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No. _____

Supreme Court of Illinois

^{KE}
Duck~~s~~

vs.

Rowley

71641  7

APPELEES BRIEF.

Supreme Court of Illinois., April Term, 1860.

JOHN DUCKS, Appellant,
vs.
REUBEN ROWLEY, Appellee. }

Most of the points are decided in the case of Jackson vs. Cummings, 15th Ill. 449, which was upon the same title as the present case.

Objection is made to the convening order of court, because it does not state that the sheriff and clerk were present. It states enough to show that a proper court was held; that the judge (Hon. John D. Batton) was present, holding court. This is sufficient. The sheriff and clerk are no portion of the court. The judge alone holds the court, rendering judgments and decrees, and has ministerial officers to execute his orders; has a clerk to record them, a sheriff to execute them, a door-keeper and constables to preserve order, and a jury to assist in finding verdicts; but these several persons are no part of the court.

The description of the premises, amount of taxes, &c., being in figures and letters and abbreviations, have been decided frequently—Jackson vs. Cummings, 15 Illinois, 453; Blakely vs. Bestor, 13 Illinois, 714; Atkins vs. Hinman, 2 Gil., 444; also section 33, Revenue Laws of 1839.

It is not necessary to state in the report and judgment, the name of the patentee or owner. It will be presumed that they were

unknown to the assessor, even upon a direct proceeding or appeal from the judgment for taxes. *Taylor vs. The People*; 2 Gil., 349; also *Spellman et. al. vs. Curtenius*, 12 Illinois, 412; *Atkins vs. Hinman*, 2 Gil., 444.

The abstract of title introduced in evidence, is no proof that the assessor or collector knew the owner of the land; and if he had examined the records, he would have found that the party in whom the record title then purported to be, was a non-resident.

The objections to the form and captions of the collector's report, and judgment, are all untenable; as they are substantially in form, as required by statute: which is all that is required.—*Chesnut vs. Marsh*, 12 Illinois, 176, and other cases before cited.

The objections to the deed, that in the recital, the word interest is used, is frivolous. If no interest was charged in the judgment it may be considered as surplusage. The judgment is properly recited, both as to date, amount, and description of premises; and the only object of the recital is to show upon what judgment the deed is made; and if that is properly recited, it is sufficient.

The deed is prima facie evidence of the assignment of certificate of purchase. *Wiley et. al. vs. Bean et. al.*, 1 Gil., 305.

As to the certificate of Zeiber and Sloan, to the advertisement, although the style of publishers is not attached to the signature, yet, when it is shown that they were the publishers of the paper at the time the certificate was signed by them, it cannot be a very violent presumption that proof of the fact was made before the court at the time judgment was rendered for taxes.

The court will not set aside a judgment as void, in a collateral proceeding, because a fact which is proven in this case did exist, does not appear on the face of the record; but the court will presume that when the fact did exist, the court knew it.

As to the point made, that the precept should be returned by the collector, instead of the sheriff, the statute provides that the

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precept should be directed to, and returned by, the sheriff of the county.

Section 31, Revenue Law of 1839.

MANNING & MERRIMAN,
Attorneys for Appellee.

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Filed April 25, 1860
L. Leland
clerk

State of Illinois p. In the Supreme Court
Ottawa Term A.D. 1860.

John Dukes
v.
Benken Rowley } Appeal from
Peoria -

Additional suggestions of
Charles C. Bonney
for the appellant.

1. The weight of authority the
spirit of the adjudged cases
in this state sustain the
points made in the printed
brief filed for the appellant.
The court need not look
further than its own de-
=cisions, to find an ample
warrant to repudiate the
extraordinary dicta of Jack-
=son v. Burrumise.
2. The justice of the law indignant-
=ly denies the monstrous
doctrine, that the act, or
rather the mere ex parte dec.

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=laration or worse than that
the bold omission of our
ministerial officer, shall
be held as a matter of law
to cover up and cure the
otherwise fatal errors of other
ministerial officers in ante-
=rior proceedings.

3. The assessor was required by
the statute, not merely to
report what he might happen
to know when appointed but
to make ~~of~~ diligent search
throughout the county to as-
=certain the name of the
present owner, and to make
report thereof, according to
the fact. And the act of
1843, (cited bottom of 15 printed
brief) will certainly warrant
a construction absolutely
requiring the name of the
present owner. If the land
was occupied the name of the
owner could be ascertained
there, at the time of the assess-
=ment, if not occupied,

the name of the last grantee of record should have been given as the present owner.

4 The objection to the description of the premises, throughout the proceedings, must be held fatal, as making them void for uncertainty. Suppose the same thing had been done in an action of ejectment, what lawyer would presume to insist before a court, that such letters, words and figures, would be sufficient, either in the pleadings, the judgment or the process?

5 A party intending to purchase lands at a tax sale is bound to look to the regularity of the anterior proceedings. By his purchase, he adopts them as the acts of his own agents, and is justly responsible for whatever irregularities and defects may exist therein. Let this rule be distinctly

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announced, and therewith
instead of seeing purchasers
at tax sales conspiring at all
sorts of frauds thereat we
shall behold them looking
to the acts of assessors, collec-
tors and sheriffs, and
obtaining regularity and com-
pliance with the law therein.

6. The objection that the Collectors
Report contains no columns
for the years for which the tax
is due and the county
where the land lies, are fatal
according to the spirit, almost
according to the very words of
the cases of Pickett v. Harstock,
and Morgan v. Casup, cited
§ 17 printed brief.

7. The counsel for the appellants
will spare the court the trouble
of reading written extracts from
the cases cited in support of
the objections taken to the
advertisement, but he earnestly

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asks the attention of the court
to those authorities and insists
that they are conclusive.
The time allowed for the argu-
-ment at the bar was too
brief to allow any examination
of them during the discussion
and it is presumed that the
court will rather look to the
printed books, than have these
suggestions swelled by argu-
-ments. In no other pro-
-ceeding known to the law would
such an attempt at or apol-
-ogy for a notice to a party
whose estate is to be seized, be
deemed sufficient: in no
other proceeding is the Rule
of construction more strict
against the party seeking the
enforcement of a statute:
how then, shall this advertisement
"so defective as not to give the
proper information", to "the per-
-son owning the land", and
not sustained by any proof
of publication authorized by
any law, — how shall this

miserable burlesque upon the genuine, bona fide notice to the present owner which is required by the plain terms of the law, be held a sufficient compliance with that law of the land which gives the citizen a hearing notice and a hearing before his estate can be taken from him.

The court below permitted a witness to testify that "Gieber & Sloan were the publishers of the newspaper &c. and the appellee insists that the records of the tax sale, after the lapse of more than fifteen years, may thus be amended, aided and made sufficient !!! If this may be done to the advertisement it may also be done to the assessment, the judgment and all the other proceedings. In one word, the effect of the ruling of the court below is, that the proceedings for tax sales, need no longer

be made matters of record
at the time thereof but that
actions of ejectment may
be sustained, regardless of
the defects in the record so
long as the several officers
of the law can be called to
the stand to swear that they
did what the law required!

Surely there can be nothing
new in presumption, after
this.

8. It is further insisted that as
the language of the statute is not
certain as to the day of sale,
the notice should have named
a particular day of a particular
month of a particular year,
whereon the sale would take
place. The rule of construction
is certain, and the reason
is plain. The rule is that the
construction should favor the
owner of the land, — the reason
is, that as the decisions of the
court show, the language of the
statute is not sufficiently certain

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to give due notice to the owner, and so the notice required by the law should descend to those particulars obviously required by, but not contained in the law itself.

9. Generally, it may be said that a decision which violates one of the settled principles of the law, is no more to be regarded as authority, than a statute which violates some provision of the constitution. The declaration in *Wiley v. Bean et al.* cited p. 23 printed brief, that the recital of the assignment of the certificate of purchase, in the deed is prima facie proof of the assignment, is believed to be the first instance in which upon the trial of an action of ejectment, a recital in one conveyance, that another had been made, has been held sufficient to authorize a recovery upon a title never

in any manner recognized or assented to by the defendant. The assignment of the certificate of purchase is as essential a part of the chain of title as the deed itself. It is most clearly within the very language of the statute of conveyances, cited § 23 of printed brief, and the rule which requires the best evidence of which the nature of the case is capable clearly requires the production and reading of that instrument without which the plaintiff below could have no title.

It cannot be, that anybody who can get a sheriff's deed for a tract of land sold at a tax sale, can procure the loss or destruction of the certificate of purchase, and then maintain ejectment upon a recital in the deed of a mere ministerial, or ministerial officer.

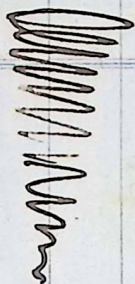
10 But the very recital in the deed read in evidence is against the appellee. It is of a certificate of purchase from the Corrins Clerk. If the recital be taken as true, the certificate was a mere nullity - if false, even the appellee himself ought not to have the effrontery to insist that it could entitle him to recover. It is not for the defendant in the ejectment to prove the negative, that the certificate was not assigned, but for him who insists upon the title by the tax sale to prove by the best evidence of which the nature of the case is capable, the affirmative, that it was.

