

No. **12170**

Supreme Court of Illinois

sloan

vs.

Petrie

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~~48~~ 11

William Sloan
vs.
Henry Petrie
Extrajudicial

11

1855

12170

United States of America
State of Illinois

Came before the Hon Isaac G. Wilson Judge of
the Circuit Judicial Circuit for the State of Illinois
at a Term of the Kane County Circuit Court
begun and held at the Court House in Geneseo
in said County on the 8th day of May in the
year of Our Lord One thousand Eight hundred
and fifty-four

Present the Hon Buckner S. Morris per. Judge
" the Hon. Boyer State Attorney
" North Bishop Sheriff

Attest

L. Stanton Clerk

and whereas heretofore to wit on the day of
AD 1855 there was filed in the ^{clerk's} office of the circuit court
of Stano County a Transcript from McHenry County in State of
Illinois which is in the words of figures following to wit

United States of America

State of Illinois (

McHenry County vs

Reas before the Honorable Isaac
G. Wilson Judge of the Thirteenth Judicial
Circuit of the State of Illinois & presiding Judge of the McHenry
County Circuit Court at a Circuit Court began and held
at the Court House in Woodstock in said County on Tuesday
the Twentieth day of January in the Year of our Lord one
Thousand Eight Hundred and Fifty Two and of the Independence
of the said United States the Seventy-Fifth

Present. the Hon^{ble} Isaac G. Wilson

Judge

Amos B. Leorn

State Attorney

John Brins

Sheriff

Attest

I. M. Johnson

Clerk

And heretofore to wit on the Second
day of October in the Year of our Lord one Thousand Eight
Hundred and Fifty one being one of the days of the late September
Term of the McHenry County Circuit Court the following
Among other proceedings were had to wit

William Sloan (

vs Ejectment

Henry Petrie

And now comes the plaintiff
in his own proper person and it appearing to the court by

And thereafter to wit on the Twentieth day of January in the year of Our Lord One Thousand Eight Hundred Fifty-Two being one of the days of the January Term of the Middlebury County Circuit Court the following among other proceedings were had to wit

And now comes the defendant
by McClure his attorney and files his petition
herein verified by affidavit and for reasons therein stated moves
the Court for a change of the venue in this cause

And thereafter writ on the Twenty Second day of January in the year of our Lord One thousand Eight Hundred and fifty two being one of the days of the January Term of the McHenry County Circuit Court the following among other proceedings were had to wit

William. Shaw
 vs
 Henry Petrie } Ejectment

And now comes the plaintiff in his own proper person and moves the court for a judgment for the want of a sufficient plea which motion is resisted by defendants counsel and the court having heard the parties thereon overrules the same and thereupon on motion of the defendant attorney it is ordered that the said defendant leave to amend ^{his plea} and it is further ordered and considered by the court that the plaintiff recover of the defendant his costs and charges from the time of filing his plea to the present time. And the court being fully advised on the motion for a change of venue herein made by the said defendant sustains the same. It is therefore ordered and considered by the court that the venue be and the same is hereby changed to the county of St. Louis in the thirteenth judicial circuit of the State of Illinois and that the clerk of this court certify and transmit to the clerk of the circuit court of said St. Louis county a copy of the record herein and also all papers filed in & pertaining to this cause.

State of Illinois
 McHenry County

I the undersigned clerk of the circuit court in & for the said county & State of Illinois do certify that the above is a true copy of the record in the above entitled cause in my office and that the papers accompanying marked 1, 2, 3 & 4 are all the papers filed in & pertaining to said cause in this office.

Witness Joel St. Johnson clerk of our said court and the seal thereof at Woodstock in said county this 9th day of February A.D. 1833
 Joel St. Johnson

Be it remembered that heretofore to wit on the 2^d day of Oct 1857 there was filed in the Office of the clerk of the circuit court of McHenry County the following Declaration which is in the words & figures following to wit

State of Illinois } McHenry County
County of McHenry } Circuit Court September Term A.D. 1857

Henry Petrie defendant in this suit
is summoned to answer William Sloan plaintiff in this suit
of a plea of Trespass and Ejectment. For that whereas heretofore to
wit on the first day of August in the year Eighteen hundred
and fifty One at and within the County of McHenry and State of
Illinois the said plaintiff was possessed as of his own demesne in
fee simple of a certain tract of land situate at and within
the said County and State and known as the mill lot of Hubbard
Addition to the Village of Algonquin according to the plat of said
Addition as recorded in the Recorder's Office of said County in
Book "B" of Records of Mortgages on page 183 being the same
mill lot described and conveyed by deed from Horace Hubbard
to Gadner Dexter recorded in said Recorder's Office in Vol. 1st
of Deeds on page 299 and the said plaintiff being then & there
possessed of said premises the said said defendant there afterwards
to wit on the day & year of foresaid entered into the said ^{described} premises
and from the time last of foresaid has unlawfully withheld & does
now unlawfully withhold from the said plaintiff the possession
of the said ^{premises} ^{to the demesne of the said} plaintiff the sum of One hundred dollars & therefore
he brings suit &c

Wm Sloan Plaintiff per

To Mr. Henry Petrie sir

you are hereby notified that the
declaration with a copy of which you are now herewith served
and to which copy this notice is subjoined will be filed in the circuit
court for the County of McHenry and State of Illinois on the Thursday
of the third week of the present term thereof A.D. 1857 being the
second day of October next and that upon filing the same
a rule will be entered requiring you to appear and plead

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To the said declaration within Twenty days after the entry of said rule and that if you neglect so to appear and plead. A judgment by default ^{will be entered} against you and the plaintiff will recover possession of the premises specified in the said declaration

Dated this 29th day of September AD 1857

Wm Sloan Plaintiff Person

State of Illinois

McHenry County

vs Henry County Circuit Court

September Term AD 1857

Wm Sloan

vs Ejectment

Henry Petrie

Henry M. Brink being duly sworn deposes & says that he did, on the first day October AD 1857 personally serve Henry Petrie the defendant in this suit who is the actual occupant of the premises for which this action is brought with a true copy of the declaration herewith annexed and also a true copy of the notice in writing to the said declaration subjoined and returns herewith annexed and further it is deponent with not

subscribed as soon as before me this second day of October AD 1857

H. M. Brink

L. W. Johnson

clerk

And upon the basis of the above declaration was the return of the Sheriff of McHenry Co which is in the words and figures following to wit

Served the within by delivering a copy of a written notice to the within named Henry Petrie the within being a true copy thereof

Oct 1st 1857

John Wink Sheriff

By W. M. Brink Deputy

1 Service	50
13 Miles	65
Per	10
	<u>125</u>

And whereas afterwards to wit on the 6th day of Oct
 there was filed in the Clerk's Office of the ^{in Henry} Henry County Circuit Court
 the following Plea which in the words of figures following to wit

Wm Sloan	{	Ejectment	In Henry County Circuit Court
vs			
Henry Petrie			
			January Term 1832

And now the said Henry Petrie by McElure
 & Murphy his attorney, comes and defends the wrong & injury when
 &c. And says that he is not guilty of the said supposed trespass
 and Ejectment above laid to his charge or of any part thereof in
 manner and form as the said Wm Sloan hath above thereof
 complained against him and of this he the said Petrie Petrie
 puts himself upon the Country &c

McElure & Murphy
 Atty for Deft

And whereas afterwards to wit on the 22^d day of I
 anuary AD 1832 there was filed in the Office of the Clerk of the
 in Henry County Circuit Court there was filed which was in
 the words of figures following to wit

Wm Sloan	{	Ejectment	In the Henry County Circuit Court
vs			
Henry Petrie			
			Jan. Term 1832

And now comes the Deft by McElure and
 Murphy his and defends the wrong & injury when &c And says
 that he is not guilty of unlawfully withholding the premises
 claimed by the Plaintiffs as alleged in the declaration
 and of this he puts himself upon the country &c

McElure & Murphy

and the Plaintiff doth the like

Wm Sloan

And whereas afterwards to wit on the 20th day of May 1852 the same being one of the days of the May Term of the said Hancock County Circuit Court and of the May Term thereof the following among other proceedings were had which are in the words of figures following to wit

Wm Sloan	{	Ejectment	This day comes the defendant by W. C. Clure his attorney and moves for a continuance the court being fully advised sustains said motion at defts cost of Term It is therefore considered by the court that the plaintiff have and recover from the defendant his costs of this Term expended and have execution therefor
Henry Petrie			

And afterwards to wit on the 21th day of December A.D. 1853 the same being one of the days of the November Term of said Hancock County Circuit Court for said year the following among other proceedings were had which are in the words of figures following to wit

William Sloan	{	for Ejectment	This cause having been previously submitted to the court for trial and having heard the proofs & allegations of the parties find the defendant guilty - the issues joined in favor of the plaintiff and that said plaintiff has a fee simple estate therein and that said plaintiff recover possession of the following premises
Henry Petrie			

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as described in the declaration to wit the mill Lot in Hubbard
addition to the village of Algonguin according to the plat
of said addition as recorded in the recorder's Office of said
county in Book B of record of mortgages on page 183 being
the same mill Lot described and conveyed by deed from Horace
Hubbard to Zadock Dexter recorded in said recorder's Office
as Lot 1 of deed on page 299. and that he have the People's
writ of possession awarded him commanding the sheriff to put
him in possession thereof and that the plaintiff have and
recover his costs against the defendant in this suit expended
and have Execution therefor thereupon comes the defendant by
Deromington his attorney and moves the court for a new trial
the court being fully advised orders that a new trial be
granted the costs having been paid

And afterwards to wit on the 4th day of March
AD 1833. the same being one of the days of the February Term of
said Hancock County Circuit court for said year the following among
other proceedings were had which are in the words of figures
following to wit

William Sloan

Henry Petrie

of Ejectionment

This day comes the plaintiff
by Plato his attorney and the defendant by
Jamesworth Ferguson his attorney. Waives a jury and submits
this cause to the court for Trial after hearing proofs and the
allegations of the parties the court finds the defendant ^{not} guilty.
It is therefore considered by the court that the defendant recover
of the Plaintiff his cost by him about this suit expended and
have Execution therefor

