this land in the Spring, so that it is generally late before we can get the ground ploughed - The present season this ground is pretty dry -

Plaintiff next offered and read in evidence tax receipts for the years 1850-1851-1855-1856-1857-1858-1859-1860 as follows, viz:

"State of Illinois } Received of Francis Clement
"Tazewell County } Eight Dollars and five cents, the
"Tekin Township } amount of Tax due the State of
Illinois and the County of Tazewell for the year 1855
on the following described tracts or lots of land

Description	Sec	Town	Range	Acres	Val
"N $\frac{1}{4}$ fraction	12	25	5	14 $\frac{1}{2}$	179
"S $\frac{1}{2}$ N. E.	12	25	5	75 $\frac{1}{2}$	87
"Personal property				377	\$8.05

W. Stanbury

"State of Illinois } Received of Francis Clement Five
"Tazewell County } Dollars and thirty two cents, State
"Town of Tekin } County and Special Tax, due
the State of Illinois and County of Tazewell, for
the year one thousand eight hundred and fifty
one, on the following described tracts or lots of
land, to wit:

Description	Sec	Town	Range	Acres	Value	State Tax	Co's Tax	Total Tax
"S $\frac{1}{2}$ N. E.	12	25	5	75 $\frac{1}{2}$	377	2.23	1.13	3.36
"Personal Property					220	1.30	.66	1.96
"N. W. fraction	12	"	"	14 $\frac{1}{2}$	87	.51	.26	.85

\$6.17

A. Riblet collector

14

State of Illinois } Received of Freeman Clement the
 Tazewell County } sum of Ten dollars and forty eight
 Pekin Town } cents, State, County and Special
 tax, due the State of Illinois and County of Tazewell
 for the year one thousand eight hundred and
 fifty five, on the following described tracts or
 lots of land, to wit:

Description	Sec	Town	Range	Acres	Valuation	State & County Tax	Town Tax	School Tax	Total Tax
pt E 1/2 N.E.	12	25	5	75 1/2	225	1.96	45	90	3.31
N.W. frac 1/4	"	"	"	14 1/2	80	.69	16	32	1.17
Personal Property					405				6.00
"									\$ 10.48

H. Riblet Collector

State of Illinois } Pekin Town 1856.
 Tazewell County } Received of J. Clement the sum
 of Four dollars and thirty three cents, State, County
 and Special tax, due the State of Illinois and County
 of Tazewell, for the year one thousand eight hundred
 and fifty six, on the following described tracts or
 lots of land, to wit:

Description	Sec	Town	Range	Acres	Valuation	State & County Tax	Town Tax	School Tax	Total Tax
E 1/2 N.E. 1/4	12	25	5	75 1/2	225	2.07	56	56	3.19
N.W. frac 1/4	"	"	"	14 1/2	80	.74	20	20	1.14
"									\$ 4.33

H. Riblet Collector

State of Illinois } Pekin Town January 1858.
 Tazewell County } Received of J. Clement the
 sum of nine dollars and eighty three cents
 State, County and Special Tax, due the State
 of Illinois, and County of Tazewell for the
 year one thousand eight hundred and fifty

15

seven on the following tracts or lots of land
to wit:

Description	Sec	Town	Range	Acres	Valued	State County Tax	Town Tax	Road Tax	School Tax	Total Tax
1/2 N.E.	12	25	5	75 1/2	377	4.03	1.13	45	1.50	7.11
N.W. 1/4	"	"	"	14 1/2	145	1.55	43	16	58	2.72

\$9.83

H. Riblet Collector

State of Illinois } Town of Pekin Jan'y 13, 1859.
Tazewell County } Received of Thos Welch by Morris
Mullins the sum of Eight Dollars, and fifteen cents
State, County and Special tax due the State of Illinois
and County of Tazewell, for the year One thousand
eight hundred and fifty eight, on the following
described tracts or lots of land, to wit:

Description	Sec	Town	Range	Acres	Valued	State County Tax	Town Tax	Road Tax	Total Tax
1/2 N.E.	12	25	5	75 1/2	377	4.03	1.11	75	5.89
N.W. 1/4	"	"	"	14 1/2	140	1.55	42	29	2.26

\$8.15

H. Riblet Collector

State of Illinois } Pekin Jan 30, 1860.
Tazewell County } Received of Thomas Welch by Morris
Barns, the sum of nine dollars and sixty seven cents
for State, County and Special tax, due the State of
Illinois and County of Tazewell, for the year
one thousand eight hundred and fifty nine
on the following described tracts or lots of land
to wit:

Description	Sec	Town	Range	Acres	Valued	State County Tax	School Tax	Town Tax	Road Tax	Total tax
1/2 N.E. 1/4	12	25	5	75 1/2	375	3.64	1.31	75	1.50	7.20
N.W. 1/4	12	25	5	14 1/2	145	1.40	50	29	58	2.77

Jos Stewart C. P. J.

State of Illinois } Pekin July 9, 1861.
 Tazewell County } Received of Thos Welch & Morris
 Mullin the sum of Fourteen dollars and nine
 cents, for State County and Special Tax, due the
 State of Illinois, and County of Tazewell, for
 the year one thousand eight hundred and
 sixty, on the following described tracts or lots of
 Land, to wit:

Description	Acres	Valuation	State & County Tax	School Tax	Town Tax	Road Tax	Total Tax
Personal	75 1/2	260	2.52	1.56	78		4.86
1/2 N E 1/4	75 1/2	377	3.66	1.13	113	75	6.67
1/2 N W 1/4	14 1/4	145	1.41	43	43	29	2.56

\$ 14.09

D. J. Thompson Collector

George Lux, next called by plaintiff, said - I know the tract of the land in question - It lies between the Road and the River - I know the lines and have helped the County Surveyor to run them - I have lived in the neighborhood and know these premises for 13 or 14 years, but never knew either of the old men Clement or Lorus - They were dead before I came there - Freeman Clement has lived there till he sold to Welch, the plaintiff, about four years ago - Clement had a field on this North West quarter, on the South side, and between the Road and the River - which he cultivated from the time I knew him till he sold out, and which Welch has cultivated since - The fence on the South side of this field next the Road, stands just where it always has stood since I first knew it - but down toward

17

the River the field has been gradually enlarged
by extending it out towards the River = The land
South of this field is open and unimproved =
Both parties claim this open land, and have
done so, since I first knew them = There has never
been any dispute about the land in the field =
That has always been held by the Clements =
I never noticed any particular road across
the open part of this lot, but have crossed it
frequently, as the public generally have = Saw
Welch cutting poles on this land this spring =
Clement had possession before Welch came
there = There is a small part of the North East
quarter of said Section 12, which lies West of the road
about an acre or something more = The road runs
on the line between the North east & North West
quarters till near the South side of Louis' field
on said North east quarter, and then veers to the
East, so as to leave a narrow strip of said North
east quarter, between said road and the line =
There has never been any improvement on said
North West quarter, North of Welch's field since
I came to the neighborhood = about $\frac{3}{4}$ of the
tract is in this field and under cultivation =
The whole quarter overflows, except the part at
the North east corner of the field, which is higher =
It is always quite late before this field can be
ploughed, and corn planted = generally the
corn in other places is up fit for cultivation
before this field is planted = but being rich and
warm ground it comes on fast and brings a
good crop = I have known corn planted here
about the last of June or early part of July do well

I don't know exactly when the ground was plowed and the corn planted in 1860, but know it was quite late

John P. Moushon, next called said - I know these premises, and have known them since 1832 - My Father settled on the North east & North West quarters of Sec 12, 25, N 5 W in that year, and made some improvements - Our first improvement was on the North West quarter - We made a small field there - which has been enlarged toward the River since - I know where the fence on the North side of this field stands - About the North East corner, it is just where we first set it, but down toward the River it may have been set farther North - my father sold out his improvement to Clement, who paid him for it, this was in 1834 - We were in possession of this North West quarter, by having a stable and field upon it, and Clement came into possession after us - Clement continued in possession till he died - this was some 13 or more years ago - his family continued in possession afterwards, till they sold to Welch - I know the family of Clement - He left 4 children, - Freeman, Agnes, Margaret & Alice, but Alice died - Agnes married Alexander Myrd - I don't know who has paid the taxes on this North West quarter

Crop Examination - We built our house on the South east side of the road, but made the little field on the West side - Louis came to live with us and settled on the Hill fraction -

19

Louis used to crop the small fraction to the River and wash there, and so did the Indians - Louis had a small enclosure of about an acre or an acre and a half on the West side of the Road, which he made when he first came there and cultivated a crop on it one year, and the next year the water washed most of his fence off, and he then removed the remainder of the fence, and used the rails in making a fence, round a field on the east side of the road and has never had any improvement on that side of the Road since - I have seen wood at a place on the Bank of the River, on the small fraction -

On re-examination, plaintiffs counsel asked the witness what Louis said when he took away his fence from the West side of the Road - for the purpose of proving an abandonment of the possession - which question was objected to by the counsel for Defendants, and the objection sustained by the Court, - to which ruling of the Court in sustaining said objection and refusing to permit said question to be put to the Witness, the Plaintiff by his counsel then and there excepted -

Plaintiff further to sustain the issues on his part, next offered and read in evidence to the Jury, a Deed from John W. Casey to Francis Clement, dated May 30th 1837 and recorded August 2nd 1837, which deed is in the words and figures as follows, to wit:

John W. Casey } Deed No 2708
 To } Recorded August 2^d 1837
 Francis Clement }

Know all men by these presents
 that I, John W. Casey of Pekin, County of Tazewell
 and State of Illinois in consideration of the sum
 of One dollar to me in hand paid the receipt
 whereof is hereby acknowledged, have bargained,
 sold and quit claimed, and by these presents
 do bargain, sell and quit claim unto the said
 Francis Clement of the County of Tazewell and
 State of Illinois, and to their heirs and assigns forever,
 all my right, title and interest, claim & demand
 both in law and equity, of, in and to that certain
 tract of ground, known and described as the North
 fractional half of Section twelve (12) in Township
 Twenty five, North of Range five West of the third
 principal meridian, containing as per the dupli-
 cate, one hundred & sixty five acres and $\frac{180}{100}$
 hundredths of an acre more or less, being, lying,
 and situate in the County and State aforesaid
 with all the appurtenances thereto belonging,
 of me situate whereof, I have hereunto set my
 hand & Seal this 20th day of May Eighteen hundred
 & thirty seven.

In presence of
 Alden Hull

John W. Casey *Seal*

State of Illinois }
 Tazewell County } ss. I, Alden Hull a Justice of the
 Peace, in and for said County, do certify that
 John W. Casey, to me personally known to be the
 person described in, and who executed the within

21

and did acknowledge the execution of the within deed
"Deed, to be his free voluntary act and deed
"for the uses and purposes therein expressed.

"Given under my hand and seal this Twentieth
"(20th) day of May A.D. One thousand eight hundred
"and thirty seven

Alden Hull J. P. ^{Seal}

"State of Illinois
"Tazewell County } P. J. George H. Harlow Clerk of
"the Circuit Court and ex officio Recorder in and
"for said County, do hereby certify that the
"within deed, is a true and correct copy of the deed
"from John W. Casey to ^{Frederic} ~~John~~ Clement as recorded
"in Book "H" of deeds at page 250. as appears of
"record in my office

"^{Seal} Given under my hand and official
"seal this 5th day of September 1861.
"Geo H. Harlow Clerk

It was then admitted by both parties that
at the time of making said deed, the said John
W. Casey was the owner in fee of said North West
fractional quarter of said Section 12. By title
regularly deduced from the United States

Plaintiff next offered and read in evidence
to the jury, against the objections of Defendants
a power of attorney from Freeman Clement and
others to Alexander Hynd. in words and figures
as follows, to wit:

"Know all men by these presents
"that we Freeman Clement, Agnes Clement
"and Margaret Clement of the City of Matteson
"in the County of Cass and Territory of Nebraska,
"have made, constituted and appointed, and by

these presents do make, constitute and appoint
 Alexander Mynd of Fremont in Fuzwell County
 and State of Illinois, our true and lawful attorney
 for us, and in our names and places to enter
 into and take possession of all the real estate
 belonging to us situated in Fuzwell County
 Illinois, and to bargain, sell, grant, convey and
 confirm, the whole or any part thereof for such
 price or sum of money, or on such terms, as he
 may think best, and for us and in our names
 to make, execute, acknowledge and deliver unto
 purchaser or purchasers thereof good and sufficient
 conveyances with warranty of same and to demand
 receive and collect all sums of money which
 shall become due and payable to us by reason
 of such sale or sales, giving and granting unto
 our said attorney, full power and authority to
 do and perform all and every act and thing
 whatsoever requisite and necessary to be done
 in and about the premises, as fully to all intents
 and purposes as we might, or could do if personally
 present, with full power of substitution and revocation,
 hereby ratifying and confirming all that our
 attorney shall lawfully do, or cause to be done,
 by virtue hereof.

In witness whereof we have hereunto set our
 hands and seals this 30th day of November A.D. 1857.

In presence of
 Millitt Pottenger

Freeman Clement
 Agnes Clement
 Margaret Clement

Territory of Nebraska
 County of Cass. Before the undersigned, a

23

Notary Public for the County & Territory aforesaid
this day came Freeman Clement Agnes Clement
& Margaret Clement, who are personally known
to me to be the identical persons, whose names
are affixed to the foregoing instrument, and they
acknowledged the same to be their voluntary
act and deed.

In testimony whereof I have subscribed
my name and affixed my seal of office
this 30th day of Nov^r 1857.
Willitt Pottinger
Notary Public

State of Illinois }
Tazewell County } J. Merrill C. Young Clerk of
the Circuit Court and ex-officio Recorder within
and for said County, do hereby certify that
within instrument was filed and recorded in
my office in Book N^o 1, Powers of Attorney page
296 this February 15th 1858.
Merrill C. Young Clerk

Plaintiff then next offered and read in
evidence to the Jury without objection, the deed
of said Freeman Clement and others, to said
Plaintiff - which said Deed is as follows. To Wit:-

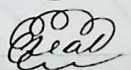
This indenture, made this Fifth day of February
in the year of our Lord one thousand eight hundred
and fifty eight, between Alexander Hynd and
Francis Ommg his wife, formerly Francis E.
Clement in her own right, and Alexander Hynd
attorney in fact for Freeman Clement, Agnes
Clement and Margaret Clement of Cass County

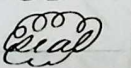
Territory of Nebraska, parties of the first part, and
 Thomas Welch of the same County and State party
 of the second part. Witnesseth, That the said parties
 of the first part, for and in consideration of the sum
 of Fourteen Hundred Dollars, to them in hand
 paid by the said party of the second part, the
 receipt of which is hereby acknowledged, have
 granted, bargained, sold, conveyed and
 confirmed, and by these presents, do grant, bargain
 sell, convey and confirm, unto the said party of the
 second part, his heirs and assigns those certain
 tracts or parcels of land, situated in Tazewell
 County State of Illinois, and described as
 follows, viz: The South half of the North East
 quarter of Section number twelve (12) in Township
 number twenty five (25) Range five (5) West of the
 third principal meridian, containing twenty
 five and one half acres, also the North West
 fractional quarter of Section number Twelve
 (12) in Township number twenty five (25) Range
 Five (5) West, containing twelve and one half acres
 of land more or less. Together with all and
 singular, the hereditaments, rights privileges
 and appurtenances therunto belonging, or in
 anywise appertaining, To have and to hold
 the said premises as above described with the
 appurtenances, to the said party of the second
 part, his heirs and assigns forever, and the said
 parties of the first part for themselves, and their
 heirs, executors and administrators, do hereby covenant
 to and with the said party of the second part,
 his heirs, executors, administrators and assigns,
 that they are well seized of the premises above

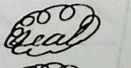
25-

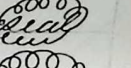
conveyed as of a good and indefeasible estate in
fee simple, and have good right to sell and convey
the same in manner and form as aforesaid; that
they are free from all incumbrance; and that the
above bargained premises in the quiet and peaceable
possession of the said party of the second part, his
heirs or assigns, against the claims of all persons
whosoever will warrant and forever defend.
In witness whereof the said parties of the first
part, have hereunto set their hands and seals
the day and year first above written.

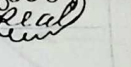
Alexander Hynd 

Freeman Clement 

Agnes Clement 

Frances E. Hynd 

Margaret Clement 

by Alexander Hynd 

attorney in fact

State of Illinois }
Sagwell County } J. H. B. Broune Justice of Peace
for said County, do certify that on this day
personally appeared before me Alexander Hynd
and Frances Emma his wife, and Alexander Hynd
attorney in fact for Freeman Clement, Agnes
Clement and Margaret Clement, whose names appear
subscribed to the foregoing Deed of Conveyance as
having executed the same, who are personally known
to me to be the real persons, who and in whose names
the acknowledgment is proposed to be made, and
acknowledged the execution thereof, as their voluntary
act and deed for the uses and purposes therein
expressed; And Frances Emma Hynd wife of the
said Alexander Hynd having been by me made

"acquainted with the contents of said deed, and
 "by me examined separate and apart from her
 "said husband, whether she had executed the
 "same and relinquished her right to the lands
 "and tenements therein mentioned, acknowledged
 "that she had done so voluntarily and freely, and
 "without compulsion of her said husband, and
 "does not wish to retract.

