

13235

No. _____

Supreme Court of Illinois

Fell

vs.

Cressford

STATE OF ILLINOIS,
SUPREME COURT,
13235
Third Grand Division.

No. 198.

Full
20

Cressford

1861

Supreme Court of Illinois,

Third Grand Division--April Term, 1861.

KERSEY H. FELL, *Appellant*,
vs.
WILLIAM CESSFORD, *Appellee*. } APPEAL FROM McLEAN.

BRIEF OF APPELLANT'S ATTORNEY.

This is an action of ejectment, brought by appellant to recover possession of lot 8, &c.

Appellant holds a perfect title to the lot, by regular conveyances from the patentee of the land on which the addition was laid out. No objection, of any sort, was urged below, against appellant's title. But appellee, holding possession of the lot as the tenant of one Peter Donahue, relies, for a defence to said action, upon the statute of limitations, by alleged payment of taxes for seven successive years, under color of title made in good faith by said Donahue, and his grantor, James Allin, jr. The defence was sustained below.

The only questions I desire to present upon this record are these :

1st. Did Donahue, the real defendant—Cessford's lessor—take, by his conveyance from James Allin, jr., *color of title made in good faith*; or did he take, by that conveyance, a specific title—a tax title—upon which he must specially rely?

2d. Was the payment of taxes made by James Allin, jr., with his own money and in his name, on the 11th of October, 1855, for the year 1854, after he conveyed the lot by his deed of date October 26, 1854, to Donahue, such a payment as will support the limitation of seven years payment, &c.?

As to the 1st question :

In the conveyance from James Allin, jr., (which was a mere quit claim deed,) there is this clause:

“The party of the first part (Allin) conveys and quit claims to the party of the second part, (Donahue,) his heirs, &c., all the interest of the party of the first part in and to the following piece or parcel of land which the party of the first part hold and *hereby convey under a tax title*, to-wit: lot 8, &c.”

That is an express declaration, and a clear and positive notice to the grantee, Donahue, of the character or class of title which he was taking under this conveyance. Is he not then bound to rely on that particular title? Or does he take this tax title as color of

title; and does the color *begin with him*, or does it run back to the deed to James Allin, jr., and thence to the sheriff's deed to James Allin, sr.?

What is *color* as used in our statute?

In *Bride vs. Watt* (23d Ills., p. 511) Justice Walker adopts this definition: "*An apparent or prima facie right*," and he decides "that the instrument relied upon as color must purport on its face to 'convey title.'"

Here the conveyance *quit claims all interest* to a tract of land which is *held and conveyed under a tax title*.

The grantee knows he is merely taking Allin's interest under a tax title; he is notified of the particular character of the title he is purchasing; his conveyance only gives him the tax title.

Now can it be said that this naked description of the character of title passed, is a "*prima facie right*?" Would it be received by any one as "an apparent or prima facie" title? or rather on the very reading of the deed which so specially points out the title passed, does not the mind at once fall back on the question, what is this tax title? and by what right is it held? from what source does it spring? is it any title at all?

This deed purports on its face to convey a particular title—a tax title. Can a man who takes a quit claim deed for all interest in a lot held and conveyed under a tax title, have color of title made in good faith within the meaning of the statute? and is not this such a case where the presumption of good faith is rebutted by the conveyance?

This deed would have been no worse if the grantor had declared in it, "I have no title to the lot except this tax title," nor if he had added, "which is a defective title;" for, he does say, that he holds and conveys the lot under a tax title, which precludes the idea that he conveys it under any other title, and, being thus notified of the tax title conveyed to him, the grantee is chargeable with notice of its imperfection.

Thus I insist that Donahue only got Allin's interest in the lot under a tax title; that he was bound by the particular title conveyed, and that if his conveyance can be called color of title made in good faith, then that under the peculiar terms of that conveyance, the color of title originated in Donahue, and had not run for seven years at the commencement of the action. For, under the sheriff's deed to Allin, sr., there were no taxes paid for nine years. Can the color of title be held until it suits the pleasure of the holder to commence payment of taxes? or, by neglect in payment of taxes merely, is the color not lost? Then did not Allin, sr., lose the benefit of his color of title under the sheriff's deed by a neglect of nine years to pay the taxes?

As to the second question—

Jas. Allin, jr., on the 26th of October, 1854, by his deed conveyed lot eight to Donahue; on the 11th of October, 1855, Allin paid the taxes on it. Not counting that payment, there has only been payment of taxes for five years successively by the person holding the color of title. From the evidence it is clear that Allin did not hold the color of title when he paid the taxes in 1855; but, on the contrary, he had one year before divested himself of all interest and claim to the premises. And *at the time of payment the color of title was in Donahue*, and the taxes were paid by Allin, in his own name, with his own money. Upon this state of facts I insist that the benefit of the payment by Allin in 1855 does not inure to Donahue, so as to support this defence.