It is believed that the other points made for the appellants are sufficiently stated and supported by authority in the printed brief on file -

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Dukes

v
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Further Argument
for Appellant

Fri May 7. 1860

L. Leland
Clerk

STATE OF ILLINOIS, ss.

{ IN THE SUPREME COURT AT OTTAWA,
{ OF THE APRIL TERM, A.D. 1860.

JOHN DUKES
v.
REUBEN ROWLEY. } *Appeal from Peoria.*

ABSTRACT OF THE RECORD.

Page of
Record.

1. EJECTMENT—REUBEN ROWLEY v. JOHN DUKES---for the northeast quarter of section twenty-two (22), in township eleven (11) north, range six (6) east of the fourth (4) principal meridian, Peoria county.

DECLARATION filed at November Term, 1857. Trial by jury,

6.] November Term, 1858: verdict for plaintiff; new trial allowed, and cause continued.

9. TRIAL BY COURT: Nov. Term, 1859, judgment for plaintiff; motion for new trial; motion denied; appeal to Supreme Court allowed to defendant on bond in \$500, within 30 days from Dec. 29, 1859, security to be approved by clerk by agreement.

11. BILL OF EXCEPTIONS.—

STATE OF ILLINOIS, }
COUNTY OF PEORIA. } ss. In the Circuit Court,
Reuben Rowley vs. John Dukes. — *Ejectment.* Of the November Term, A.D. 1858.

BILL OF EXCEPTIONS.

Be it remembered, that on the trial of this cause the plaintiff offered the following evidence, to wit:

First, a judgment in the words and figures following, to wit:

“At a Circuit Court begun and held at the Court-House in the town of Peoria, in and for the County of Peoria and State of Illinois, on Monday the twenty-sixth day of May, in the year of our Lord one thousand eight hundred and forty-five, present

the Honorable John Dean Caton, Associate Justice of the Supreme Court of the State of Illinois, assigned to perform the duties of Judge of the Ninth Judicial Circuit: (Here follows a judgment against certain other lands for taxes of 1843.)

" MONDAY, May 26th, 1845.

" STATE OF ILLINOIS, }
PEORIA COUNTY, } ss. Whereas Smith Fryc, Collector of said county, returned to the Circuit Court of said county on the twentieth day of January, A.D. 1845, the following tracts and parts of tracts of land as having been assessed for taxes by the assessor of said County of Peoria for the year 1844, and has also returned that the taxes thereon remained due and unpaid on the day of the date of the said collector's return, and that the respective owner or owners have no goods and chattels within this county on which the said collector can levy for the taxes, interest and costs due and unpaid on the following described lands, situated in the County of Peoria and State of Illinois, to wit:

Description.	Acres.	Tax.	Costs
N.W. 17, 11 N., 6 E.	160	\$3 36	.40
N.E. 22, " "	160	3 36	.40
part N.E. 24, " "	71	ac 2 13	.40

And whereas due notice has been given of the intended application for a judgment against said lands, and no owner hath appeared to make defense or show cause why judgment should not be entered against said lands for the taxes, interest and costs due and unpaid thereon for the year herein set forth: Therefore, it is considered by the Court that judgment be and is hereby entered against the aforesaid tracts and parts of tracts of land, in the name of the State of Illinois, for the sum annexed to each parcel or tract of land, being the amount of taxes and costs due severally thereon; and it is ordered by the Court that the said several tracts of land, or so much thereof as shall be sufficient of each of them to satisfy the amount of taxes and costs annexed to them severally, be sold as the law directs."

To which the defendant then and there made the following objections, to wit:

- (1.) The caption is insufficient.
- (2.) It doth not show that the officers required to constitute a court were present.
- (3.) There is, in fact, nothing to show that any court rendered the alleged judgment.

(4.) Said alleged judgment doth not contain the recitals and set forth the facts required by the statute.

(5.) Said alleged judgment is manifestly variant from the report and advertisement of the collector.

(6.) Said judgment doth not properly show the amount of tax, interest and costs, as required by law.

(7.) Said judgment is otherwise defective.

Which several objections were argued by counsel and overruled by the Court, and the said judgment read in evidence; whereto the defendant then and there excepted.

13. The plaintiff then offered in evidence a precept and the return thereto, in the words and figures following, to wit :

"The People of the State of Illinois to the Sheriff of Peoria County, GREETING.

"MONDAY, May 26th, 1845."

[Here follows a recital of the judgment set out above, whereto the following certificate and return are appended, to wit:]

STATE OF ILLINOIS,)

PEORIA COUNTY, ss. I, Jacob Gale, Clerk of the Circuit Court within and for the said County of Peoria, do hereby certify that the foregoing is a full and perfect copy of a judgment and order of the said Court made at the May Term thereof A.D. 1845, and of all proceedings had at said term of said Court on or concerning the list of delinquent lands for the taxes of the year 1844 lying in said Peoria County. In witness whereof, I have hereunto set my hand and the seal of said [L.S.] Court, at Peoria, this seventh day of June, A.D. 1845.

JACOB GALE, Clerk.

"STATE OF ILLINOIS,)
COUNTY OF PEORIA,) ss.

By virtue of the foregoing process, I did, with the assistance of the Clerk of the County Commissioners' Court of said county, by his deputy, attend at the Court-House in the town of Peoria, in said county, on the ninth day of June, A.D. 1845, at the hour of ten o'clock A.M., and between that time and three o'clock P.M. of that day proceeded to sell each lot or parcel of land described in the foregoing list at public auction, commencing with the first lot therein described, and sold all the lots and tracts (except those on which the taxes were paid to me before sale) to the W $\frac{1}{2}$ NE $\frac{1}{4}$ of section 32, of Township 7 North, 6 East, inclusive; and afterwards, to wit, at 3 o'clock P.M., adjourned the sale to 10 o'clock A.M. of the 10th day of June instant; and on June 10th, at 10 o'clock A.M., proceeded to sell in like manner the lands described in said list from E. hf. NE. 2, of 8 North, 6 East, and sold to the pt. NW. 2 of Township 10 North, 8 East, inclusive; and afterwards, at three o'clock of the last-mentioned day, adjourned the sale to 10 o'clock

A.M. of the 11th day of June instant, and on the 11th day of June, A.D. 1845, at 10 o'clock A.M., proceeded to sell in like manner the remainder of the lands described in said list to the end of Bigelow & Underhill's Addition to Peoria (excepting, also, such lots of said Addition as are situated on the Southwest quarter of section nine of Township 8 N., 8 E.), and afterwards, at 3 o'clock P.M. of the last-mentioned day, adjourned the sale to 10 o'clock A.M. of the 12th day of June instant; and on the 12th day of June, A.D. 1845, at 10 o'clock A.M., proceeded to sell in like manner the lands described in said list from Morton, Voris & Laveille's Addition to Peoria, and sold to the end of said list inclusive. The lands in the above list were so sold in the order the same are therein described, by offering the whole tract or lot of land for the amount of taxes and costs due thereon, and striking them off severally to the person or persons who would pay the amount due on each tract of land or town lot for the least number of acres or the least quantity thereof. The said Clerk kept a register of said sales, in which was entered each lot or parcel of land exposed to sale by me as aforesaid, the name of the purchaser, his place of residence, and the quantity of land sold. Dated June 20th, A.D. 1845.

SMITH FRYE, Sheriff.
JACOB GALE, Clerk."

"Sheriff's return filed June 20th, 1845.

To which the defendant then and there made the following objections, to wit:

- (1.) The precept varies from the judgment.
- (2.) It doth not set forth the facts and prerequisites required by the statute.
- (3.) It doth not appear to have been executed and returned in the time and manner required by law.
- (4.) It doth not show any authority to sell the land in question.
- (5.) Said precept is uncertain as to the tax, interest and costs to be collected.
- (6.) Said precept is otherwise defective.

Which said objections were then and there argued by counsel and overruled by the Court, and said precept read in evidence; whereto the defendant then and there excepted.

The said plaintiff then offered in evidence a deed in the words and figures following, to wit:

17. "Know all men by these presents, that whereas at the May term, 1845, of the Circuit Court of Peoria County a judg-

ment was obtained in said Court, in favor of the State of Illinois, against the following described tract of land situated in said County of Peoria and State of Illinois, viz: The Northeast quarter of section twenty-two, in township eleven north of the base line, in six east of the 4th principal meridian, for the sum of three dollars and seventy-six cents, being the amount of taxes, interest and cost assessed upon the said tract of land for the year 1844; and whereas on the tenth day of June, A.D. 1845, Smith Frye, then Sheriff of the county of the county aforesaid, by virtue of a precept issued out of the Circuit Court of the county aforesaid, dated the seventh day of June, A.D. 1845, and to the Sheriff of said county directed, did expose to public sale at the door of the Court-House in the county aforesaid, in conformity with all the requisitions of the statute in such case made and provided, the tract of land above described, for the satisfaction of the judgment so rendered as aforesaid; and whereas, at the time and place aforesaid John Elting, of the County of Peoria and State of Illinois, having offered to pay the the aforesaid sum of three dollars and seventy-six cents for the whole of the tract of land above described, which was the least quantity bid for, the said tract of land was stricken off to him at that price; and whereas the said John Elting did by his endorsement, under his hand, written on the back of the certificate of purchase to him executed by the Clerk of the Circuit Court of Peoria County for the tract of land so sold as aforesaid, at the time of said sale, said endorsement bearing date the tenth day of June, A.D. 1845, assign the said certificate of purchase to Reuben Rowley, of the City, County and State of New York. Now, therefore, I, Francis W. Smith, Sheriff of Peoria County, for and in consideration of the sum of three dollars and seventy-six cents to the Sheriff of said county aforesaid in hand paid by the said John Elting, at the time of the aforesaid sale, and by virtue of the statute in such case made and provided, have granted, bargained and sold, and by these presents do grant, bargain and sell, unto the said Reuben Rowley as assignee of the said John Elting, his heirs and assigns, the above described tract of land, viz: the said Northeast quarter of section twenty-two, in township eleven north of the base line, in range six east of the 4th principal meridian. To have and to hold, unto him, the said Reuben Rowley, his heirs and assigns, forever; subject, however, to all the rights of redemption provided by law. In witness whereof,

I, Francis W. Smith, Sheriff as aforesaid, by virtue of the authority aforesaid, have hereunto subscribed my name and affixed my seal, this twelfth day of December, 1856.