"Given under my hand and seal of Office at
 "Tremont this Twenty third day of February A.D. 1858,
 "Henry B. Brown J. P. *Ed*

"State of Illinois }
 "Tazewell County) This instrument was filed for
 "record the 26th day of Feb'y 1858, and duly recorded
 "in Book A. H. pages 327 + 328.
 "A^o 21.095. M. C. Young Recorder

Plaintiff then rested.
 The Defendants then to
 maintain the issues on their part, offered, and
 was permitted by the Court, to read in evidence
 to the Jury a Bill in Chancery filed September
 10. 1839, in the Circuit Court of said Tazewell
 County, wherein Jean Florent Louis is complainant
 and Francis Clement, ^{is} defendant, which said
 Bill is as follows, to wit:

"To the Hon. the Judge of the Tazewell Circuit Court
 "in Chancery sitting.
 "Humbly complaining your orator
 "Jean Florent Louis of the County of Tazewell, State
 "of Illinois, sheweth, that on the twenty sixth day

27

of July A.D. One thousand eight hundred and
thirty six. Your orator and one Francis Clermont
settled on the North east fractional quarter of
Section twelve, in Township twenty five, South of
Range 5. West of the third principal meridian in
the County of Tazewell State of Illinois. Your
orator further sheweth, that by virtue of said
settlement your orator and one Francis Clermont
became entitled by the acts of Congress. to the
entry the said land. Your orator further sheweth
that the lines of said land. were to your orator
unknown, and to the end that your orator and
the said Francis Clermont when the land was
entered, that each one in the subdivision of the
said tract of land. that your orator and the
said Clermont, each of them should have each
their labor and improvements, it was agreed
between your orator and the said Francis Clermont
for the purpose of making division of the said tract
of land between them, that the said Francis. did
this day meaning the twenty sixth July 1836, agree
to convey to your orator, the North half of the said
tract of land, and your orator did agree to convey
to said Francis the South half of the said tract
of land, and the intention being that each party,
that is your orator and said Francis; should
retain his improvements, it was therefore then
agreed by your orator and said Francis the
land should be surveyed, and that if the
improvement of your orator should be found
to be on the South half of the said land, improved
by your orator, the said land should be conveyed
by the said Francis (the hereafter named defendant)

to your Orator, and in return therefor your Orator
 agreed to convey to the said Francis, equal number
 of acres from the North half of the said land.
 And it was agreed between your Orator and the
 said Francis that if the any part of the improved
 land of the said Francis should be found to be
 on the North half of the said land, then your
 Orator should convey to the said Francis, said
 Francis should have equal quantity of land from
 the South half. And your Orator further sheweth
 that it was agreed between your Orator and
 said Francis, that there was a fraction of fourteen
 acres, lying in front of your Orators land, that
 said Francis Clement, agreed with your Orator
 in case, whatever the improvements of your Orator
 and on the said fraction, that he, the said Francis
 would convey to your Orator: for more particulars
 of these contracts, see agreement marked "A", which
 your orator prays may be made part of this Bill.
 Your Orator further sheweth that both your Orator
 and the said Francis Clements' improvements
 are on the South half of the said tracts of land.
 Your orator further sheweth, that he has offered
 to have surveyed equal number of acres off
 of the North half of said land, and execute a
 deed of conveyance for the same, to the said
 Francis Clement, and requested him to convey
 by deed to your Orator so much of his improvements
 as was on the South half of the said tract of land.
 Your orator further sheweth, that the said Francis
 is the sole owner of the other tract that the fraction
 of fourteen acres - Your orator further sheweth
 that he has requested the said Francis Clement

29

"to convey so much of your orator's improvement
"as on the fractional tracts, and has wholly
"refused so to do. And your Orator has used all
"influence of your Orator's, and said Francis' friends
"to induce him the said Francis to convey the said
"lands according to the said agreement. But now
"so it is, may it please your Honor, that the said
"Francis Clement, combining and confederating
"to and with divers other persons, at present unknown
"to your Orator but whose names when discovered
"your Orator prays may be herein and they be
"made parties hitherto with proper and apt words to
"charge them how to injure and aggrieve your
"Orator in the premises, and to defraud him of
"his improvements, all of which acts and doings
"of the said Francis Clement and his confederates
"are contrary to equity and good conscience
"and tend to the manifest injury and oppression
"of your Orator. In tender consideration whereof
"and as much as your orator has not a complete
"remedy in the premises by Law, to compel the
"said Francis to convey the said land according
"to said agreement. To the end therefore that the
"said Francis Clement and his confederates
"when discovered, may upon their several respec-
"tive corporal oaths, true, full and perfect answer
"make to all singulars the said premises, as fully
"and particularly as if the same was again repeated
"and thereunto particularly interrogated according
"to the best of their respective ^{knowledge} information and
"rememberance, and the said Francis Clement
"may be decreed to convey to your orator (in
"consideration that your orator first conveys so

to said Francis Clement, so much
 " much of said North half of said land) So
 " much of the South part of said tract land
 " as your orator has improvement on, together
 " with the improvement on the fraction of fourteen
 " acres - and that there be some persons as Commis-
 " sioners, to make partition of the said land according
 " to said agreement - And that your orator may have
 " such other further relief in the premises as your
 " Honor may seem proper, and shall be agreeable
 " to equity and good conscience, May it please
 " your Honor the premises considered, to grant
 " unto your Orator the Peoples writ of Subpoena
 " of the State of Illinois, issuing under the seal
 " of this Hon Court to be directed to the said
 " Francis Clement therein, and thereby comman-
 " ding him and them on certain day, and
 " under a certain penalty therein to be inserted
 " personally to be and appear before your
 " Honor in this Hon Court, then and there to answer
 " all and singular the said premises, and to stand
 " to, and abide by such order and decree therein,
 " as your Honor shall seem meet, and shall be
 " agreeable to equity and good conscience, and
 " your orator will ever pray
 " Samuel P. Bailly
 " For Complainant

" This article of agreement Witness, that whereas
 " Francis Clement & Jean Florant Louis did
 " receive from the Receiver of the Land Office at
 " Springfield Illinois, a certificate of purchase
 " for the North east fractional quarter of Section
 " twelve, in Township Twenty five, North of Range

31

"Five West, in the County of Tazewell, and
"whereas, for the purpose of making division
"of said tract of land between them, the said
"Francis did this day agree to ~~pass~~ convey to the
"said Jean the North half of said land, and
"the said Jean did agree to convey to the Francis
"the South half of the said tract, and the intention
"being that each party shall retain his improve-
"ments, it is therefore now agreed by the parties
"that said land shall be surveyed, and that
"if the improvement of the said Jean shall be
"found to be on the South half, then the land
"improved of the said Jean, shall be conveyed
"to him by the said Francis, and in return
"therefor the said Jean shall convey to the
"said Francis an equal number of acres
"from the North half, and if any part of
"the improved land of the said Francis shall
"be found to be in the North half, then the
"said Jean shall convey to him said land
"and shall receive an equal quantity of
"land from the South half thereof, and the
"parties also agree to convey to each the improvement
"which each may have on the small fraction of
"fourteen acres attached to the land herein
"described, In testimony whereof we have hereunto set our hands
"witness this 26th day of July 1836, Francois Clement *Real*
Jean Florant Louis *Real*

Also the following orders, reports, proceedings
and decrees in said cause viz:-

September Term A.D. 1839

12th day of the Term, Tazewell County Circuit Court

Present Hon William Thomas

Jean Florant Louis

Francis Clement

In Chancery
Bill for Partition

This day came into Court,
and this cause coming on to a hearing, it
appearing to the Court, that the defendants was
duly summoned, made no answer, it is consid-
ered by the Court that the matters set forth in
the complainant's bill be taken for confessed,
and it also appearing to the Court that the said
defendant and said plaintiffs were owners of the
following tract of land, lying and being situated
in the County of Tazewell and State of Illinois
known as the North east fractional quarter of
Section twelve in Township twenty five, North
of Range five West, and it also appearing
to the Court, that the said defendant agreed
to convey to the said Plaintiff, whatever improve-
ment the said Complainant had on a small
fraction of fourteen acres, attached to the
above described land, It also appearing further
to the Court, that it was agreed between the
Complainant and the defendant, that the
defendant would convey to the said complainant
whatever improvement the said complainant
might have on the South half of the frac-
tional quarter Section above described together
with whatever improvement the said complain-
ant should have on the last mentioned small
fraction, and it also appearing to the

33

Court, that the said complainant was to convey
to said defendant the South half of the first
described tract of land, except whatever improve-
ment the said complainant had on the said
land, and it also appearing to the Court, that
the parties agreed, that each of them should have
equal quantity of land in the first tract and
the improvements made by each in the small
tract, and it also appearing that each one of
them should have their improvement on said
land, and to the end the said land be divided
according to the terms of said agreement, the
Court doth appoint Joseph W. Garrison,
Alden Hull and Vincent Bailey, Commis-
sioners to divide and set apart the said
agreement, and it is further ordered that
when the said land shall be divided, by
said Commissioners aforesaid, and they shall
set apart and divide the said land aforesaid,
and make report to this Court

April Term A. D. 1840
6th day of the Term Tazewell Circuit Court
Present Hon Samuel A. Throat Judge
John Florant Louis }
" " }
Francis Clement } All for Conveyance
This day came the defendant
By his Solicitors, and on his motion the interlocutory
decree herein before entered is set aside

Jaywell County Circuit Court April Term 1841,
5th day of the Term.

Present Hon Samuel H. Cheat Judge

Jean Florent Louis

vs
Francis Clement

In Chancery

This day came the complainant
by his Solicitor, and the Defendant by his
Solicitor, and this ^{cause} came on to be heard, it
appearing to the Court that the said complainant
had to the full satisfaction of the Court estab-
lished the matters and things set forth in
his said Bill of Complaint, by the pleadings
and by the testimony of Edward Jones, and
that Defendant had entered into the agreement
described in said Bill of Complaint. The
Court doth order and decree that the land
To Wit: the North east fractional quarter of
Section twelve, in Township twenty five, North
Range five West, also the fourteen acres attached
to the above described, be surveyed in the
manner following. The North half of the ^{said} first
described land, and the South half of the said first
described land, and the South half of the first
described land, and so to set apart to John
Florent Louis, the North half of said land, and
so set apart the South half of said land, to
Francis Clement, and in case by survey, it
shall be found that the said Louis shall have
any improvement on the South half of said
land, the Court doth order that the Surveyor
shall measure and ascertain the quantity
by miles and fownds, and also measure off

35

By metes and bounds, a like quantity of the
South half of said of unimproved land
having reference to the convenience of the same
This Court doth further order that in case of
survey it shall be found that the said Francis
Clement shall have any improvement on the
North half of said land, that the said sur-
veyor shall ascertain the same by metes and
bounds, and the Surveyor is ordered to measure
so much off of the North half of improved land
having reference to the convenience and location
of the same as will be equal to the said last
named improvement, the Surveyor having in
view that intention in that each of the parties
is to have his improvements. The Court doth
further order that the Surveyor, survey and
ascertain how much land the said Louis had
under improvement in the year one thousand
eight hundred and thirty six, and survey
the second described 14 acres, measure the
land, and describe the same by metes and bounds.
This Court doth appoint Lewis Prettyman
Surveyor, and that the said Surveyor report
his proceedings in the premises, to the next
Term of this Court. The Court doth order this
cause to be continued.

Tazewell County Circuit Court September Term 1841.
7th day of the Term.
Present Hon Samuel H. Cheat Judge
Jean Florent Louis }
Francis Clement } In Chancery

This day came the complainant by his Solicitor
 and presented to the Court the Report of Lewis
 Pettyman Surveyor, to whom and in pursuance
 of an Interlocutory decree in this cause, this matter
 was referred, and it appearing to the Court by the
 report of the said Surveyor, that the improvement
 that complainant had on the South Half of the
 above quarter, to wit: The fractional quarter of
 Section number twelve, Township twenty five, Range
 five West of the third principal meridian, is as
 follows, commencing at a post at the North W.
 corner, Black Walnut 12 inches bearing S. 81° W 28.
 links, thence South $9\frac{26}{100}$ chains to a stone, thence
 West $6\frac{75}{100}$ chains to the place of beginning, contain-
 ing $6\frac{10}{100}$ acres, It also appearing to the Court
 that the Surveyor has measured and set off
 in lieu of the land, the following land, commencing
 at the W. W. corner of the above improvement of J. F.
 Linois at a stone, thence North $1\frac{78}{100}$ chains to a stone
 thence East 34 chains to a stone, thence South $1\frac{78}{100}$
 chains to a post, thence West 34 chains to the place
 of beginning, containing six acres & 5 hundredths
 It appearing to the Court that the parties agreed
 to the above division, and that it appearing to
 the Court, that there were a deficit of five
 hundredths of an acre in the division of the
 land, and that in consideration of said deficit
 the complainant agreed that the defendant should
 have a cart way across the North end of the
 complainant's improvement, It also appearing
 by said surveyors report that the following are
 the metes and bounds of the small fraction of
 land described in the interlocutory decree mentioned

37

are as follows, commencing at a post near the
Illinois River, Black Walnut bearing S. 81. W. 26
links, thence South $19\frac{26}{100}$ chains to a post, thence West
22 chains to a post on the River (meaning Illinois) bank
Bottom Wood bearing N 70. W. 20 links, thence with
the said River N 42. E 29 chains to the place of begin-
ning containing 21 acres. It further appearing
to the Court, that the complainant had in year
1836, an improvement on the north part of the
above fraction as follows. Beginning at the
beginning corner of the said above described fraction
thence South $12\frac{25}{100}$ chains to a stone, thence West
 $2\frac{31}{100}$ chains, thence North $12\frac{25}{100}$ chains, thence East
to the place of beginning, containing $2\frac{52}{100}$ acres -
The Court being fully advised in the premises
doth order and decree that the Plaintiff convey
to the defendant by deed, the following described
land, to wit: The North half of the North East
fractional quarter of Section number twelve,
Town twenty five, North Range 5 West, also that
the complainant shall convey to the defendant
a private cart way across the North end of the
land described as the complainant's improvement,
upon the complainant executing the deed as
aforesaid. - And the Court doth decree that the
defendant convey to the complainant the
following land, to wit: commencing at a
post at the N. W. corner Black Walnut 12 in
bearing S. 81. W. 28 links, thence South $9\frac{06}{100}$ chains
to a ~~stone~~ stone, thence East $6\frac{75}{100}$ chains to a stone,
thence North $9\frac{06}{100}$ chains to a stone, thence West
 $6\frac{75}{100}$ chains to the place of beginning, containing
Six acres and ten hundredths: Also the North

39

Township 25 North Range 5 West, Field notes of the N.E.
Fractional quarter Section No 12 as taken August 25, 1841.
Commencing at a post on the Bank of Ill. River. Run
O. 12 inches dia Bearing N. 4° West 36 links, thence East, 31 chains
to a post, the original corner of the section, thence South 21
7/100 chains to a post Black O. 30 inches dia. Bearing S 58. W.
174 links the division corner between Louis & Clements land
thence South 18 8/100 chains to a post B.O. 40 inches. Bearing
S. 53. W 87 links. thence West 40. 7/100 chains to a post at the
center of Section 12. thence North 19 26/100 chains to a post
Black Wall, bearing S 81. W 28 links near the river, thence
N. 24. E. 23 25/100 chains to the beginning corner.

The improvement that Jean Florant Louis has on
the South half of the above quarter is as follows, viz:
commencing at a post at the N. W. corner. Black Wall
12 inches bearing S. 81. W 28 links, thence South 9 06/100 chains
to a stone, thence East 6 75/100 chains to a stone, thence
North 9 06/100 chains to a stone, thence West 6 75/100 chains
to the place of beginning containing 6 1/100 acres

The land set off to Francis Clement on the North
half of the above quarter is bounded as follows, viz:
commencing at the N. W. corner of the above improve-
ment at a stone, thence North 1 78/100 chains to a
stone, thence East 34 chains to a stone thence South
1 78/100 chains to a post, thence West 34 chains to the
place of beginning, containing 6 05/100 acres -
it being agreed by the parties that for the deficit
in Clements part, he, the said Clement should
have the privilege of a private cart way across
the south end of said Louis improvement as laid off.
The notes and bounds of the small fraction
are as follows, viz: commencing at a post near
the bank of the river Black Wall bearing S 81. W 28 links

N.E.

" thence South $19\frac{26}{100}$ chains, to a post, thence West
 " 22 chains to a post on the River Bank, section
 " Hood bearing $S 70. N 20$ links, thence with the River
 " $S 42 E 29$ chains to the place of beginning, containing
 " 21 acres. The improvement which appears to have
 " been made on the North part of the above fraction
 " is as follows; beginning at the beginning corner
 " of said fraction, thence South $12\frac{26}{100}$ chains to a
 " stone, thence West $2\frac{31}{100}$ chains, thence North $12\frac{25}{100}$
 " chains, thence East to the place of beginning, contain-
 " ing $2\frac{52}{100}$ acres = The North part of the small
 " fraction, designated by the dotted line, East
 " and West contains $8\frac{10}{100}$ acres. the length of the
 " dotted line, running West is $13\frac{23}{100}$ chains, to a
 " post on the River Bank, Pecan 24 inches diameter
 " bearing $S 2^{\circ}$ West 6 links distant

" August 27th 1841.

" Lewis Pettysman County Surveyor &c

Tazewell County Circuit Court, April Term A.D. 1842,
 7th day of the Term

Present Hon Samuel H. Treat Judge
 Jean Florent Louis } In the matter between said parties
 Francis Clement } in Chancery in The Tazewell Circuit
 Court, Illinois.

" This case this day coming on
 " for a further hearing, and the Report of Lewis
 " Pettysman, a Commissioner and Surveyor appointed
 " by this Court, to survey and divide the fractional
 " quarter of Section twelve, Township twenty five
 " North of Range five West of the third principal
 " meridian in Tazewell County Illinois, fairly
 " and impartially between the parties aforesaid

41

Having reference to a certain contract entered into
between said parties, having been heard and approved
It is therefore considered by the Court (said parties
to said contract having refused to convey to each
other their separate portion, according to said
contract contemplated) that Peter Menard Jr be
appointed a Commissioner to execute and deliver
to each of the said parties aforesaid a good and
sufficient deed in the partition of said land having
reference to said partition division or survey of
said land, made by said Pettysman and to this
book submitted and now on files of this Court
and that he make report of the same at the
next term of this Court

Tazewell County Circuit Court September Term 1842.
6th day of said Term.

Present Hon Samuel H. Treat Judge

Jean Florent Louis }
Francis Clement } Bill to convey

On motion, it is ordered
that this cause be stricken from the Docket

Tazewell County Circuit Court, April Term 1852.
14th day

Jean Florent Louis }
Francis Clement }

This day comes Peter Menard
the Commissioner appointed to execute the

decree in this cause, entered and presents his report to the Court, in words and figures as follows, to wit:

"Jean Florent Louis } At the April Term 1852,
 "Francis Clement } For Conveyance
 "Judge &c. } To the Hon David Davis

Peter Menard special Commissioner
 in the above entitled cause, would most respectfully report, that after the rendition of the Decree of this Court, appointing him Special Commissioner in said cause, to convey the lands in said cause mentioned, to the original parties to this suit, and before he executed the said conveyances, as required in said decree, both the original parties to the said suit, departed this life, leaving surviving them respectively, the persons hereinafter named and described, as their only heirs at law, respectively, and that in accordance with the requirements of the decree in said cause, he has made and executed to John Louis and Margaretta Hammond the lawful heirs of Jean F. Louis, the North half of said land as follows; Beginning at a post on the East bank of the Illinois River in the line on the North side of Section twelve in Township twenty-five North of Range Five West of the third principal meridian, from which said post a Burr Oak tree twelve inches in diameter bears North, four degrees West, distant thirty-six links, thence along the North side of said Section twelve, thirty one chains to a post

43

" at the North east corner of said Section, thence
" South along the east side of said Section, nineteen
" chains and ninety three links to a stone, thence
" West thirty four chains, thence South ten chains
" and eighty four links, thence West six chains and
" seventy five links, thence South three chains and
" nineteen links, thence West thirteen chains and
" twenty three links to a post on the East bank of
" the Illinois River, from which post a Pecan tree
" twenty four inches in diameter, bears North
" two degrees West, distant six links, thence up
" along the East bank of the Illinois River, in
" a North easterly direction to the place of beginning
" And that he has conveyed to Freeman Clement
" Agnes Clement, Margarett Clement, and
" Francis Hynd the lawful heirs of said Francis
" Clement, the South half of said land as
" follows, to wit: beginning at the South West
" corner of the North West fractional quarter
" of Section twelve in Township twenty five
" North of Range five West of the third principal
" meridian, from which corner a Cotton wood tree
" bears North seventy degrees West twenty links
" distant, thence East sixty two chains and
" seventy one links, to the South east corner of the
" North east quarter of said Section twelve, thence
" North nineteen chains and twenty six links,
" Thence West thirty four chains, thence South
" ten chains and eighty four links, thence West
" six chains and seventy five links, thence South
" three chains and nineteen links, thence West thirteen
" chains and twenty three links to the Illinois River,
" thence South west along the bank of the Illinois

River to the place of beginning,
 All of which is most respectfully submitted
 to the Court

P. Menard Esq
 Special Comr

October Term Tazewell Circuit Court 1853
 11th day

Jean Florent Louis } In Chancery
 Francis Clement }

This day comes E. Jones
 Solicitor for defence in this cause, and
 moves to set aside the report of Peter Menard
 the Commissioner appointed to execute the
 decree final in this cause

April Term Tazewell Circuit Court 1852
 14th day

John Florent Louis } In Chancery for Partition of Land
 Francis Clement } Decree rendered Tazewell Circuit
 Court April Term 1841 -

It appearing to the satisfaction
 of the Court, that Peter Menard the Commissioner
 heretofore appointed by the Court to perform certain
 duties has failed to do so, and it also appearing
 to the Court that ^{since} ~~and~~ the decree in this cause, both
 complainant and respondent have died; That the
 complainant left the following heirs John Louis
 Mary Louisa Hammond, formerly Mary Louisa

45

"Louis, and the Respondent the following
"Heirs. Freeman Clement, Margaritta Clement
"Agnes Clement, Frances Hynd formerly
"Frances Clement, It is therefore ordered by
"the Court, that the said Commissioner Peter
"Menard execute the decree heretofore rendered
"in this cause, and that whereon by the directions
"of said Decree he was ordered to make a conveyance
"to Jean Florent Louis, that he make the
"conveyance to the heirs of said Jean Louis, to wit;
"John Louis, Mary Louisa Hammond, and that
"whereon by the directions of said Decree, he was
"ordered to make conveyance to Francis Clement
"that he make said conveyance to the heirs
"of said Francis Clement, to wit; Freeman
"Clement, Margaritta Clement, Agnes Clement
"and Frances Hynd, formerly Frances Clement
"It is further ordered that said Commissioner
"report his doings to the present Term of this Court

To the reading in evidence to the Jury
of all which papers, proceedings and records in
said chancery suit, the plaintiff then and there
by his counsel, as the same were severally offered
objected to, But the Court overruled said objections
and the plaintiff then and there excepted -
Defendant next offered in evidence a deed
from said Peter Menard, as Commissioner to
John and Margant Louis, in words and figures
following, to wit:-

"Peter Menard Special Comr

N^o 11,345.