In *Cofield vs. Funy* (19 Ills., p. 186) the court decide "that if the 'taxes for seven years are paid *under claim or color, by those having or succeeding to the possession, &c.,*' it is sufficient.

In the case at bar, Allin neither had nor succeeded to the *color* or possession at the time of payment; but the color of title had passed to Donahue.

In *Newland vs. Marsh* (19 Ills., p. 385) the court say "the bar is 'perfected when the payment of the taxes *under the color of title* is complete."

In *Dunlap vs. Dougherty* (20 Ills., p. 404) it is said, "in this 'case the two things required have not concurred; the color of title and payment of taxes *have not gone together* for the period of limitation. There was not a period of seven successive years *in which the person paying the taxes had the color of title.*'"

In *Dawley vs. Van Court* (21 Ills. pp. 462, 463) the case of *Dunlap vs. Dougherty* was approved, and in stating the last named case the court state it as broadly deciding "that the payment of 'taxes and color of title must unite and concur in the same person *at the time when the payment is made.*'" And the court so re-affirm in deciding the case under their consideration.

These cases seem to me as decisive of the question presented; for the *payment* of taxes in 1855 by Allin did not go with the color of title, as it was then, and for a year previous had been, in Donahue. Therefore, the color of title and payment of taxes did not unite and concur in the same person (Allin) on the 11th of October, 1855, *the time* when the payment of the taxes was made by Allin. Nor did the color of title and payment of taxes unite and concur in Donahue on the 11th of October, 1855, for he only held the color of title and did not pay the taxes at that date. Thus, Allin paid the taxes, and Donahue held the color of title.

In the case of *Stearns vs. Gitting* (23d Ills., p. 492) this court has decided that payment of taxes by executors with their money and in their name on lands of the testator, in which they had "a

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In the case at bar, Allin had no interest whatever of any kind or shape in the lot on which he paid taxes, October 11th 1855, in his own name and with his money.

Again in *Bride vs. Watt* (23d Ills. p. 512) your honors re-affirm your oft repeated decision that the payment of taxes must be by the person holding the color of title; and if these do not concur in the same person, the benefit of the payment is lost.

Taking the law as thus so distinctly settled, I feel satisfied that my client's title has been overcome in the court below by a defence which lacks the requirements of the statute; that his title is paramount, and not barred by the limitation set up. I therefore ask a reversal of the judgment below.

W. W. ORME,

Attorney for Appellant.

No. 198

Fell vs. Cessford

Brief of Applt. atty.

Filed Apr 16. 1861

A. Leonard
Clerk

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W. W. ORME,

Attorney for Appellant.

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Brief of appl^t atty.-

Filed April 16, 1861

S. Deland
Clerk

STATE OF ILLINOIS,
Supreme Court, Third Grand Division.

OTTAWA, APRIL TERM, 1861.

KERSEY H. FELL }
 ^{vs.} } APPEAL FROM MCLEAN.
WILLIAM CESSFORD. }

BRIEF OF APPELLEE'S ATTORNEYS.

The appellant asks that the judgment of the court below be reversed upon two grounds.

The first is, that the deed from James Allin, jr., does not make color of title, and upon this point appellant cites the case of *Bride vs. Watt*, (23 Ill.) The question in that case was, whether a certificate of purchase at a tax sale makes color of title. On page 510, the court say: "This, then, presents the question whether the certificate of purchase at the tax sale, and held by Johnson as assignee, constitutes color of title within the meaning of the 9th section of the conveyance act." The court decided that the certificate did not make color of title, for the reason that the certificate of purchase does not purport to convey title. A certificate of purchase is not even an absolute sale, but simply entitles the holder to a deed upon the condition that the owner of the realty shall fail to redeem within a given time. When the time for redemption elapses, the certificate does not even then become absolute, but further action is necessary in order to entitle the holder to an instrument purporting to convey a title. It requires no argument to show the wide distinction between such a paper and a deed, which does purport to convey a title.

On page 511, the court defines the character of conveyance which will support color of title, in the following language: "The deed or other instrument relied upon, must apparently transfer title to the holder. *Not that the title should purport, when traced back to its source, to be an apparently legal and valid title, but the instrument under which the occupant holds, and upon which he relies, must itself profess to convey a title to the grantor.*"

The fact that the deed is a quit claim presents no valid reason why it may not support color of title.

In the very nature of things, the holder of the original title, who

neglects both to pay his taxes, or to possess himself of his estate, for the long period of seven years, is apt to be confronted alone by a quit claim deed.

If it should be held that color of title cannot be based upon a quit claim deed, then it must be evident that the 9th section of the conveyance act is an unmeaning act of legislation.