And afterwards to wit on the 9th
day of May AD 1833 it being one of the days of the

of May Term of said Howard County Circuit Court the following among other proceedings were had which are in the words and figures following to wit

William Sloan }
v } Ejectment
Henry Petrie } This day comes the plaintiff
by Plato his attorney and on his motion
the judgment of Last Term is set aside and a new trial awarded under the Statute cost having been paid

and afterwards to wit on the 11th of May 1833 the same being one of the days of the aforesaid May Term of said court the following among other proceedings were had which are in the words and figures following to wit

William Sloan }
v } Ejectment
Henry Petrie } This day comes the defendant
and by his attorney and moves to suppress the
deposition ^{filed} herein

And afterwards to wit on the 9th day of November 1833 the same being one of the days of November Term of said Howard County Circuit Court the following among other proceedings were had which are in the words and figures following to wit

William Sloan }
v } Ejectment
Henry Petrie } This day comes the defendant by James
Perryson his attorney and moves to suppress the deposition

of John B. B. The court being fully advised Orders the same
 suppressed to which ruling of the court the plaintiff his ^{attorney} ~~agent~~
 Excepts On Motion of defendant it is ordered that
 by the court that a jury come Whereupon came a jury of good
 and lawful men to wit" M. C. Mattison

Langdon Miller Daniel Hunt Jared Birby
 Edward W. Austin G. M. Woodbury Leroy Hall
 W. J. Moore J. C. Austin J. E. Amet
 Caleb Kibb Wm Lindley

being severally selected tried & sworn
 also come and after hearing the evidence and argument
 of counsel and instructions of court retire under charge
 of a sworn officer of this court to consider of their verdict
 and it is agreed between the parties that when they agree
 upon their verdict they may seal the same and meet the
 court to morrow morning

And afterwards to wit on the 10th Day of
 November AD 1833. the same being one of the days of the
 said November Term of said State county circuit court
 the following among other proceedings were had which are
 in the words & figures following to wit

William Sloan
 4
 Henry Petrie
 Ejectment

This day comes the parties by their
 attorneys and the jury heretofore empannelled herein also come
 and for a verdict upon their oaths say and the jury find the
 defendant not guilty. It is therefore considered by the
 court the defendant have and recover from the plaintiff
 his cost in this behalf expended and have execution
 therefor

and afterwards to wit on the 19th day November A.D. 1833 the same being one of the days of the aforesaid November of said Kane County circuit court the following among other proceedings were had which is in the words of figures following to wit

William Sloan (
 v
 Henry Petrie) for Ejectment -

This day comes on to be heard the Plaintiffs motion for a new trial the court being fully advised sustained the same at the plaintiffs cost of Term

and afterwards to wit on the 15th day of February 1834 the same being one of the days of the said Kane County circuit court of the February Term thereof A.D. 1834 the following among other proceedings were had which is in the words of figures following to wit

William Sloan (
 v
 Henry Petrie) for Ejectment -

This day comes the Parties to this suit by their respective attorneys and on motion of plaintiff it is ordered that a jury come whereupon come a jury of good & lawful men to wit of Anson Leonard Solomon Ellis jr. Harry Sirmels H.E. Stearns J. P. Farnald Alva Fuller John Legree James Dickson A. L. Kistio John H. Dewey George Stringer Lindorf Muntoon who being severally elected ~~Chickens~~ and sworn. After hearing the evidence for a verdict say upon their oaths say that the jury find the defendant Guilty. Thereupon comes the defendant by Jamesworth & Purgeson his attorneys and moves for a new Trial under the Statute upon an affidavit

the court sustains the motion and grants a new trial upon payment of costs—

and afterwards writ on the 8th day of May A.D. 1857 the same being one of the days of the said Kansas county circuit court of the May Term thereof 1857 the following among other proceedings were had which is in the words & figures following to wit

William Sloan
v
Henry Petrie } Ejectment

This cause continued at the defendants cost at until tomorrow morning

And afterwards writ on the 9th day of May 1857 the same being one of the days of the last aforesaid May Term of said Kansas county circuit court the following among other proceedings were had which is in the words & figures following to wit

William Sloan
v
Henry Petrie } Ejectment—

This cause continued ^{at defendants cost} until tomorrow morning

And afterwards writ on the 11th day of May 1857 the same being ^{of the days} one of the last aforesaid May Term of said Kansas county circuit court the following among other proceedings were had which are in the words & figures following to wit

William Sloan
v
Henry Petrie } Ejectment—

This day comes the parties to this writ and on motion of the plaintiff it is ordered that

a Jury come whereupon come a jury of good and Lawful men to wit Charles Seamans Parley Lee. Knight L. Gardner Marshall Clark Ferdinand Sheafner R. S. Sargent R. S. Sovereign S. H. Lord Phineas Stone Nathan Bond George H. French Isaac Stone who being severally selected tried and sworn also come and after hearing a portion of the evidence it is agreed between the parties that the jury may separate and meet the court to morrow morning

And afterwards to wit on the 12th day of May 1854 the same being one of the days of the aforesaid May Term of said State County Circuit court the following among other proceedings were had which are in the words of figures following to wit

William Sloan	}	Ejectment
Henry Petrie		

this day comes the parties to this suit and the by their attorneys and the jury heretofore impaneled herein also come and after hearing the balance of the testimony argument of counsel and instructions of the court acting under charge of a sworn officer of this court to consider of their verdict and subsequently return into court and for a verdict upon their oaths say me the jury find the defendant not Guilty and thereupon comes the plaintiff in person and by his attorneys and move the court for a new trial herein the court being fully advised overrules the same to which making the plaintiff excepts and prays an appeal to the Supreme court

It is therefore considered by the court that the defendant have and recover from the plaintiff his costs in this behalf expended and have execution therefor

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The United States of America

United States } To all to whom these Presents shall come,
to } Greeting. Whereas William Allen of Hamp-
shire County, Massachusetts, has deposited in
Certificate No. 7369 of the General Land Office, of the United States of
a certificate of the Register of the Land Office at
Chicago whereby it appears that full payment has been made
by the said William Allen according to the provisions of the act of
Congress of the 24th of April 1830, entitled "An Act ma-
king further provision for the sale of the Public Lands" for the
West Fraction of the North East Fractional Quarter and the
South East Fraction of the North West Fractional quarter of
Section Thirty four in Township Forty Three North of Range
Eight East of the District of Lands subject to sale at Chicago
Illinois containing One hundred and twenty eight acres and twenty
three hundredths of an acre according to the official plat of
the survey of the said Lands returned to the General Land Office
by the Surveyor General, which said tract has been purchased
by the said William Allen. We know Ye that the United
States of America, in consideration of the Premises, and in
conformity with the several acts of Congress, in such case
made and provided, Have given and granted and by these presents
do give and grant unto the said William Allen and to his heirs and
assigns the said tract above described, To Have and to Hold the same,
together with all the rights, privileges, immunities and appurte-
nances of whatsoever nature thereunto belonging unto the said
William Allen, and to his heirs and assigns forever. The testimony
whereof I John Taylor President of the United States of America, have
caused these letters to be made Patent and the Seal of the General Land
Office to be hereunto affixed. Given under my hand at the City
of Washington, the Tenth day of March in the year of our
Lord one thousand eight hundred and fifty four, three
and of the Independence of the United States the sixty fourth.

By the President John Tyler
 By R. Tyler Sec'y
 Records Vol 13 Page 216
Williamson Records of the General Land Office

To all People to whom these Presents shall come bearing
 Witness that I William Allen of Northampton
 Horace Hubbard in the County of Hampshire, and Commonwealth of Mas-
 sachusetts For and in consideration of the sum of three
 Hundred and twenty seven Dollars current money of the Commonwealth
 of said, to me in hand paid, before the sealing hereof, by Horace
 Hubbard of the County of McHenry and State of Illinois the receipt
 whereof I do hereby acknowledge and am fully satisfied, contented &
 paid Nam given, granted, bargained, sold, aliened, released, conveyed
 and confirmed, and by these presents do fully, clearly and absolutely
 give, grant, bargain, sell, alien, release, convey and confirm unto
 him, the said Horace Hubbard and to his heirs and assigns forever
 The following described tracts of land, lying in McHenry Coun-
 ty and State of Illinois, namely The West Fraction of the North East
 fractional Quarter, and the South East Fraction of the North West
 fractional Quarter of Section Thirty, Town in Township Forty three
 North, and Range Eight, East of the Third Meridian, making One
 Hundred and twenty eight acres and $\frac{23}{100}$ of an acre, more or less.
 To Have and to Hold the before granted premises, with the ap-
 purtenances and privileges therunto belonging, to him the said
 Horace Hubbard and to his heirs and assigns To Have and their
 own proper use, benefit and behoof, forever more, And I the said
 William Allen, for myself, my heirs, executors and administrators
 as covenants, promises and grants unto and with the said
 Horace Hubbard and his heirs and assigns forever That before
 the sealing hereof I am the true, sole, proper and lawful owner
 and possessor of the before granted premises with the appurtenan-
 ces And have in myself, good right, full power and lawful

authority to give, grant bargain, sell, alien, release, convey & confirm the same as aforesaid; and that free and clear, and fully and clearly, executed, acquitted and discharged of and from all former and other gifts, grants, bargains, sales, leases, mortgages, wills, entails, jointures, doweries, thirds, executions and incumbrances whatsoever.

And I furthermore, I the said William Allen for myself my heirs, executors and administrators, do hereby covenant, promise, and engage, the before granted premises with the appurtenances unto him the said Isaac Nisbet and his heirs and assigns forever, to warrant, secure and defend against the lawful claims and demands of any person or persons whatsoever. In witness whereof the said William Allen, together with my wife, Sarah, J. Allen who hereby signs this deed in token of her release of all rights of dower in and to the above described premises have hereunto set my hand and seal this Thirtieth day of November in the year of our Lord one thousand eight hundred and forty four.