To
"John Louis & Margaretta Hammond

Recorded 19th day of
April A.D. 1852

" This Indenture made and entered into the Eighth
 " day of April in the year of our Lord eighteen
 " Hundred and Fifty two, between Peter Menard
 " Special Commissioner appointed by the Circuit
 " Court of Tazewell County at the April Term
 " thereof A.D. 1842, in a certain cause in which
 " Jean Florant Louis is plaintiff & Francis
 " Clement is defendant) of the first part, and
 " John Louis, Margaretha Hammond, formerly
 " Margaretha Louis a child & heir of Jean Florant
 " Louis deceased heirs at law of said Jean Florant
 " Louis of the second part, Witnesseth, that whereas
 " at the April term of the said Court aforesaid
 " in the cause aforesaid, it was by the Court
 " ordered, adjudged and decreed, that the
 " said Peter Menard convey to the parties in
 " the said cause respectively the land in said
 " aforesaid cause mentioned, having reference
 " to the partition, division or survey of said land
 " made by Lewis Pettymann, and in said cause
 " submitted and on file, and whereas the said
 " Jean Florant Louis & the said Francis Clement
 " both departed this life, and whereas the said
 " Peter Menard did not in the lifetime of the
 " said Louis & Clement make said conveyance
 " and whereas on complaint of the heirs of the
 " said Louis, the said subject matter was again
 " by the Court considered, at the September Term
 " thereof A.D. 1851, and the Court did in the said
 " cause on the complaint of the said heirs of Louis
 " & the heirs of the said Clement, order and
 " decree that the said Peter Menard, execute the
 " decree heretofore rendered in the said cause

47

of Louis vs Clement, and that where by the
said decree, he is ordered to conveyance to ~~John~~
Florant Louis, that he convey the same to the
heirs of said Jean Florant Louis, and where by
said decree he was directed to convey to the
said Francis Clement, that he convey the same
to the heirs of the said Francis Clement. Now
therefore this Indenture Witnesseth, that the said
Peter Menard Commissioner aforesaid, by virtue
of the authority aforesaid, and in consideration
thereof of the sum of one dollar to me in
hand paid by the said John Louis and
Margaretta Hammond, heirs at law of Jean
Florant Louis, at and before the enrolling and
delivering of these presents, the receipt whereof
is hereby acknowledged, have granted, bargained
and sold, and by these presents, do hereby grant,
bargain and sell and convey unto John Louis
and Margaretta Hammond, their heirs and
assigns forever, all of the following described real
estate, situate in the County of Tazewell and
State of Illinois, and known and designated as
follows; to wit: Beginning at a post on the East
Bank of the Illinois River, in the line on the
North side of Section twelve, in Township
twenty five, North of Range five West of the
third principal meridian, from which said
post a Burr Oak tree twelve inches in diameter
bears North four degrees West distant thirty
six links, thence along the North side of said
Section twelve, being the North side of the
North east quarter, fractional quarter of said
Section; thirty one chains to a post at the

" North east corner of said Section, thence South
 " along the East side of said Section, nineteen
 " chains and ninety three links to a stone, thence
 " West thirty four chains to a stone, thence South
 " ten chains and eighty four links to a stone,
 " thence West Six chains and seventy five links
 " to a stone, thence South, three chains and
 " nineteen links to a stone, thence West thirteen
 " chains and twenty three links to a post on
 " the east bank of the Illinois River, from which
 " post a Pecan tree twenty four inches in
 " diameter bears North two degrees West, distant
 " six links, thence up along the bank of the Illinois
 " River, in a North easterly direction to the place
 " of beginning, To have and to hold the same
 " unto him the said John Louis and Margaretta
 " Hammond, their heirs and assigns forever.

" In witness whereof I have hereunto set my
 " hand and seal the day and year first above
 " written.

" Peter Menard *(Seal)*
 " Special Commissioner

" State of Illinois }
 " Tazewell County } P. Be it remembered that
 " on this 8th day of April, in the year of our
 " Lord one thousand eight hundred and
 " fifty two, personally appeared ^{Peter Menard} before the
 " undersigned Clerk of the Circuit Court
 " in and for said County, and acknowledged
 " that he had executed the foregoing deed of
 " conveyance in his capacity as Commis-
 " sioner for the purposes therein expressed

49

Witness my hand and official
Seal at Whim the day and year
above written
Geo A. Jones Clerk

To the reading of which to the Jury Defendant
by his counsel, then and there objected. But the
Court overruled the objection, and Defendant excepted.
Defendant next offered to read to the Jury from the
Books of the Recorder of Deeds, of said Fagwell
County, a deed from said Menard, to the Heirs of
Francis Clement as follows, to wit:

"Peter Menard Com^r } No. 11,305.
" To } Recorded April 8th ad 1852.
" Freeman Clement et als }

This Indenture, made and
entered into this Eighth day of April in the
year of our Lord, eighteen hundred and
fifty two, between Peter Menard Special
Commissioner appointed by the Circuit Court
of Fagwell County at the April Term thereof
A.D. 1842, in a certain cause wherein Jean
Florant Louis is plaintiff and Francis
Clement is defendant of the first, and Freeman
Clement, Marguerite Clement, Agnes Clement,
& Francis Wagnon, formerly Frances Clement,
children & Heirs of Francis Clement deceased of
the second part, Witnesseth; that whereas at the
April Term of the said Court aforesaid, in the
County aforesaid, it was by the Court, ordered,
adjudged and decreed, that the said Peter Menard

convey to the parties in the said cause respectively
 the land in said aforesaid cause mentioned, having
 reference to the partition division or survey of said
 land made by Lewis Pettigrew and in said cause
 submitted on file, and whereas the Jean Florant
 & the said Francis Clement, both departed this
 life, and whereas the said Peter Menard did not
 in the life time of the said Louis & Clement, make
 said conveyance, and whereas on complaint
 the heirs of the said Louis the said subject matter
 was again by the Court considered at the
 September Term thereof A.D. 1851, and the Court
 did in the said cause on complaint of the
 said heirs of Louis vs the heirs & widow of the
 said Clement, order and decree that the said
 Peter Menard, execute the decree heretofore rendered
 in said cause of Louis vs Clement and that
 where by the said decree he is ordered to convey
 to Jean Florant Louis that he convey the
 same to the heirs of said Jean Florant Louis
 and where by said decree he was directed to
 convey to the said Clement, that he convey the
 same to the heirs of the said Francis Clement.
 Now therefore this Indenture Witnesseth; that I
 the said Peter Menard, Commissioner aforesaid
 by virtue of the authority aforesaid, and in
 consideration thereof, have granted, bargained
 and sold, and do hereby convey unto the said
 Freeman Clement, Agnes Clement, Marguerite
 Clement & Frances Mynd, the said children &
 heirs of the said Francis Clement, their heirs
 and assigns forever, all of the following described
 real estate situate in the County of Fitzgerald

and State of Illinois and known and designated
 as follows, to wit: beginning at a post on the
 East bank of the Illinois River from which post
 a Cotton Wood tree inches in diameter, bears
 North Seventy degrees West, distant twenty links
 at the South west corner of the North west fractional
 quarter of section twelve, in Township twenty five
 North in Range five West of the third principal
 meridian, thence East Sixty two chains and
 seventy one links, to the South east corner of the North
 West quarter of said Section twelve, thence North
 nineteen chains and twenty six links, thence West
 thirty four chains, thence South ten chains and eighty
 four links, thence West six chains and seventy five
 links, thence South three chains and nineteen links
 thence West thirteen chains and twenty three links
 to the Illinois River, thence South West, along the bank
 of the Illinois River to the place of beginning. To have
 and to hold the same unto them the said Francis Clement
 Agnes Clement, Margarett Clement, Francis Hynd
 and to their heirs and assigns forever.

In witness whereof I have hereunto set my
 hand and seal the day and year first above written
 Peter Menard *Seal*
 Special Comr

State of Illinois, ss.
 Tazewell County. On this 8th day of April A.D. 1852.
 personally appeared before me the undersigned Clerk
 of the Circuit Court in and for said County, Peter Menard
 whose signature is subscribed to the foregoing conveyance
 and acknowledged that in his capacity of Commissioner
 he had executed said deed for the purposes therein
 expressed.

Witness my hand and official seal at
 Equal Perkins the day and year above written.
 Jno. S. Jones, Clerk

To the giving of which in evidence, Plaintiff then & there by his counsel objected, unless it were shown that said heirs had procured said deed to be recorded, or that said deed had been delivered to and accepted by them, as also because the original was not produced, which said objections were then and there overruled by the Court, and the Plaintiff at the time excepted and the Court then against the objections of the Plaintiff permitted said deed to be read to the Jury.

Defendants next called William Hammond who said - defendants have occupied the land in dispute since 1848 - John Louis had a wood yard on a part of this land north of the field, on the River bank - there was a road through the land to the River, and Louis and the family had washed at the River - Crop examination - Louis and Clements have had law suits about this land - no part of the portion in dispute is under cultivation - Defendants have rested -

The Plaintiff then offered and read in evidence a Bill, Amended Bill, and proceedings in a Chancery suit, wherein the heirs of Jean Florant Louis were complainants, and the heirs of said Francis & Clement & Peter Menard were defendants as follows, viz:

Tazewell Circuit Court April Term 1850
- Bill -

To the Honorable David Davis
Judge of the 8th Judicial Circuit, In Chancery
Sitting

Your orators John Louis, Mary Louis &
Hammond, formerly Mary Louisa Louis, children
and heirs of Jean Florant Louis deceased, William
Hammond, husband of said Mary Louis, and
Margarette Louis widow of said Jean Florant Louis
deceased, humbly complaining, sheweth unto
your Honor, that said Jean Florant Louis
in his life time, since deceased, entered at the
land office in Springfield Illinois, in conjunction
with one Francis Clement, also, since deceased, the
North east fractional quarter of Section No. twelve
in Township No. twenty five North of Range five
West of the third principal meridian, and that
the said Jean Florant Louis & Francis Clement
were also jointly entitled to the North West
fractional quarter of said Section No. twelve
and being so jointly entitled to said North
West & North east fractional quarters of said
Section twelve, they, the said Jean Florant Louis
& the said Francis Clement, both since deceased
in consideration thereof, entered into a mutual
agreement, to divide the said North east and
North West fractional quarters of said Section
No. twelve aforesaid equally between them, having
respect to their several improvements situated
on said tracts of land - and they further shew that
the said Francis Clement, refused to divide the said
land, according to his said agreement aforesaid, on

being requested by the said Louis, and that
 said Louis filed a Bill in Chancery for
 partition of said land aforesaid, against the
 said Francis Clement, in the Circuit Court of
 Hazenell County at the Term AD 1839, and on
 a hearing of said cause, the Honorable Court,
 adjudged and decreed in the said cause a division
 of said land in accordance with the prayer of said
 Louis, appointing Lewis Pettyman a Commissioner
 to survey and divide the same between the said
 parties, having respect and regard to their several
 improvements made thereon, as they had agreed they
 would do, all of which petition, exhibits & decrees in
 said cause, your orators pray may be made part
 of this Bill, - and complainants aver that the
 said Lewis Pettyman did survey and divide
 the same, and made a plat of said land as
 divided, and made report of his proceedings in
 said cause, to the said Circuit Court, which
 report was filed & approved by the said Court,
 and the said parties were ordered to make convey-
 -ances to each other respectively of the several
 parts of said land set off to each, and they,
 said complainants aver that said Louis deceased
 was ever ready to convey to said Clement the
 part set off to said Clement by said Commis-
 -sioner Pettyman, but said Clement would not
 receive the same, nor would he make a convey-
 -ance of the part of said land, set off by said
 Commissioner Pettyman, to him the said
 Louis, as he was ordered to do, but wholly
 refused to do anything in the matter whatever,
 And they aver that the Court being advised

55

thereof, by a decree in said cause, rendered at
the Term A.D. 1842, then pending in said Court,
that Peter Menard, &c. and he was then appointed
a Commissioner to make to the said Jean Florant
Louis a deed of conveyance of the land in said
tracts mentioned, which was set apart by said
Puttymann as Commissioner, to the said Louis,
and also to make a deed of the part set off to
the said Francis Clement, to him, said Clement,
and your complainants shew, that the said Peter
Menard neglected to make the deeds and deliver
them severally, as by the said decree he was ordered
to do, immediately thereafter, and that when he
did make out and sign the same, the said Louis
and the said Clement were both deceased, the said
Louis leaving surviving him your complainants
as his heirs and legal representatives, and the
said Clement left surviving him Freeman
Clement (Mary Clement his widow) Marguerite
Clement, Agnes Clement, Frances Wynd his
children (and Alexander Wynd husband of
said Amy) legal representatives and heirs,
and your orators pray that the said Freeman
Clement, Mary Clement, Marguerite Clement,
Alicia Clement, Amy Wynd & Alexander Wynd
& Peter Menard may be made defendants
heirs. And your orators shew that the said deeds
although fully made out have not either of
them been delivered, either to the said Jean Florant
Louis in his life time, or to the said Francis Clement
in his life time, or to the said complainants, or to the
said Defts, since the decease of the said Jean &
Francis. - And complainants shew that the said

" Jean Florant Louis died, on, or about the 27th
 " day of March 1848, and that the said Francis
 " Clement died, on or about the day of July
 " A.D. 1848, and that the said Peter Menard has not
 " made any report of his proceedings in the said cause
 " as by the said Court he was required to do, and
 " your orators further show that the said defendants
 " still claim to hold and own and occupy, and
 " have since enclosed a large part of the land set
 " off by the said Pettyman as Commissioners
 " aforesaid to the said Louis, and to which since
 " his decease, your complainants are entitled
 " and that the said defendants are constantly
 " committing trespass thereon, and seizing and
 " harrying your complainants, on all occasions,
 " for every act of ownership which they exercise
 " over any part thereof, although your orators
 " aver that the same was originally owned by
 " the said Jean Florant Louis & the said Francis
 " Clement in common, and was by said
 " Commissioners, by virtue of said decree aforesaid
 " set apart to said Jean Florant Louis, and
 " as such was then possessed by him, and your
 " orators further aver, that the said defendants
 " fraudulently procured the said cause of Louis
 " Clement, to be stricken from the docket,
 " although the said Menard had not then
 " reported, as by the decree of the Court he ought
 " to do, and ought to have done, and your orators
 " charge that the said defendants are colluding
 " and combining together with others to your
 " orators unknown, prevent the said Menard
 " from delivering the said deeds & making the report

57

thereof to this Court, hoping thereby to harass
and wrong your orators out of the land aforesaid
all of which actings and doings on the part of
said defendants, your orators charge is contrary to
equity and in fraud of the rights of your orators.
And your orators aver that the said Peter Menard
ought to make his report & deliver the said deeds,
and that the said defendants ought to be bound
thereby, and as your orators are remediless except
in a Court of Equity, to the end thereof that the said
defendants the said Freeman Clement, Mary Clement
Margarette Clement, Alice Clement, Amy Hynd &
Alexander Hynd and said Peter Menard, may
true and perfect answer make to all and singular
the charges and allegations in said Bill mentioned
as fully and particularly as though the same
were therein inserted, in the form of interrogatories
and ^{prayer} that the said Peter Menard may deliver the
deeds respectively, the deed to the part set off to said
Jean Florant Louis, to your Orators & the deed to the
part set off the said Francis Clement to the
said defendants Freeman, Mary, Margarette &
Agnes Clement & Francis & Alexander Hynd, and
that they the said defendants aforesaid may be
summoned to be and appear at the next Term
of this Court, and then, and there stand to and
abide by, the order, Judgment and decree of this Court
in the premises, and that the said complainants may
have the full benefit of all the proceedings in said
cause of Louis vs Clement, and that the heirs and
representatives of said Clement may be bound by all
of the action & decrees of the Court in said cause.
And that your Orators may have such other and

" further order, Judgment and decree in the
 " premises as to your Honorable Court may seem
 " meet, and as in duty bound will ever say &c &c

" John Louis
 " Margantle Loring
 " Mary Louisa Hammond
 " William Hammond
 " per B. E. Pottymann
 " Sol for Compt

10th Day April Term A.D. 1850,
 Fagwell County Circuit Court

" John Louis & others
 " " Freeman Clement & others } In Chancery

" This day came the parties
 " by their Solicitors, and the defendants having been
 " regularly served with process, were on motion, ruled
 " to answer, in sixty days from this date, with leave
 " to complainants to file replication, and this cause
 " is continued and testimony to be taken at next
 " Term

25th Day September Term A.D. 1850,
 Fagwell County Circuit Court

" John Louis & others
 " " Freeman Clement & others } In Chancery

" This day again came the parties
 " and on motion of complainant this cause is

59

, continued and leave granted to amend the
"Bill herein filed

22nd Day September Term A. D. 1851,
Tazewell County Circuit Court

John Louis & others }
" " } In Chancery
" Freeman Clement & others }
" and on motion this cause is continued } This day came the parties

for amended Bill
John Louis & others } Amended Bill
" " } In Chancery for Partition
" Freeman Clement & others } & Deeds
" To Hon D. Davis Judge &c

And said complainant, on leave of the Court
in said cause first had and obtained, further
complaining show unto the Court, that after
said land was surveyed by the said Puttymann
and reported on, in his aforesaid Report particularly
set forth, the said Court ordered and decreed convey-
ances as in said decree Recinth filed referred to is
particularly set forth, and said complainants
further show, that by accident and mistake, in
said decree referred to last aforesaid, the said John
Herant Louis, is required to convey to said Francis
Clement the North Half of the North east quarter
of Section twelve, whereas it should have been & was
intended to be a decree for a conveyance of said
North half according to said survey and report, from
said Clement to said Louis, and said decree also

orders said Clement to convey to said Louis
 the lot containing his improvement as appears
 in said report, on the South half of said North
 east quarter of section twelve aforesaid, and also
 the North half of said North east quarter of said
 Section twelve. Your orators further show and charge
 that it was the understanding of the Court, and
 the parties to said decree, that it was a decree for
 said Clement to convey to said Louis the North half
 of the North east quarter of Section twelve, and the
 lot containing six acres and ten hundredths of
 an acre on the South half of said North east
 quarter, and also the improvement of said Louis
 which was situated on the North west fractional
 quarter, and which is designated on said
 report of said Surveyor as containing $200 + \frac{52}{100}$
 acres & $5 \frac{58}{100}$ acres, and said complainants further
 show that it was understood and intended by
 said decree, to order the said Jean F. Louis, to convey
 to the said Clement, the South half of the North
 east quarter of Section twelve aforesaid, which
 was by mistake as they charge called the North
 half of said North east quarter of Section twelve
 aforesaid in said decree, and they further show
 that they part of the North half of said North east
 quarter of section twelve aforesaid, described as
 commencing at the North west corner of the said
 improvement of said Louis, on said North east
 quarter, and containing six acres and $\frac{5}{100}$ of an acre
 was designed and intended, and does by said
 surveyor commence at the North east corner of said
 improvement, on the North east quarter aforesaid
 Yet complainants aver and show, that notwithstanding