There can be no question of the good faith of Donahue in his purchase from James Allin, jr. The record shows a sheriff's deed to James Allin, sr., which was eleven years old at the time of Donahue's purchase. Following that, comes the deed of James Allin, sr., to James Allin, jr., made in 1852. Donahue finds that his grantor has had a deed for the premises for two years, and that the grantor of his grantor has had a deed for nine years. He had good reasons to believe that he was obtaining a good title to the property. Donahue did not assume the burden of proving payments of taxes by James Allin, sr., for the reason that payments by James Allin, jr., and himself, constituted in themselves an abundant compliance with the statute.

2d. The second point urged by counsel for appellant consists in the fact that James Allin, jr., paid the taxes of 1854 after the sale to Donahue. The authorities cited show that the law on this point is with the appellee.

By ingeniously extracting single sentences from the opinion of the court, counsel for appellant strives to distort the evident intent of the body of these decisions. The substance of the decision of *Cofield vs. Furry*, (19th Ill.,) is that the statute of seven years limitation does *not* require that the possession under claim and color of title should be continued in the same person, *nor* that the same person shall pay all the taxes for that period, nor that the taxes be paid during the year for which they accrued.

The court in the case of *Cofield vs. Furry*, (page 130,) anticipates the very objection raised by appellant: "The construction contended for would preclude a sale of the land, and surrender of possession, during a current year—for in such case two persons would be in possession during portions of the same year, and neither could pay the taxes for the portion of the year of his possession."

In the case at bar the position of appellant would preclude a sale by Allin during the year 1854, for both himself and Donahue had color of title during different portions of the same year.

In the case of *Newland vs. Marsh*, (19th Ill.,) the court say: "The bar is perfected when payment of taxes, under the color of title, is complete." But the court in that decision nowhere overrule the case of *Cofield vs. Furry*. They do *not* decide that the bar may not be perfected by gaining the payment of taxes by two or more persons, in order to make out the seven years, nor do they decide that the taxes must be paid during the year they accrued.

The case of *Dunlap vs. Dougherty* (20 Ill.) does not touch the question at issue. In that case taxes were paid for two years under a contract for a conveyance, which not being a color of title, the payment of taxes availed nothing.

The case of *Dawley vs. Van Court*, (21st Ill.) is to the same purport. In that case one half the taxes had been paid by a party who never at any time had color of title.

In the case of *Stearns vs. Gitting*, (23 Ill., 387,) it was held that payment by an executor in whom was vested no legal title, but simply a naked power to sell, was not a payment under color of title. The executor was not legally bound to pay the taxes. The law does not impose it as a duty upon an administrator or executor to pay taxes on the land belonging to the estate. In the case at bar, James Allin, jr., was the person against whom the taxes of 1854 had been assessed. The taxes for 1854 accrued on the 1st day of May, 1854, and Allin did not sell the lot to Donahue until October, 1854, so that Allin was legally liable for the taxes of 1854. Being a citizen (see deed of Allin to Donahue) of the city in which the lot was situated, the taxes on the lot were personal debts due from Allin, which Donahue could not have considered himself bound to pay. On page 392 of case last referred to, the court say: "And it can make no difference whether the taxes assessed subsequent to the commencement of the running of the statute have been paid within the current year or not." According to our defence, the statute, commenced running in 1852, under the deed of James Allin, sr., to James Allin, jr.; and taxes were regularly paid by the parties holding under that conveyance, until the commencement of suit.

Under the cases of *Cofield vs. Fury*, (19 Ill.) and *Stearns vs. Gitting*, (23d Ill.) payment by Allin, against whom the taxes of 1854 were assessed, and who held the color of title during the greater part of the year, was as valid as if it had been made at any time during the current year of 1854.

HOGG & REEVES,

for Appellee.

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Kersey H. Fell

vs

William Censford

Appellee's argument

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Filed Apr. 24-1861

L. Leland

Clerk

Supreme Court of Illinois,

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KERSEY H. FELL, *Appellant*,
vs.
WILLIAM CESSFORD, *Appellee*. } APPEAL FROM McLEAN.

PAGE.

ABSTRACT.

- 1 This is an action of ejectment, commenced by Kersey H. Fell vs. William Cessford, on the third day of February, 1860, in the McLean circuit court, to recover possession of lot 8 in block 8, in Allin, Gridley, and Prickett's addition to Bloomington.
- 1 2 Declaration filed, February third, 1860; rule to plead entered,
3 and plea of not guilty filed, February fourth, 1860.
- 3 4 The cause was continued through different terms, to the December term, 1860.
- 4 5 On the seventeenth day of January, 1861, the cause came on for trial, and was by agreement tried by the court without the intervention of a jury. The court took time to consider, and on the twenty-ninth of January announced its verdict in favor of the defendant.
- 5 Appellant moved for a new trial, filed his motion and the grounds thereof, and the court overruled the motion; and appellant excepted and tendered his bill of exceptions.
- 5 The bill of exceptions shows that on the trial of the cause, appellant offered and read in evidence, without objection:
1. The certificate of the register of the land office, proving entry of the $N\frac{1}{2}$ NW $\frac{1}{4}$ of section 4, Town. 23, 2 E of 3d P. M., in McLean county, by James Latta, October fourteen, 1830.
 2. A deed from James Latta to James Allin, dated February first, 1832, conveying sixty acres off W end of said $N\frac{1}{2}$ NW $\frac{1}{4}$.
 3. The plat of Allin, Gridley, and Prickett's addition to Bloomington, properly certified, acknowledged, and recorded, and laid off on a part of the NW $\frac{1}{4}$ of said section 4, by James Allin, Asahel Gridley, and David Prickett; said plat containing, among others, block 8, composed of 10 lots, one of which is lot 8.
 4. Appellant then introduced one Peter Folsom, who testified that he was county surveyor, and knew the premises in controversy; that block 8, containing said lot 8, was laid off on the premises known as 60 acres off the west end of the $N\frac{1}{2}$ NW $\frac{1}{4}$ of section 4, aforesaid.
 5. A power of attorney, regularly executed and recorded, from