Signed, sealed & delivered in presence of

Samuel Wells. William Allen Junr & Wm. Allen Esq

Sarah J. Allen Esq

Nampshire SS - Nov 13. 1854 - Then William and Sarah, J.

Allen above named, personally appeared and acknowledged this instrument to be their deed, before me.

S. Wells - Justice of the Peace.

Commonwealth of Massachusetts

Nampshire ss. I, Geo B Morris Clerk of the Supreme Judicial Court of the Commonwealth for the County of Hampshire do certify, that the foregoing deed is executed and acknowledged in conformity with the laws of this Commonwealth.

In testimony whereof I have hereunto set my hand and seal of said Supreme Court for said Commonwealth this Twenty-fifth day of April in the year of our Lord one thousand eight hundred and fifty three.

Geo B Morris

Beatsy
C. C.

Clerk.

authority to give, grant bargain, sell, alien, release, convey & confirm the same as aforesaid; and that free and clear, and fully and clearly, executed, acquitted and discharged of and from all former and other gifts, grants, bargains, sales, leases, mortgages, wills, entails, jointures, doweries, thirds, reversion and incumbrances whatsoever.

And I furthermore, I the said William Allen for myself my heirs, executors and administrators, do hereby covenant, promise, and engage, the before granted premises with the appurtenances unto him the said Isaac Nubbard and his heirs and assigns forever, to warrant, secure and defend against the lawful claims and demands of any person or persons whatsoever. In witness whereof I the said William Allen, together with my wife, Sarah, J. Allen who hereby signs this deed in token of her release of all rights of dower in and to the above described premises have hereunto set my hand and seal this Thirtieth day of November in the year of our Lord one thousand eight hundred and forty four.

Signed, sealed & delivered in presence of

Samuel Wells William Allen Junr & Wm Allen Esq

Sarah J. Allen Esq

Hampshire SS - Nov 13. 1854. Then William and Sarah J.

Allen above named, personally appeared and acknowledged this instrument to be their deed, before me

S. Wells - Justice of the Peace

Commonwealth of Massachusetts

Hampshire Co. I, Geo R Morris Clerk of the Supreme Judicial Court of the Commonwealth for the County of Hampshire do certify, that the foregoing deed is executed and acknowledged in conformity with the laws of this Commonwealth.

In testimony whereof I have hereunto set my hand and seal of said Supreme Court for said Commonwealth this Twenty fifth day of April in the year of our Lord one thousand eight hundred and fifty three.

Geo R Morris

Esq

Clerk

Commonwealth of Massachusetts
 Hampshire Co. I Samuel Wells, Clerk of the Judicial
 Courts of the Commonwealth, for the County of
 Hampshire, do hereby certify that Samuel Wells Esquire whose
 signature is affixed to the certificate on the paper here annexed
 was at the date thereof one of the Justices of the Peace within
 and for said County, duly commissioned and acting under the au-
 thority of this Commonwealth, and that full faith and credit is
 accorded to his acts and attestations done in that
 capacity; and that I am acquainted with the hand writing of the said
 Samuel Wells and believe his signature to said certificate is genu-
 ine, also that the deed annexed is duly executed and acknowledged
 according to the laws of this Commonwealth.

In testimony whereof I have hereunto set my hand and affixed
 the seal of the Supreme Judicial Court for said Commonwealth
 this thirtieth day of November in the year of our Lord one
 Thousand eight hundred and forty four.

[Signature]

S. Wells Clerk

And on the back of the above Deed were the following en-
 dorsements, to wit: "This instrument was filed April 16th 1853
 and duly recorded in Book K of Deeds on Page 121
 O. F. Vanoring, C. L. Recorder." "Filed May 2^d 1853 at 8
 o'clock & Recorded in B. K. of Deeds May 2^d 1853 on Page
 122 J. M. Johnson, Clerk." & "Filed and Recorded
 May 2^d 1853 on the Margin of Page 122 in Book K of Deeds
 J. M. Johnson Recorder in Henry Co. Dec. " " &

This Indenture, made this Twentieth day of April in
 the year of our Lord one Thousand eight hundred
 & forty four, between Horace Hubbard of the County
 of Westchester and State of New York of the first part and George Foster
 of the County of Jefferson, State of New York of the second
 part Witnesseth that the said party of the first part for

and in the consideration of the sum of one thousand dollars to me in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part for now released and discharged therefrom has granted, bargained, sold, remitted, released, aliased and confirmed, and by these presents do grant bargain, sell, remise, release, alias and confirm unto the said party of the second part and to his heirs and assigns forever. All of the following described premises, situated lying and being in the County of Mackinac and State of Illinois to wit to wit. Lot No. 3 Block No. Three in said Hubbard's Addition to Algonquin in said County. Also what is termed the Mill lot in said Hubbard's Addition to Algonquin described as follows. Commencing at the South West Corner of the East buttment of the bridge across Fox River in the said village of Algonquin running thence Easterly on the South line of the Road, running thence Easterly from the East end of said bridge fifty (50) feet, which Road runs South $52\frac{1}{2}$ East thence South $30\frac{3}{4}$ West one hundred and sixteen (116) feet, thence North $52\frac{1}{2}$ West parallel with said Road to the water line of said Fox River, thence on the line of said Fox River Northerly one hundred and sixteen (116) feet to the place of beginning. And that there shall forever be a Public Highway or Street five Rods wide on the East side and adjoining the above described Mill lot and from said Public Highway or Street Southerly, an open public cart road or street running Southerly, to intersect the West end of Jackson Street in said Hubbard's Addition, and and that forever there shall be ten feet wide next South of the South line of the above described Mill lot, unoccupied in any manner whatever. Said Hubbard forever reserves any growth of the Water of said River to be used on the East side of said ^{dam} River which shall be at any time hereafter ~~made~~ made by damming said Fox River three feet or that may hereafter be made by enlarging said dam. The raising or keeping up of said Dam to be at all times at the option of said City, his administrators

or assigns with the privilege of conveying said water across the above described mill lot under the direction of the owner or owners thereof in a flume ten feet wide and four feet high which flume is to be constructed by said Dexter in a reasonable time after said Hubbard may want to make use of the above mentioned water. Also the above mentioned Hubbard his heirs or assigns, is forever to be to the one half of the expenses of keeping in repair the best half of said dam after he shall have commenced using said water. — Also all damages that I may in any wise sustain in consequence of raising the water of said Fox River by said Dexter his heirs or assigns.

Together with all and singular the hereditaments and appurtenances therunto belonging or in any wise appertaining; and the reversion and remainder, remainder and remainders, rents, issues and profits thereof and all the estate, right, title, interest, claim or demand whatsoever of the said party of the first part either in law or equity of in and to the above bargained premises with the hereditaments and appurtenances. Do Give and Do Hold the said premises above bargained and described with the appurtenances unto the said party of the second part his heirs and assigns forever And the said party of the first part for himself his heirs, executors and administrators do covenant bargain and agree to and with the said party of the second part his heirs and assigns that at the time of the executing and delivery of these Presents, the said party of the first part was well seized of the premises above conveyed as of a good and perfect absolute and indefeasible estate of inheritance in the law in fee simple, and has good right, full power and lawful authority to grant bargain, sell and convey the same in manner and form aforesaid, and that the same are free and clear of all former and other grants, bargains, sales, liens, judgments, taxes, appurtenances and incumbrances of what kind or nature soever, and the above bargained premises in the quiet and peaceable possession of the said party of the second part his heirs and assigns against all and every

person or persons lawfully claiming or to claim the whole or any part thereof shall and will Remain and forever Defend.

In witness whereof, the said party of the first part hereunto set his hand and seal the day and year first above written.

Sealed and delivered

In presence of

Alexander Dawson

William Jackson

Norace Hubbard

Sarah A. Hubbard



Between the 25 & 26 line from the top the words "said River to be used" were inserted before signing. The agreement on the back of this instrument shall be considered a part of the deed, which agreement is in regard to the dam mentioned above.

State of Illinois ss

McHenry County ss

I, William Jackson a Justice of the Peace in and for the said County in the State aforesaid, do hereby certify that Norace Hubbard personally known to me as the same person whose name is subscribed to the annexed deed, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth. And the said Sarah a wife of the said Norace Hubbard having been by me examined separately and apart and out of the hearing of her husband, and the contents and meaning of the said instrument of writing having been by me fully made known and explained to her, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and seal, this second day of May A.D. 1850

William Jackson

State of Illinois ss I, the undersigned Clerk of the Circuit Court of McHenry County and ex officio Recorder in and for the said County and State aforesaid do hereby certify that there are no liens upon the Real Estate described in the within Deed as against Norace Hubbard or Grace Dexter by judgment

or otherwise in this Office.

Witness Joel A. Johnson, Clerk of our said Court
and the Seal thereof at Woodstock in said County this 21st
day of July A.D. 1850.

Joel A. Johnson, Clerk
And on the back of said Deed was the following agreement, to wit:
April 24th 1850.

It is mutually agreed by and between the parties to
the within Deed that in case either the parties shall at any time fail
to keep in repair his proportion of the dam mentioned within in a
reasonable time after the same shall have become damaged or out
of repair then either party shall have the privilege of replacing or re-
pairing the same and the party who has been to the expense of re-
pairing or replacing said dam or any part thereof shall have the
use of all the water of said River belonging to either party their
kind or assigns until the party who fails to repair his part
shall have paid to the party who has done the repairing or re-
placing with the interest thereon at six per cent per annum.

State of Illinois, ss. I, Erno. McSmith, Clerk of the County
Kane County, ss. Court of said County, do hereby certify that
William Jackson Requin whose name is subscribed
to the certificate of acknowledgment of the within Deed was
at the time of taking such acknowledgment an acting Justice
of the Peace in and for said County, duly commissioned and sworn
and duly authorized to take such acknowledgment and that I
am well acquainted with the handwriting of said Jackson and he-
fore his signature to said certificate of acknowledgment to
be genuine. In Witness whereof I have hereunto set my hand
and affixed the said Seal of Court at Woodstock in said County
this 3rd day of December A.D. 1853.