„ said understanding, intention and design
„ in framing said decree, that owing to the crude
„ and informal report of the surveyor & Commissioners
„ and the difficulty in understanding the exact
„ language to use in framing the said decree,
„ so as to express the order, intent and design of the
„ Court in the premises, the said decree by mistake
„ of the Solicitor of the said Jean T. Louis, in said
„ cause, in framing said decree, contained the errors
„ and mistakes aforesaid, which were not at the time
„ nor until recently discovered, And your orators
„ pray that said decree ^{may} be amended according to
„ the true intent and design thereof, and altered
„ and changed so as that each of the parties to this
„ Bill, representing the parties to the said former decree
„ may have, and hold in severally the parts and
„ lots in said surveyors report designated and set apart
„ to said Louis & Clemont respectively, as marked
„ on said plat, in said Report mentioned, and
„ that a Commissioner may be appointed by this
„ Court to make to the parties herein, according to their
„ respective rights in said final decree herein
„ prayed for, settled, a deed to each party in fee
„ simple as ascertained and decreed by the Court
„ and that all the parties in interest may be compelled
„ to stand to, and abide by the order and decree of the
„ Court in the premises, and they further charge that
„ said agreement dated 1839, and herewith also filed
„ as part of the original Bill, was entered into
„ between said J. T. Louis & Clemont, as and for the
„ purposes therein expressed, and that said portion
„ written on the margin was done at the express
„ instance of said Francis Clemont and on good

and sufficient consideration, and was
 intended and designed to be an express
 agreement to divide the fourth west fractional
 quarter of Section twelve, between the parties
 the same as the said fourth east quarter is
 therein agreed to be divided and was so by
 said Clement & Louis, agreed and undertook
 to be stated & containing at the time it was
 executed, and that at the time the same was
 entered into, the fourth part of said fractional
 fourth west quarter of Sec twelve, was then
 enclosed and improved by said Louis as
 marked and designated in said Report,
 and your orators pray that the said Freeman
 Clement, Francis Wynd, Alexander Wynd, Agnes
 Clement & Marguerite Clement & Mary Clement
 may also be made defendants to this amended
 Bill, and that they may true and perfect
 answers make to all and singular the charges
 and allegations, in this amended Bill contained
 and for such other and further order & decree
 in the premises, as to the said Court may
 seem meet & in accordance with equity and
 good conscience, and as in duty bound
 your orators will ever pray &c

John Louis
 Marguerite Louis
 Mr Hammond
 Marguerite Hammond
 for Prettyman
 Sol for compels

63

14th Day

April Term A.D. 1852

Tazewell County Circuit Court

John Florent Loucheurs

Francis Clements heirs

In Chancery

This day comes the
Commissioner appointed to execute the decree
in this cause and presented his report to the
Court, which is approved by the Court as of
this Term, unless by next Term successful
objections are made to it

September Term A.D. 1852

Tazewell County Circuit Court

John Louis, Marguerite Louis

Mary Louisa Hammond

William Hammond, heirs

of John Louis deceased

Agnes Clement, Truman Clement

Francis Wynd, Maria Clement

Margaret Clement heirs of

Francis Clement deceased

In Chancery

Now on this 15th day
day of September A.D. 1852, came the compla-
inants, and it appearing to the Court that the
defendants have failed to interpose their
objections to the report of the Commissioners
herein filed, at the April Term A.D. 1852, and
pursuant to the order then entered, It is ordered
that said Report be entered nunc pro tunc

conformably to said order, and said Report is
in the words and figures as follows, to wit:

J. F. Louis & heirs } At the April Term 1852,
J. Clement & heirs } For Conveyance.

To the Hon David Davis Judge &
Peter Menard special commissioner in
the above cause, would most respectfully report
that in accordance with the requirements of
the decree in said cause, he has made and
executed to John Louis and Margaretta Hammond
the heirs of Jean F. Louis, the North half of said
land as follows, Beginning at a post on the
East Bank of the Illinois River in the line on
the North side of Section twelve in Township
twenty five, North of Range five West of the
third principal meridian, from which said post
a Burr Oak tree, twelve inches in diameter bears
North four degrees West distant thirty six links
thence along the North side of said Section
twelve, twenty one chains to a post at the North
East corner of said Section, thence South along
the East side of said Section, nineteen chains
and ninety three links to a stone, thence West
thirty four chains, thence South ten chains
and eighty four links, thence West six
chains and seventy five links, thence
South three chains and nineteen links, thence
West thirteen chains and twenty three links
to a post on the East Bank of the Illinois River
from which post a Pecan tree, twenty four
inches in diameter bears North two degrees,

65-

West, distant six links, thence up along
the East bank of the Illinois River in a
North easterly direction to the place of begin-
ning, and that he has conveyed to Freeman
Clement, Agnes Clement, Marguerite Clement,
& Frances Wynd, the heirs of said Francis
Clement the South half of said land as
follows, to wit: Beginning at the South
West corner of the North West fractional
quarter of Section twelve in Township
twenty five, North of Range five West of the
third principal meridian from which corner
a Cotton Wood tree bears North, seventy
degrees West, twenty links distant, thence
East sixty two chains and seventy one
links, to the South east corner of the North
east quarter of said Section twelve, thence
North, nineteen chains and twenty six links
thence West, thirty four chains, thence South
ten chains and eighty four links, thence
West six chains and seventy five links, thence
South, three chains and nineteen links, thence
West thirteen chains, and twenty three links,
to the Illinois River, thence South West along
the Bank of the Illinois River to the place
of beginning - all of which is most
respectfully submitted to the Court.
P. Menard Esq
Special Comr

22 day
September Term A.D. 1852.
Dazum County Circuit Court

" John Louis & others }
 " Freeman Clement & others } In Chancery
 " On motion of Defendants
 " this cause is continued

May Term A.D. 1853,
 Tazewell County Circuit Court

" John Louis, Mary Louis & Hammond
 " and William Hammond her husband
 " and Marguerite Louis widow of Jean
 " Florent Louis
 " vs
 " Freeman Clement, Mary Clement
 " Marguerite Clement, Alice Clement
 " Henry Hynd & Alexander Hynd
 " her husband and Peter Menard
 " In Chancery
 " This 9th day
 " of May ^{came} again the parties, and on motion it
 " is ordered that this cause be dismissed at the
 " costs of the complainants. It is therefore ordered
 " and adjudged by the Court, that the defend-
 " ants recover of the complainants the costs and
 " charges by them about their defence expended
 " and that execution issue therefor

May Term A.D. 1853
 Tazewell County Circuit Court

67

" John Louis, Margretta Louis,
" Mary Louisa Hammond
" William Hammond, Heirs
" of John Louis deceased

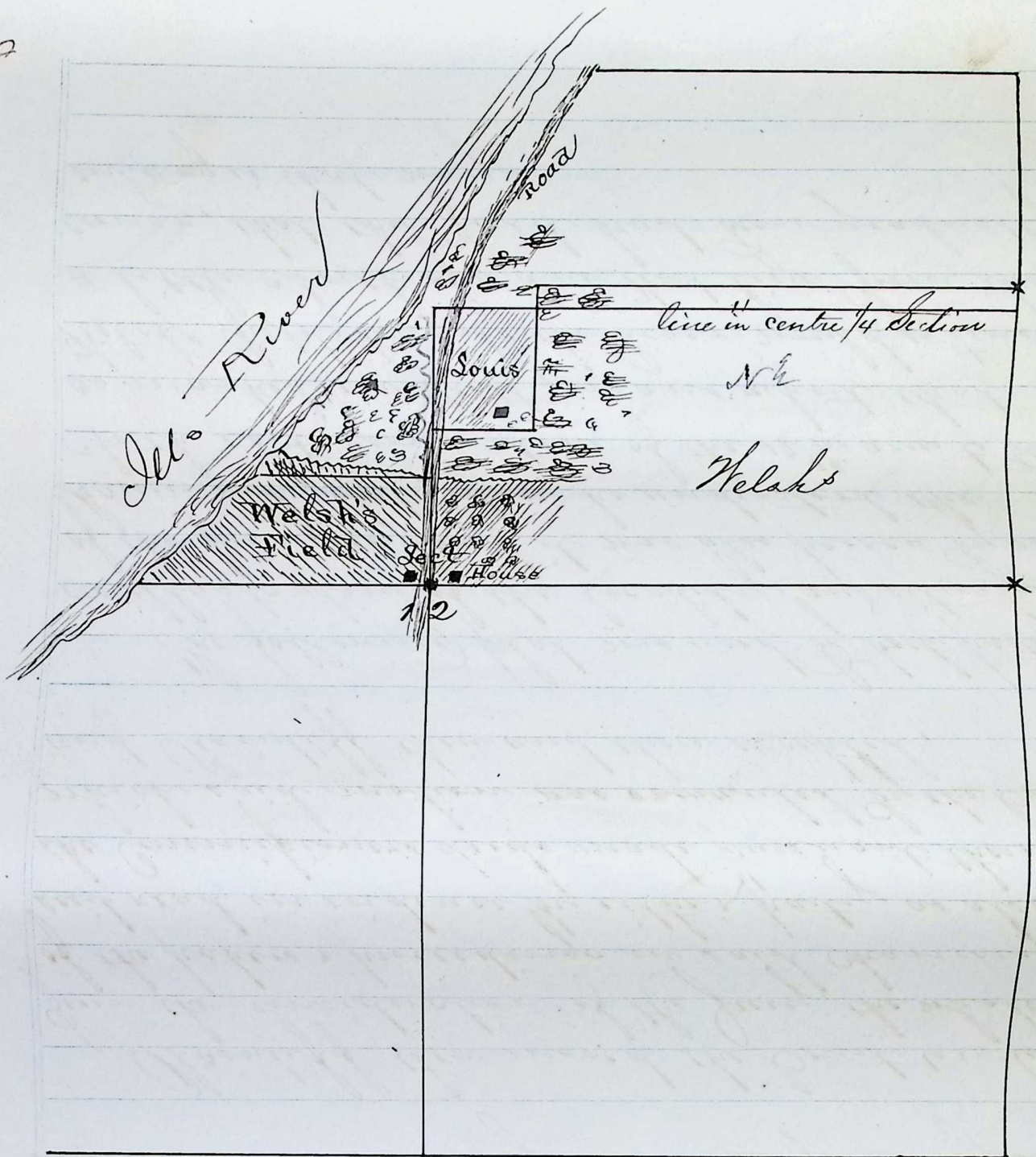
" Agnes Clement, Freeman Clement
" Francis Wynd, Maria Clement
" Margaret Clement, Heirs of
" Francis Clement deceased

In Chancery

It is ordered by
" the Court, that the report herein entered be
" set aside and wholly esteemed for naught

Plaintiff then moved the Court to exclude
from the consideration of the Jury, the whole
of the papers & proceedings in said Chancery
suit read in evidence by either party, as also
the Commissioners deeds made pursuant thereto,
which said motion was overruled by the Court
and Plaintiff then and there excepted.

The following plat was used by both parties
as illustrative of the locality, and situation
of the premises, and it was also proven by said
Hammond, that when he understood the
North east corner stone of the 12⁹/₁₀₀ acres to be
as marked in Pettysmans report that
Welch's field towards the River would extend
a little North of a due West line from that
corner, that the field had been gradually
enlarged that way.



This was all the material evidence in the case. Plaintiff then asked the Court to instruct the Jury as follows viz:

Thomas Welch	} Circuit Court.
" John Louis & al	
	Fazewell Co Ills
	Sept Term 1861.

The Court is asked to instruct the Jury for the plaintiff as follows:

"1st That the title to the land in question.

69

deceased from the United States, being
admitted by both parties to have been in
John Carey, on the 30th day of May A.D. 1837,
the date of his deed to Francis Clement, the
defendant has shown title in himself to
said land, provided it is proved to the satisfaction
of the Jury that said Francis Clement died
prior to the 30th day of November 1857, the
date of the Power of Attorney from Freeman
Clement, Agnes Clement, & Margaret Clement
to Alexander Hynd, offered and read in evidence
and provided the Jury shall further believe
from the evidence that said Frances E. Hynd
is the wife of said Alexander Hynd, and that
she and said Freeman, Agnes, & Margaret Clement
are the only surviving children and theirs at law
of said Francis Clement deceased

2^d That if the Jury shall find under the
foregoing instruction that the Plaintiff is
the owner of the said North West fractional quarter
of Section 12, Township 25 North Range 5 West
in said Tazewell County (the land in controversy)
and was such owner on and prior to the first day
of June 1860, and if the Jury shall further believe
from the evidence, that since said first of June
1860, & prior to the commencement of this suit,
the said defendants John Louis and Marguerite
Louis, or either of them have committed or
authorized, and directed the commission of the
trespasses or either of them, in said declaration
mentioned, the Jury should find for the Plaintiff
against defendants, or the one committing or

"authorizing and directing such trespasses,
 "and assess his damages at such amount as they
 "shall believe from the evidence he has sustained
 "thereby, unless the Jury shall further believe
 "from the evidence that said trespasses were committed
 "under a license to do so from the plaintiff or under
 "a title superior to that of said plaintiff."

"3^d That the Defendants have not shown any
 "title in themselves to said land, or any part of
 "it, as against the Plaintiff in this suit."

"4th If the Jury believe from the evidence that at
 "the time of the trespasses complained of, the plaintiff
 "was in the actual possession and occupancy of
 "a part of said sixth west fractional quarter
 "of said Section 12, under a paper title derived
 "from the United States Government to the whole of
 "said fractional quarter, such possession of a part
 "of said tract, is, in law, a possession of the whole
 "of said tract, and any entry upon, or trespass
 "committed, on any part of said land, whether
 "actually occupied or not by the plaintiff,
 "by any person not showing a better title, against
 "the will of the plaintiff, is a trespass upon
 "his rights, of which he has a right to complain
 "and for which an action lies."

"5th An agreement by one man to convey
 "to another a parcel of land, to be valid, must
 "be founded on some consideration good or
 "valuable in law - and if no such consideration
 "appear, the contract or agreement is void and

71

"cannot be enforced in equity or at law

6th If the Jury believe from the evidence that
"Jean Florent Louis and Francis Clement
"both departed this life, during or prior to the
"year 1848, they are instructed that all the
"proceedings in the Chancery suit, in their
"names ^{subsequent to their decease} are void, and are not now before the
"Jury in evidence

7th That the papers and proceedings read in
"evidence, in the name of the Heirs of Jean
"Florent Louis, against the Heirs of Francis
"Clement, revived and continued the former
"suit commenced by said Jean F. Louis against
"said Francis Louis, and the dismissal of said
"last named suit at the costs of the complainant
"disposed conclusively of both suits, and all
"orders and decrees in either, and reports and
"deeds made pursuant thereto, are thereby set
"aside, and rendered of no effect - and none
"of said proceedings, nor the deed of Peter
"Menard, as Commissioner there under,
"introduced in evidence, are now before the
"Jury for their consideration =

8th Where land is conveyed by miles and
"bounds, or by any general description known
"to the law, as the North west quarter or fractional
"quarter of Section 12, in any given Township
"and Range, the number of acres named in
"the deed is not material, and the grantee
"will take all the land within the limits

mentioned, or the whole of such quarter or fractional quarter, the a less number of acres than the true amount be set out in the deed

"9th The mere execution and recording of the deed from Menard to Freeman Clement & others, is not of itself sufficient to prove that said deed was delivered to, or accepted by or made of record by them or someone, or more of them, and unless the Jury shall believe from the evidence that said deed was delivered to said grantees, and accepted by them, they are not bound by said deed and the same should not be considered by the Jury, as in evidence before them in this case for any purpose =

Which said instructions numbered, 1, 2, 4, & 8, were given by the Court - and those numbered 3, 5, 6, 7, & 9, were refused - to which ruling of the Court in refusing said instructions numbered 3, 5, 6, 7, & 9, the Plaintiff by his counsel then and there excepted =

Defendants then asked the following instructions which were given to the Jury by the Court, viz: =

Helch

"⁴⁷
"Louis

"1st

} Defendants Instructions
The Court instructs the Jury, that in this cause, if the plaintiffs claim under title

73

derived from Francis Clement, and has
shown no other title, and they further believe
from the evidence, that at the April Term
1842, of the Circuit Court of Tazewell County,
Illinois, a decree was entered in favor of
Jean T. Louis against Francis Clement
ordering one Peter Menard to convey
the land in question to said Jean T. Louis,
and if they further believe from the evidence
that said Jean T. Louis died before said
conveyance, and that said Menard in
pursuance of said decree, conveyed said
land to the heirs of Jean T. Louis, and
that the defendants are the heirs of said Jean
T. Louis, they will find for the defendants.

2^d The Court instructs the Jury that if
they believe from the evidence that Louis
and Clement owned the N. E. 1/4 jointly
and that Clement during his life time
occupied the South Half of the N. E. 1/4 of
Section 12, and that the heirs of Clement in
conveying by their deed to Welch, purport to
convey by their deed the South Half of the
North east fractional quarter of Section 12,
where but for the decree referred to in the
first instruction, said Clement's heirs would
only have been entitled to an undivided half
of said quarter section, and that a deed from a
Commissioner conveying the South Half of
said quarter Section is duly recorded, they
may from such facts presume that they
claim under said Commissioner's deed.

To the giving of which said instructions for defendants, the Plaintiff then and there objected and excepted.

The Jury then retired and returned the following verdict "We the Jury find the defendants not guilty" and thereupon said Plaintiff entered his motion for a new trial in words & figures following, to wit:-

"Thomas Welch	} In the Circuit Court Tazewell County Illa September Term 1861.
"John Louis	
"Margaretta Louis	
"	

And now comes the said Plaintiff by his attorneys, and moves the Court for a new trial herein, for reasons following

"1st = Because the Court refused to admit proper evidence to the Jury offered by the Plaintiff

"2nd = The Court admitted improper evidence on the part of the defendants

"3^d = Because the Court overruled the motion of the Plaintiff to withdraw from the consideration of the Jury the record evidence before admitted in evidence, against the objections of the Plff-

"4th = Because the Court refused proper instructions to the Jury asked by Plff =

"5th = The Court gave improper instructions for the defendants.

75

"6th = Because the verdict of the Jury is against the
law and the evidence in the case

"7th = Said verdict is against the instructions
of the Court

Therefore and for other good and
sufficient reasons, plaintiff prays that a new
trial may be granted him herein =

Cooper & Maffs
for Jeff

Which said motion was overruled by the Court
and Judgment rendered by the Court on said
verdict. To all which said decisions of said
Court, in refusing said motion for new trial,
and rendering Judgment on said verdict,
the plaintiff then and there excepted, and prays
this his Bill of Exceptions to be signed and
sealed by the Court, which is done
James Harriott Seal

State of Illinois }
Tazewell County } J. George H. Harlow, Clerk of the
Circuit Court within and for said County, do
hereby certify, that the foregoing 74 1/2 pages contain
a full, true and complete transcript of the records
of proceedings had in said cause, as fully as
the same appears of record in my office.
Witness my hand and seal of said
Circuit Court hereto affixed at Office in
Pekin this 17th day of March A.D. 1862.
George H. Harlow Clerk
J. A. B. Ginnard Deputy

And now comes the said Thomas Welch, ~~Appellant~~ ^{Plaintiff in error} herein, and says that in the record, proceedings and judgment of said Circuit Court, in said Cause, manifest error hath intervened to his prejudice, in this, to-wit:-

- 1st - Said Court erred in refusing to admit proper evidence offered by Plaintiff.
- 2^d - Said Court erred in the admission of improper evidence on the part of the Defendant.
- 3^d - Said Court erred in overruling the motion of said Plaintiff to exclude from the jury the Chancery record, and proceedings, including reports, and deed of Commissioner thereunder, before given in evidence, against the objections of the Plaintiff.
- 4th - Said Court erred in refusing to give instructions numbered 3, 5, 6, 7, & 8 asked by Plff.
- 5th - Said Court erred in the instructions given the jury on the part of said deft.
- 6th - Said Court erred in admitting defendants to read in evidence from the books of the recorder of Tazewell Co. the copy of deed from Peter Menard, as Commissioner, to the heirs of Francis Clement, without at first showing the delivery of said deed, or that said heirs had accepted, and procured it to be made of record.