6 James Allin and David Prickett to Asahel Gridley, dated November, 1836, authorizing Gridley to convey any and all lots in Allin, Gridley, and Prickett's addition aforesaid, &c.

6 6. A deed, regularly executed and recorded, from Asahel Gridley and James Allin and David Prickett, by Gridley, their attorney, to William L. Newbold, dated March tenth, 1837, conveying the lot 8 in controversy.

6 7. A deed, regularly executed and recorded, from William L. Newbold to Kersey H. Fell, dated March fifth 1855, conveying said lot 8.

8. The return on the declaration, showing that appellee was in possession of said lot 8.

And here appellant rested.

7 Appellee then offered in evidence :

1. A deed from the sheriff of McLean county, Illinois, to James Allin, dated September eighteen, 1843, conveying said lot 8; and purporting on its face to be based on a sale of taxes on the tenth day of May, 1841. The deed was regularly executed and recorded.

7 2. A *quit claim* deed from James Allin to James Allin, jr., of McLean county, Illinois, dated February eleventh, 1852, releasing and quit claiming all interest in said block 8—the consideration being *one dollar and natural love and affection*. This deed was regularly acknowledged and recorded.

3. A *quit claim* deed, regularly executed and recorded, from James Allin, jr., to Peter Donahue, of date October twenty-six, 1854, quit claiming and releasing all his interest in said lot 8; said deed contains this statement, to-wit: "*the party of the first part (Allin) conveys and quit claims to the party of the second part (Donahue) his heirs, &c., all the interest of the party of the first part in and to the following lot, piece, or parcel of land, which the party of the first part hold and hereby convey under a tax title, to-wit: lot 8, &c.*"

4. It was then admitted that the defendant was the tenant of Peter Donahue, and holding said premises as such.

5. The defendant then introduced tax receipt of date June third, 1853, for taxes of 1852, paid by James Allin, jr.,

Also tax receipt of date April twenty-four, 1854, for taxes of 1853, paid by James Allin, jr. ;

8 Also tax receipt of date October eleventh, 1855, for taxes of 1854, paid by James Allin, jr. ; to the introduction of this receipt plaintiff objected—court overruled the objection; and plaintiff excepted ; and then defendant proved payment of taxes by Peter Donahue for the years 1856, 1857, 1858, 1859, 1860.

8 6. Defendant then introduced the collector's book of 1854, showing the assessment of lot 8 in the name of James Allin, jr.

7. The defendant then introduced James Allin, jr., who testified

8

that about six months after he made his deed to Donahue, said Donahue took possession of the lot and built a house on it; or it might have been from six to twelve months after making the deed that the house was built and possession taken of the lot. Allin also testified *that he paid the taxes of 1854 with his own money, October eleven, 1855.*

And here the defendant rested.

And this was all the evidence offered.

9

On the foregoing evidence the court rendered its decision in favor of defendant. The plaintiff moved for a new trial: the motion was overruled, and plaintiff excepted—and judgment rendered for defendant. And plaintiff prayed and obtained an appeal.

10

W. W. ORME,

for Appellant.

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Fell vs. Cusford

= Abstract =

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1. The certificate of the register of the land office, proving entry of the N $\frac{1}{2}$ NW $\frac{1}{4}$ of section 4, Town. 23, 2 E of 3d P. M., in McLean county, by James Latta, October fourteen, 1830.
 2. A deed from James Latta to James Allin, dated February first, 1832, conveying sixty acres off W end of said N $\frac{1}{2}$ NW $\frac{1}{4}$.
 3. The plat of Allin, Gridley, and Prickett's addition to Bloomington, properly certified, acknowledged, and recorded, and laid off on a part of the NW $\frac{1}{4}$ of said section 4, by James Allin, Asahel Gridley, and David Prickett; said plat containing, among others, block 8, composed of 10 lots, one of which is lot 8.
 4. Appellant then introduced one Peter Folsom, who testified that he was county surveyor, and knew the premises in controversy; that block 8, containing said lot 8, was laid off on the premises known as 60 acres off the west end of the N $\frac{1}{2}$ NW $\frac{1}{4}$ of section 4, aforesaid.
 5. A power of attorney, regularly executed and recorded, from

6 James Allin and David Prickett to Asahel Gridley, dated November, 1836, authorizing Gridley to convey any and all lots in Allin, Gridley, and Prickett's addition aforesaid, &c.