Erno. McSmith
Clerk

Erno. McSmith, Clerk
And on the back of said Deed was the

following Indorsement, to wit:

"Filed May 2^d 1850 at 1 P.M. & Recorded July 1st 1850
in Vol. One Pages 299. 300 & 301

J. H. Johnson Clerk"

This Indenture Made this nineteenth day of June
in the year of our Lord one thousand eight hundred and fifty
between James Dyer to John Bithorn James Dyer and Adeline
William Sloan's Re Dyer his wife of the Town of Hineson in
the County of Jefferson and State of ~~Missouri~~ ^{New York}
parties of the first part and William Sloan of the Village
of Woodstock in the County of Mc Henry and State of Illinois
party of the ^{second} part Witnesseth. That the said parties of the
first part for and in consideration of the sum of Three Thousand
Dollars to the said parties of the first part in hand paid by
the said party of the second part the receipt whereof is hereby
confessed and acknowledged have remised released conveyed and
quit claimed and by these presents do remise release con-
vey and quit claim unto the said party of the second part his
heirs and assigns forever—

All the right title interest claim and demand which the said
parties of the first part have in and to the following described lot
a parcel of Land situate lying and being in the County of Mc Henry
and State of Illinois to wit The Lot in Hubbard's Addition to the
Village of Algonquin known as the Mill Lot upon which a
Flouring Mill is now standing together with said Mill. Also lot
No Three in Block A Three in said Addition Also the water
power of Fox River at said Algonquin being the same premises
rights and privileges conveyed to said party of the first part by Deed
from Isaac Hubbard of said Mc Henry County recorded in the
Recorder's Office of said County in Vol 1st of Records of Deeds on
Pages 299. 300 & 301 to which reference may be had for a more
full description Also the following described lots on the

West side of Fox River in the original Village of Algonquin, viz. Block N^o Ten, Lot N^o Three in Block N^o Eleven, Lot N^o Six in Block N^o Three, and all Lots in said village or addition ~~land~~ ^{stretching or adjoining on or to said Fox River, and the water power of Fox River at said Algonquin, and the right to improve or increase the same and to overflow for that purpose the lands lying in or above said Algonquin and said Addition, and all contracts, writings and agreements, made by or in the name of said Zadoc Dexter, with any person or persons in relation to said water power or in relation to the using or improving thereof. To Have and To Hold the same together with all and singular the appurtenances and privileges thereunto belonging or in any wise therunto appertaining, and all the estate, right, title, interest and claim whatsoever, of the said parties of the first part within in Law or Equity, to the only proper use, benefit and behoof, of the said party of the second part his heirs and assigns forever.}

In witness whereof The said parties of the first part have hereunto set their hands and seals the day and year first above written.

Sealed and delivered
In presence of 8

Zadoc Dexter Esq^r
Adeline R. Dexter Esq^d

State of New York ss. I Charles W. Rogers one of the Justices of the Peace in and for the said County, in the State aforesaid, do hereby certify, that Zadoc Dexter & Adeline R. Dexter his wife, who are personally known to me as the real persons whose names are subscribed to the annexed and appeared before me this day in person and acknowledged and acknowledged that they executed and delivered the said deed as their free and voluntary act, for the uses and purposes therein set forth. And the said Adeline R. Dexter wife of the said Zadoc Dexter having been by me examined separately and apart and out of hearing of her husband and the contents and meaning of the said deed having been by me made known and fully explained to her she acknowledged that

West side of Fox River in the original Village of Algonquin, viz. Block No. Ten, Lot No. Three in Block No. Eleven, Lot No. Six in Block No. Three, and all Lots in said village or addition touching or adjoining on or to said Fox River, and the water power of Fox River at said Algonquin, and the right to improve or increase the same and to overflow for that purpose the lands lying in or above said Algonquin and said Addition, and all contracts, writings and agreements, made by or in the names of said Zadoc Dexter, with any person or persons in relation to said water power, or in relation to the using or improving thereof. To Have and To Hold the same together with all and singular the appurtenances and privileges thereunto belonging or in any wise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever of the said parties of the first part within in Law or Equity, to the only proper use, benefit and behoof of the said party of the second part his heirs and assigns forever.

In witness whereof The said parties of the first part have hereunto set their hands and seals the day and year first above written.

Sealed and delivered
in presence of 8

Zadoc Dexter Esq
Adeline R. Dexter Esq

State of New York ss. I Charles W. Rogers one of the Justices of the Peace in and for the said County, in the State aforesaid, do hereby certify, that Zadoc Dexter Adeline R. Dexter his wife, who are personally known to me as the real persons whose names are subscribed to the annexed and appeared before me this day in person and acknowledged and acknowledged that they executed and delivered the said deed as their free and voluntary act, for the uses and purposes therein set forth. And the said Adeline R. Dexter wife of the said Zadoc Dexter having been by me examined separately and apart and out of hearing of her husband and the contents and meaning of the said deed having been by me made known and fully explained to her she acknowledged that

she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned without compulsion of her said husband and that she did not wish to retract the same

Given under my hand and seal this nineteenth day of June in the year of our Lord one thousand eight hundred and fifty one

Chas W Rogers Esq

State of New York

Justice of the Peace.

County of Jefferson I Isaac Munson Clerk of the said County

of Jefferson do hereby certify, that Charles W. Rogers whose signature appears to the certificate of acknowledgment of the within deed was at the time of taking said acknowledgment a Justice of the Peace duly commissioned, sworn, and acting in and for said County of Jefferson and fully authorized to take such acknowledgment and that full credit should be given to all his acts as such Justice, and that I am acquainted with the handwriting of such Justice and believe the signature to such certificate of acknowledgment to be the proper handwriting of said Rogers as such Justice, and I further certify that the within deed is executed and acknowledged in due conformity with the laws of this State.

Witness my hand and the seal of said County at Watertown this 20th day of June A.D. 1857.

Isaac Munson Clerk

State of New York I W Barron Williams Clerk of said

Monroe County and of all the Courts of Record in said County certify that the within Deed is executed and acknowledged according to the laws of this State.

In testimony whereof I have hereunto set my hand and affixed the seal of said County and of the several Courts therein the twenty seventh day of April 1852.

W Barron Williams

Clerk of the County of Monroe
and the Courts of Record therein.

And in the back of said Deed was the following

endorsements to wit: "Filed May 2^d 1853 at 8 Am. Re-
corded May 2^d 1853 in Vol 3 Pages 240 J.H. Johnson, Clerk."
"Filed July 1st 1857 at 8 Am. & Recorded Sept 29th 1857
in Vol 3 Pages 239 & 240 J.H. Johnson, Clerk."

The Plaintiff also introduced and read
to the jury after proving the signature of Alfred Cowles. The cer-
tificate of Alfred Cowles register of the United States Land
Office at Chicago Ills. dated Feb'y 24th 1853. which is as follows

U.S. Land Office Chicago Ills
February 24th 1853

I Alfred Cowles Register of the Land Office at Chicago Illinois
do hereby certify that on the twenty third day of May A.D. 1840
Thomas Plunk, of McHenry county State of Illinois purchased
from the United States according to Law as appears from the records
at this Office the "North west fraction of North west 1/4 of sec
no" thirty four and on the 29th day of September of the year last
mentioned William Allen of Hampshire Co. Massachusetts purchased
of the United States according to Law as appears from the
records of this Office the South East Quarter fraction of North
West 1/4 of the above section all in Township no forty three
North Range Eight East of the third principal Meridian
and containing — acres according to the United States survey
for which he has paid at the rate of One Dollar & Twenty five
cents per acre and that the last described tract is the only tract
or portion of said quarter section lying East of Fox River
as appears by the plats of this Office

Alfred Cowles Register

In the introduction of which certificate the said defendant
by his counsel objected which objection was overruled
by the court and defendant except to such ruling at the time

The Plaintiff also introduced as a witness John Brown who being duly sworn testified that in the year 1847 or 1848 he being then Surveyor of McHenry County Illinois laid out and surveyed Hubbard's addition to the village of Algonquin in said County of McHenry for Horace Hubbard of said County and that he surveyed out the mill lot in said addition and said mill lot is situated on the East side of Fox River according to the best recollection of this witness and on the South East fraction of the North West fractional quarter of Section thirty four of Township forty three of Range Eight East of the third Principal Meridian in said County and that the defendant was before on and after the first day of October A.D. 1857 in possession of said mill lot and that there was a mill upon said lot. On cross Examination witness stated that the mill lot was north of the center of that quarter section and that fractions were designated by quarter section lines and the river.

The Plaintiff then rested his case and the Defendant produced the following testimony to wit:

Charles Tallentire being duly sworn testified to the court in relation to the contract next hereinafter contained that he (Witness) as the agent of Zadock Dexter Executed said contract. that the contract was brought to the witness by Alexander Dawson and the defendant. ^{orally} drawn up that Dawson told the witness that there was a power of Attorney from said Dexter to the witness authorizing him to Execute the contract and according to the witness best recollection said defendant he ^{also} had seen it on the records of McHenry County. Dawson & Defendant were not together when they told this and the witness would not have Executed had he not been so informed and supposed to have authority to do so. that the next fall the witness saw said Dexter and told him about the contract. and told him all he had done and Dexter told him it was right and to go on.

Mill on the
East.

X

And receive the payments And to keep an account of the them And the contract was also signed by the defendant and he received the money endorsed on the contract and retained it for money he had advanced to Larson in improving the mill on the premises in question. of Dexter and informant Dexter what he had done with the money. And Dexter said it was right - the defendant also after proving the same showed to the Court the notice hereinafter mentioned. And thereupon the defendant offered the following contract in Evidence to wit.