77 And also because said Defendant did not produce the original of said deed, or prove notice on Plaintiff, or show any reason for its non-production.

7th Said Court erred in overruling motion of Plaintiff for new trial.

8th Said Court erred in rendering judgment in favor of Defendant on said verdict.

9th Said Court erred in not rendering judgment for Plaintiff.

Wherefore, & for other manifest errors appearing in said Record, Plaintiff prays that the judgment of said Circuit Court may be reversed, annulled, & wholly for naught esteemed.

Casper & Mose
for Plaintiff in Error.

And now comes the said Defendants in Error herein, and say that in the foregoing Record Proceedings & Judgment of said Circuit Court in said Cause, Manifest Error hath not intervened & the propriety of said Plaintiff in Error, and therefore Defendants in Error submit to the Court, that said Judgment of said Circuit Court ought to be wholly affirmed & not either wholly or in part annulled as prayed for by Plaintiff in Error.

B. J. Patterson
for Defendants in Error

53 234
Welch
vs.
Louis & Co.

Filed Apr. 28th 1862
L. Island
Ch.

¢ 26.

State of Illinois,
SUPREME COURT.

} Third Grand Division,
APRIL TERM, A. D. 1863.

THOMAS WELCH

vs.

JOHN LOUIS ET AL.

ERROR TO TAZEWELL.

BRIEF AND ARGUMENT FOR DEFENDANTS IN ERROR.

This was a suit in trespass by Welch vs. Louis et al, for damages done on the northwest quarter of section 12, town 25 north, range 5 west 3d P. M. And the record and evidence show that Louis, the ancestor of defendants in this case, and claimant, the ancestor of the grantor of plaintiff in 1834, settled, respectively, and made improvements on the N. E. and N. W. frac. quarters of section 12 aforesaid, then government land; and that they soon afterwards entered of the United States, jointly, the N. E. quarter. One Casey having entered the 14 acre fractional N. W. quarter, he in 1836 conveyed it to ~~Clament~~; and ~~Clament~~, on some consideration or inducement from Louis, by his agreement under seal, covenanted with Louis to convey to him all his improvement on the said northwest quarter and northeast quarter, and also divide equally between them the northeast quarter, then owned by them jointly, Louis also covenanting to convey to claimant, claimant's improvement on the northwest quarter, and also divide the northeast quarter equally between each, having regard to the improvements of the other on the whole tract, and each quarter. This agreement is under seal, and the evidence shows Louis then had possession of the very part of the tract, in cultivation, where the trespass is alleged to have been committed. See the article of agreement, record, page 30, 31; the plat and report of Lewis Prettyman, page 38, and the testimony of Hammond as to the possession, in 1848, page 52.

The record also shows that an application to the circuit court of Tazewell county, in 1841, entered a decree, each to convey to the other the land, as the same had been agreed to be conveyed, having regard to each other's improvements on the whole tract, and caused it to be surveyed and plotted, to enable them to do so the more correctly. See Decree, page 34 and 35 of record; and also plat of survey, page 38.

And said court, (Record, page 40,) expressly decreed that Peter Menard convey the land as described in the plat and divided by the surveyor, unto the parties respectively. This decree was never appealed from, and is still in full force; and according to which, (the parties to the suit having deceased before the execution of the deed,) the said Peter Menard executed and delivered the conveyances so required to be executed, unto the heirs of said parties, respectively; and by this deed, the land so described and set apart, and on which the trespass is alleged to have been committed, was conveyed to these defendants, whose ancestors were possessed of it, and had it under improvement in 1836, which is admitted by the agreement of claimant, above referred to—and plaintiff is estopped from denying that fact—and who was also possessed by improvement on it in 1848, as shown by

Hammond's testimony; and who, with defendants, used it for a wood yard and timber lot, for fire-wood and other purposes, at all times claiming it as their own, from the year 1836 to the present time. They have at all times lived immediately adjoining it; their only access to the river was over it; they used it personally, individually, and daily, and claimed right and title, and had actual possession of it, as is admitted by the record, page 31; plaintiff's grantor, ~~Clement~~, there agreed that it should be set off and apart to Louis as his own, under his hand and seal.

It is true there are some errors in description, in those of record referred to, and the whole transaction is remote. All parties to it are dead, and plaintiff now insists on the proof of the consideration of the agreement, which is under seal, and imports a consideration. But if it did not, thirty years' possession, improvement, and claim of title, with the decree of the court ordering a conveyance to him, should raise a presumption of consideration, rather than a doubt; and the fact of the possession of it by Louis, and use of it, sometimes by actual inclosure and improvement of the land; sometimes by using it in cutting timber and keeping a wood yard on it; and always by the personal use and enjoyment of it by himself and his family—it lying immediately between his house and the river, only a few rods off—should raise a presumption the jury might well settle in defendants' favor.

The facts that the grantors of plaintiff, (~~the~~ ~~Clement~~), except for the deed from Menard to them, were the owners in full of but the undivided half of the northeast quarter, which is admitted; and the further fact that, after the deed from Menard to them, they sold by warrantee deed to plaintiff the whole of the south half of said northeast quarter of section 12, is significant, and from it the jury might well infer that they had accepted the deed so made and reported to them by said Menard, and without which they could have conveyed but one undivided half; and altogether it well warranted the jury in finding the defendants not guilty of the trespass charged, and also warranted the court in giving the 2d instruction of defendants complained of.

The reason for objection to the testimony of John Moshan, on being recalled, was, that he had been fully examined by plaintiff as his witness in chief, and had been turned over to the defendants for cross-examination; and that defendants had not cross-examined, or asked defendants upon or about anything upon which plaintiff asked to re-examine, and that, by the law, it was a matter in the discretion of the court to allow a party to recall and re-examine a witness which had been previously examined by the party in chief; and the ruling of the court was therefore correct, and could not be assigned for error.

And as to said first instruction of defendants complained of, the objections to it are untenable, but if really sustainable when alone, it is fully neutralized and explained by plaintiff's 2d and 4th instructions which were given, and plaintiff is not prejudiced by it. Louis had long possessed the land under claim of title; the records of the county showed it, and plaintiff knew it; and this court will not disturb a verdict when substantial justice has been done. *Smith vs. Shultz*, 1 Scam., R. 420. There is, in this record, clearly some evidence on which the jury might find for the defendants, and such cases, "in trespass, and where the evidence is usually circumstantial, the court will rarely, if ever, disturb a verdict, when there is anything in the record tending to support the finding of the jury." *Young vs. Silkwood*, 11 Ills, 36.

And it is plain from all the evidence, that the trespass complained of was the most trifling and insignificant, merely nominal, under full belief of right; and this cause, when decided, does not effect the title to the land in either party. Apparent justice has been done; and even conceding (which we do not) all that plaintiff complains of, yet, "if this court is satisfied that justice has been done, it will not charge a new trial, even though the jury find against the weight of evidence; against the instructions of the court, or through misdirection of the court in point of law." Leigh vs. Hodges, 3 Scam., R. 18, and Allen vs. Smith, 3 Scam., 27. Bloom vs. Denman, 12 Ills., 240; Gillett vs. Sweat, 1 Gill., 475; Low vs. Orr, 1 Gill., 70; and Young vs. Silkwood, 11 Ills., 36.

When a question is fairly and intelligibly submitted to a jury, their determination ought not to be set aside without the most substantial reasons. Kincaid vs. Turner, 2 Gillman, R. 618. Wherefore, this judgment ought to be affirmed.

B. S. PRETTYMAN,
Attorney for Defendants.

100 53

Wetzel

Larus

Prop & account of
Gifts

Frid May 4th 1863

La Leland
Club

Supreme Court of Illinois,

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1863.

THOMAS WELCH,

vs.

JOHN LOUIS, ET AL.

ERROR TO TAZEWELL.

BRIEF OF PLAINTIFF IN ERROR.

1. This suit is for trespass in tearing down fences, &c., on the N. W. fr 12, T. 25, N. R. 5 W. 3d Meridian, and plaintiff below having established, *prima facie*, the ownership of said land in himself, by undisputed paper title, and proved the trespass complained of, was entitled to recover, unless the claim of superior title, set up by defendants, was sustained.

2. The claim of prior and *continued* possession, being much relied on by defendants, the declarations of Jean Florent Louis, their ancestor, at the time he removed his fences, were proper, to show *abandonment* of such possession, and should have been admitted for that purpose. These declarations were *res gestae*, and were further admissible, as being *against the interest* of the party making them, and in *derogation of his title*. Greenl. Ev. Secs. 109, 147 and books *passim*.

3. The deed of April 8, 1852, from Menard, as commissioner in chancery, to John and Margaret Louis, was not admissible in evidence.

1ST. Because the order of April —, 1842, authorizes no such conveyance of land in said N. W. 12, as is covered by said deed—nor does said deed conform, in other respects, with the orders and decrees under which it purports to be made.

2ND. Because of ^{loss} ~~loss~~ of time and subsequent disposal of the case. The order appointing said commissioner, was made at the April term 1842, and re-

quired him to report at the next term. At the September term 1842, (the next term, in course,) the cause was stricken from the docket, and thus remained out of court, for nearly ten years, before the deed is made or any further action had in it. This, it is submitted, rendered the proceeding stale, and authorized defendant to regard it as entirely abandoned, and the subsequent action, *without notice* to parties in interest, was irregular and void.

3d. Because, by the death of both original parties, it became impossible to execute the order as it stood, and new proceedings, and a new order were requisite to give the commissioner power to act. This was the more necessary, as said original order is itself, confused, unintelligible, and clearly vicious, for mistake apparent on its face.

The proceedings at the April term 1852, of said court, *in name of Jean Florent Louis vs. Francis Clement*, were simply void, and should not have been allowed in evidence. Because 1st, without notice to parties in interest; and 2nd, because both parties, plaintiff and defendant, were at the time dead. Judicial proceedings cannot be carried on in the name of a dead man—nor against a dead man. *Brown vs. Parker* 15 Ills. 310.

5. The record of the deed from Menard, as such commissioner, to the heirs of Francis Clement, deceased, was improperly admitted in evidence. There was no evidence that said heirs, or Welch, ever knew of it, much less accepted or claimed under it. There should have been some excuse for not producing the original—as, that it was destroyed or lost, or in possession of said heirs, or Welch; and, if the latter, some call on them for it. For reasons before given likewise, the deed itself was unauthorized and void.

6. The motion of plaintiff, to exclude said chancery proceedings and commissioner's deeds, should have been allowed. And this, as well for reasons already stated, as because the proceedings in the name of the heirs of said Jean F. Louis *vs.* said Clement heirs, instituted by these defendants, and read in evidence by plaintiff, revived said original suit, and showed that said suit had been dismissed, and the acts of said commissioner thereunder, set aside and annulled.

7. For reasons indicated, instructions 3, 6, 7 and 9, asked by plaintiff, should have been given. So of instruction 5 which is clearly law. And as there was, in fact, upon the proof, no consideration for the agreement referred to, the instruction was pertinent, and should have been given.

8. Defendants' instruction No. 1, was improperly given. It was for the court, and not the jury, to say whether said decree did or did not direct Menard to convey to Jean F. Louis "the land in question." So also, whether "*pursuant to said decree*," said Menard conveyed said land to said heirs, was a question of *law* rather *fact*. Both, it is submitted, were matters of *construction* of records which fell to the court and not the jury, to decide.

This instruction further directs the jury to find for defendants, in case they find that Menard conveyed said land to the heirs of Jean F. Louis, and that de-

fendants are his heirs—while the proof is, that one of the trespasses complained of was committed at a point confessedly always in possession of the plaintiff or his grantors, not covered by said Menard deed, and to which neither the defendants nor their ancestor ever claimed to have title.

Instruction 2, given for defendants, is bad for irrelevancy, and as calculated to mislead the jury. Because the heirs of Clement deeded the S. half of said N. E. 12 to Welch, it did not follow that they claimed title through said commissioner's deed. The direct contrary is indeed apparent from the face of the two papers, if agreement in description of the land conveyed in each, be the thing intended. And that this is the point made by the instruction, is plain from its whole tenor. The instruction, ^{never} ~~however~~, assumes what is untrue, viz: That there is "a deed from a commissioner conveying said S. half of said quarter duly recorded." No such commissioner's deed was before that jury.

10. For reasons stated, the application of plaintiff below, for a new trial, should have been granted.

COOPER & MOSS,
For Plff. in Error.

53-100
Welch vs. Lewis's rules.
Pltiff's Brief 2

Filed April 27th 1863
L. Leland
Clerk

State of Illinois,
SUPREME COURT.

} Third Grand Division,
APRIL TERM, A. D. 1863.

THOMAS WELCH

vs.

JOHN LOUIS ET AL.

ERROR TO TAZEWELL.

BRIEF AND ARGUMENT FOR DEFENDANTS IN ERROR.

This was a suit in trespass by Welch vs. Louis et al, for damages done on the northwest quarter of section 12, town 25 north, range 5 west 3d P. M. And the record and evidence show that Louis, the ancestor of defendants in this case, and *claimant*, the ancestor of the grantor of plaintiff in 1834, settled, respectively, and made improvements on the N. E. and N. W. frac. quarters of section 12 aforesaid, then government land; and that they soon afterwards entered of the United States, jointly, the N. E. quarter. One Casey having entered the 14 acre fractional N. W. quarter, he in 1836 conveyed it to *claimant*; and *claimant*, on some consideration or inducement from Louis, by his agreement under seal, covenanted with Louis to convey to him all his improvement on the said northwest quarter and northeast quarter, and also divide equally between them the northeast quarter, then owned by them jointly, Louis also covenanting to convey to claimant, claimant's improvement on the northwest quarter, and also divide the northeast quarter equally between each, having regard to the improvements of the other on the whole tract, and each quarter. This agreement is under seal, and the evidence shows Louis then had possession of the very part of the tract, in cultivation, where the trespass is alleged to have been committed. See the article of agreement, record, page 30, 31; the plat and report of Lewis Prettyman, page 38, and the testimony of Hammond as to the possession, in 1848, page 52.

The record also shows that *an* application to the circuit court of Tazewell county, in 1841, entered a decree, each to convey to the other the land, as the same had been agreed to be conveyed, having regard to each other's improvements on the whole tract, and caused it to be surveyed and plotted, to enable them to do so the more correctly. See Decree, page 34 and 35 of record; and also plat of survey, page 38.

And said court, (Record, page 40,) expressly decreed that Peter Menard convey the land as described in the plat and divided by the surveyor, unto the parties respectively. This decree was never appealed from, and is still in full force; and according to which, (the parties to the suit having deceased before the execution of the deed,) the said Peter Menard executed and delivered the conveyances so required to be executed, unto the heirs of said parties, respectively; and by this deed, the land so described and set apart, and on which the trespass is alleged to have been committed, was conveyed to these defendants, whose ancestors were possessed of it, and had it under improvement in 1836, which is admitted by the agreement of claimant, above referred to—and plaintiff is estopped from denying that fact—and who was also possessed by improvement on it in 1848, as shown by

Hammond's testimony; and who, with defendants, used it for a wood yard and timber lot, for fire-wood and other purposes, at all times claiming it as their own, from the year 1836 to the present time. They have at all times lived immediately adjoining it; their only access to the river was over it; they used it personally, individually, and daily, and claimed right and title, and had actual possession of it, as is admitted by the record, page 31; plaintiff's grantor, ~~the defendant~~, there agreed that it should be set off and apart to Louis as his own, under his hand and seal.

It is true there are some errors in description, in those of record referred to, and the whole transaction is remote. All parties to it are dead, and plaintiff now insists on the proof of the consideration of the agreement, which is under seal, and imports a consideration. But if it did not, thirty years' possession, improvement, and claim of title, with the decree of the court ordering a conveyance to him, should raise a presumption of consideration, rather than a doubt; and the fact of the possession of it by Louis, and use of it, sometimes by actual inclosure and improvement of the land; sometimes by using it in cutting timber and keeping a wood yard on it; and always by the personal use and enjoyment of it by himself and his family—it lying immediately between his house and the river, only a few rods off—should raise a presumption the jury might well settle in defendants' favor.

The facts that the grantors of plaintiff, (~~the defendant~~), except for the deed from Menard to them, were the owners in full of but the undivided half of the northeast quarter, which is admitted; and the further fact that, after the deed from Menard to them, they sold by warrantee deed to plaintiff the whole of the south half of said northeast quarter of section 12, is significant, and from it the jury might well infer that they had accepted the deed so made and reported to them by said Menard, and without which they could have conveyed but one undivided half; and altogether it well warranted the jury in finding the defendants not guilty of the trespass charged, and also warranted the court in giving the 2d instruction of defendants complained of.

The reason for objection to the testimony of John Moshan, on being recalled, was, that he had been fully examined by plaintiff as his witness in chief, and had been turned over to the defendants for cross-examination; and that defendants had not cross-examined, or asked defendants upon or about anything upon which plaintiff asked to re-examine, and that, by the law, it was a matter in the discretion of the court to allow a party to recall and re-examine a witness which had been previously examined by the party in chief; and the ruling of the court was therefore correct, and could not be assigned for error.

And as to said first instruction of defendants complained of, the objections to it are untenable, but if really sustainable when alone, it is fully neutralized and explained by plaintiff's 2d and 4th instructions which were given, and plaintiff is not prejudiced by it. Louis had long possessed the land under claim of title; the records of the county showed it, and plaintiff knew it; and this court will not disturb a verdict when substantial justice has been done. *Smith vs. Shultz*, 1 Scam., R. 420. There is, in this record, clearly some evidence on which the jury might find for the defendants, and such cases, "in trespass, and where the evidence is usually circumstantial, the court will rarely, if ever, disturb a verdict, when there is anything in the record tending to support the finding of the jury." *Young vs. Silkwood*, 11 Ills, 36.

And it is plain from all the evidence, that the trespass complained of was the most trifling and insignificant, merely nominal, under full belief of right; and this cause, when decided, does not effect the title to the land in either party. Apparent justice has been done; and even conceding (which we do not) all that plaintiff complains of, yet, "if this court is satisfied that justice has been done, it will not charge a new trial, even though the jury find against the weight of evidence; against the instructions of the court, or through misdirection of the court in point of law." Leigh vs. Hodges, 3 Scam., R. 18, and Allen vs. Smith, 3 Scam., 27. Bloom vs. Denman, 12 Ills., 240; Gillett vs. Sweat, 1 Gill., 475; Low vs. Orr, 1 Gill., 70; and Young vs. Silkwood, 11 Ills., 36.

When a question is fairly and intelligibly submitted to a jury, their determination ought not to be set aside without the most substantial reasons. Kincaid vs. Turner, 2 Gillman, R. 618. Wherefore, this judgment ought to be affirmed.

B. S. PRETTYMAN,
Attorney for Defendants.

WELCH

Lewis et al.

Briefs app. Sep -
Sept

Filed May 4, 1863
J. L. Leland
Clerk

SUPREME COURT OF ILLINOIS.

Third Grand Division at Ottawa—April Term, 1862.

THOMAS WELCH, *Plaintiff in Error,*

vs.

JOHN LEWIS, *et al., Defs. in Error.*

} **Error to Circuit Court of Tazewell
County.**

ABSTRACT OF RECORD.

1 Plaintiff in Error, said Defendant's in Error to September Term, 1861, of said Court, in trespass *vi et armis*. Summons issued August 22, 1861. Damages claimed \$500.

2,3 Declaration alleges that Defendants on the 1st of June, 1860, and on divers other days since, trespassed on the close of Plaintiff, situate on frac. N.W. 12, 25 N., 5 W., in said County, by breaking fences, destroying crops, and cutting and carrying off timber, &c.

4,5 1st. Plea not guilty.

2d. Special plea denying allegations in declaration.

6 Issue joined on first plea and replication to second.

7,8 Cause tried September 5th, 1861, before said Court and a jury. Verdict and judgment for defendants. Motion for new trial made and overruled.