6 6. A deed, regularly executed and recorded, from Asahel Gridley and James Allin and David Prickett, by Gridley, their attorney, to William L. Newbold, dated March tenth, 1837, conveying the lot 8 in controversy.

6 7. A deed, regularly executed and recorded, from William L. Newbold to Kersey H. Fell, dated March fifth 1855, conveying said lot 8.

8. The return on the declaration, showing that appellee was in possession of said lot 8.

And here appellant rested.

7 Appellee then offered in evidence :

1. A deed from the sheriff of McLean county, Illinois, to James Allin, dated September eighteen, 1843, conveying said lot 8; and purporting on its face to be based on a sale of taxes on the tenth day of May, 1841. The deed was regularly executed and recorded:

7 2. A *quit claim* deed from James Allin to James Allin, jr., of McLean county, Illinois, dated February eleventh, 1852, releasing and quit claiming all interest in said block 8—the consideration being *one dollar and natural love and affection*. This deed was regularly acknowledged and recorded.

3. A *quit claim* deed, regularly executed and recorded, from James Allin, jr., to Peter Donahue, of date October twenty-six, 1854, quit claiming and releasing all his interest in said lot 8; said deed contains this statement, to-wit: "*the party of the first part (Allin) conveys and quit claims to the party of the second part (Donahue) his heirs, &c., all the interest of the party of the first part in and to the following lot, piece, or parcel of land, which the party of the first part hold and hereby convey under a tax title, to-wit: lot 8, &c.*"

4. It was then admitted that the defendant was the tenant of Peter Donahue, and holding said premises as such.

5. The defendant then introduced tax receipt of date June third, 1853, for taxes of 1852, paid by James Allin, jr.,

Also tax receipt of date April twenty-four, 1854, for taxes of 1853, paid by James Allin, jr. ;

8 Also tax receipt of date October eleventh, 1855, for taxes of 1854, paid by James Allin, jr. ; to the introduction of this receipt plaintiff objected—court overruled the objection; and plaintiff excepted ; and then defendant proved payment of taxes by Peter Donahue for the years 1856, 1857, 1858, 1859, 1860.

8 6. Defendant then introduced the collector's book of 1854, showing the assessment of lot 8 in the name of James Allin, jr.

7. The defendant then introduced James Allin, jr., who testified

8

that about six months after he made his deed to Donahue, said Donahue took possession of the lot and built a house on it; or it might have been from six to twelve months after making the deed that the house was built and possession taken of the lot. Allin also testified *that he paid the taxes of 1854 with his own money, October eleven, 1855.*

And here the defendant rested.

And this was all the evidence offered.

9

On the foregoing evidence the court rendered its decision in favor of defendant. The plaintiff moved for a new trial: the motion was overruled, and plaintiff excepted—and judgment rendered for defendant. And plaintiff prayed and obtained an appeal.

10

W. W. ORME,

for Appellant.

198-66

Fell vs. Cessford

Abstract

Filed April 16, 1861

H. Delamater

Clerk

Page 1

Pleas Continued and held at the Court House in Bloomington within and for the County of McLean, in the Eighth Judicial Circuit of the State of Illinois, before the Honorable David Davis Judge of said Eighth Judicial Circuit, of the December Term, to wit: on the 29th day of January AD 1861. -

Kersey H. Fell

५४

William Cessford

✓ In Ejectment.-

Be it remembered, that heretofore, to wit: on the third day of February A.D. 1860. Kersey H. Fell by his Attorneys filed in the office of the Clerk of said Court a declaration, notice and affidavit of service thereof, in words and figures following, to wit:

State of Illinois
McLean County ss-

of the December Term 1859.
of the M. Lean Circuit Court.

Kersey H. Fell, plaintiff in this suit, by his attorneys, complains of William Cessford, defendant.

For that the said plaintiff heretofore, to wit, on the first day of December A.D. 1857. at the County and State aforesaid was possessed of the premises situate in said County and State and known and described as Lot Eight (8) in Block Eight (8) in Allin, Gridley and Prickett's addition to Bloomington. - And being so possessed thereof, that the defendant afterwards on the day and year aforesaid entered into such premises, and that he unlawfully withholds from the plaintiff the possession thereof, to the damage of plaintiff of \$100. - And hence he owes. -

Kersey H. Fell -

- by Swett & Orme, Attys

Mr. William Cessford -

2

You are hereby notified that on this 3^d day of February A.D. 1860. during the present Term of the Circuit Court of McLean County Illinois. the above declaration will be filed that upon filing such declaration a rule will be entered requiring you to appear and plead to such declaration within twenty days after the entry of such rule - And if you neglect so to appear and plead, a judgment will be entered against you and the plaintiff will recover possession of the premises. -

Bloomington Ills. Feby. 3^d. 1860.