Articles of Agreement made this third day of May in the year of our Lord One Thousand Eight Hundred and fifty (1850) Between Zadoc Dexter of the County of Jefferson and State of New York of the first part and Henry Petrie of the County of McHenry and State of Illinois of the second part. It is covenanted that - that if the party of the second part shall first make the payments - and perform the covenants hereinafter mentioned on his part to be made and performed the said party of the first part hereby covenants and agrees to convey and assure to the party of the second part in a good and sufficient quit claim deed the following described ^{property} of all my right title and interest in and to the ~~property~~ lands Water and Water Power contained in a certain deed from Horace Hubbard and wife of the County of McHenry and State of Illinois to Zadoc Dexter of the County of Jefferson and State of New York dated on the 20th day of April A.D. 1850 and left for Record in the Recorder's Office the 3^d day of May A.D. 1850 at 4 P.M. for a more full description of the above mentioned property see the above mentioned deed - and the said party of the second part hereby covenants and agrees to pay to the said party of the first part at the office of Charles Ballenshaw in the City of Chicago or any other agent that - the said party of the first part may direct in said

Agree A

City the sum of Two Thousand Nine hundred Dollars (\$2900) as follows with annual interest thereon the sum of Forty 40. Dollars in hand paid the receipt whereof is hereby acknowledged the sum of Four hundred and sixty (\$460) Dollars on or before the first day of July A.D. 1850 the sum of Eight hundred (\$800) Dollars on or before the first day of July A.D. 1851 the sum of Eight hundred (\$800) Dollars on or before the first day of July A.D. 1852 the sum of Eight hundred 800 Dollars on or before the first day of July A.D. 1853 and pay all taxes assessments or impositions that may be legally levied or imposed upon said property and in case of failure of the said party of the second part to make to make either of the payments or perform any of the covenants on his part. The party of the first part shall have the right to declare this contract forfeited and determined and receive and take possession and have and retain all payments that shall have been made on this contract. It is mutually agreed that all covenants and agreements contained herein shall extend to the obligation upon the administrators and assigns of the respective parties. In witness whereof the parties to these presents have hereunto set their hands and seals the day and year above written

Adm^r Dexter
By L. Gallenber his attorney
in fact. Henry Peter

\$300.00 Chicago 9th July 1835
Received on the above three hundred Dollars

L. Gallenber att for
Dexter in fact

And upon the back of said contract the following assignment which is in the words of figures following to wit

right to declare
contract forfeited &c

X

binding upon
assignees &c

X

Receipt

X

For a valuable consideration to me in hand paid the receipt-
whereof is hereby acknowledged I assign all my right title
and Interest to the within contract to Stephen L. Petrie of
Cleveland Ohio

Woodstock 30th July 1850

Henry Petrie

To the introduction of which contract
the plaintiff by his counsel objected and the court overruled
such objection and admitted said contract in evidence to the
Overruling of which objection and to the admission of said
contract in Evidence the said plaintiff by his counsel excepted
at the time

Said Witness L. Tollenhue further testified
to the court that the writing was acquainted with the hand
writing of Gadre Dexter and of William Sloan and had seen
them write and that the signatures to the notice next hereinafter
contained was in their proper hand writing and thereupon
the defendant offered the writing or notice in evidence to wit

To Messrs. Henry Petrie of McHenry County
Illinois

See you are hereby required
to make payment of all money now due on contract signed
by us dated May 3. 1850 in relation to the sale of mill property
at Algonquin and pay before the hour of Ten O'clock And
July 9th 1851 to Mr Charles Tollenhue of Chicago all who
is authorized to receive for and receive the money. if the
money is not then paid the contract will be declared for-
feited. Dated this first day of July A.D. 1851

Gadre Dexter
Wm Sloan

To the introduction of which notice as evidence
to the Jury the plaintiff objected and the court overruled

Notice
X

such objections and admitted such Notice in Evidence
to the overruling of which objection and admitting said
Notice in Evidence the plaintiff at the time accepted
the said entry, then testified to the court
and jury as follows:

On the Evening of July 8th 1857 the
defendant came to my Store in Chicago and said that he had
had notice from Dexter and Sloan to pay me the money due
on the mill contract the next day by 10 O'clock P. M. and
that he was coming at that time the next day to make the paymen-
ent to me on the Dexter contract for the mill property. I
told him I was not authorized to receive any money, and I
could not take it as I had been directed by Dexter not to
receive any more money on the contract on his account.
defendant said he did not care he should tender me
the money in accordance with the notice after the 8th of
July 1857. I never received any authority to receive money
on the contract. The defendant went into possession of the mill
under the contract - about the time of the date of the contract
he also testified that he had never been authorized by
plaintiff to receive money on the contract so far as the present

Petitioner went
into possession
under contract

+

Croft Examined by Plaintiff

On the 9th day of July 1857 the defendant came to my
store between 11 & 12 O'clock and said he had ^{been} come in to
pay me some money. I think he said some Eleven or Twelve
hundred dollars. I told him I should like to see it. I would take
it now. He said I was too late I could not have it, on that
morning the 9th I went from my store about 9th clock
I went onto South Water Street and just as I got my
business done a heavy shower came up and detained me so
that I did not get back to my store under an hour & a half
I did not go away to avoid receiving the money.

Petitioner said
it was too late

+

I do not know when the defendant received notice to pay the money to me but the 8th I told the defendant I had received notice from Dexter not to receive any money on the contract I received a letter from Dexter sometime before the first of July 1851 not to receive any more money on the contract on his account as he had said to plaintiff plaintiff brought me the letter from Dexter I informed him of the contents of the same at the time he brought it I do not know that defendant showed me the ^{notice} ~~letter~~ he had received to pay the money but he told me the contents ^{of it} on the 8th the plaintiff never told me not to receive any money on the contract I went up to the mill once to get some money on the contract of the defendant on this contract it was in April or May 1851 he ^{the defendant refused to make any payment} seemed inclined not to pay any more then and he said he should not pay any more on the contract. Often when the defendant has been in my store we have spoken about of the contract and after the \$300 was paid he said he should not pay any more on the contract but this was in the spring of 1851 or prior thereto

Re. Examined by defendant

The defendant said that he would not pay any more money on the contract. Dawson had not done as he agreed. Dawson had no authority to receive any money Dawson has acted as my agent on the on the 9th day of July the defendant said he had been in to pay the amount due on the contract when I refused to him that I should receive it. I was not laughing I was serious & meant what I said

The Witness being Examined by the plaintiff testified that he had seen the defendant write and knew his hand writing and that the agreement on the contract from Defendant to L. L. Petrie is in the hand writing of the defendant

and also that the following notice is in his hand writing 'Smit'

Mrs. Wm Sloan

Sir I received recently a notice from you yesterday requiring me to make payment in full on a ~~contract~~ certain contract made between Gaboelbert and myself the 3^d day of May, 1850 in regard to certain mill property - at Algonquin I hereby wish to inform you that I am not the owner of said property or contract - but that Stephen L. Petrie of Cleveland & others is

Henry Petrie

The defendant also introduced and read to the jury the following deposition to wit

Henry Petrie Sir

Please take notice that on the fourteenth day of January AD 1853 at 10 o'clock of the forenoon I shall proceed to take the deposition of Charles Tollenbee and Halland Richmond at the Office of the county judge of Cook County Illinois in the city of Chicago before said judge the Hon. H. L. Rucker acting as justice of the peace. Said deposition to be used in a certain suit now pending in the Circuit of McHenry County Illinois wherein Henry Petrie is plaintiff and I am defendant. You can attend at the taking of said deposition if you deem proper

Wm Sloan

To J. D. Murphy Esq
Atty at Law

Deposition of Halland W Richmond
Who being duly cautioned & sworn deposes & says &c
Interrogatory by defendant in person

are you acquainted with the parties to this suit

Answer I am

2^d Interrog y by same. Where do you reside

Answer at Chicago in Cook County

3^d Interrog y by same What do you know about Mr. Petrie
the Plaintiff making a tender of money
to Charles Tollenbee at my store in Chicago on the 9th July 1857
Question Objected to by Pliffs atty

Answer The date I am not positive about
but it was in the summer of 1857. I went with Mr. Petrie to
Mr. Tollenbee's Office or store about ten o'clock in the forenoon
he had with him Richmond & Co's checks on her Smith & Co
I think for an amount which he said was due Mr. Tollenbee as
agent for some one it was on a mail contract. Mr. Tollenbee
was not at his Office. He walked to the Tremont House and
returned to Mr. Tollenbee's after a few moments. He was still
not in. I should think from fifteen minutes to half an hour
had elapsed between the time of calling

4th Interrog y by same. What money had Mr. Petrie at
the time you went with him to Mr. Tollenbee's and for what
purpose did you go with him

Question Objected to by Pliffs atty

Answer No money that I know of. I think he asked me to
go along along with him and show him the Office and deliver
the tender this is my impression of what I saw then for

5th Interrogatory by same What money did Mr Petrie
tell you he had with him at the time
Question objected to by plaintiff

Answer I don't recollect of his telling me that he had any

6th Interrogatory by same What was done with Richmond's
check.
Question Objected to by plaintiff's atty

Answer It was returned to them and it is my impression that it was destroyed

7th Interrogatory by same Who wrote or filled up the checks
for Mr. Petrie and to whom was it delivered when it was
returned

Answer I cannot state it is my impression that
Allen Richmond filled it up he was the Boats Keeper
at Richmond's levee at the time. I cannot state to whom
it was returned

8th Interrogatory by same. What do you know of Mr. Petrie's
tendering or offering to tender or having money to tender to
Mr. Tallentree about or on the 9th day of July 1857 and
of Mr Tallentree refusing to receive it

Answer I know nothing more specifically about
the date nor about the tendering or having money to
tender than I have stated. I did not see them together
at all

6th Examination

1st Interrogatory by plaintiff counsel

What was the amount of Richmond's check which Mr Petrie had on the occasion you have now mentioned

Answer I cannot state the exact amount my impression is that it was between \$10,000 & \$15,000

2nd Interrogatory by same Was the check good for the money it called for and Equivalent in value to that amount

Answer Richmond's checks were always good for the amounts they called for this check was good for its face in currency

3rd Interrogatory by same Did not Mr. Petrie make an arrangement with Richmond & Co. to borrow an amount to make this tender and receive this check as money
Question Objected to by Petff

Answer He did

Direct Examⁿ resumed
9th Interrogatory by plaintiff What was the value of currency at that time as compared with specie

Answer I should think it was about 1 per cent less

10th Interrogatory by same What did Mr Petrie say he wanted to do with the check at the time he borrowed the check

Answer He wanted to make a tender to Mr Tollenbee

11th Interrog, by same

Did you know or do you know
that Richmond also had money in the hands of Geo Smith also
to pay the amount of said check and would Geo Smith also
have paid the check if the amount was not in deposit with them
Question objected to by platts atty

Answer I don't know whether the money
was there or not, but think that Geo. Smith also would
have paid it whether there was money there or not
Sworn to & subscribed { W. M. Richmond
before me this 14th day of January
1853. H. L. Rucker }
County Judge

State of Illinois
County of Cook
I Henry L. Rucker County Judge
and ex Officio a Justice of the Peace in and for
said county do hereby certify that under the notice hereto
annexed I proceeded at the time and place therein mentioned
and as set forth in the caption foregoing to take the deposition
of Charles Dallenbach and Halland Mc Richmond which are
set forth above. that said deposition were reduced to writing
by me in part and in part by my clerk that said witness
was by me sworn in due form of Law as each & severally
subscribed their deposition in my presence

Given under my hand this 14 day of January 1853

H. L. Rucker
County Judge

Dec.