"FRANCIS W. SMITH, [SEAL]
"Sheriff of Peoria County, Illinois.

"STATE OF ILLINOIS, }
PEORIA COUNTY, } ss. I certify that, on the 13th day of December, in the year of our Lord one thousand eight hundred and fifty-six, personally appeared before me, Charles Kettelle, Clerk of the County Court of Peoria County aforesaid, Francis W. Smith, Sheriff of said County of Peoria, who is personally known to me, the said Clerk, to be the identical person whose name is subscribed to the foregoing deed as having executed the same, and acknowledged that he had executed the said deed for the uses and purposes therein expressed. In testimony [L.S.] whereof, I have hereunto subscribed my name and affixed the seal of the said court, the day and year above written. CHARLES KETTELE, Clerk,
"pr GEO. H. KETTELE, Deputy."

To which the defendant then and there made the following objections, to wit:

- (1.) It varies from the judgment and precept in the recitals and the dates and amounts stated.
- (2.) No authority to make it to the plaintiff is shown.
- (3.) It is not shown that the plaintiff was assignee of the purchaser.
- (4.) Said deed is otherwise defective.

Which objections were then and there argued by counsel but overruled by the Court, and said deed read in evidence, whereto the said defendant then and there excepted.

It was admitted that the defendant was in possession of the land in controversy at the time of the commencement of this suit.

Here the plaintiff rested.

20. The defendant then offered in evidence a Collector's Report, in the words and figures following, to wit:

"Report of the Collector of Taxes for the year 1844. List of lands and other real estate, situated in the County of Peoria and State of Illinois, on which taxes remain due and unpaid for the year 1844.

Patentee.	Present Owner.	Description.	No. of Acres.	Valuation.	Tax.
Nath'l Lee		SE 21	160	\$480	\$3 36
Sam'l Rickman		NE 22	160	480	3 36
* * *	* * *	* * *	* * *	* * *	* * *

"The costs on each of the above tracts and town lots and part town lots already accrued is 10 cents.

"Notice is hereby given that application will be made to the

Circuit Court of Peoria County, at the next term thereof, to be held at the Court-House in the town of Peoria, within and for the County of Peoria in the State of Illinois, on the fourth Monday of May next, for a judgment against the lands and town lots above enumerated, for the taxes and costs due thereon for the year 1844, and for an order to sell the lands and town lots for the satisfaction thereof; and all such lands and town lots against which judgment shall be pronounced will be exposed to public sale, at the Court-House of said county, on the second Monday next succeeding the said term of the said court, for the amount of taxes and costs due thereon for the year 1844.

"SMITH FRYE, Collector for the year 1844.

"PEORIA, January 15, 1845.

"We hereby certify that the foregoing was duly published on the 15th of January, 1845, in the Peoria Democratic Press, published in Peoria, Peoria county, Illinois, and that the number of transcripts so published corresponds with the number of newspapers printed and distributed for that week. ZIEBER & SLOAN."

To which the plaintiff then and there objected; but the Court overruled the objection, and the said report was read in evidence; to which ruling of the Court the plaintiff then and there excepted, and thereupon the defendant made the following points, to wit:

- (1.) It hath not any proper or sufficient caption.
- (2.) It doth not show the name of the present owner.
- (3.) It doth not show that no personal property could be found.
- (4.) It doth not contain the name of the present owner.
- (5.) It is not in the form required by law.
- (6.) It is not made on oath.
- (7.) It is not certified as the law requires.
- (8.) The printers' certificate is not sufficient.
- (9.) The character of Zieber & Sloan is not shown.
- (10.) Said report is otherwise informal and insufficient, and is not properly filed.

The defendant then offered in evidence an advertisement and the certificates thereto appended, in the words and figures following, to wit:

22. "List of lands and other real estate situated in the County of Peoria and State of Illinois, on which taxes remain due and unpaid for the year 1844.

11 NORTH, 6 EAST.

Patentee.	Present Owner.	Description.	No. of Acres.	Valuation.	Tax.
* * *		* *	* *	* *	*
Nath'l Leo		SE 21	160	480	3.36
Sam'l Rickman		NE 22	160	480	3.36
* * *	* * *	* * *	* * *	* * *	*

"The costs on each of the above tracts of land and town lots and part town lots already accrued is 10 cents.

[Here follows a recital of the Notice dated Peoria, January 15th, 1845, and signed SMITH FRYE, Collector for the year 1844; also of the Certificate signed ZIEBER & SLOAN; which notice and certificate are set out above in the Collector's Report read in evidence. Then follows a certificate in these words:]

"STATE OF ILLINOIS,
PEORIA COUNTY, ss. I, Smith Frye, Collector of said county, do hereby certify that the within tracts and parts of tracts of land and town lots were assessed for taxes in said county for State and County purposes for the year 1844 at the sums respectively in the within list set forth, and that the taxes and costs thereon remain due and unpaid. SMITH FRYE, Sheriff,
"Collector of Peoria County for the year 1844.

"January 20, 1845.

"Filed in the office of the Clerk of the Circuit Court within and for Peoria County, State of Illinois, January 20th, 1845. JACOB GALE, Clerk."

To which the plaintiff objected in the same manner as to the Collector's Report; but the Court overruled the objection, and the advertisement was read in evidence. To which ruling of the Court the plaintiff then and there excepted, and thereupon the defendant made thereon the following points, to wit:

- (1.) The name of the present owner is not given.
- (2.) The taxes, interest, costs, and lands, are not properly stated.
- (3.) It doth not contain the recitals and matters of fact required by the statute.
- (4.) It doth not appear to have been properly published.
- (5.) It is otherwise manifestly uncertain and insufficient, and is in many respects variant from the collector's report.
- (6.) It is not properly filed.

The defendant then offered in evidence a record from the office of the Recorder of Deeds for said Peoria County, in the words and figures following, to wit:

N. E. 22, TOWNSHIP 11 NORTH, RANGE 6 EAST.

25.

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Grantor.	Grantee.	Description	Instrument.	Date Inst.	Date Record.	Vol.	Page.
K. G. Berry Auditor.	R. B. Stockton, assignee.	whole tract deed.		1st April, 1825.	27th Nov. 1826.	C	29
Dani. Low and wife.	John Alstyne.	do do deed.		1st Nov. 1834.	7th Feb. 1835.	D	219
John Tilsen, jr., and wife.	Daniel Low.	do do deed.		27th Oct. 1834.	28th Feb. 1835.	D	235
United States.	Samuel Rickman.	do do patent.		15th Dec. 1817.	14th Oct. 1836.	G	279
Samuel D. Rickman.	John Cox and William D. Lapeyre.	do do deed.		30th April, 1818.	14th Oct. 1836.	G	279
W. B. Lapeyre and wife, and John Cox.	William R. Barrington.	do do deed.		10th Sept. 1818.	14th Oct. 1836.	G	280
John Alstyne.	Charles F. Moulton and 12 others.	do do deed.		2nd Dec. 1835.	10th March, 1837.	H	241
Charles F. Moulton, by att'y, and 12 others.	Lemuel Lamb and Thomas Dunlap.	do do deed.		30th April, 1838.	21st Feb. 1839.	K	121
L. Lamb and wife, and T. Dunlap and wife.	David H. Nevins and John Alstyne.	do do deed.		15th Nov. 1844.	18th Nov. 1845.	Q	37
Christopher Orr, Sheriff.	L. Lamb and T. Dunlap.	do do deed.		3rd June, 1842.	13 Jan'y. 1848.	T	50
Wm. Hunter and 9 others.	Jane Barrington.	whole tract deed.		28 January, 1852.	7th August, 1852.	BA	473
Jane Barrington.	William Hunter & Alexander H. Barrington	whole tract power of att'y.		27th July, 1852.	7th August, 1852.	BA	474
Jane Barrington (by att'y).	Leonard B. Cornwell.	whole tract deed.		17th Aug. 1852.	17th August, 1852	BA	514
Leonard B. Cornwell.	Jane Barrington.	whole tract mortgage.		17th Aug. 1852.	18th August, 1852 No. 4	No. 4	521
C. F. Moulton and Cesarine I. Moulton.	David H. Nevins.	power of att'y.		9th July, 1836.	12th July, 1853.	EA	254
A. R. Barrington, guardian.	Leonard B. Cornwell.	whole tract deed.		15th July, 1853.	2nd May, 1854.	KA	120
David H. Nevins and 2 others.	Reuben Rowley.	whole tract deed.		1st June, 1847.	3rd Oct. 1855.	PA	373
James T. B. Stapp, Auditor.	John Tilsen, Jr., assignee.	whole tract deed.		16th Jan'y. 1834.	12th Nov. 1855.	PA	574
Charles F. Moulton, by att'y, and 12 others.	Lemuel Lamb and Thomas Dunlap.	whole tract deed.		30th April, 1838.	16th Jan. 1858.	WA	456
Leonard B. Cornwell and wife,	John Dukes.	whole tract deed.		21st July, 1854.	8th June, 1857.	XA	109