Sweett & Orme -
Attys. for Kersey & Fell.

State of Illinois

McLean County

{^{ss} Ludwell E. Rucker, being first duly sworn says and swears that on the 3^d day of February A.D. 1860 he delivered a true copy of the above declaration and notice to William Cessford. - And that said William Cessford, was at the time of the service of said declaration in possession of and living upon said Lot Eight (8) in Block Eight (8) in Allin, Gridley and Prickett's addition to Bloomington Illinois. - And further says not. -

Subscribed & Sworn to before me
Feby 3^d. 1860.

W. M. Callough Clk.

L. E. Rucker -
Fees \$1.15. -

And afterwards, to wit: on the day and year last aforesaid, on motion of plaintiff's Attorneys, the Court made the following rule, which was entered of record to wit:

3

Hersey H. Fell

vs

William Cessford

In Ejectment. -

And now at this day comes the said plaintiff by his Attorneys and files herein his declaration against said defendant. and makes due proof to the Court here, that due notice of the filing of the same has been given the said defendant in accordance with the Statute And on motion said defendant is by the Court ruled to plead to said declaration within twenty days. - And this cause is Continued. -

And afterwards at the same Term of said Court to wit: on the fourth day of February A.D. 1860. aforesaid the defendant by his Attorneys filed in the office of the Clerk aforesaid the following plea, to wit: -

Hersey H. Fell

vs

William Cessford

And now comes the said defendant, and defends the wrong and injury when &c. And says - he is not guilty as plaintiff has declared against him. - And of this he puts himself upon the Country &c. -

- Hogg & Reeves. -

- Defts. Attys -

And afterwards, to wit: at the September Term of said Court in the year last aforesaid, to wit: On the Sixth day of September, the following Order was made to wit: -

4 Kersey H. Fell
vs
William Cessford

In Ejectment.-

This day by order of the Court, this Cause is continued.-

And afterwards, to wit: At the December Term of said Court, in the year AD 1861. to wit: On the Seventeenth day of January in said year, Came again the parties by their Attorneys, and by agreement thereof the Cause was submitted to the Court for trial, and the Court having taken time to consider what judgment ought to be rendered.- thereupon the following order was made, to wit:-

Kersey H. Fell
vs
William Cessford

In Ejectment.-

And now at this day come the parties hereto by their Attorneys, and issue being joined on the plea filed herein by said defendant: by agreement of the parties this Cause is submitted to the Court for trial without the intervention of a jury.- And the Court having heard the evidence produced, and the Arguments of Counsel and not being fully advised what judgment ought to be rendered herein doth take the same under advice.-

And afterwards, to wit: At the same Term of said Court in the year last aforesaid, to wit: On the twenty ninth day of January in said year

5

the Court being then fully advised in the prem-
-ises announced its verdict on the issues for the de-
-fendant. And thereupon the plaintiff by his Attor-
-ney moved the Court for a new trial and in arrest
of judgment; which motion the Court then and
there overruled.- to the overruling of which plain-
tiff excepted - And tendered his bill of exceptions
in words and figures following, to wit: -

Kersey H. Fell

४

William Cessford E

W. Leav Circuit Court of Illinois -

December Term A.D. 1860.

Be it remembered that on the trial of this Cause in said Court on this 17th day of January AD 1861. when the same came on to be heard, the parties by agreement submitted the Cause to the Court for trial without the intervention of a jury. - And thereupon the plaintiff introduced to support the issues on his part the following proof -

1st The Certificate of W^m E. Keefer, register of the land office at Springfield Illinois, showing the entry of the N¹/₂. NW¹/₄. of Section 4. township 23 N. R. 2 East of 3^d. P. M. in McLean County Illinois by James Latta October 14th 1830. -

2^d A deed from James Latta and wife to James Allen of date February 1st 1832. Conveying sixty acres off of the west end of the N¹/₂. NW¹/₄ of Section 4. aforesaid. -

3^d. The ~~plot~~ of the addition properly certified acknowledged and recorded, dated July 4th 1836. known and described as Allen Gridley and Prickett's addition to Bloomington in McLean County Illinois laid off upon a part of the NW ¹/₄ of said Section 4. by James Allen, Asahel Gridley and David Prickett—

containing Block 8, composed of and divided into ten lots, one of which is lot 8.