Dep 25 folio

312 1/2

am + leo

50

Spa service

40 1/2
\$483.5 paid by Dep-

The defendant also introduced and read to the jury the following deposition:

The defendant here rested his case and the plaintiff offered in evidence the said last herein contained notice. To the admission of which notice as evidence the defendant by his counsel objected and the court overruled the objection and admitted the notice in evidence to which ruling the defendant excepted at the time.

The plaintiff then asked the court to instruct the jury as follows:

1st That the evidence produced by the plaintiff establishes in him the legal title and the right of possession of the premises described in the declaration and the defendant has introduced no evidence sufficient to defeat the plaintiff's title or right of possession and it is therefore the duty of the jury under the law to find for the plaintiff.

2^d That unless the jury believe from the evidence that the defendant on or before the 9th day of July 1857 actually produced and offered to pay to Charles Tallentree at his Office in Chicago all the money due on the contract given in evidence and described in the notice from Dexter & Sloan to Petrie, then there has been no legal tender nor payment under said notice and upon that question the jury must find for the plaintiff.

3^d That if the jury believe from the evidence that the defendant had in his possession a statement in writing signed by Zadock Dexter and Wm Sloan giving Charles Tallentree full power to receive money on the contract in evidence, then the defendant should have relied upon such writing and not upon the statement of Charles Tallentree.

Refused

4th That - in order to support or establish a legal tender the defendant must prove that the money was actually produced to the creditor or his agent. It must be in sight and capable of immediate delivery. And unless the defendant has proved in this case such a state of facts and also that the money has been kept ready at any and all times since such tender subject to the plaintiff's order and control then the Law is for the plaintiff upon the question of tender.

Refused

5th That - under the evidence of the present case it was not necessary for the plaintiff or his grantors to give the defendant any notice to surrender or quit said premises in question before the commencement of this suit.

Refused

6th That if the jury find from the evidence that the defendant previous to the commencement of this suit had sold and transferred all his right title claim or interest of any he had to Stephen L. Petrie in and to the contract signed by said defendant and Zacher Sexton and dated the 3 day of May 1850 then in that case the defendant would have no right by law to hold the possession of said premises by virtue of said contract - unless the defendant has ~~produced~~ proved he had the possession under Stephen L. Petrie.

Refused

7th That if the defendant seeks to claim any right to the mile in controversy under the contract in evidence the defendant must prove that the terms and conditions of said contract has been complied with upon his part - or prove articles of the money that was due (if any) upon said contract.

8

That if the defendant seeks to claim any

right to the mill in controversy under the notice given given in evidence signed by Gadock Dexter & W. Plow then the defendant must prove that he paid the money according to the direction of said notice or that he tendered the money according to the direction of said notice

9. Unless the jury believe from the evidence that at the commencement of this suit all the payments due under the contract between Gadock Dexter by C. Tollenstee his attorney had been paid then the defendants cannot claim under said contract any right to the possession of the mill in controversy

10. If the jury believe from the evidence that on the 9th of July 1857 the defendants had at the office of C. Tollenstee any thing else than gold or silver in the absence of C. Tollenstee then such tender is not good

11. That if the defendants attempts to prove a tender to C. Tollenstee on the 9th of July 1857 of the money due on said contract in evidence the defendant must prove that he had such amount in gold or silver coin or the defendant must prove that Tollenstee was present and did not object to its not being in gold or silver

12. That if the jury believe from the evidence that after the defendants pretended tender to C. Tollenstee on the 9th day of July 1857 said Tollenstee asked for the money tendered and the defendant refused it then the tender was destroyed by such refusal

13th

That if the jury believe from the evidence that the defendant went into possession under the contract to purchase by the terms of which contract the defendant was to make payment in the future and in the case he did not make such payments. that his interest in said contract and the premises in controversy should be forfeited and if the jury shall further believe from the evidence that the defendant has not made the payment provided for in said contract then by such non payment the defendant has forfeited his interest in the premises. And the plaintiff was not required to give him notice to quit before bringing this suit

14.

That if the jury believe from the evidence that the defendant went into possession of the premises in controversy under a contract to purchase and that such contract provided that the defendant should make certain payments before he should be entitled to have the premises conveyed to him and in case he failed to make any one payment provided in said contract the vendor or his assigns should have the right to declare the contract forfeited and reenter and take possession of said premises and prior to the commencement of this suit the defendant did fail to make any one of such payments. And the vendor in said contract or his assignee has in consequence of such non payment declared said contract. then the defendant was not entitled to any notice to quit before the commencement of this suit and the plaintiff is not required to prove such notice

15

That if the jury believe from the evidence that the defendant after receiving the notice from Sexton & Sloan which was dated on the 1st day of

Refused July 1857 and in reply to said notice the defendant wrote to the plaintiff that he claimed no right under ^{the} contract referred to in said notice and that he had parted with all right he had to said contract. That in that case the plaintiff was not bound to give the defendant notice to quit before the bringing of this action

to which decision of the court in refusing said instructions as asked for by the plaintiff by his counsel at the time excepted

The defendant then asked the Court to instruct the jury as follows

Given 1st That if the jury believe from the evidence that by the design and consent of Sloan. Petrie was made to believe and did believe that it was unnecessary to have the specie at Tallensbee's to pay on the contract or to hand the money at Tallensbee's as a tender And that Petrie acted good faith offering the "Cheque" of Richmond & Co. in accordance with such belief then Sloan was guilty of fraud and is entitled to no benefit by reason of such attempted compliance of Petrie with Dexter & Sloan's notice to pay on the 9th July 1857.

Given 2^d That unless the plaintiff has proved that notice to quit was served upon defendant or a demand of the premises before bringing this action the jury should find for defendant.

Given 3^d If the jury believe from the evidence that the deft in good faith endeavored to comply with the written directions of Dexter & Sloan dated July 1 1857 but was prevented from doing so by the absence of Mr Tallensbee their agent after notice by deft on the 8th of July

that he should be at his office between 9 & 10 in the next morning to pay or tender to him the money due on the contract. - then the law is for debt -

4th *Given* If the jury believe from the evidence in this case that the plaintiff Sloan fraudulently intending to prevent the defendant from making payment of the money due on the contract with Dexter created an insub-
dily to the defendant to make the payment to Tollenbee at the time mentioned in the notice from Sloan and Dexter the jury should find for the Defendant -

5th *Given* If the jury believe from the evidence that Petrie endeavored in good faith to comply with the direction of Dexter & Sloan as contained in the notice of date of July 1st 1837 but was by the negligence & design of Sloan prevented from making payment of the money to Tollenbee in accordance with said notice they should find for defendant -

6th *Given* That unless it is proved by evidence that the plaintiff had prior to the bringing of this action declared the contract between Petrie & Dexter forfeited then the plaintiff is not entitled to a judgment & the jury should find for defendant -

which was done by the court
which instructions so given by the court the plaintiff by his counsel at the time objected

The jury found a verdict for the defendant. The ^{plaintiff} then asked the court to set aside the verdict and grant him a new trial for the following reasons

Wm Sloan (Hans Circuit Court May
 v Spectant Term 1837
 Henry Petrie)

And now comes the said Petitioner by Bradley & Plate his attorneys and moves the court to set aside the verdict of the jury in this cause and grant a new trial to the said Plaintiff for the following reasons

1st The court erred in giving the instructions asked for by the defendant

2^d The court erred in refusing to give the instructions asked by the Plaintiff

3^d The court erred in instructing the jury

4th The verdict of the jury is against the Law

5th The verdict of the jury is against the Evidence

Which ^{by the Plaintiff} motion for a new trial was Overruled by the ^{court} and judgment rendered on the verdict to all of which ruling and decision of the court the Plaintiff by his counsel at the time excepted and prays that this his bill of Exception may be signed and sealed which is done in open court.