8,9 Bill of Exceptions filed September 10, 1861, shows that Plaintiff, to sustain the issues on his part, called first, Samuel B. Davis, who swears: I know frac. N.W. 12, 25 N., 5 W., in said County. Have known it for 25 years and reside about two and a half miles from it. Knew Francis Clement and John Florent Louis, in their life time. They have both been dead a number of years. Think since 1847 or 1848. Both lived and their families after them on the N.E. 12, and on the east side of the road, which here runs N. & S., or pretty near the line between said N.E. and N.W. quarter. Clement had a field enclosed, which he cultivated, on said N.W. quarter, and between the road and the river, from the time I first knew the premises. His family lived on the old place and cultivated this field after his death until they sold out to Plaintiff, Welch, some four years since. Welch still occupies and cultivates said field. Neither old man Louis nor his family, ever had any improvements on said N. W. qr. nor west of said road, since I have known the premises. The Clements and Welch have a stable west of the road—this has been there a long time. The north part of said fractional quarter, above Welch's field, has never been cleared off, though the big trees have been pretty much cut out. Old Clement in his life-time, and his family afterwards, always claimed the whole of said N. W. quarter, and had frequent suits with Louis on account of trespasses committed by the latter

10

on the ground north of the field. This part has never been inclosed or cultivated.

Cross-Ex. Louis also claimed the unenclosed part of said N. W. quarter. He lived on his improvements east of the road, as early as 1836, and had a field which extended to the road on that side. There are paths leading to the river west of Louis' improvements on the N. E. quarter, and I have seen the family carry water from a spring on the river north of the house. This spring is 50 or 60 rods north of Louis' house, and on land north of said northwest quarter. There was a wood yard on the river, west from Louis' house, where wood was kept some 12 years ago. Have not seen much there since.

Andrew J. Towne called, said: I have lived in the neighborhood about 16 years, and before the old people died. Knew the ground in dispute. Have seen wood cut there, but don't know who cut it. Never saw any improvements on the N. W. quarter, above Clement's field and west of Louis's improvements. Don't know who owns this land. Pretty much all of the land on this quarter overflows. The land in the field on the south side is tilled in dry seasons.

Cross Examination.—The north part of this quarter was formerly more free from timber than now. Young trees have grown up. Never knew about the wood yard spoken of. There was no road across the land. Louis carries his water from above. Have seen a kettle for washing across at the river west of Louis' field. Don't know who it belonged to. Have seen Louis' daughter there.

M. Quinlin called, said: I know parties to this suit, and the land in dispute. Was helping Plaintiff to build fence on it west of Louis' house, and north of Welch's field in August. About three weeks since. John Louis and his sister came and tore it down. It was a pole fence. Welch cut some of the poles for the fence on this land. We had put up a number of pannels when it was torn down.

Patrick Welch called, said: Am son of Plaintiff, who has lived three or four years where he now does. He bought of Clements. Some three or more weeks since father undertook to build a fence on the fraction lying west of the road and Louis' house. We were building this fence when John Louis came and tore it down. We were making this fence of poles and stakes driven into the ground and intended to enclose all the unenclosed part of said quarter. Father has a field on part of this quarter, and has cut wood on the part north of the field, and was cutting poles and stakes for the fence he was building on this piece. Last year the old woman Margaretta Louis tore down the fence on the north side of the field on this quarter in two places. This was late in the spring, just before we ploughed the land for corn. We were repairing the fence where it had been washed away. The field overflows every spring and we are always late getting corn in it. One place where the old woman tore the fence down was towards the river, at which place we were setting the fence, a little north of where it had been, when she came and tore it down. She then went to the North East corner at the road and tore it down, taking down several pannels at each place. The part she tore down next the road was the old fence, and stood where it had always stood, as far as I know. When I first saw the fence it was old and seemed to have stood there a long time. We put up the fence again at the road, putting it in the old place, but next the river set it back. Father has paid the taxes on this quarter since he has been there. I never saw John Louis cut any trees on this quarter.

Cross-Examination.—Mrs. Louis lives on the East side of the road. There is an old road across this quarter West of Louis' field. I have seen the family of Louis gather wood from this land.

Re-called, said : It was some time in June, 1860, think about the middle, that old Mrs. Louis tore this fence down. It was only a litte before harvest. The water
 13 lies on this land in the spring, so that it is generally late before we can get it ploughed. The present season it is pretty dry.

14 Plaintiff next offered and read in evidence receipts for taxes of 1850, 1851, 1855,
 15 1856, 1857, 1858, 1859 and 1860, on all said fractional N.W., 12, 25 N. 5W., paid by Clements and Plaintiff.

16 George Lux called, said : I know the land in controversy. It lies between the road and the river. I helped the County Surveyor run the lines and know them. Have lived near and known the land 13 or 14 years, but never knew either of the old men, Clement or Louis. They died before I came there. Freeman Clement had a field on the South side of said N.W. quarter, between the road and the river, cultivated it, and lived there till he sold to Plaintiff about four years ago, and Plaintiff has cultivated it ever since. The fence on the north side of this field, next
 17 the road, stands where it has stood ever since I knew it, but the field has been extended toward the river. The land North of this field is open, and unimproved. Both parties claim it, and have done so ever since I knew them. The land in the field, there has never been any dispute about. It has been held by the Clements. I never noticed any road across this open part, but have crossed it frequently as the public generally have. Saw Welch cutting poles on it this spring. Clement had possession of it before Welch came there. About an acre or something more, part of the N.E. quarter of said section, lies West of the road, which runs on the line between the N.E. and N.W. qrs., until near the south side of Louis' field on said N. E. quarter, and then veers to the E., so as to leave a narrow strip of said N.E. quarter, between the road and the line. There has never been any improvements on said N.W. qr. north of Welch's field since I came to the neighborhood. About three-fourths of said tract is in Welch's field. The whole quarter, except the N.E. corner, overflows, and it is always late before it can be planted. Corn in other places is generally up high enough to plough before it is planted here, but being rich, warm ground, it comes on fast. I have known it planted the last of June or
 18 first of July and do well. Don't know just when it was planted in 1860, but it was late.

John P. Moushon called, said : I have known these premises ever since 1832. My father settled on said N.E. and N.W. quarters in that year, and made some improvements. We first made a small field on said N.W. quarter, which has been enlarged towards the river. On the North side, the fence at the N.E. corner is just where we set it, but down towards the river it may have been set a little farther North. Father sold his improvements to Clement in 1834. We had a field and stable on said N.W. quarter, which Clement occupied after us, until he died, some 13 years ago, and his family occupied it until they sold to Welch. Clement left four children, Freeman, Agnes, Margaret and Alice, but Alice died. Agnes married Alexander Wynd. Don't know who paid taxes on this quarter.

Cross-Examination.—We built our house on the S.E. side of the road, but we made a field on the West side. Louis came to live with us and settled on the hill
 19 fraction. Louis used to cross the small fraction to the river and wash there, and

so did the Indians. Louis had a small enclosure of about an acre or an acre and a half on the West side of the road, which he made when he first came and cultivated it one year. The next year the water washed most of the fence off. He then removed the remainder and used the rails in making a fence round a field on the east side of the road, and has never had any improvements on that side of the road since. I have seen wood at a place on the bank of the river, on the small fraction.

Re-Examination. Plaintiff's counsel asked witness, "What Louis said when he took away his fence from the west side of the road" for the purpose of proving an abandonment of possession. To which Defendants objected—objection sustained
 20 Plaintiff's excepted. Plaintiff then read to the jury a quitclaim deed from John W. Casey, to Francis Clement, dated May 30, '37, and recorded August 2, '37, for the
 21 N. fractional half of said Sec. 12, 25 N., 5 W., and it was admitted by Defendants, that when Casey made said deed he owned said land in fee.

22 Plaintiff next read in evidence a power of attorney from Freeman, Agnes and Margaret Clement to Alexander Wynd, dated Nov. 30, '57, and recorded February 15, '58, authorizing him to sell and convey by general warranty,
 23 or otherwise dispose of all real estate belonging to them, situate in Tazewell County, Ills. Next a deed of general warranty dated February 5, '58, from Alexander Wynd and Francis Emma, his wife in her own right, and said Freeman, Agnes
 24 and Margaret Clement, by their said attorney to Plaintiff for said fractional N. W. 25
 26 qr. of Sec 12, 25, 5, and other property recorded Feb. 26, '58. Plaintiff here rested.

Defendant then read in evidence against the objections of Plaintiff. The proceedings in Chancery in a cause brought to the September term of 1839 of the Tazewell Circuit Court, wherein Jean Florent Louis is Complainant and Francis Clement is Defendant.

27 The bill sets out that Clement and Louis had settled on and were entitled to enter the N. E. qr. of Sec 12, 25, 5 in said County on the 26th of July, 1836, with the understanding that Louis was to have the N. half and Clement the S. half thereof, and that if either party should be found, when the tract was surveyed, to have im-
 28 provements on the part agreed to be conveyed to the other, the party having such improvements was to have his improvement, and convey an equal portion of unimproved land to the other in lieu thereof—also that said Clement is the owner of the
 29 fractional N. W. qr. of said section, and that he agreed to convey to Louis all of said N. W. qr. which Louis should be found to have improved. That Louis was ready to comply with on his part but Clement refused—prays for specified performance and for partition and relief.

30 Exhibit 'A' attached sets out that said parties have a certificate of purchase
 31 from the Receiver of the land office at Springfield for said N. E. qr. that Clement is to convey to Louis the N. half of said N.E. qr. and that Louis is to convey to Clement the south half, each to have his improvements, and if on the other's to convey unimproved land in lieu thereof. By an entry on the margin each party is made to agree to convey to the other the improvements each may have on a fraction of 14
 32 acres attached to the said N. E. qr. Date of this instrument, July 26th, 1836.

33 Decree taken at September term, 1839.

April term 1840, this decree on motion of Defendant set aside.

24 By a decree rendered at the April term, 1841, it is ordered that said N. E. 12

and the 14 acres attached be surveyed and that the N. hf. of said N. E. 12 be set off to Louis and the S. hf. thereof to Clement and that each party have his improvements on said N. E. 12, and the surveyor is to find how much land Louis had under improvement in 1836, and the intention of the parties under the agreement. Said Surveyor is then ordered to survey said 14 acre piece, measure the same and describe it by metes and bounds. Louis Prettyman appointed surveyor and to report to next term.

At the September term, 1841, said Surveyor presented his report, and thereupon a decree is entered directing Defendant to convey to complainant the N. hf. of said N. E. 12, and $6\frac{1}{10}$ acres out of the S. hf. of same, and Complainant to convey to Defendant the same N. hf. and a certain private cartway, and cause continued. Said report finds that the 14 acre piece, so called, contained 21 acres and that in 1836, Louis had an improvement of $2\frac{5}{10}$ acres on the east side of the N. part of same.

At the April Term 1842, it is further decreed, "This cause coming on again to be heard upon the report of the Surveyor to survey and divide said N. E. 12 between the parties and they having refused to convey to each other their separate portions according to said contract contemplated, it is decreed that Peter Menard, Jr. be appointed a Commissioner to make deeds to each of said parties of said land having reference to said partition, division or survey of said land made by said Prettyman and now on file and that he make report to the next term of Court.

September Term, 1842, cause stricken from Docket.

April Term, 1852, Peter Menard filed report, showing that the original parties to said suit were both dead, and that he had conveyed to the heirs of said deceased certain parts of said N. E. 12, also to the heirs of said Louis, $8\frac{1}{10}$ acres off the N. side of said fractional N. W. 12, and to the heirs of Clement $12\frac{3}{10}$ off the S. side of said N. W. 12.

October Term 1853, motion by Defendant's Solicitors to set aside said report.

April Term 1852, decree taken in names of said original parties sets out that said commissioner had failed to execute the former decree therein and that said original parties had both died since said decree, and directed said commissioner to make deeds to their heirs and report to the present term of said Court. To the reading of all which to the jury, Plaintiff objected—objection overruled and Plaintiff excepted.

Defendant then offered a deed from Peter Menard as Commissioner, to John and Margaret Louis, dated April 8, '52, conveying to them as heirs of said Jean Florent Louis, part of said N. E. 12, and 8 and $\frac{1}{10}$ acres off the North side of said fractional N. W. 12. To the reading of which Plaintiff objected—objection overruled and Plaintiff excepted.

Defendant next offered to read to the Jury from the books of the Recorder of said Co., a deed from said Menard to Freeman Clement, Margaret Clement, Agnes Clement and Francis Wynd, formerly Francis Clement, children and heirs of Francis Clement deceased, conveying to them part of said N. E. 12, also 12 and $\frac{3}{10}$ acres off the South side of said fractional N. W. 12. To the reading of which in evidence

Plaintiff objected unless shown that said heirs procured said deed to be made or recorded, or it had been delivered to, and accepted by them as also because the original was not produced. Objection overruled and Plaintiff excepted.

53 William Hammond then called by Defendant, swears "Defendants have occupied the land in dispute since 1848. John Louis had a wood yard on a part of this land North of the field on the river bank. There was a road through the land to the river and Louis and his family have washed at the river.

Cross-Examination. Louis and Clement had lawsuits about this land. No part of that in dispute is cultivated. Defendants rested.

Plaintiff then read in evidence the proceeding in a suit in Chancery, wherein John Louis et als, the heirs and widow of Jean F. Louis deceased, are Complainants, and Freeman Clement and others, the heirs and widow of Francis Clement deceased, and Peter Menard are Defendants, brought to the April Term 1850, of said Court. The bill filed, claims that Jean Florent Louis and Francis Clement entered said fractional N. E. 12, and were jointly entitled to both said N. W. and N. E. qrs., and agreed to divide the same equally between them having respect to each others improvements. That said Francis Clement afterwards refused to comply with said agreement, refers to proceedings herein-before set out and makes them part of said bill, states that the Commissioner appointed to deed to the parties their respective shares had neglected to do so immediately, and that when the deeds were made, the parties to said original suit were both dead and the deeds not delivered to them nor their heirs—that said Louis and Clement both died in 1848—that the said Commissioner had not reported as required and that Defendants still claim to hold, own and occupy, and have since enclosed a large part of the land set off by the Surveyor to Louis—that Defendants continually sue and harass Complainants for all acts of ownership they exercise over any part thereof, also that Defendants fraudulently procured said cause to be stricken from the Docket—calls for answer to bill, and asks that said Commissioner be decreed to convey to the heirs of Louis and Clement the parts respectively set off to them—that Complainants have the benefit of proceedings in said cause of Louis and Clement, and that the heirs of Clement be bound thereby.

59 September Term 1850, leave given to amend said Bill.

September Term 1851, cause continued.

60 The amended Bill filed to this term, charges sundry mistakes in decree in original suit, Louis vs. Clement, among others, that the Court designed to decree that Clement should convey to Louis all the improved land Louis had on said fractional N. W. 12, and prays that the decree be amended so that the parties to this bill, representing the parties to said former suit, may have and hold in severalty, the parts by the Surveyor set off to said Louis and Clement respectively, and that a Commissioner be appointed to make deeds to the heirs accordingly.

63 April Term, 1852. Report of Commissioner presented to be approved if not objected to by next term.

64 September Term 1852, report approved and entered, *Miss Tane.* ~~was~~ *pro tem.* Said report sets out that Menard as Commissioner had made deeds to the heirs of Louis and Clement, certain parts of said N. E. 12, also, to said Louis' heirs, 8 and $\frac{1}{10}$.

65 acres off the North side of said N. W. 12, and to the Clement heirs 12 and $\frac{90}{100}$ off
of the South side of said N. W. 12.

66 May Term '53, this cause dismissed at Complainant's cost, and it is ordered that said
67 report be set aside and for naught esteemed. Plaintiff thereupon moved the Court to
exclude from the Jury, all the papers and proceedings in said Chancery suits read
by either party, also the Commissioner's deed made pursuant thereto. Motion
overruled and Plaintiff excepted.

For plat used by both parties showing situation &c., of the land in question
see p. 68. Witness Hammond also stated that where he understood the N. E. corner
67 of the $12\frac{90}{100}$ acres to be, as marked in Surveyor's report, Welch's field, toward
the river, would extend a little north of a due west line from that corner, and that
68 the field had been gradually enlarged that way. This was all the evidence.

Plaintiff asked instructions substantially as follows :

69 1st. That title in fee to the land in question being admitted in John Casey
on the 30th of May 1837, the Plaintiff has shown title in himself to said land if it is
proved that Francis Clement died prior to Nov. 30th, 1857, the date of the power
of Attorney to Alexander Wynd, and that Frances E. Wynd is the wife of said Alex
ander, and that she and said Freeman, Agnes and Margaretta Clement are the only
heirs at law of said deceased.

2d. If the Jury find that Plaintiff is the owner of said N. W. 12, and was
such owner on, and prior to June 1st 1860, and that since June 1st 1860, and prior
to commencement of this suit, said John and Margaretta Louis, or either of them,
committed the trespasses, or either of them in said declaration mentioned, they will
find for Plaintiff against Defendants, or the one committing such trespass, and assess
his damages at such sum as the evidence shows he has sustained thereby, unless
they shall believe, from the evidence such trespasses were committed under a license
from Plaintiff or title superior to Plaintiff.

3rd. Defendants have not shown title in themselves, to said land, or any
part thereof, as against Plaintiff.

4th. If the Jury believe from the evidence that at the time of the trespasses
complained of, Plaintiff was in actual possession of a part of said fractional N. W.
12, under paper title to the whole: such possession of part is, in law, possession of
the whole, and any trespass committed on any part of it, by any one not showing
better title, entitles the Plaintiff to an action therefor.

5th. An agreement to convey land to be valid, must be founded upon a
consideration good or valuable in law, and if there be no such consideration, the
agreement is void, and cannot be enforced in equity or at law.

6th. That all the proceedings in Chancery in the names of Jean Florent Louis
and Francis Clement, after their decease, are void, and not in evidence before the
jury.

7th. That the proceedings in the name of the heirs of Jean Florent Louis,
against the heirs of Francis Clement, revived and continued the former suit brought
by said Jean, against said Francis, and the dismissal of said last named suit, at the

costs of Complainant, determined both suits, and all orders and decrees and other proceedings therein, or pursuant thereto, are thereby annulled, and not to be considered by the jury in making their verdict.

72 8th. Where land is conveyed by metes and bounds, or any general description, known to the law, the number of acres named in the deed is not material, and the grantee will take all the land within the limits mentioned, though a less number of acres be named in the deed.

9th. The mere execution and recording of the deed from Menard to the Clement heirs, is not of itself sufficient to prove delivery to, or acceptance, or recording, by them of said deed, and unless the jury believe from the evidence, that said deed was delivered to, and accepted by, said grantees, they are not bound by said deed, and the jury should not consider said deed as in evidence for any purpose.

Of which said instructions, the Court gave the 1st, 2d, 4th and 8th, and refused the 3d, 5th, 6th, 7th and 9th, and Plaintiff excepted.

The Court then instructed the jury for the Defendants.

73 1st. That if Plaintiff claims under title derived from Francis Clement, and has shown no other title, and if they believe from the evidence, that at the April Term, 1842, of this Court, a decree was entered in favor of Jean F. Louis *vs.* Francis Clement, ordering Peter Menard, Jr., to convey the land in question to Jean F. Louis, and if they further believe, from the evidence that said Jean F. died before conveyance, and that Menard pursuant to said decree, conveyed said land to the heirs of said Jean, and that the Defendants are the heirs of said Jean, they will find for Defendant.

2. If they jury believe from the evidence that Louis and Clement owned the N.E. fractional quarter jointly, and that Clement during his life occupied the South half of the N.E. quarter of sec. 12, and that the heirs of Clement in conveying, by their deed to Welch, purported to convey the South half of the fractional N. E. 12, when, but for the decree referred to in the first instruction, said Clement's heirs, would only have been entitled to an undivided half of said quarter, and that a deed from a Commissioner, conveying said South half of said quarter, is duly recorded, they may from such facts presume that they claim under said Commissioners deed.