4th Peter Folemy, County Surveyor of McLean County Illinois, who testified that he knew the premises described as lot 8 in Block 8 in Allen, Gridley and Pickett's Addition to Bloomington aforesaid - and that said Block 8, containing said lot was laid off and upon the said premises described as 60 acres off the West end of the $N\frac{1}{2}$ NW $\frac{1}{4}$ of Section 4 Aforesaid -

5th A power of Attorney regularly acknowledged and recorded of date November 1836. from James Allen and wife and David Pickett to Asahel Gridley empowering said Gridley to convey any and all lots in Allen Gridley and Pickett's Addition aforesaid -

6th A deed from Asahel Gridley and wife, and James Allen and wife and David Pickett by their Attorney Asahel Gridley to William L. Newbold of date March 10th 1837. properly acknowledged and recorded conveying the whole ten lots including lot 8, in Block 8. in Allen, Gridley and Pickett's Addition to Bloomington in McLean County Illinois. -

7th A deed from William L. Newbold to Kersey H. Fell of date March 5th 1855. - Conveying the whole ten lots including lot 8, in Block 8. in Allen, Gridley and Pickett's addition to Bloomington McLean County Illinois, which deed was regularly acknowledged and recorded.

8th The return on the declaration served showing that the defendant William Cessford was in possession of said premises described in the declaration as lot 8 in Block 8 aforesaid.

And thereupon the said plaintiff rested his case - and the said defendant to support the issue on his part offered in evidence -

7

1st A deed from Richard Edwards Sheriff of McLean County Illinois to James Allen of date September 18. 1843 Conveying the whole of Block 8 aforesaid, purporting on its face to be based on a sale of taxes on the 10th day of May 1841. which said deed was regularly acknowledged and recorded.

2^d A deed from James Allen to James Allen jr of McLean County Illinois of date February 11th 1852. being a quit claim deed releasing and quit claiming all his interest in the whole of Block 8. Aforesaid - which deed was regularly acknowledged and recorded. the Consideration being One dollar and natural love and affection as in said deed expressed.

3^d A quit claim deed from James Allen jr, of McLean County Illinois to Peter Dmahue of date October 26th 1854. quit claiming and releasing all his interest in the ^{said lot} ~~whole Block~~ 8 aforesaid - which said deed contains this statement to wit: the party of the first part (allen) Conveys and quit claims to the party of the second part (Dmahue) his heirs &c. all the interest of the party of the first part in and to the following lot piece or parcels of land which the party of the first part hold and hereby convey under a tax title to wit: Lot 8 &c.

4th It was then agreed and admitted that the defendant was the tenant of Peter Dmahue - and holding the premises as such.

5th The defendant then introduced a tax receipt of date June 3^d 1853. for the taxes of 1852 on said lot 8. paid by James Allen jr. -

also a tax receipt of date April 24th 1854. for the taxes of 1853 on said lot 8. paid by James Allen jr.

Also a tax receipt of date October 11th 1855. for the taxes of 1854 showing payment of taxes on said lot 8 by James Allen jr. - to the introduction of which said last receipt plaintiff objected, And the Court overruled the objection - And the plaintiff excepted thereto. -

Also a tax receipt of date February 7. 1856. for the taxes of 1855 showing payment of taxes on said lot 8, by Peter Donahue.

Also a tax receipt of date February 26th 1857. for the taxes of 1856. showing payment of taxes on said lot 8 by Peter Donahue.

Also a tax receipt of date February 8th 1858. showing payment of taxes of 1857. on said lot 8 by Peter Donahue.

also a tax receipt of date March 12th 1859. showing payment of taxes of 1858. on said lot 8. by Peter Donahue.

Also a tax receipt of date January 12th 1860 showing payment of taxes of 1859. on said lot 8. by Peter Donahue.

And defendant then introduced the Collectors book of 1854 showing that said lot 8. was assessed in the name of said James Allen for said year - 1854. -

And defendant then introduced James Allen jr. who testified that about six months after he made his deed to Donahue the said Donahue took possession of said lot 8 and built a house thereon, or it might have been from six to twelve months after the making of said deed that said Donahue built his house. and took possession ^{of said lot.} - And Allen also testified that he paid the taxes of 1854 with his own money October 11th 1855. - And the defendant rested his case.

And this was all the evidence of any sort offered by either party on the trial of this case -

p. 9

and on the foregoing evidence the Court took time to Consider and on the 29th day of January 1861. found the issues for the defendant. -

And thereupon plaintiff moved the Court for a new trial and filed his motion in writing with the grounds thereof in words and figures following - to wit: -