N. E. 22, TOWNSHIP 11 NORTH, RANGE 6 EAST.

Grantor.	Grantee.	Description	Instrument.	Date Inst.	Date Record.	Vol.	Page
E. C. Berry Auditor.	R. B. Stockton, assignee.	whole tract	deed.	1st April, 1825.	27th Nov. 1826.	C	29
Danl. Low and wife.	John Alstyne.	do do	deed.	1st Nov. 1834.	7th Feb. 1835.	D	219
John Tillson, jr., and wife.	Daniel Low.	do do	deed.	27th Oct. 1834.	28th Feb. 1835.	D	235
United States.	Samuel Rickman.	do do	patent.	15th Dec. 1817.	14th Oct. 1836.	G	279
Samuel D. Rickman.	John Cox and William D. Lapeyre.	do do	deed.	30th April, 1818.	14th Oct. 1836.	G	279
W. B. Lapeyre and wife, and John Cox.	William R. Barrington.	do do	deed.	10th Sept. 1818.	14th Oct. 1836.	G	280
John Alstyne.	Charles F. Moulton and 12 others.	do do	deed.	2nd Dec. 1835.	10th March, 1837.	H	241
Charles F. Moulton, by att'y, and 12 others.	Lemuel Lamb and Thomas Dunlap.	do do	do.	30th April, 1838.	21st Feb. 1839.	K	121
L. Lamb and wife, and T. Dunlap and wife.	David H. Nevins and John Alstyne.	do do	deed.	15th Nov. 1844.	18th Nov. 1845.	Q	37
Christopher Orr, Sheriff.	L. Lamb and T. Dunlap.	do do	deed.	3rd June, 1842.	13 Jany. 1848.	T	50
Wm. Hunter and 9 others.	Jane Barrington.	whole tract	deed.	28 January, 1852.	7th August, 1852.	BA	473
Jane Barrington.	William Hunter & Alexander R. Barrington	whole tract	power of atty.	27th July, 1852.	7th August, 1852.	BA	474
Jane Barrington (by attys).	Leonard B. Cornwell.	whole tract	deed.	17th Aug. 1852.	17th August, 1852	BA	514
Leonard B. Cornwell.	Jane Barrington.	whole tract	mortgage.	17th Aug. 1852.	18th August, 1852	No.4	521
C. F. Moulton and Cesarine I. Moulton.	David H. Nevins.		power of atty.	9th July, 1836.	12th July, 1853.	EA	254
A. R. Barrington, guardian.	Leonard B. Cornwell.	whole tract	deed.	15th July, 1853.	2nd May, 1854.	KA	120
David H. Nevins and 2 others.	Reuben Rowley.	whole tract	deed.	1st June, 1847.	3rd Oct. 1855.	PA	373
James T. B. Stapp, Auditor.	John Tillson, jr., assignee.	whole tract	deed.	16th Jany. 1834.	12th Nov. 1855.	PA	574
Charles F. Moulton, by atty, and 12 others.	Lemuel Lamb and Thomas Dunlap.	whole tract	deed.	30th April, 1838.	16th Jan. 1858.	WA	456
Leonard B. Cornwell and wife,	John Dukes.	whole tract	deed.	21st July, 1854.	8th June, 1857.	XA	109

25.

[6]

To which the plaintiff objected in the same manner as to the report and advertisement; but the Court overruled the objection, and the said record was read in evidence; and to which ruling of the Court the plaintiff then and there excepted, and the defendant thereupon made the following points thereon, to wit:

(1.) This record rebuts any presumption that the present owner of the land when said tax was assessed, and when said report was made, and when said advertisement was published, was not known.

(2.) As the name of the owner is not in the advertisement, he is in no respect concluded by the judgment, but may make any objection whatever upon this trial.

26. The plaintiff admitted that the defendant had a regular patent title to the land, derived under patent issued by the United States for bounty land in the [year] 1817 or 1818, at the time of the sale under which the plaintiff claims.

The defendant rested, and the plaintiff offered in evidence an assessment from the assessor's return of the assessment of lands for the purpose of taxation for the year A.D. 1844, and for and in the County of Peoria and State of Illinois, in the words and figures following, to wit:

ASSESSOR'S BOOK. Peoria County, 1844. Filed in the office of the Clerk of the County Commissioners' Court of Peoria County, Illinois, this fifteenth day of July, A.D. 1844.

WILLIAM MITCHELL, Clerk of said Court.

"Abstract of lands lying in the County of Peoria, State of Illinois, subject to taxation for the year A.D. 1844.

TOWNSHIP 8 NORTH, RANGE 5 EAST.

Patentee.	Present Owner.	Description.	Sec.	No Acres.	Value pr acre.	Total.	State Tax.	County Tax.	Road Tax.
					\$	\$	\$ cts.	\$ cts.	\$ cts.
11 NORTH, 6 EAST.									
Saml Rickman		N.E.	22	160	3	480	96	1 92	48

"STATE OF ILLINOIS,
PEORIA COUNTY. } I, William M. Dodge, Assessor within
and for the said county, do hereby certify that the within contains a full and perfect assessment of the real and personal property subject to taxation for State, County and Road purposes

in the said County of Peoria, for the year 1844, so far as the same has come to my knowledge. Given under my hand this fifteenth day of July, in the year of our Lord one thousand eight hundred and forty-four.

WILLIAM M. DODGE."

To which the defendant then and there made the following objections, to wit:

- (1.) It doth not appear that said assessor was duly qualified.
- (2.) No authority for making such assessment is shown.
- (3.) Said assessment is not made in the form required by law.
- (4.) It is otherwise irregular and insufficient.

Which objections were argued by counsel and overruled by the Court, and said assessment read in evidence; whereto the defendant then and there excepted.

28. The plaintiff then, against the objection of the defendant, called Enoch P. Sloan, to prove the character of said Zieber & Sloan, and that the Democratic Press was a newspaper, &c. The defendant objected that such testimony was incompetent, and that the statute allowed no evidence in that behalf but the certificate and any proof which may be made against it. But the Court overruled the objections, and said Sloan testified that he was said Sloan, and that he and Zieber were the publishers of the Democratic Press at the time of said advertisement, and that said Democratic Press was a newspaper then published in the City and County of Peoria aforesaid.

This was all the evidence.

The Court found the plaintiff guilty, and assessed his damages at one cent.

The defendant moved for a new trial, for the following among other reasons, to wit:

- (1.) The verdict of the Court is against the evidence.
- (2.) The verdict is against the law of the land.
- (3.) The Court admitted improper evidence for the plaintiff.
- (4.) The Court overruled proper objections made by defendant.
- (5.) By the law and the evidence, the verdict ought to have been for the defendant.

But the Court overruled said motion, and gave judgment for the plaintiff upon said verdict; whereto the said defendant then and there excepted, and prayed the Court to sign and seal this bill of exceptions, which is accordingly done.

E. N. POWELL. [SEAL.]

29. Appeal-bond filed and approved January 27th, 1860.

30. Certificate of clerk in due form.

31. ASSIGNMENT OF ERRORS.—

(1.) The verdict and judgment are against the evidence and the law.

(2.) The Circuit Court erred in refusing a new trial.

(3.) (4.) (5.) (6.) (7.) (8.) The Assessment, the Collector's Report, the Advertisement, the Judgment, the Precept, and the Deed, read in evidence, are respectively erroneous and insufficient.

(9.) The proceedings are otherwise insufficient.

[The several matters specifically assigned for error are printed at large in the Appellant's Brief, and it is deemed unnecessary to repeat them here.]

CHARLES C. BONNEY, Attorney for Appellant.

34. Joinder in error.

MANNING & MERRIMAN, Attorneys for Appellee.

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Dukes

v.