74 To the giving of which Plaintiff excepted.

The jury then found for the Defendant, and Plaintiff moved for new trial, Because :

- 1st. The Court refused proper evidence offered by Plaintiff.
- 2d. The Court admitted improper evidence for Defendants.
- 3d. Overruling motion of Defendant to exclude the record evidence, before admitted, against objection of Plaintiff.
- 4th Refusal of proper instructions asked by Plaintiff.
- 5th Giving improper instructions for Defendants.
- 75 6th & 7th. The verdict is against the law and evidence, and instructions of the Court.

Motion overruled. Judgment for Defendants and Plaintiff excepted.

And now comes the said Thomas Welch, plaintiff in error herein, and says that in the record, proceedings and judgment of said Circuit Court, in said cause, manifest error hath intervened to his prejudice in this, to wit :

1st. Said Court erred in refusing to admit proper evidence offered by Plaintiff.

2d. Said Court erred in the admission of improper evidence on the part of the Defendant.

3d. Said Court erred in overruling the motion of said Plaintiff to exclude from the jury the Chancery record and proceedings, including reports and deed of Commissioner thereunder, before given in evidence against the objections of the Plaintiff.

4th. Said Court erred in refusing to give instructions, numbered, 3, 5, 6, 7 and 9, asked by Plaintiff.

6th. Said Court erred in the instructions given the jury on the part of said Defendants.

5th. Said Court erred in admitting Defendants to read in evidence from the books of the Recorder of Tazewell County the copy of deed, from Peter Menard, as Commissioner to the heirs of Francis Clement, without first showing the delivery of said deed, or that said heirs had accepted, and procured it to be made of record, and also because said Defendants did not produce the original of said deed, nor prove notice on Plaintiff, or show any reason for its non-production.

7th. Said Court erred in overruling motion of Plaintiff for new trial.

8th. Said Court erred in rendering judgment in favor of Defendants on said verdict.

9th. Said Court erred in not rendering judgment for Plaintiff.

Wherefore and for other manifest errors appearing in said record, Plaintiff prays that the judgment of said Circuit Court may be reversed, and annulled, and wholly for naught esteemed.

COOPER & MOSS,
For Plaintiff in Error.

Assignment of Errors.

1st. In refusing proper evidence offered by Plaintiff.

2d. In admitting improper evidence for Defendant.

3d. In overruling Plaintiffs motion to exclude from the jury the proceedings in the suit in Equity of Louis vs. Clement, and Commissioner's deed thereunder, before given in evidence.

4th. In permitting the record of deed from Peter Menard, as Commissioner, to the heirs of Francis Clement to be read to the jury.

5th. In refusing instructions, 3, 5, 6, 7 and 9, asked by Plaintiff.

6th. In the instructions given for the Defendants.

7th. In overruling Plaintiffs motion for new trial.

8th. In rendering judgment for Defendant.

9th. In not rendering judgment for Plaintiff.

COOPER & MOSS,
For Plaintiff in Error.

53-100 234

Welch

~

Swiss

Abstracts

no. for September

Filed Apr. 23. 1862

L. Veland

Ch.

STATE OF ILLINOIS,
SUPREME COURT. } ss. The People of the State of Illinois,

To the Sheriff of Lazear County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Circuit Court of Lazear County, before the Judge thereof, between Thomas Welch

plaintiff, and ~~John Louis~~ John Louis and Margaret Louis

defendant, it is said that manifest error hath intervened, to the injury of the said plaintiff

as we are informed by his complainant, 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 John Louis and Margaret Louis

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, 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 then there the names of those by whom you shall give the said John Louis and Margaret Louis

notice, together with this writ.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 7th day of May in the year of our Lord One Thousand Eight Hundred and Sixty-two

L. Leland

Clerk of the Supreme Court.
J. B. Rice Secy



This Summons has been duly served
By Reading to the within named John Lewis
and Margaret Lewis this 22nd day of May 1862
Shiff for Service \$1.00
 Mileage 50
 Return 10
 \$1.60

C. Williamson Shiff. J.C.
By J. M. Saiter Deputy.

Thomas Welch
vs.
John Lewis et al

SCIRE FACIAS.

Filed May 24th A.D. 1862
J. Welch Clerk.

Thomas Welch } In the Supreme Court =
vs. } April Term 1862 =
John Louis &als. } Error to Lafayette County =

Brief & points made by plaintiff in Error, on application for supersedeas to stay collection of costs =

This action is in respect to real property by tearing down fences, & preventing plaintiff from enclosing & cultivating part of N.W. 12. S. 25. R. 12. S. W. 3rd (Meridian)

Plff proved the trespasses & deranged title clearly, through the heirs of Francis Clement deceased: Defendants also claimed the locus in quo, through their ancestor Jean Florent Louis =

Both parties also claimed to hold by prior & continued possession =

1st The errors chiefly relied on for reversal, are: Refusal of the court to permit plff to prove declarations of said Jean F. Louis, connected with removal of fences he once had on part of the land, to show abandonment of possession = see Record, p. 20. Abstract p. 4 = This was admissible as res gesta and also as made by a party, against his interest & the title through which defendants claim =

2nd = The admission in evidence for defendants, of the proceedings in the suit in Chancery, running in the names of Jean F. Louis, & Francis Clement, set out on p. p. 27 to 49, inclusive, of Record & 4 & 5 of Abstract =

These proceedings were objectionable, among other things, on the ground that the conveyance set up under them was ^{not} authorized by any order or decree in the cause - And next - Because, after being stricken from the docket, the suit was reinstated, ~~on the docket~~, and the only proceedings, of any efficacy, had, in the names of these parties, after the death of both = They died in 1847, or 1848 - see testimony of Louis, Abstract

p. 1- Recor-p. 9= The cause was stricken off in 1842-
and rechecked at April Term 1852 - Abstract, p. 5, 6
referring to Recor. 41-2+45=

3^o The Admission, for depts, of Record copy of deed from Merend, as commissioner, to the Heirs of Francis Clement. ^{which is} For objections ^{these to} ~~to~~ ^{to} Record, 50-51. 52 - Abstract, 4 & 5 =

4th = Refusal of Court to exclude proceedings in said chancery suit, after introduction of proceedings in name of John Louis & als, Heirs &c. of Jean Florent Louis, vs. Herman Clement & als., Heirs &c. of said Francis Clement dec'd, & reversing former suit, and finally dismissing the whole, at complainant's cost, and vacating the orders & proceedings therein - See Record - 56 to 67, inclusive - Abstract 6 & 7 =

5th = Refusal to give instructions 3. 5. 6. 7 & 9, asked by plff. - Record - 69 to 72, inclusive - Abstract 7. 8 =
For reasons suggested above, and that said no. 8, is plain law - these instructions should have been given =

6th = The giving instructions ^{1 & 2,} asked by defendant - Record, p. 73 = Abstract - p. 8 = On this Record these instructions should not have been given =

7th = Overruling plff's motion for new trial = see Record 74-5 = Abstract - 8-9 =

If the positions above assumed, or any of them, are well taken, this motion should have been granted.

Cooper & Moffs
for plff in error
Ottawa, May 1/62 =

And now comes said plff in error, by Cooper & Moffs, his attys, and moves the court for a supersedeas to stay collection of costs in the Court below herein, on record, abstracts, affidavits and points, as above, filed herein.

Cooper & Moffs
for plff in error

²³⁴⁻
Thomas Welch
vs. =
John Louis & als =
points & Motion for
Supersedeas =

Filed May 2^d 1862
L. Deland
Ck.

Supreme Court of Illinois,

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1863.

THOMAS WELCH,

vs.

JOHN LOUIS, ET AL.

ERROR TO TAZEWELL.

BRIEF OF PLAINTIFF IN ERROR.

1. This suit is for trespass in tearing down fences, &c., on the N. W. fr 12, T. 25, N. R. 5 W. 3d Meridian, and plaintiff below having established, *prima facie*, the ownership of said land in himself, by undisputed paper title, and proved the trespass complained of, was entitled to recover, unless the claim of superior title, set up by defendants, was sustained.

2. The claim of prior and *continued* possession, being much relied on by defendants, the declarations of Jean Florent Louis, their ancestor, at the time he removed his fences, were proper, to show *abandonment* of such possession, and should have been admitted for that purpose. These declarations were *res gestae*, and were further admissible, as being *against the interest* of the party making them, and in *derogation of his title*. Greenl. Ev. Secs. 109, 147 and books *passim*.

3. The deed of April 8, 1852, from Menard, as commissioner in chancery, to John and Margaret Louis, was not admissible in evidence.

1ST. Because the order of April —, 1842, authorizes no such conveyance of land in said N. W. 12, as is covered by said deed—nor does said deed conform, in other respects, with the orders and decrees under which it purports to be made.

2ND. Because of ^{lapse} ~~loss~~ of time and subsequent disposal of the case. The order appointing said commissioner, was made at the April term 1842, and re-

quired him to report at the next term. At the September term 1842, (the next term, in course,) the cause was stricken from the docket, and thus remained out of court, for nearly ten years, before the deed is made or any further action had in it. This, it is submitted, rendered the proceeding stale, and authorized defendant to regard it as entirely abandoned, and the subsequent action, *without notice* to parties in interest, was irregular and void.

3d. Because, by the death of both original parties, it became impossible to execute the order as it stood, and new proceedings, and a new order were requisite to give the commissioner power to act. This was the more necessary, as said original order is itself, confused, unintelligible, and clearly vicious, for mistake apparent on its face.

The proceedings at the April term 1852, of said court, *in name of Jean Florent Louis vs. Francis Clement*, were simply void, and should not have been allowed in evidence. Because 1st, without notice to parties in interest; and 2nd, because both parties, plaintiff and defendant, were at the time dead. Judicial proceedings cannot be carried on in the name of a dead man—nor against a dead man. *Brown vs. Parker* 15 Ills. 310.

5. The record of the deed from Menard, as such commissioner, to the heirs of Francis Clement, deceased, was improperly admitted in evidence. There was no evidence that said heirs, or Welch, ever knew of it, much less accepted or claimed under it. There should have been some excuse for not producing the original—as, that it was destroyed or lost, or in possession of said heirs, or Welch; and, if the latter, some call on them for it. For reasons before given likewise, the deed itself was unauthorized and void.

6. The motion of plaintiff, to exclude said chancery proceedings and commissioner's deeds, should have been allowed. And this, as well for reasons already stated, as because the proceedings in the name of the heirs of said Jean F. Louis *vs.* said Clement heirs, instituted by these defendants, and read in evidence by plaintiff, revived said original suit, and showed that said suit had been dismissed, and the acts of said commissioner thereunder, set aside and annulled.

7. For reasons indicated, instructions 3, 6, 7 and 9, asked by plaintiff, should have been given. So, of instruction 5, which is clearly law. And as there was, in fact, upon the proof, no consideration for the agreement referred to, the instruction was pertinent, and should have been given.

8. Defendant's instruction No. 1, was improperly given. It was for the court, and not the jury, to say whether said decree did or did not direct Menard to convey to Jean F. Louis "the land in question." So also, whether "*pursuant to said decree*," said Menard conveyed said land to said heirs, was a question of *law* rather than *fact*. Both, it is submitted, were matters of *construction* of records, which fell to the court and not the jury, to decide.

This instruction further directs the jury to find for defendants, in case they find that Menard conveyed said land to the heirs of Jean F. Louis, and that de-

fendants are his heirs—while the proof is, that one of the trespasses complained of was committed at a point confessedly always in possession of the plaintiff or his grantors, not covered by said Menard deed, and to which neither the defendants nor their ancestor ever claimed to have title.

Instruction 2, given for defendants, is bad for irrelevancy, and as calculated to mislead the jury. Because the heirs of Clement deeded the S. half of said N. E. 12 to Welch, it did not follow that they claimed title through said commissioner's deed. The direct contrary is indeed apparent from the face of the two papers, if agreement in description of the land conveyed in each, be the thing intended. And that this is the point made by the instruction, is plain from its whole tenor. The instruction, ~~however~~ ^{never}, assumes what is untrue, viz: That there is "a deed from a commissioner conveying said S. half of said quarter duly recorded." No such commissioner's deed was before that jury.

10. For reasons stated, the application of plaintiff below, for a new trial, should have been granted.

COOPER & MOSS,
For Plff. in Error.

Welch vs. Lewis & Co.,
Petts Brief =

Filed April 27th 1883
L. Leland
clerk

Am. Justice

delivered the opinion of the Court.
Breese, ~~et al~~ This was an action of trespass
to land, ~~the cause in question~~ brought by the
plaintiff against the defendants in the Tazewell
circuit Court. To the action the defend-
ants pleaded not guilty and a special plea
that the close was their soil and freehold.
The jury found the issue for the defendants
and a judgment was rendered against the
plaintiff for the costs. A motion for a new
trial was made and overruled, a bill of ex-
ception signed, and the case brought here by
a writ of error, and various errors assigned which will
be disposed of as we proceed.

~~The following are the errors assigned in~~
~~the record.~~

The facts of the case appear to be substantially these. One Moushon in 1832 entered upon the land including the locus in quo while ~~the~~ it belonged to the United States, and made some improvements on the North west fractional quarter and on the North east fraction also. He built a stable and made a small field on the south part of the North West, and a house on the south part of the North east fractional quarter, on the each side of ^{the} a road dividing the two fractions, and ~~the~~ near the South ^{the} line of the quarter. Moushon sold these improvements to Francis Clement in 1834, who, thereupon went into possession, and occupied ~~the premises~~ ^{the premises} until July 1848. His heirs continued to occupy them until the first of February 1858, when they sold and conveyed ~~the premises~~ ^{the premises} to Clement was in possession over Casey ~~the premises~~ ^{the premises} and purchasers of the United States, ~~the premises~~ ^{the premises} of the North fractional half. While Moushon occupied, the father of the defendants, John Forest Lewis, lived with him, and made an improvement on the full fraction, ~~near the~~ in the south half of the North east quarter and in the North west corner and each of the roads; he built his house ^{near the North line of the South half} ~~there~~, and enclosed a small field of about two acres, on the west side of the road near his house. ^{field} ~~the~~ he cultivated one

2

782

year. It was low ground, and the next year, the water washed off most of the fence; Louis then removed the remainder, and used the rails in making a fence around a field on the east side of the road. It appears this road ~~to~~ ran north and south on the ~~existing~~ line ~~between~~ dividing the north ^{west} ~~end~~ from the north ^{east} ~~part~~ fractional quarter until near the north west corner of the south half of this quarter, when it inclined to the east ^{and left} ~~proceeding~~ about two acres of this tract, west of the road. ~~At that year the fence was removed, & does not appear.~~

The Land was public Land, and ~~was~~ on
 record from the vital in the agreement of
 the 20th July 1836 between Clement and John
 Florent Louis, that ~~these~~ ^{they} had made proof
 of ~~a~~ ^{their} permission to the North East quarter
 entered into a written agreement, reciting that
 they had obtained from the Land office
 a certificate of purchase for the north
 East fractional quarter, and for the purpose
 of making a division of it between them, Clement
 agreed to convey to Louis, the north half
 of the quarter and Louis agreed to convey
 to Clement the South half, "the intention
 being that each party shall retain his in-
 promise," and to effect that object, it was

agreed that the land should be surveyed, and if it appeared was found by the survey, that Louis' improvement was on the south half of the quarter then it should be conveyed to him by deed, and in return therefor, Louis should convey to Clement an equal number of acres out of the north half, and if any part of the improved land of Clement should be found to be in the north half of the quarter, then Louis was to convey it to him taking himself an equal quantity from the south half. They also agreed to convey to each, the improvement which each ^{might} have on the small portion of fourteen acres attached to the land described in the agreement.

5
4
Marine from it as was frequently the case about the time of this agreement, parties who had moved up their presumption, ^{so disposed} ~~so disposed~~ of their claims, & to enable another party to make payment and procure the certificate of purchase from the United States, and which we infer, was the course pursued in this case for ~~the latter party~~ ^{John W. Casey} entered and purchased the whole of the north fractional half of Section 12, containing 135.80 acres, and it is admitted by the parties to this suit, became the undisputed owner thereof. Casey on the 20th of May 1837

by deed of that date duly recorded on the 2^d of August 1837, sold and conveyed the ~~whole~~ ^{same} ~~of~~ to Clement.

Clement By this deed, Clement transferred in the entire tract, ~~he sold to Clement~~ and if ~~Clement~~ continued to occupy the ~~south part~~ ^{the south part} of the ~~disputed~~ ^{disputed} ~~portion~~ ^{portion} in the possession and ~~enjoyment~~ ^{enjoyment} of the south part of the north east fractional quarter, and of the field on the north west fractional quarter containing in taking wood from that part of it not enclosed, and exercising such acts of ownership over it, as is usual and customary by owners or claimants of unoccupied land. ^{Through his right, long denied by Louis,} After his death in ^{July 1848,} his children and heirs at law, continued such occupancy, until the fifth of February 1858, when they sold and conveyed, by deed of that date, to the plaintiff, the south half of the North east quarter, and containing $75 \frac{50}{100}$ a/c and the North west fractional quarter, containing fourteen a/c more or less, under which deed the plaintiff went into possession, and was in possession at the time of suit brought. John Florent Louis died in March 1848, leaving then heirs & at his heirs at law, in possession and who occupy as their ancestor did.

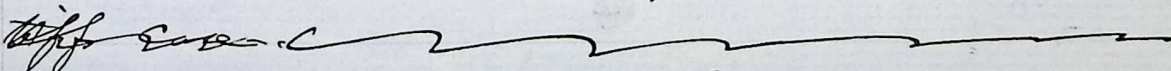
It appears that ~~def~~ Louis the ancestor of

these defunct acts, had, in his life time and the defunct acts since his death, disrupted the right of Clement to this fraction, and while it is not proved that they themselves ever exercised any unequivocal acts of ownership over it, they have prevented the plaintiff from extending his field ^{over} the north part of the fraction, and from enclosing it for any purpose. ~~Actual possession of the fraction is proved by~~

~~It now appears the temporary complaint of your Committee ~~is~~ states the plaintiff was in the act of building a fence on the east line of this fraction ~~as a result of~~ of it is proof, no portion of the fraction north of plaintiff's field has ever been enclosed.~~

~~Whereas~~ With a view to an exclusive appropriation of the north part of this ^{small} fraction, the plaintiff, before the commencement of this suit, commenced to build a ^{fencing} fence on the east line of this ^{it} fraction with poles cut from this land, when the defuncts intervened and tore it down. The design was, to enclose all the vacant portion of the fraction, which was frustrated by the violent acts of the defuncts. One year before, ~~the~~ including the time land in the dealma-

Now it appears, that one of the defendants tore down the fence on the north side of the field in two different places, at one place near the river, when the plaintiff was repairing the damage occasioned by high water, in doing which, he placed his fence some what farther north than it had been, which Margaretta, one of the defendants, tore down. The other place was at the north east corner of this field by the road, when the same defendant tore down several panels of fence, of the old fence which had ~~been~~ ^{there} been made by Monahan and had stood there at the time of the purchase by Clement and son since. This field enclosed in part by this fence

These are the main facts of the plaintiff's case.  The defendant, to maintain his plea of ~~abandonment~~ ^{adverse possession} it appears, has been in the actual and undisturbed possession of the plaintiff and those under whom he claims ~~for nearly thirty years~~ ^{for about twenty six years} for about twenty six years, and at the point, where the trespass was committed, before the sale to Clement, the fence stood when it was placed, in eighteen hundred and thirty four.

These are the main facts of the plaintiff's case.

The defendants to maintain the issues on X

* Their last introduced evidence against the objection of the plaintiff, certain provisions in Chancery, originating in 1839 between John Street & son, was completely irrelevant and immaterial. Clement was defendant and John Street & son were plaintiffs in the case. From 1839 onwards in an introductory decree.

787

Merdon it was necessary to notice the decree
for the reason that the suit of 1840, in
which the defendant was defendant's action. The
bill was based on which the decree was based, and
which was the foundation of subsequent proceedings,
set out this agreement of July 26. 1836, and charges
that it was a deed between the complainant and
defendant that there was a fraction of fourteen
acres lying in front of complainant's land,
that defendant agreed with complainant, in
case whatever improvement he complainant had
on that fraction the defendant would convey
to him, and alleges that as to this fractional
part of fourteen acres, the complainant the
defendant "Count" is the sole owner thereof.