R. S. Morris Clerk
 Judge

Know all men by these presents that we William Sloan and principal and Neil Donnelly as parties are held and firmly bound unto Henry Petrie in the several sum of two thousand dollars lawful money of the United States for the payment of which to him his heirs executors and administrators well and truly to be made we bind ourselves our heirs executors and administrators jointly severally and firmly by these presents

Witness our hands & seals this sixteenth day of May
1854

The condition of the obligation is such that whereas the said Petrie did at the May Term 1854 of the Kane County Circuit Court in the County of Kane and State of Illinois on the twelfth day of May 1854 recover judgment against said Sloan in an action of Ejectment then pending in said Court between said Sloan as plaintiff and said Petrie as defendant from which judgment said Sloan has taken an appeal to the Supreme Court of said State now if the said Sloan shall prosecute his said appeal with effect and pay whatever judgment may be rendered and all costs interest and damages that may be adjudged against him in case said judgment shall be affirmed then the above obligation to be void otherwise to remain in full force

Wm Sloan Seal
Neil Donnelly Seal

State of Illinois
Hane County

I Luther Dearborn Clerk
of the Hane County Circuit Court
do hereby certify that the above and foregoing is a full perfect
and complete copy of the Transcript from the Record of the Hane
County Circuit Court. Declaration Notice Affidavit of Deputy Sheriff
Plea amended Plea Record of the Hane County Circuit Court
Bill of Exception and Appeal Bond in the case of William
Sloan vs Henry Petrie as appears from the Records & files of
my said Office

In Witness Whereof I have hereunto set my
hand and the seal of said Court at General Land
said County this 8th day of June A.D. 1854
Luther Dearborn
Clerk

And now comes the appellant G. Plato & Cook his
attys and says that in the records and proceedings
aforesaid there is manifest error in this to wit

1st The Court erred in ^{admitting in} evidence the written contract
signed by Henry Petrie and Gadoc Dexter

2nd The Court erred in admitting in evidence the
notice from Gadoc Dexter & William Sloan to
Henry Petrie

3rd The Court erred in refusing the 1st instruction
asked by plaintiff

4th The Court erred in refusing the 2nd instruction asked
by plaintiff

5th The Court erred in refusing the 3rd instruction asked
for by plaintiff

- 6th The Court erred in refusing the 4th instruction asked for by plaintiff
- 7th The Court erred in refusing the 5th instruction asked for by plaintiff
- 8th The Court erred in refusing the 6th instruction asked for by plaintiff
- 9th The Court erred in refusing the 7th instruction asked for by plaintiff
- 10th The Court erred in refusing the 8th instruction asked for by plaintiff
- 11th The Court erred in refusing the 9th instruction asked for by plaintiff
- 12th The Court erred in refusing the 10th instruction asked for by plaintiff
- 13th The Court erred in refusing the 11th instruction asked for by plaintiff
- 14th The Court erred in refusing the 12th instruction asked for by plaintiff
- 15th The Court erred in refusing the 13th instruction asked for by plaintiff
- 16th The Court erred in refusing the 14th instruction asked for by plaintiff
- 17th The Court erred in refusing the 15th instruction asked for by plaintiff
- 18th The Court erred in giving the 1st instruction asked for by defendant
- 19th The Court erred in giving the 2nd instruction asked for by defendant
- 20th The Court erred in giving the 3rd instruction asked for by defendant
- 21st The Court erred in giving the 4th instruction asked for by defendant
- 22nd The Court erred in giving the 5th instruction asked for by defendant
- 23rd The Court erred in giving the 6th instruction asked for by defendant

24th The Court erred in overruling the plaintiffs motion for a new trial

25th The Court erred in rendering the Judgment
 of record in manner & form aforesaid

Plato & Cook

attys for appellant

11 ~~no 48~~

Moan - affidavit

P. H.

Sept

used from here

Part to 8 book

Filed June 12th 1854.
L. Leland Clk.
By P. H. Leland Depy.

+

No 11 Sloan vs Petrie

The evidence introduced by p^lff in the court below showed a perfect title in him to the premises in question the only point to be considered is did the defendant establish his right to the possession of the premises the title being in p^lff. The d^f raised in evidence a title bond from Zadoc Dexter the grantor of Sloan to him, this was simply an agreement from Dexter & Sloan by which Dexter agreed to convey to Petrie the premises in question & Petrie agreed to pay Dexter \$2500. with annual interest as follows. \$40 down \$460 July 1st 1850 \$800 July 1st 1851 \$800 July 1st 1852 \$800 July 1st 1853 & pay all taxes. And in case Petrie failed to make either of the payments Sloan had the right to declare the contract forfeited and to reenter and take possession of the premises.

Point 1st This Agreement was improperly admitted in evidence because it did not give the right of possession to Petrie at any time = it was not agreed that Petrie should have the possession of said premises in said bond but it was a mere contract of sale this does not carry with it the right of possession.

Holmes as Schofield & Bell 171

2^d Point

The offering of said bond in evidence was not accompanied by any proof that the payments therein mentioned had been made & as what doth not appear doth not exist the case presents only the defendant claiming under a title bond long since broken and rendered of no effect by his own neglect & refusal to make the payments

3^d Point

The tender sought to be established by the testimony of Hallamshu does not help the case. Because while the tender admits that there was 10 or 12 or dollars due the tender was not a valid tender in any respect

1st The tender was not made in money

2^d Hallamshu offered to take the money and Petrie refused to pay it See cross examination of Hallamshu

2 Greenleaf on Evidence Sec 602-603 pp 584, 585

Harding vs Lewis 2 Car & P 877 Haller vs Little 7 A H 536

Sanborn vs Jackson 6 Wm 22 Brown vs Gilman 8 Green 107

Bruce vs Hurd 6 Pick 356

Scaring vs Calhoun 4 Dallas 325

4th Point

Petrie had before this time assigned the Agreement for a conveyance and had no right in the premises at the time of the pretended tender. The assignment was in July 1850 & the pretended tender in July 1851 See letter from Petrie to Sloan notifying him of such assignment. What right had Petrie to make payment so long after the bond was forfeited after he had assigned the bond

5th

The amount due on 1st July 1831 by the terms of the contract was \$1260. of principal & interest on the payment of \$460 which became due July 1st 1830 \$276 making in all \$1287,60 the check which was borrowed to be tendered did not amount to this sum even if the check would be a good tender and have been properly tendered

II

The 1st instruction asked by plaintiff was improperly refused. The plaintiff had shown a perfect title to the premises. The defendant had offered no proof tending to show his right of possession

2 The second instruction asked for by plaintiff and which was refused was clearly law. The plaintiff was not bound to accept a smaller sum than was due

3^d The 3rd & 5th instruction asked by plaintiff and refused involve the same question which is this

If Petrie entered into possession of the premises by virtue of a contract of purchase from Dexter & failed to comply with its terms, would a demand of possession or notice to quit be necessary & entitle Dexter to bring his Ejectment. The Court below held that such notice was necessary.

The contrary doctrine is expressly held by this Court in

Pantier vs Wilson et al 14 Ills 91

See also Jackson vs Miller 7 Cow 747

White side vs Jackson 1 Vorne 418

Baker vs Gitting Lease 16 Ohio 485

Maron vs Coldwell 5 Gilen 203

The 9th instruction presents the same question & was improperly refused

The 13th & 14th instructions assert the law as laid down in 14 Ills 91 & should have been given

The instructions in relation to tender were all law & should have been given see authorities above cited on the question of tender

The last instruction asked of plaintiffs was clearly law if Petrie wrote in answer to a demand for payment that he claimed no further right in the premises then Sloan was not bound to give him further notice to quit or to make ~~provisions~~ arrangements with Hollanslee for him to receive the money.

III

The instructions given for debt were none of them law

The 3^d & 4th instructions are directly in the teeth of the law as decided in 14 Ills 91.

The whole case shows 1st a clear title on the part of the plaintiffs to the premises
2^d an entry under an executory contract which conveys no title by defendant
3^d A failure of defendant to comply with his contract for over a year

4th a demand of payment from plaintiff

5th The defendant then went to the store of the agent of plaintiff in the morning & had with him that the money but the check of Reikens was on Geo Smith not for the full amount due & not funding Halluslee the agent then withdrew. & in the afternoon saw Halluslee again & told him that he wanted to have made the tender in the morning Halluslee said he would take the money but Petrie said not pay it to him, & never paid it.

6th Petrie had before this time notified Sloan in writing that he claimed no right to the premises.

I contend that every ruling of the court in the whole case is erroneous.

B. C. Cook

att'y for appellant

Scan is Petrie

Argument of Appellants

B. C. Cook

1853

W. L. Tucker



County Judge

The defendant here rested his case and the plaintiff offered in evidence the said last herem^{Contained} notice to the admission of which notice as evidence the defendant by his counsel objected and the court overruled the objection and admitted the notice in evidence to which ruling the defendant excepted at the time

The plaintiff then asked the court to instruct the jury as follows

1st That the evidence produced by the plaintiff establishes in him the legal title and the right of possession of the premises described in the declaration and the defendant has introduced no evidence sufficient to defeat the plaintiff's title or right possession and it is therefore the duty of the jury under the law to find for the plaintiff

2nd That unless the jury believe from the evidence that the defendant on or before the 7th day of July 1851 actually produced and offered to pay Charles Follenbee at his Office in Chicago all the money due on the contract given in evidence and described in the notice from Dexter & Sloan to Citie

Refused

Refused

then there has been no legal tender or payment under said Notice and upon that question the jury must find for the plaintiff

3rd That if the jury believe from the evidence that the defendant had in his possession a statement in writing signed by Zadoc Dexter and William Sloan giving Charles Hollinsbee full power to receive money on the contract in evidence then the defendant should have relied upon such writing and not upon the statement of Charles Hollinsbee

4th That in order to support or establish a legal tender the defendant must prove that the money was actually produced to the creditor or his agent & must be in sight and capable of immediate delivery and unless the defendant has proved on this issue such a state of facts and also that the money has been kept ready at any and all times since such tender subject to the plaintiff order and control then all the law is for the plaintiff upon the question of tender

5th That under the evidence of the present case it was not necessary for the plaintiff or his grantors to give the defendant any notice to surrender or quit said premises in question before the commencement of this suit

Refused

6th That if the jury find from the Evidence that the defendant previous to this suit had sold and transferred all his right title claim or interest (if any he had) to Stephen L. Pitre in and to the contract signed by said defendant and Zador Dexter and dated the 3rd day of May 1850 then in that case the defendant would have no right by law to hold the possession of said premises by virtue of said contract unless the defendant has proved he had the possession under Stephen L. Pitre

Refused

7th That if the defendant seeks to claim any right to the Mill in controversy under the contract in Evidence the defendant must prove that the terms and condition of said contract has been complied with upon his part - or prove a tender of the Money that was due (if any) upon said contract

Refused

8th That if the defendant seeks to claim any right to the Mill in controversy under the note given in evidence signed by Zador R. Dexter & Wm Sloan then the defendant must prove that he paid the money according to the direction of said note or that he tendered the money according to the direction of said note

9 Unless the jury believe from the evidence that at the commencement of this but all the payments are under the contract between Dexter & Follansbee his attorney had been paid then the dependants cannot claim under said contract any right to the possession of the mill in controversy.