Rowley

Abstract -

Filed March 27, 1840

L. Leland
Clerk

Pleas before the Circuit Court within and for the County
of Peoria in the State of Illinois, it being the 16th Judicial
Circuit in said State, on the 29th day of December in the
year of our Lord one thousand eight hundred and fifty nine

State of Illinois }
Peoria County }^{as} Be it remembered that heretofore
to wit on the 16th day of November A.D. 1857 there
was filed in the clerk's office of the Circuit Court of
Peoria County in the State of Illinois a declaration
which is in the words and figures following to wit:

State of Illinois }
County of Peoria }^{as} In the Circuit Court for said County
Reuben Rowley }
 versus }
John Dukes }
 Ejectment

Reuben Rowley the plaintiff in this
suit by Manning and Meriman his attorneys complains of
the defendant in this suit of a plea wherefore he the said
defendant with force and arms &c entered into the following
described premises: For that heretofore to wit on the twentieth

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day of May in the year of our Lord One thousand eight hundred and fifty seven the said plaintiff was possessed of certain premises situated in the County of Peoria in the State of Illinois and described as follows to wit: The north east quarter of section twenty two in township eleven north in range six east of the 4th principal meridian and being so possessed thereof the said defendant afterwards to wit on the twenty first day of May in the year of our Lord One thousand eight hundred and fifty seven entered into such premises, and that he unlawfully withholds from the said plaintiff the possession thereof; and the said plaintiff avers that he claims title to said premises in fee. Whereof said plaintiff says that he is injured and has sustained damages to a large amount to wit: Five hundred dollars and therefore he sues &c

Manning & Merriman

Attorneys for plaintiff

To John Dukes defendant in this suit. Take notice
1. That on the first day of the next term of the Circuit Court within and for the County of Peoria aforesaid to wit at the Court house in Peoria in said County and State on the third Monday of November in the year of our Lord One thousand eight hundred and fifty seven or as soon thereafter as counsel can be heard a declaration of which the foregoing is a copy will be filed in said Court.
2. That upon filing the same a rule will be entered requiring you, such defendant to appear and plead to such declaration within twenty days after the entry of such rule.

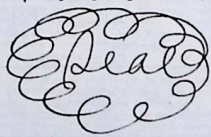
3. That if you neglect to appear and plead a judgment by default will be entered against you, and the plaintiff will recover possession of the premises described in said declaration. Dated at Peoria this 30th day of May A.D. 1857.

Manning & Merriman
Attorneys for plaintiff

State of New York

City & County of New York } Reuben Rowley being first
duly sworn upon his oath says that he served a declaration
and notice of which the within and foregoing are copies
upon the within named defendant by delivering the
same to him personally on the ninth day of June Anno
Domini eighteen hundred and fifty seven

R. Rowley
Subscribed and sworn to before me this eleventh day of
November A.D. eighteen hundred and fifty seven



J. B. Jones
Commissioner of the State of Illinois
for the State of New York

And afterwards on the same day to wit on the 16th day
of November A.D. 1857 the defendant filed his plea in
the above case which is in the words and figures follow-
ing to wit:

Reuben Rowley

vs
John Dukes

{ In Circuit Court Peoria County
Nov. Term 1857
Ejectment.

Ska

X
And now comes the said defendant and says that he is not guilty of unlawfully withholding the possession of the premises in said plaintiffs declaration mentioned and of this he puts himself upon the country &c
Purpfe & Pratt, Defts atty.

Proceedings in the Circuit Court at a term thereof began and held in the Court house in the City and County of Peoria in and for said County and State of Illinois on the third Monday of November in the year of our Lord one thousand eight hundred and fifty seven it being the sixteenth day of said month. Present the Honorable Elihu N. Powell Judge of the 16th judicial Circuit in the State of Illinois. Francis W. Smith Sheriff and Enoch P. Sloan Clerk to wit:

Monday November 16th A.D. 1857
Reuben Rowley

vs
John Dukes
Ejectment

This day came the said Reuben Rowley by A. L. Merriman his attorney and filed his declaration in this cause and proved the due service of a copy thereof and of the notice annexed upon the defendant, whereupon on his motion it is ordered that the said defendant plead to this action in twenty days.

A

Tuesday December 15th A.D. 1857
Reuben Rowley

vs
John Dukes

Ejectment.

By agreement this cause is continued

Proceedings at a term of the Circuit Court began and held in the Court house in the City of Peoria in and for the County of Peoria and State of Illinois on the first Monday of March in the year of our Lord one thousand eight hundred and fifty eight, it being the first day of said month.

Present Honorable Elisha N. Powell, Judge of the sixteenth judicial Circuit in said State, Francis W. Smith, Sheriff and Enoch P. Sloan, Clerk viz:

Friday March 5th A.D. 1858
Reuben Rowley

vs
John Dukes

Ejectment

By agreement this cause is continued

Proceedings at a term of the Circuit Court began and held at the Court house in the City and County of Peoria, State of Illinois on the third Monday in the month of November in the year of our Lord One thousand eight hundred and fifty eight, it being the fifteenth day of said month. Present the E. N. Powell, Judge of the sixteenth judicial Circuit in said State, Francis W. Smith, Sheriff and Enoch P. Sloan Clerk - to wit:

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is an estate in fee simple and we do assess the plaintiffs damages at one cent. Whereupon it is considered by the Court that the said plaintiff have and recover of the defendant the possession of said premises together with his damages aforesaid, also his costs and charges by him about his suit in this behalf expended and that he have execution therefor.

Friday December 3rd. 1858
Reuben Rowley

vs
John Dukes

Ejectment

This day came defendant by Turple his attorney and having paid the costs of this proceeding moves the Court for a new trial of this cause, and the Court being satisfied in the premises do order that the judgment heretofore entered against said defendant be vacated and that this cause be docketed for a new hearing, and it is further ordered that this cause be continued.

Proceedings at a term of the Circuit Court began and held at the Court house in the City of Peoria in and for the County of Peoria in the State of Illinois on the first Monday of March in the year of our Lord One thousand eight hundred and fifty nine, it being the seventh day of said month. Present the Honorable Elihu N. Towell, Judge of the 16th Judicial Circuit in the State of Illinois, John Bryner Sheriff and Enoch P. Sloan Clerk to wit.

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Thursday March 17th A.D. 1859
Reuben Rowley

vs
John Dukes

Ejectment

By agreement this cause is continued

Proceedings at a Special term of the Circuit Court began and held at the Court house in the City and County of Peoria in the State of Illinois on the second Monday in the month of June in the year of our Lord one thousand eight hundred and fifty nine it being the thirteenth day of said month. Present the Honorable Elisha N. Powell Judge of the 16th Judicial Circuit in the State of Illinois John Boyner Sheriff and Enoch P. Sloan Clerk to wit:

Tuesday June 14th A.D. 1859
Reuben Rowley

vs
John Dukes

Ejectment

By agreement this cause is continued

Proceedings at a term of the Circuit Court of Peoria County began and held at the Court house in the City of Peoria in said County and State of Illinois on the third Monday in the month of November in the year of our Lord one thousand eight hundred and fifty nine it being the twenty first day of said month. Present the Honorable Elisha N. Powell Judge of the 16th Judicial Circuit in said State John Boyner Sheriff and Enoch P. Sloan Clerk to wit:

Wednesday December 28th A.D. 1859

Reuben Rowley

vs

John Dukes

Ejectment

This day came the defendant by his attorney and moved the court for a continuance of this cause for reasons stated in affidavit, and the court being fully advised in the premises overruled said motion.

Thursday December 29th A.D. 1859

Reuben Rowley

vs

John Dukes

Ejectment.

This day came the plaintiff by Manning his attorney and the defendant by Johnson Wead and Bonney his attorneys and waive trial by jury and agree that all matters of law and fact arising in this cause shall be tried by the court and the court being fully advised in the premises do find the defendant guilty, and that the plaintiff has title in fee simple to the land as by him alleged and do assess the plaintiffs damages by reason of the premises to one cent. Therefore it is considered by the court that the said Reuben Rowley

have and recover of the John Dukes the said sum of one cent his damages aforesaid, and also his costs and charges by him about his suit in this behalf expended and that he have execution therefor, and that the said Reuben Rowley have and recover of the said John Dukes the possession of the following described real estate to wit: "The north east quarter of section twenty two in township eleven north in range six east of the 4th principal meridian in the County of Peoria and State of Illinois, and that a writ of possession issue therefor. The defendant by his attorneys moved the Court for a new trial which motion on consideration of the Court was overruled; whereupon the defendant prayed an appeal to the Supreme Court of this State which is allowed on his filing his bond with security payable to the plaintiff in the penal sum of five hundred dollars, with the Clerk of this Court in thirty days, said bond to be conditioned as the law directs. It is agreed that the Clerk shall approve the security.