Kerey H. Fell

vs

William Cerefas

~~~~~

W. Lean Circuit Court Illinois -

And now comes the plaintiff and moves the Court here for a new trial on the following grounds to wit:

- 1<sup>st</sup> Because the Court decided this Case Contrary to the evidence -
- 2<sup>d</sup> Because the Court should have rendered its verdict in favor of plaintiff -
- 3<sup>d</sup> Because the Court erred in rendering its verdict for defendant. -
- 4<sup>th</sup> Because the Court admitted improper evidence -
- 5<sup>th</sup> Because the verdict of the Court is against the law -  
Orme for pltff. -

And the Court overruled said motion, to the overruling of which motion plaintiff then and there excepted - and tenders his bill of exceptions, and prays the same may be signed and Sealed and made part of the record in this Case, which is done in open Court this 29<sup>th</sup> day of January 1861 -

D. Davis ssab

Whereupon afterwards, to wit: On the same day and year last aforesaid, the parties being present by their

p. 10. - Attorneys, the following final order was made, to wit:  
Kersey H. Fell  
vs  
William Cessford } In Ejectment -

And now at this day come again the parties hereto by their attorneys. - And the Court having heard the evidence herein produced, and having duly considered the same. and being now fully advised in the premises, doth find the issue for the defendant - And now comes the plaintiff by his Attorney and moves the Court to grant a new trial in this cause, but not under the Statute, which motion being heard by the Court, <sup>is overruled</sup> It is therefore considered by the Court that said defendant be hereof discharged and go hence without day. - And that he recover of and from the said plaintiff his costs herein expended and that he have execution therefor. - And now comes the said plaintiff and prays an appeal to the Supreme Court of this State, and the same is granted upon his filing a good and sufficient Bond in the sum of two hundred dollars, conditioned as the law directs with W.W. Orme as security. -

And afterwards to wit: On the day and year last aforesaid the plaintiff filed in the office of the Clerk of the Court aforesaid, as by said order required; his Bond with William W. Orme security and which Bond is in words and figures following to wit: -

Know all men by these presents that we Kersey H. Fell and William W. Orme of the County of W. Lean

p. 11 -

and State of Illinois, are held and firmly bound unto William Ceseford in the penal sum of two hundred dollars, for the payment of which well and truly to be made, we and each of us bind ourselves our heirs executors and administrators, jointly and severally, and firmly by these presents. Sealed with our seals and dated at Bloomington this 29<sup>th</sup> day of January Anno-Domini, one thousand eight hundred and sixty one -

The condition of the above obligation is such: That whereas the above named William Ceseford did on the 29<sup>th</sup> day of January One thousand Eight hundred and sixty one at a term of the Circuit Court then being holden within and for the County of McLean and State of Illinois, obtain a judgment against the above bounden Kerey H. Fell for the Costs of Said Suit - from which judgment the Said Kerey H. Fell has prayed for and obtained an appeal to the Supreme Court of Said State -

Now if the Said Kerey H. Fell, shall duly prosecute Said appeal; and shall moreover pay the amount of the judgment, costs, interest and damages rendered and to be rendered against him the Said Kerey H. Fell in case the <sup>Said</sup> judgment shall be affirmed in the Said Supreme Court then the above obligation to be null and void otherwise to remain in full force and virtue -

Taken and entered into in open Court }  
and approved this 29<sup>th</sup> day of }  
January AD 1861. - }

K. H. Fell,

William W. Orme,

Seal

Seal

W<sup>m</sup> M. Cullough Clk.

by L. Burr - Dpty.

State of Illinois ss  
McLean County ss L. Wm. McCullough. Clerk of the  
Circuit Court in and for said County. do hereby certify  
that the foregoing is a true and complete transcript of  
the records & files of my office pertaining to a certain  
cause wherein Kersey H. Fell was plaintiff and William  
Cessford was Defendant.



Given under my hand & seal of office at  
Bloomington this 8<sup>th</sup> day of April. A.D.  
1861.

Wm. McCullough. Clerk

By L. Burn. Deputy

State of Illinois - ss.

Supreme Court of Illinois  
3<sup>d</sup> Grand Division  
April Term 1861

Kersey H. Fell - Appellant

vs.

William Cessford - Appellee

Appeal from McLean

And now comes the said Kersey H.  
Fell by Orme his Attorney and says that  
in the record and proceedings aforesaid  
there is manifest Error in this to wit:

- 1<sup>st</sup> The Court Erred in admitting improper Evidence  
on the part of defendant below -
- 2<sup>d</sup>. The Court Erred in rendering its verdict  
in favor of defendant below -

3<sup>d</sup> The Court Erred in rendering judgment for the defendant below -

4<sup>th</sup> The Court Erred in not granting plaintiff below a new trial on the evidence -

5<sup>th</sup> The Court should have rendered its verdict and judgment for plaintiff below -  
Wherefore on account of the errors aforesaid the said appellant asks this Honorable Court that the judgment of the Court below may be reversed, annulled and wholly held for naught - and that he may be restored to all things he may have lost thereby -

W. W. Orme  
Atty for applt.

And now comes the appellee by his Attorneys and says that in the record and proceedings aforesaid there is no such error as the said appellant hath above thereof complained - And so.

Hogg Reeves & Scott  
Counsel for appellee

No. - 1982-55

Supreme Court - Illinois  
April Term 1861

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Henry H. Fell  
vs. appth.

Wm. Casford  
applee

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Appeal from McLean

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Record & assignment  
of Errors -

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Filed April 16. 1861  
L. Leland  
Clerk