10

If the jury believe from the evidence that on the 9th of July 1851 the dependant had at the office of Follansbee any thing else than gold or silver in the absence of Follansbee then such tender is not good.

11

That if the dependant attempt to prove a tender to Follansbee on the 9 day of July 1851 of the money due on said contract in evidence the dependant must prove that he had such amount in gold or silver when the dependant must prove that Follansbee was present and did not object to its ^{not} being in gold or silver.

12

Refused

That if the jury believe from the evidence that after the defendants pretended tender to Follansbee on the 9th day of July 1851, said Follansbee asked for the money tendered and the defendants refused it then the tender was destroyed by such refusal

13

Refused

That if the jury believe from the evidence that the defendant went into possession under contract to purchase by the terms of which contract the defendant was to make payments in the future and in case he did not make such payments that his interest in said contract and to the premises in controversy should be forfeited and if the jury shall further believe from the evidence that the defendant has not made the payments provided for in said contract then by such non payment the defendant has forfeited his interest in the premises and the plaintiff was not required to give him notice to quit before bringing this suit

14

Refused

That if the jury believe from the evidence that the defendant went into possession of the premises in controversy under a contract to purchase and that such contract provided that the defendant should make certain

Refused

payments before he should be
entitled to have the premises
conveyed to him and in case he
refused to make any one payment
provided in said contract the vendor
or his assigns should have the right
to declare the contract forfeited and
re-enter and take possession of said
premises and prior to the commencement
of this suit the defendant did fail to
make any one of such payments
and the vendor in said contract or
his assigns has in consequence of
such non payment declared said
contract to be forfeited then the
defendant was not entitled to any
notice to quit before the commence-
ment of this suit and the plaintiff
is not required to prove notice

- 15 That if the jury believe from the
evidence that the defendant after
receiving the notice from Dexter H.
Sloan which was dated on the 1st day
of July 1850 and in reply to said
notice the defendant wrote to the
plaintiff that he claimed no right
under said contract referred to in
said notice and that he had
parted with all right he had to
said contract. That in that case
the defendant ^{plaintiff} was not bound to
give the defendant notice to quit
before the beginning of this action.

Refused

by
To which decision of the Court in
refusing the said instructions as rec-
per by the plaintiffs the plaintiffs
by his counsel then and then accepted

The Defendant then
asked the Court to instruct the
jury as follows

1st That if the jury believe from the
evidence that by the design and
consent of Sloan, Petrie was made
to believe and did believe and did
believe that it was unnecessary to
have the specie at Follansher's to
pay on the contract or to have the
money at Follansher's as a tender
and that Petrie acted in good faith
in referring the Cheque of Kirkman
and Co. in accordance with such
belief then Sloan was guilty of fraud
and is entitled to no benefit by
reason of such attempt compliance
of Petrie with Dexter & Sloan's notice
to pay on the 7th day of July 1851

2 If the jury believe from the
evidence that the said defendant
intended in good faith to comply
with the written directions of Dexter
and Sloan dated July 1st 1851 but
was prevented from doing so by the
absence of Mr. Follansher then grant
after notice by letter on the 8th of July

that he should be in his office
between 9 & 10 in the next morning
to pay or tender to him the money
due on the contract. Then the case
is per septe

2 That unless the Plaintiffs prove that
notice to quit was served on defendant
as a demand of the premises before bringing
this suit the jury should find for
the defendant.

3 If the jury believe from the evidence
that in this case the plaintiffs
Sloan permanently interfere to
prevent the defendant from making
payment of the money due on the
contract with Dexter & Co. on
inability of the defendant to make
the payment to Hollander at the
time mentioned in the notice from
Sloan and Dexter, the jury should
find for the defendant.

4 If the jury believe from the evidence
that Petrie in good faith endeavored
to comply with the directions of Dexter
& Sloan as contained in their notice
of the date of July 1st 1851 but was
by the negligence or design of Sloan
prevented from making the payment
of the money to Hollander in
accordance with said notice they
should find for the defendant.

6

given

That unless it is proved by evidence that the plaintiffs have prior to the bringing of this action declared the contract between Petrie & Dexter for percell then the plaintiffs is not entitled to possession and the jury should find for defendant.

To the giving of which instructions by the court and to each of them the plaintiffs by his counsel then and then excepted

The jury found for the defendant. Plaintiffs moved for a new trial the court overruled the motion for new trial to which ruling of the court the plaintiffs by his counsel then and then excepted and prayed his appeal to the Supreme Court which is granted

And now comes the appellant by Plato & Cook his attorneys and say that in the record and proceedings herein there is manifest error in this to wit

1st The court erred in admitting in evidence the note from Jacob M. Dexter & Wm. Sloan to Henry Petrie

2nd The court erred in admitting in evidence the note from Dexter & Sloan to Henry Petrie

3rd The Court erred in refusing each
of the instructions asked for by plaintiff

4th The Court erred in refusing
giving each of the instructions
asked for by Defendant.

5th The Court erred in overruling the
motion for a New Trial

6 The Court erred in rendering the
judgment aforesaid in manner and
form as aforesaid

Plato & Cook

Wm. Sloan
Henry Deane
Abstract

55-06153

Sloan vs Petrie

I insist that the motion comes too late after the cause has been submitted by both parties and argued by us, it is in the nature of a plea in abatement & ought not to be considered after it has been formally waived.

This question involves a construction of sec 44 of chapter of Res Stat entitled Ejectment
B. C. Cook

And for Petrie, I insist that the case is not like a plea in abatement;

For it is manifest upon the face of the case that there is no proper plaintiff. Judgment could not properly be rendered either in favor of, or against an administrator, as plff in Ejectment. & such a judgment would be arbitrary & unjust. If the judgment of the court below is affirmed, could this court properly give judgment as the plff (Administrator) for costs?!

It is only by virtue of the statute that suit survives

It is the duty of the heirs, if they wish to further prosecute the suit, to come in, & show their heirship, & be made parties. No one else is, or can be properly in court; & submitting the case can make no difference, as the court can give no judgment which would be binding.

Error is not joined in the case.
Mr Blackwell merely assumed for me

in my absence, & not knowing any
thing about the case -

I beg to refer the court to Sec 26. of
Chap. entitled "Epictunet". Rev. St.

Also Sections 37 to 44. inclusive -
And Section 7. in Chapter entitled "Abatement".

J. F. Farnsworth

Sloan
No 11

ms

Petrie

points on notes
set aside Suburban

to Mr Hollensbee's Office or Store about ten o'clock in the forenoon he had with him Richmonds & Co's Check on Geo Smith & Co. I think for an amount which was due Mr Hollensbee as agent for some one it was on a Mill Contract Mr Hollensbee was not at his Office. He walked to the Tremont House and returned to Mr Hollensbee's after a few moments. He was still not in. I should think from fifteen minutes to half an hour had elapsed between the time of calling

1st Interrogatory by same What money had Mr Petrie at the time you went with him to Mr Hollensbee's and for what purpose did you go with him

Question Objected to by Plaintiffs Atty

Answer No Money that I know of. I think he asked me to go along with him and show him the Office and Witness the tender this is my impression of what I was there for

5th Interrogatory by same What Money did Mr Petrie tell you he had with him at the time

Question objected to by plaintiff

Answer. I don't recollect of his telling me that he had any

6th Interrogatory by same What was done with Richmonds & Co's Check Question objected to by plotts Atty

Answer. It was returned to them and it is my impression that it was destroyed.

7th Interrogatory by same Who wrote or filled up the check for Mr Petrie and to whom was it delivered when it was returned

Answer I cannot state it is my impression that Allen Richards filled it up he was the Bookkeeper at Richards & Co's at the time. I cannot state to whom it was returned

8th Interrogatory by same What do you know of Mr Petrie tendering, or offering, to tender or having money to tender to Mr Follenstedt about or on the 9th Day of July 1887 and of Mr Follenstedt refusing to receive it

Answer I know nothing more specifically about the date nor the tendering or having money to tender than I stated I did not see them together at all

Cross Examination

1st Interrogatory by plffs counsel What was the amount of Richards & Co's check which Mr Petrie had on the occasion you have now mentioned

Answer. I cannot state the exact amount my

impression is that it was between \$10,000 and \$12,000

2nd Cross Interrogatory by same Was the check good for the amount of money it called for and equivalent in value to that amount

Answer Richmond's checks were always good for the amounts they called for this check was good for its face in currency

3rd Cross Interrogatory by same Did not Mr Petrie make an arrangement Richmond's to borrow an amount to make this tender and receive this check as money

Question objected to by Duff

Answer Hadid

Direct examination resumed
4th Interrogatory by plaintiff What was the value of currency at that time as compared with specie

Answer I should think about one per cent less

10th Interrogatory by same What did Mr Petrie say he wanted to do with the check at the time he borrowed the check

Answer It was got to ^{make a} tender to Mr Hollinsbee

11th Interrogatory by same did you know or do you know that Richmond's had money in the bank

of George Smith & Co to pay the amount of said
check and would Geo Smith and Co have paid the
check if the amount was not in deposit with them
Question objected to by pliffs atty

Answer I dont know whether the money was
there or not but think that Geo Smith & Co would
paid it whether there was money there or not

Sworn to & Subscribed
before me this 14th day of
January 1853

H. M. Richmond

H. L. Tucker
County Judge

State of Illinois
County of Cook } Henry L. Tucker county
judge and Ex Officio a justice of the peace in and for
said county do hereby certify that under the notice
hereto annexed & proceeded at the time and place
therein mentioned and as set forth in the caption
foregoing to take the deposition of Charles Follenbee
and Holland M. Richmond which are set forth
above. that said depositions were reduced to writing
by me in part and part by Clerk that said
Witness was by me sworn in due form of Law as
each and severally subscribed their depositions in
my presence

Given under my hand this 14th day of January