And afterwards to wit on the 20th day of December A.D. 1859 there was filed in the office of the Clerk of the Circuit Court of said County a bill of exceptions in the above cause which is in the words and figures following to wit:

State of Illinois }
County of Peoria }
Reuben Rowley

In the Circuit Court
of the November term A.D. 1859

vs
John Dukes

Ejectment

Bill of exceptions

Be it Remembered that on the trial of this cause the
plaintiff offered the following evidence to wit:

First a judgment in the words and figures following to wit:

At a Circuit Court begun and held at
the Court house in the town of Peoria, ^{in and for the County of Peoria} and State of Illinois
on Monday the twenty sixth day of May in the year of our
Lord One thousand eight hundred and forty five. Present the
Honorable John Dean Eaton, Associate Justice of the Supreme
Court of the State of Illinois, assigned to perform the duties
of Judge of the Ninth Judicial Circuit:

(Here follows a judgment against certain other lands
for taxes of 1843)

Monday May 26th 1845

State of Illinois }
Peoria County }
Whereas Smith Prye, collector of said

County, returned to the Circuit Court of said County on the
twentieth day of January A.D. 1845, the following tracts
and parts of tracts of land as having been assessed for
taxes by the assessor of said County of Peoria for the year
1844 and has also returned that the taxes thereon remained
due and unpaid on the day of the date of the said collectors
return and that the respective owner or owners have no

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goods and chattels within this County on which the said Collector can levy for the taxes, interest and costs due and unpaid on the following described lands, situated in the County of Peoria and State of Illinois to wit:

Description			acres	Tax	Costs
NW	17	11 N 6 E	160	3 36	40
N E	22	"	160	3 36	40
part N E	24	"	71	no 2 13	40

And whereas due notice has been given of the intended application for a judgment against said lands and no owner hath appeared to make defence or show cause why judgment should not be entered against said lands, for the taxes interest and costs due and unpaid thereon for the year herein set forth. Therefore it is considered by the Court that judgment be and is hereby entered against the aforesaid tracts and parts of tracts of land in the name of the State of Illinois for the sum annexed to each parcel or tract of land, being the amount of taxes and costs due severally thereon and it is ordered by the Court that the said several tracts of land or so much thereof as shall be sufficient of each of them to satisfy the amount of taxes and costs annexed to them severally be sold as the law directs."

To which the defendant then and there made the following objections to wit:

1. The caption is insufficient.
2. It doth not show that the officers required to constitute

a Court were present.

3. There is in fact nothing to show that any Court rendered the alleged judgment.

4. Said alleged judgment doth not contain the recitals and set forth the facts required by the Statute.

5. Said alleged judgment is manifestly variant from the report and advertisement of the Collector.

6. Said judgment doth not properly show the amount of tax interest & costs as required by law.

7. Said judgment is otherwise defective, which several objections were argued by counsel and overruled by the Court, and the said judgment read in evidence where to the defendant then and there excepted.

The plaintiff then offered in evidence a precept and the return thereto in the words and figures following to wit:

"The People of the State of Illinois, to the Sheriff of Peoria County Greeting.

Monday May 26th 1845 (See 2d of abstract)
A.

State of Illinois

Peoria County

{ Oct. Whereas Smith Frye Collector of said County returned to the Circuit Court of said County on the twentieth day of January A.D. 1845 the following tracts and parts of tracts of land as having been assessed for taxes by the assessor of the said County of Peoria for the year 1844 and has also returned that the taxes thereon remained due and unpaid on the day of the date of the said Collectors return and that the respective owner or owners have no goods and

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chattels within his bounty on which the said collector can levy for the taxes interest and costs due and unpaid on the following described lands situated in the County of Peoria and State of Illinois to wit:

Description	acres	tax	cost	Total
NE 22 11 NE 6 E 160	3	36	40	
pt. NE 24 ~ ~ 71 ac	2	13	40	

And whereas due notice has been given of the intended application for a judgment against said lands and no owner hath appeared to make defence or show cause why judgment should not be entered against said lands for the taxes interest and costs due and unpaid thereon for the year herein set forth. Therefore it is considered by the Court that judgment be and it hereby entered against the aforesaid tracts and parts of tracts of land in the name of the State of Illinois for the sum annexed to each parcel or tract of land, being the amount of taxes and costs due severally thereon and it is ordered by the Court that the said several tracts of land or so much thereof as shall be sufficient of each of them to satisfy the amount of taxes and costs annexed to them severally, be sold as the law directs.

State of Illinois
Peoria County as } J. Jacob Gale, Clerk of the Circuit Court
within and for the said County of Peoria do hereby certify that the foregoing is a full and perfect copy of a judgment and order of the said Court made at the May term thereof A.D. 1845, and of all proceedings had at said term of

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said Court on or concerning the list of delinquent lands
for the taxes of the year 1844 lying in said Peoria County
In witness whereof I have herewith set my hand
and the seal of said Court at Peoria this seventh
day of June A.D. 1845

Jacob Gale Clerk

State of Illinois
County of Peoria }^{ss} By virtue of the foregoing process I
did with the assistance of the Clerk of the County Com-
missioners Court of said County by his Deputy attend at
the Court house in the town of Peoria in said County on
the ninth day of June A.D. 1845 at the hour of ten o'clock
A.M. and between that time and three o'clock P.M. of that
day proceeded to sell each lot or parcel of land described in
the foregoing list at public auction commencing with the
first lot therein described and sold all the Lots & tracts
(except those on which the taxes were paid to me before sale)
to the N¹/₂ N.E. qr. of section 32 of Township 7 North 6 East
inclusive and afterwards to wit at 3 o'clock P.M. adjourned
the sale to 10 o'clock A.M. of the 10th day of June instant,
and on June 10th at 10 o'clock A.M. proceeded to sell in
like manner the lands described in said list from E. hf.
N.E. 2 of 8 north 6 East and sold to the Pt. N.W. 2 of Township
10 North 8 East inclusive, and afterwards at 3 o'clock of the
last mentioned day adjourned the sale to 10 o'clock A.M.
of 11th day of June instant and on the 11th day of June A.D.
1845 at 10 o'clock A.M. proceeded to sell in like manner
the remainder of the lands described in said list to the end

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of Bigelow & Underhills addition to Peoria (excepting also such lots of said addition as are situated on the South west quarter of section nine. of township 8 N. & E.) and afterward at 3 o'clock P. M. of the last mentioned day adjourned the sale to 10 o'clock A. M. of the 12th day of June instant, and on the 12th day of June A. D. 1845 at 10 o'clock A. M. proceeded to sell in like manner the lands described in said list from Morton Davis & Sawcille's addition to Peoria and sold to the end of said list inclusive. The lands in the above list were so sold in the order the same are therein described, by offering the whole tract or lot of land for the amount of taxes and costs due thereon and striking them off severally to the person or persons who would pay the amount due on each tract of land or town lot for the least number of acres or the least quantity thereof. The said clerk kept a register of said sales in which was entered each lot or parcel of land exposed to sale by me as aforesaid the name of the purchaser his place of residence and the quantity of land sold. Dated June 20th A. D. 1845

Samuel Frye, Sheriff
Sheriff's return filed June 20th 1845
Jacob Gale, Clerk."

To which the defendant then and there made the following objections to wit:

1. The precept varies from the judgment.
2. It doth not set forth the facts and prerequisites required by the Statute.
3. It doth not appear to have been executed and returned

in the time and manner required by law.

4. It doth not show any authority to sell the land in question.

5. Said precept is uncertain as to the tax interest and costs to be collected.

6. Said precept is otherwise defective.

Which said objections were then and there argued by counsel and overruled by the Court and said precept read in evidence where to the defendant then and there excepted.

The ^{said} plaintiff then offered in evidence a deed in the words and figures following to wit:

"Know all men by these presents, that whereas at the May term 1845 of the Circuit Court of Peoria County a judgment was obtained in said Court in favor of the State of Illinois against the following described tract of land situated in said County of Peoria and State of Illinois viz: The North East quarter of section twenty two in township eleven north of the base line in six east of the 4th principal meridian for the sum of three dollars and seventy six cents being the amount of taxes interest and cost, assessed upon the said tract of land for the year 1844, and whereas on the tenth day of June A.D. 1845, Smith Frye then Sheriff of the County of the County aforesaid, by virtue of a precept issued out of the Circuit Court of the County aforesaid dated the seventh day of June A.D. 1845 and to the Sheriff of said County directed did expose to public sale at the door of the Court house in the County aforesaid in conformity with all the requisitions of the Statute in such case made and provided the tract of land above described, for the satisfaction of the judgment

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to rendered as aforesaid and whereas at the time and place
aforesaid John Elting of the County of Peoria and State of Illinois
having offered to pay the the aforesaid sum of three dollars
and seventy six cents for the whole of the tract of land above
described, which was the least quantity bid for, the said tract
of land was stricken off to him at that price, and whereas the
said John Elting did by his endorsement under his hand
written on the back of the certificate of purchase to him ex-
ecuted by the Clerk of the Circuit Court of Peoria County, for
the tract of land so sold as aforesaid at the time of said sale
said endorsement bearing date the tenth day of June A.D. 1845
assign the said certificate of purchase to Reuben Rowley of the
City, County & State of New York. Now therefore I, Francis
W. Smith Sheriff of Peoria County for and in consideration
of the sum of three dollars and seventy six cents to the Sheriff
of said County aforesaid in hand paid by the said John Elting
at the time of the aforesaid sale, and by virtue of the Statute
in such case made and provided, have granted, bargained and
sold and by these presents do grant bargain and sell unto the
said Reuben Rowley as assignee of the said John Elting his
heirs and assigns, the above described tract of land viz: The said
North east quarter of section twenty two in township eleven
north of the base line in Range six east of the 4th principal
meridian. To have and to hold unto him the said Reuben
Rowley, his heirs and assigns forever, subject however to all
the rights of redemption provided by law. In witness whereof I
Francis W. Smith Sheriff as aforesaid by virtue of the
authority aforesaid have herunto subscribed my name

and affixed my seal this twelfth day of December 1856
Francis W. Smith ~~Seal~~
Sheriff of Peoria County, Illinois.