The object and scope of the bill was to obtain
a specific performance of the agreement of
July 20. 1836, as to the respective rights and
claims of the parties to the north east
fractional quarter, ^{and} that this tract should
be so divided between them, as that each
party should have an equal quantity of
land to include their respective improvements.

The prayer of the bill is for a partition of the
south east fractional quarter the south half to
be set off to the defendant, leaving thereout, such
portion of it as the complainant might have
made improvement, and the north half to be set

off to Complainant, the defendant to be compensated out of it, for a fourth of the South half, as complainants in process should cover. ~~This was the intention of the bill~~ There is an allegation

The ~~prayer~~ⁱⁿ of the bill was that the defendant designed to deprive complainant out of ~~the~~^{his} improvements. The prayer of the bill is not quite intelligible, but we understand it to be that Complainant should be deemed to convey to Complainant, ~~in consideration that~~ ~~Complainant conveyed to him, and out of~~ then so much of the South half of the North east quarter as ^{embraced} complainants in process, in consideration that Complainant would first convey to the defendant, an equal quantity out of the North half, and also prays that his improvement on the fraction of fourteen acres ^{might} ~~may~~ be let off to Complainant. The bill was taken by consensus.

He deemed it unnecessary to notice the decree which followed, for the reason, it was, at the next term April term 1840, on motion of the defendant, vacated.

At the April term 1841, another order and decree was entered granting the prayer of the bill as to the North east ^{fractional} quarter, and the respective improvements of the parties thereon, and it was further ordered, that the survey on survey and ascertain

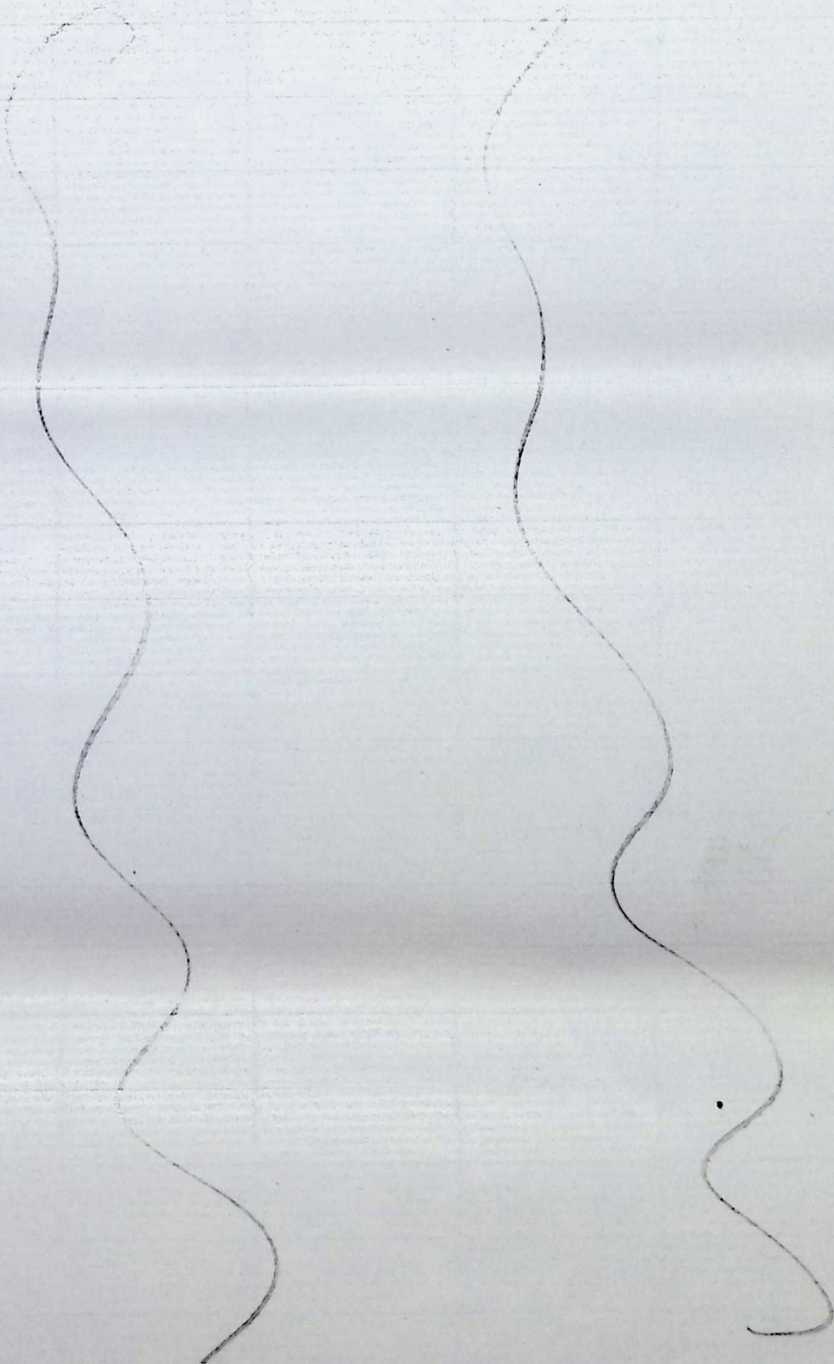
How much land couple in suit had under
in promiss in 1836, and survey the second
described fourteen acres, measure the land,
and describe the same by metes and bounds;
and the Court appointed Lewis Pettyman and
surveyor, who was required to report his
proceedings in the premises to the next term
of the Court.

At the next term it being the September
term 1841, the couple in suit presented the
report and survey of Mr. Pettyman, whereupon,
the record recites, "it appearing to the Court by
the report of the Surveyor that the improvements
Louis had on the south half of the north East
quarter consists of a piece of land containing
six $\frac{10}{100}$ acres, described by metes and bounds,
that the Surveyor has measured and set off in
lieu of this land, the following land, "Commenc-
ing at the north west corner of the above im-
provement of 6 $\frac{10}{100}$ acres, thence north $1\frac{78}{100}$ chains
to a stone - thence east 34 chains to a stone -
thence south $1\frac{78}{100}$ chains to a post, thence West
34 chains to the place of beginning containing
six $\frac{5}{100}$ acres." It also appearing by said Surveyor's
report that ~~the following~~ the metes and bounds
of the small fraction of land described in the
interlocutory decree mentioned, are as follows:
(here the metes and bounds are specified) "containing

21 aces" It further appearing to the court
 that the complainant had in 1836, an improve-
 ment on the north part of the above fraction
 as follows: (describing it by meters and foms)
 'containing $2\frac{52}{100}$ aces', The court being fully
 advised in the premises orders and decrees that
 the plaintiff convey to the defendant by deed,

~~VE~~

11



White

White

791

21

~~And by deed~~, the following described land, to-wit:
The north half of the north-east fractional
quarter of Section number 12, Town 25 North,
Range 5 West, also that the complainant
shall convey to the defendant a private
cut way across the north end of the land
described as complainant's in process upon
the complainant executing the deed as aforesaid;
And the Court doth decree that the defendant
convey to the complainant the following
land to-wit: Commencing at a post at the
N. W. corner Black Walnut 12 in. bearing
S. 81° W 28 links; thence North, $9 \frac{0.6}{100}$ chains
to a stone; thence East, $6 \frac{75}{100}$ chains to a
stone; thence North, $9 \frac{0.6}{100}$ chains to a stone
thence West $6 \frac{75}{100}$ chains to the place of begin-
ning containing six acres and ten hundredths
of an acre - also the north half of the north
east fractional quarter of Section number
twelve the said deed be executed and
delivered by the next term of this Court to
which term the cause is continued.

At the April term 1842 the next
term in course, a further hearing was
had, and the report of Pettigrew a com-
missioner and surveyor appointed by this
Court to survey and divide the fractional
quarter of Section twelve Township 25

North, Range five West of the third principal
 Meridian in Izewell County, Fair and im-
 partially between the parties aforesaid, having
 reference to a certain Contract entered into between
 said parties, having been heard and approved,
 It is therefore commanded by the Court
 (Said parties to said contract having agreed
 to comply to each other their separate
 portion according to said contract Contem-
 plated) that Peter Menard Jr. be appointed
 a Commissioner to execute and deliver
 to each of the said parties aforesaid
 a good and sufficient deed in the partition
 of the said land having reference to said
 partition division on survey of said land
 made by said Pattonman and to this
 Court submitted and now on file of this
 Court and that he make report of the
 same at the next term of this Court."

At the September term following, on
 motion, it ^{was} ~~is~~ ordered that ^{the} ~~this~~ cause be
 stricken from the docket.

13

18

24

14
15

This is the state of the record up to September term 1842, and the question here arises, what was the condition of the cause when it was stricken from the docket, was it any longer in Court for the action of the Court upon it? This question is discussed at some length in the case of Fibb et al. decided at the last January term, and the conclusion there reached was, that the cause was not so out of Court and beyond its jurisdiction ^{by striking it from the docket but} that it could ~~be~~ be ~~revised~~ again brought before the Court in some mode, and the mode suggested, ^{in that case,} was, by motion and notice, or by petition, or by supplemental bill, or bill of revivor, ^{the} ~~either of the parties~~ ^{had intervened} setting out the facts as they existed up to the time of the motion, or petition or bill.

By the death of these parties in 1848, the suit abated making, in this respect, the case to differ from Fibb's case. It is an anomaly in judicial proceedings, to carry on a suit in the name of the deceased parties to it. ~~As shown~~ ~~in the bill~~ ^{as a bill}, in the nature of a bill of revivor, by the heirs at law of one party against the heirs at law of the other party, ^{is} ~~was~~ the course indicated by the practice in Chancery in such cases. 3 Daniels Ch. pr. 1718.

The propriety of this is obvious, for although a deceased proprietor of land may leave children, it may not follow they become entitled to his estate. ~~other may have been in litigation he may have~~ ^{have} alienated it to other parties - he may have devised it in certain and unequal proportions to his children, or wholly, to strangers, hence the necessity of a bill to revise the proceedings wherein the complainant should show their estate in the land, and the defendant's claim, and by what rights, so that they may have an opportunity to disclaim, or otherwise defend according to the nature of their case.

By the death of these parties, new rights arose, ~~of~~ ^{of} the nature of which the Court should be judicially informed by bill, and the bill should progress to a hearing and decree as in other

Cases. ~~It was in that the answer to all the~~ ^{Without this or something} ~~equivalent to it~~ ^{as} the Court had jurisdiction of the ~~whole~~ case, and the proceedings commencing in 1852 had ten years after the cause was stricken from the docket, and four years after the death of both parties were not only unequal, but void. ~~If they were in fact only,~~ ^{voidly,} they could not be attacked in this Court as ~~being~~ ^{void} there was neither a cause in Court, nor living parties to the cause, in which the Circuit Court undertook to act. The

15
150

whole Subject was Coram non iudice,
and the report of the Commissioners, and the
deeds executed by him to the heirs at
Law of the deceased parties, should not
have been received by the Court. The action
of the Court, in these respects was void and
of no effect, and they should not have
been allowed to go in evidence.

But waiving this, and considering the pro-
ceedings in 1852 and the
report and deeds ~~of~~ regular, it will be
seen on examination, ^{the deed} they do not con-
form to the decree, and are ~~for that reason~~
void and of no effect.

The decree, which was passed on the
coming in of the surveyor's report, gives to the
defendant the north half of the north east
fractional quarter, and also, in the last por-
tion of it, decrees it to the Complainant, and
does not decree the south half to the degen-
dant. It is therefore void for uncertainty. The
deed gives the north half to Complainant's ^{heirs} and
the south half to defendant's heirs. By the
decree the strip taken out of the north half
and awarded to the Complainant's defendant
is described as bounded by line, the initial
point of which is at the north west corner
of Complainant's improvement on the south half,
whereas by the deed, following the course, and

distances given in it, ~~the~~ not one of the lines would touch the North West Corner but would only reach the North East Corner of the improvement. The decree does not find that the Complainant Louis, was entitled to any part a portion of the North West fractional quarter of 12, but only directs the Surveyor to measure it, and ascertain what improvement the Complainant had on it in 1836. This the Surveyor did, and reported the area as 21 acres, and that Complainant had on it in 1836 an improvement of $2 \frac{52}{100}$ acres. The deed conveyed to him not only this $2 \frac{52}{100}$ acres, but five $\frac{52}{100}$ acres in addition.

It is unnecessary to cite authorities on the point, that a naked power must be strictly pursued, and that a conveyance of ~~power~~ land ~~thus~~ not authorized by the power, is a void conveyance. The Commissioner, did not by his deeds, carry out the decree, but naturally separated therefrom, and his acts not being conformable to the decree, are void. These deeds were not approved by the Court, so that no ^{aid} ~~argument~~ can be derived from that quarter. They stand upon their naked merit, and not being authorized by the decree they must be considered ^{inoperative to convey} invalid, and ~~consequently~~ ^{inoperative to convey} title.

Demurrer
A Commissioner, like any other agent or attorney, must act according to the power conferred, and convey the land he is authorized to convey, and none other. The doctrine on this point is too well settled to require argument on authority.

18 Without accounting or discussing the objections made by ~~the~~ the plaintiff to the introduction of these deeds, it is sufficient to say the Commissioner had no power by the decree to locate them, and they convey no title to the premises, on which the trespass was committed.

The defendant also ~~produced~~ ^{called} on William Hammond as a witness who stated that the defendant had occupied the land in dispute since 1848 - that John Louis had a wood yard on a part of it, north of the field on the river, and he and the family have washed at the river - On his cross examination he said, Louis and Clement had lawsuits about this land, and no ~~portion~~ part of the ^{portion} ~~portion~~ in dispute was under cultivation.

This was the defendant's case, & he opposed the plaintiff, against the objections of the defendants, introduced in evidence certain other proceedings in Chancery, commenced ^{in 1850} by the heirs at law of John Forest Louis, then

defendants and the heirs at law of ~~the~~
^{and Peter Remond the commissioners}
 Clement, ~~to~~ ^{to} correct certain errors in
 the original decree, and to revive and con-
 firm the original estate deed, and praying
 to carry into effect the original decree, which
 he deems unnecessary to notice more particularly,
 inasmuch, as the bill, after being amended,
 and continued from term to term until 1853,
 was dismissed at the cost of the complainant.
 Whether this dismissal, did, or did not, dispose
 of the original decree is a question not
 essential to this case to be decided, as
 we are of opinion, the plaintiff's case
 was fully made out, by the proofs he had
 adduced.

The plaintiff proved the trespasses to
 have been committed on land to which, by
 Cass's deed, and by the admissions of the
 defendants' ancestors, he had the title. Having
 the title, he had a perfect right to enclose
 the land, and a forcible disturbance of him in
 the exercise of that right, was a trespass.
 Some steps were laid upon ~~the~~ a prior occu-
 pancy of a part of this north west portion
 by John Louis Florent and on an improve-
 ment made by him thereon and which Clement
 agreed to convey to him. Saying nothing about
 this agreement, as being void for want of a

Consideration, it is quite evident, he had no
 improvement on it in 1836, or at any other
 time. The proof is, he enclosed, ~~before~~
 while living with Monahan about two acres of
 land west of the road, and it is proved,
 that a small portion of the South half of the
 North east quarter of is west of the road by
 reason of the road trending to the east
 just as it reaches the South west corner
 of that tract, so that must have been
 the improvement, and no other. But if it
 was on the North west fraction, he voluntar-
 ily abandoned it, by removing the rail,
 and it was competent for the plaintiff,
 in order to show an abandonment, to
 prove the declarations of ~~Dea~~ Louis
 when he was in the act of removing the
 fence. It was a part of the ^{test} ~~the~~ ^{quest} ~~the~~ ^{gest} ~~the~~
 of the thing done - giving it character,
 showing the animus under which it
 was done. ^{Pigg's 77. Cook, 4 N. H. 336.} The Court said in not per-
 mitting the plaintiff to have these declara-
 tions go to the jury. ^{Robtson v. Town of Lewiston, 25 Me. 153,} It may be, he said
 he had no claim or title to the land, and he
 would therefore remove his fence. The
 weight of evidence is however, that this
 improvement was not on the North west
 fraction but upon the North east. ~~It was~~

~~bounded on the side by the road, and west of~~
~~the defendant's premises~~ The plot used in
 evidence in this cause, shows a strip of
 land west of the road part of the north
 east quarter, which we infer was the
 tract, ~~on~~ which Louis improved and from
 which he removed the fence - At the
 witness can even in saying, that the part
 of the fraction north of plaintiff's field
 never was, at any time enclosed.

21 The testimony here shows that on
 land to which the plaintiff shows a paper
 title, ^{actual} and ^{and cultivation} possession of part, claiming
 the whole tract. This is sufficient evidence
 of title to the unenclosed part, to sustain
 the action. Davis vs. Early et al., 13 W. 192,
 and cases there cited.

The consequences due to defendants
 being void, they are left without a leg to
 stand upon. No possession of any portion
 of this tract by defendants, or their ancestor,
 has been shown. The occasional use of ~~the~~
 an undivided part of it, to place wood
 upon, and working to the bank for washing,
 picking up sticks of wood upon it, crossing
 over it to reach the river, are no possessory
 acts, out of which a title can spring, sufficient
 to destroy the title shown by the plaintiff.

It is also in proof that the plaintiff or those under whom they claim have paid taxes on this fraction, ~~and~~ for a series of years. It is described as containing but $14\frac{1}{4}$ acres, but upon survey, it is found to contain twenty one acres. The defendants show no payment of taxes on any part of the fraction.

22 The deem it unnecessary to comment upon the instructions given and refused, or the views of us have expressed, dispose of them substantially, so that on and then that, the Circuit Court, ~~under the~~ will give such instructions should it be moved to do so, in harmony with this opinion.

The judgment of the Circuit Court is reversed and the cause remanded for a new trial, and for further proceedings not inconsistent with this opinion.

Judgment reversed.

100
Thomas Welch

by
John Louis et al.

—
Specimen by

Theresa J.

12.12.
17883

Record Book
pp 722, - 731.

Completed

State of Illinois, §
 ss,
 Tazewell County.

THE PEOPLE OF THE STATE OF ILLINOIS:

TO ALL TO WHOM THESE PRESENTS SHALL COME---GREETING.

Know Ye, That whereas, Thomas Welch late of the county of Tazewell, and State of Illinois, died intestate, as it is said, on or about, the 29th day of April A. D. 1863, having at the time of his decease, personal property in this State which may be lost destroyed, or diminished in value if speedy care be not taken of the same; to the end therefore, that said property may be collected and preserved for those who shall appear to have a legal right or interest therein, we do hereby appoint

Joseph Willard of the county of Tazewell, and State of Illinois, administrator of all and singular the GOODS AND CHATTELS, RIGHTS AND CREDITS, which were of the said Thomas Welch at the time of his decease, with full power and authority to secure and collect the said property and debts, wheresoever the same may be found in this State; and in general to do and perform all other acts which now are, or hereafter may be required of him by law.

Witness, John Gridley Clerk of the County Court, in and for the County of Tazewell, at his office in Pekin, this 12th day of May A. D. 1863

John Gridley Clerk.
Geo E Rhodes Sct.

State of Illinois, §
 ss.
 Tazewell County.

I Do solemnly swear that I will well and truly administer all and singular the goods and chattels, rights, credits and effects of Thomas Welch deceased, and pay all just claims and charges against said estate, so far as his goods chattels and effects shall extend, and the same charge me, and that I will do and perform all other acts required of me by law, to the best of my knowledge and abilities.

Sworn to and subscribed before me this 12th day of May A. D. 1863

John Gridley County Clerk.
Geo E Rhodes Sct.



53
Thomas Welch
Settlor of Admin^{or} on
estate of —

12.5
150
150
125

550
8 1/2

4400
275

4675
owed, 300

4975

Filed Dec. 25 1863
L. Leland
Clerk

1863