State of Illinois }
Peoria County }
I certify that on the 13th day of December
in the year of our Lord One thousand eight hundred and fifty
six personally appeared before me Charles Kettelle clerk of
the County Court of Peoria County aforesaid Francis W.
Smith, Sheriff of ~~the~~ ^{said} County of Peoria who is personally known
to me the said clerk to be the identical person whose name
is subscribed to the foregoing deed as having executed the same
and acknowledged that he had executed the said deed
for the uses and purposes therein expressed. In testimony whereof
I have hereunto subscribed my name and affixed
the seal of the of said Court the day and year
above written.

Charles Kettelle, clerk
per Geo. H. Kettelle Opdy

To which the defendant then and there made the following ob-
jections to wit:

1. It varies from the judgment and precept in the recitals made and the dates and amounts stated.
2. No authority to make it to the plaintiff is shown
3. It is not shown that the plaintiff was assignee of the purchaser
4. Said deed is otherwise defective.

Which objections were then and there argued by counsel

but overruled by the Court and said deed read in evidence whereby the said defendant then and there excepted.

It was admitted that the defendant was in possession of the land in controversy at the time of the commencement of this suit.

Here the plaintiff rested.
The defendant then offered in evidence a Collector's report, in the words and figures following to wit:

" Report of the Collector of taxes for the year 1844

List of lands and other real estate situated in the County of Peoria and State of Illinois on which taxes remain due and unpaid for the year 1844

Patentee	Present owner	Description	No. of acres	Valuation	Tax
Nathl. Lee		SE 21	160	480	336
Saml. Rickman		NE 22	160	480	336

^ ^ ^ ^ ^ ^ ^ ^ ^ ^ ^ ^ ^ ^ ^ ^
 The costs on each of the above tracts and town lots and part town lots already accrued is 10 cents.

Notice is hereby given that application will be made to the Circuit Court of Peoria County at the next ^{term} thereof to be held at the Court house in the town of Peoria within and for the County of Peoria in the State of Illinois on the fourth Monday of May next for a judgment against the lands and town lots above enumerated for the taxes and costs due thereon for the year 1844 and for an order to sell the lands and town lots for the satisfaction thereof and all such lands and town lots against which judgment shall be pronounced

will be exposed to public sale at the Court house of said County on the second Monday next succeeding the said term of the said Court for the amount of taxes and costs due thereon for the year 1844.

Peoria January 15, 1845.

Smith Frye, Collector
for the year 1844

We hereby certify that the foregoing was duly published on the 15th of January 1845 in the Peoria Democratic Press, published in Peoria, Peoria County Illinois and that the number of transcripts so published corresponds with the number of newspapers printed and ~~published~~ distributed for that week.

"Zeiber & Sloan"

To which the plaintiff then and there objected but the Court overruled the objection and the said report was read in evidence, to which ruling of the Court the plaintiff then and there excepted, and thereupon the defendant made the following points to wit:

1. It hath not any proper or sufficient caption
2. It doth not show the name of the present owner.
3. It doth not show that no personal property could be found
4. It doth not contain the name of the present owner.
5. It is not in the form required by law.
6. It is not made on oath.
7. It is not certified as the law requires
8. The printers certificate is not sufficient
9. The character of Zeiber & Sloan is not shown

10. Said report is otherwise informal and insufficient and is not properly filed.

The defendant then offered in evidence an advertisement and the certificates thereto appended in the words and figures following to wit:

" List of lands and other real estate situated in the County of Peoria and State of Illinois on which taxes remain due and unpaid for the year 1844.

Patentee	Present owner	Description	No. of acres	valuation	tax
x	x	x	x	x	x

		11 N 6 E.			
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Nathl. Lee
Saml. Rickman

SE 21 - 160 - 480 - 336

NE 22 - 160 - 480 - 336.

x	x	x	x	x	x
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The costs on each of the above tracts of land and town lots and part town lots already accrued is 10 cents

(see also pg 2)
B -

Notice is hereby given that application will be made to the Circuit Court of Peoria County at the next term thereof to be held at the Court house in the town of Peoria within and for the County of Peoria in the State of Illinois on the fourth Monday of May next for a judgment against the lands and town lots above enumerated for the taxes and costs due thereon for the year 1844, and for an order to sell the lands and town lots for the satisfaction thereof and all such lands and town lots against which judgment shall be pronounced will be exposed to public sale at the Court house of said County on the second Monday next succeeding the said term of the

said Court for the amount of taxes and costs due thereon
for the year 1844

Peoria January 15th 1845. Smith Poye, Collector
for the year 1844

We hereby certify that the foregoing was duly published on
the 15th of January 1845 in the Peoria Democratic press,
published in Peoria, Peoria County Illinois and that the
number of transcripts so published corresponds with the num-
ber of newspapers printed and distributed for that week

Gieber & Sloan

State of Illinois

Peoria County } ss I, Smith Poye, Collector of said County
do hereby certify that the within tracts and parts of tracts
of land and town lots were assessed for taxes in said County
for state and County purposes for the year 1844 at the
sums respectively in the within list set forth and that
the taxes and costs thereon remain due and unpaid.
January 20, 1845.

Smith Poye, Sheriff, Collector of
Peoria County for the year 1844 }

Filed in the Office of the Clerk of the Circuit Court
within & for Peoria County, State of Illinois, January
20th 1845

Jacob Gale, Clerk "

To which the plaintiff objected in the same manner as
to the Collectors report, but the Court overruled the
objection and the advertisement was read in evidence

To which ruling of the Court the plaintiff then and there excepted, and thereupon the defendant made thereon the following points to wit:

- 1 The name of the present owner is not given
- 2 The taxes interest, costs and lands are not properly stated
3. It doth not contain the recitals and matters of fact required by the Statute
4. It doth not appear to have been properly published
5. It is otherwise manifestly uncertain and insufficient and is in many respects variant from the collector's report
6. It is not properly filed.

The defendant then offered in evidence a record from the office of the Recorder of deeds for said Peoria County in the words and figures following to wit:

N E 22 Township 11 North Range 6 East

Grantor	Grantee	Description	Instrument	Date Inst.	Date Record	Vol.	Page
---------	---------	-------------	------------	------------	-------------	------	------

E. C. Berry, Auditor	R. B. Stockton, assignee	whole tract	deed	1st April 1825	27th Nov. 1826	C	29
Danl. Low & wife	John Alityne	do do	deed	1st Nov. 1834	7th Feb. 1835	D	219
John Tillson Jr. & wife	Daniel Low	do do	deed	27th Oct. 1834	28th Feb. 1835	D	235
United States	Samuel Rickman	do do	Patent	15th Dec. 1817	14th Oct. 1836	G	279
Samuel D. Rickman	John Cox & William D. Lafeyre	do do	deed	30th April 1818	14th Oct. 1836	G	279
W. B. Lafeyre & wife & John Cox	William R. Barrington	do do	deed	10th Sept. 1818	14th Oct. 1836	G	280
John Alityne	Charles T. Moulton & 12 others	do do	deed	2nd Dec. 1835	10th March 1837	H.	241
Charles T. Moulton by atty & 12 others	Samuel Lamb & Thomas Dunlap	do do	do	30th April 1838	21st Feb. 1839	K	121
L. Lamb wife & T. Dunlap & wife	David H. Nevins & John Alityne	do do	deed	15th Nov. 1844	18th Nov. 1845	Q	37
Christopher Orr, Sheriff	L. Lamb & T. Dunlap	do do	deed	3rd June 1842	13 Jan. 1848	T	50
Wm Hunter & 9 others	Jane Barrington	whole tract	deed	28 January 1852	7th August 1852	BA	473
Jane Barrington	William Hunter & Alexander R. Barrington	whole tract	power of atty	27th July 1852	7th August 1852	BA	474
Jane Barrington (by atty)	Leonard B. Cornwell	whole tract	deed	17th Aug. 1852	17th Aug. 1852	BA	514
Leonard B. Cornwell	Jane Barrington	whole tract	mortgage	17th Aug. 1852	18th Aug. 1852	N. H.	521
C. T. Moulton & Caroline I. Moulton	David H. Nevins		power of atty	9th July 1836	12th July 1853	EA	254
A. R. Barrington, guardian	Leonard B. Cornwell	whole tract	deed	15th July 1853	2nd May 1854	KA	120
David H. Nevins & 2 others	Reuben Rowley	whole tract	deed	1st June 1847	3rd Oct. 1855	PA	373
James T. B. Stapp, Auditor	John Tillson Jr. assignee	whole tract	deed	16th Jan. 1834	12th Nov. 1855	PA	574
Charles T. Moulton by atty & 12 others	Samuel Lamb & Thomas Dunlap	whole tract	deed	30th April 1838	16th Jan. 1858	WA	456
Leonard B. Cornwell & wife	John Dukes	whole tract	deed	21st July 1854	8th June 1857	XA	109

To which the plaintiff objected in the same manner as to the report and advertisement but the Court overruled the objection and the said record was read in evidence and to which ruling of the Court the plaintiff then and there excepted, and the defendant thereupon made the following points thereon to wit:

1. This record rebuts any presumption that the present owner of the land when said tax was assessed and when said report was made and when said advertisement was published was not known.
2. As the name of the owner is not in the advertisement he is in no respect concluded by the judgment, but may make any objection whatever upon this trial.

The plaintiff admitted that the defendant had a regular patent title to the land derived under patent issued by the United States for bounty land in the 1817 or 1818, at the time of the sale under which the plaintiff claims

The defendant rested and the plaintiff offered in evidence an assessment from the assessors return of the assessment of lands for the purpose of taxation for the year A.D. 1844, and for and in the County of Peoria and State of Illinois in the words and figures following to wit:

Assessors Book. Peoria County 1844
filed in the office of the Clerk of the County
Commissioners Court of Peoria County, Illinois this
fifteenth day of July A.D. 1844
William Mitchell
Clerk of said Court.

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Abstract of Lands lying in the County of Peoria,
State of Illinois subject to Taxation for the
Year A.D. 1844.

Township 8. North, Range 5 East.

Patentee	Present owner	Description	See notes	value in acres	State	State Tax	County Tax	Road Tax
					\$	\$	cts	cts
		11 North 6 East			\$		cts	cts
Saml Rickman		NE 22	160	3	480	96	192	48

State of Illinois }
Peoria County } I William M Dodge assessor within & for the said
County do hereby certify that the within contains
a full and perfect assessment of the Real and personal
property Subject to taxation for State County and Road
purposes in the said County of Peoria for the Year 1844.
so far as the same has come to my knowledge.
Given under my hand this fifteenth day of July in the
Year of our Lord one thousand eight hundred and forty four
William M. Dodge "

To which the defendant then and there made the following
objections to wit:

1. It doth not appear that said assessor was duly
qualified.
2. No authority for making such assessment is shown.

3. Said assessment is not made in the form required by law.

4. It is otherwise irregular and insufficient.

Which objections were argued by counsel and overruled by the Court and said assessment read in evidence, where to the defendant then and there excepted.

The plaintiff then against the objection of the defendant called Enoch P. Sloan, to prove the character of said Zeiber & Sloan and that the Democratic Press was a newspaper &c. The defendant objected that such testimony was incompetent and that the Statute allowed no evidence in that behalf, but the certificate and any proof which may be made against it. But the Court overruled the objections and said Sloan testified that he was said Sloan and that he and Zeiber were the publishers of the Democratic Press at the time of said advertisement and that said Democratic Press was a newspaper then published in the City and County of Peoria aforesaid.

This was all the evidence

The Court found the plaintiff guilty and assessed his damages at one cent. - The defendant moved for a new trial for the following among other reasons to wit:

1. The verdict of the Court is against the evidence,
2. The verdict is against the law of the land.
3. The Court admitted improper evidence for the plaintiff
4. The Court overruled proper objections made by defendant
5. By the law and the evidence the verdict ought to have been for the defendant.

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But the Court overruled said motion and gave judgment for the plaintiff upon said verdict, whereunto the said defendant then and there excepted and prayed the Court to sign and seal this bill of exceptions, which is accordingly done.

E. N. Powell Seal

And afterwards to wit on the 27th day of January A.D. 1860 the defendant filed his appeal bond in this case in the words and figures to wit:

State of Illinois }
County of Peoria } In the Circuit Court
Reuben Rowley }
vs } Appeal Bond
John Dukes }

Know all men by these presents that we John Dukes as principal and John Williams as surety are held and firmly bound unto Reuben Rowley in the penal sum of five hundred dollars for the payment whereof well and truly to be made we bind ourselves our heirs executors and administrators jointly and severally, firmly by these presents. Witness our hands and seals at Peoria this twenty seventh day of January A.D. 1860.

The condition of the foregoing obligation is such that whereas at the November term A.D. 1859 of the Circuit Court within and for the County of Peoria in the State of Illinois, in a certain action of ejectment the said Reuben Rowley did recover a judgment against said John Dukes by the consideration of said Court for the north east

quarter of section twenty two in township eleven north
in Range six east of the fourth principal meridian in
the County of Peoria aforesaid, together with one cent
damages and costs of suit, from which said judgment
the said John Dukes has taken an appeal to the Supreme
Court of the said State of Illinois. Now provided the said
John Dukes shall duly prosecute his said appeal and shall
well and truly perform and pay said judgment and costs
and all interest and damages, in case the judgment
aforesaid shall be affirmed by said Supreme Court then
this obligation shall be void otherwise to remain in full
force and virtue.

John Dukes *Seal*

John Williams *Seal*

Approved by me January 27, 1860

Enoch T. Sloan, clk.

State of Illinois }
Peoria County } I Enoch T. Sloan, clerk of the Circuit
Court in and for the County of Peoria in the State of Illinois
do hereby certify that the foregoing is a full and correct transcript
of the papers filed and of the proceedings had in our said Court
in a certain cause wherein Reuben Rowley is plaintiff and
John Dukes is defendant as the same remain on file and of
Record in my office. Given under my hand and the seal
of said Court at my office in Peoria
this 6th day of February 1860
Enoch Sloan, clerk

31
State of Illinois

In the Supreme Court at Ottawa
Of the April Term A.D. 1868.

John Dukes

vs.
Benben Rowley

Appeal from Peoria
Assignment of Errors

And hereupon comes
the said John Dukes by Charles C. Bourney his attorney,
and says that in the Record and Proceedings aforesaid
and also in the rendition of the judgment aforesaid,
= said, there is manifest error in this, to-wit;

1. The finding of the court, and the judgment rendered thereon, are respectively against the evidence; and against the law of the land.
2. The said Circuit Court erred in refusing to allow the motion of the appellee for a new trial.
3. The Assessment read in evidence on the trial below, is erroneous in this, to-wit;
 1. The heading required by the statute is not given.
 2. There is no sufficient description of the premises in controversy.
 3. The name of the owner of the land is not given.
 4. It doth not appear that said William M. Dodge was assessor &c.
 5. It doth not appear that the assessment was made on oath as the law requires.
 6. No authority for making such assessment is shown.

7. Said assessment is otherwise irregular and insufficient.
4. The collector's Report, read in evidence on the trial below, is erroneous in this respect;
1. The name of the owner is not given.
 2. The description of the premises is insufficient.
 3. The columns required by the Statute for Town Lots, years for which Tax due, and the County, are omitted.
 4. The form required by the Statute is not pursued.
 5. Said Report is otherwise defective.
5. The Advertisement read in evidence on the trial below, is erroneous in this respect;
1. The name of the present owner is not given, nor is it stated that he is not known, or cannot be found.
 2. The description of the premises is insufficient.
 3. The taxes, interest and costs are not properly stated. The several taxes are not specified, nor is the interest designated.
 4. The Certificate of Publication is altogether insufficient. It does not appear when, where or by whom it was made. The character of Eicher & Sloan is not shown; they certify as private persons, and in a firm name.
 5. The notice of sale is void for uncertainty. No day certain is designated.

6. The collector does not show that he can find no goods and chattels.
 7. Said advertisement is otherwise insufficient;
 6. ~~and~~ the evidence of Sloan is incompetent to aid it.
- The judgment read in evidence on the trial below is erroneous in this, to wit;
1. The caption is insufficient. It doth not show that the officers required to constitute a court, were present.
 2. There is a variance from the Collector's Report in the statement of the costs, and in the recital of the collector's return.
 3. The description of the premises is uncertain and insufficient.
 4. The respective amounts of taxes, interest, and costs are not properly shown.
 5. Said judgment is otherwise defective.
7. The Precept read in evidence on the trial below, is erroneous in this, to wit;
1. It is not executed by the officer or in the manner required by law.
 2. The judgment recited is insufficient to authorize a sale.
 3. Said Precept doth not contain the matters and set forth the facts required by the statute, and is otherwise defective.
8. The Deed read in evidence on the trial below, is erroneous in this, to wit;

1. It varies from the judgment and the precept in stating the sums for which the sale was made. They are for taxes and costs, only. This is for taxes, interest and costs.
 2. The alleged assignment of the Certificate of Purchase is not established by proof thereof.
 3. The Deed recites a Certificate of Purchase from the Circuit, instead of the County clerk.
9. The proceedings and judgment aforesaid are otherwise manifestly irregular, illegal, and insufficient.

Wherefore the said John Dukes prays that the judgment aforesaid, for the errors aforesaid, may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of the said judgment &c.

Charles L. Borney
attorney for appellee

And hereupon comes the said Ruben Rowley by Manning & Merriam his attorneys; and says that there is no error, either in the

Record and Proceedings aforesaid, or
 in the matters aforesaid, above
 assigned for error, and prays that
 the said Supreme Court may pro-
 ceed and examine, as well the
 record and proceedings aforesaid as
 the matters aforesaid above assigned
 for error, and that the judgment
 aforesaid, in form aforesaid given
 may be in all things affirmed;
 &c.

Mammy Mucian
 Atty Gen. J. P. Fuller

In the Supreme Court

John Dukes

v.

Reuben Rowley

Appeal from Peoria

Record, Errors, & Finders.

Filed March 27. 1860

L. Leland
Clerk

Charles C. Bonney for Appr.

Manning Merriam for Applee