

No. 12394

Supreme Court of Illinois

Doyel.

vs.

Wiley.

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Isaac Doyel
vs.

Andrew M. Wiley

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12394

1854

Be it remembered that on the 24th day of September A.D. 1853
there was filed in the office of the clerk of the Circuit Court of Peoria County, Illinois,
a Bill in Chancery, which is in the words and figures following, to wit:

Bill
"State of Illinois, ss. In the Circuit Court of Peoria County-
"Peoria County, ss. November Term, A.D. 1853.
To the Hon Charles Peters,
Judge of the said court.

Complains your Orator Andrew Mc. Wiley of the
County of Peoria and State of Illinois, that sometime in the
year A. D. 1840, or about that time, the precise time your
Orator entered into a contract in writing with one Fountain
Wachins, and one Isaac Doyle, then and now residents of
said County of Peoria which said contract was in
substance as follows,

That each of the said parties should use all due and proper
diligence, to purchase from and procure a deed from whoever
might be the Owner of the S. W. 1/4 of Section number Eight
(20) in Township number Nine (9) North of Range number
Five (5) East of the fourth principal meridian in Peoria
County, Illinois, That your Orator was to have forty acres
off the North end of said lot, adjoining lands then owned
by him, That said Wachins was to have forty acres
described as commencing at the South West corner of the
said quarter section and running thence East about one
hundred and twenty rods to the Main branch running
through said quarter section, thence Northwesterly along said
branch until it reaches a point where a line drawn due
West to the West line of the said quarter section would make
forty acres in the South West corner of the said quarter section,
and that the said Doyle was to have the residue, eighty
acres of said land and each to pay the owner or to either
of the others, who might become the purchaser as aforesaid for
the benefit of the whole an equal proportion of the cost of said
land compared with the number of acres each was to receive under

said contract, and by virtue of the said intended purchase.

And your Orator charges that the said contract was signed by ~~these~~ the parties thereto severally, but whether the same was or was not under seal, he is unable to state, because the said contract which was for the mutual benefit all of all the parties; has as he is informed and believed been by accident lost or destroyed, and he is unable to produce the same to the court, that said contract was deposited with one James Clarkness for safe keeping, who your Orator is informed after strict and diligent search cannot find the same and knows not what has become of it. And your Orator further states that he, said Watkins & Doyle were at the time of said contract several owners and occupants of lands adjoining the tract before described, and that the said contract was made in good faith at least so far as he and said Watkins was concerned for the purpose of procuring said land from the owner at a just and reasonable compensation and to divide the same between the parties to said contract in such manner as would mutually result in the benefit of each, and that it was understood and agreed by the parties and in the contract aforesaid, that which ever of the parties should purchase said said land, should deed to the others his proportionate share thereof as herein before stated by good and sufficient deed of conveyance, accordingly each of said parties to said contract; (the land being vacant and unoccupied), entered upon and took possession of his particular share and portion of said land, as allotted to him by said contract, and since that time have continued to occupy and improve the same unmolested except, that the said Doyle, either by accident or design, has enclosed and now has in his possession eight or nine acres of your Orators forty acres above described, and refuses to surrender the possession of the same to your Orator,

Your Orator further states and shews to the court, that since he has taken possession of his portion of said land as herein before stated he has made improvements on the same amounting at least to the sum of one hundred & twenty dollars and that the same land on account of said improvements and the rise or appreciation in the value of real estate, has greatly increased in value so that in fact the said forty acres at this time is worth at least the sum of eight hundred dollars.

And your Orator further shews that the said Fountain Watkins above named who was also a party to said contract since the same has been made and on the faith and confidence that he had in the parties to the same has proceeded to make improvements on his said portion of said land amounting in value at least to the sum of two hundred dollars.

And your Orator further shews that both he and the said Watkins have from always hitherto been willing and anxious to comply with the terms and conditions of their said contract, with the said Isaac Doyle, and that they used all reasonable exertions on their part to ascertain where said title was and who was owner of the same, until they ascertained that the said land had been fraudently and against the terms and conditions of the contract before recited, in manner hereinafter stated, purchased by the said Isaac Doyle one of the parties to the contract above mentioned.

And your Orator further charges that on the 24th day of March A.D. 1851, he purchased of the said Fountain Watkins all his interest in right and title to the said land before described, and took from the said Watkins and Eliza his wife a quit claim deed in due form of law for all their interest and title in and to the same, a copy of which said deed, dated the day and year aforesaid is hereto attached

and made part of this bill, marked "A", and the original will be produced upon the hearing of this cause.

And your Orator further shows, that some time about the month of July A. D. 1818, the said Isaac Doyle, having by some means ascertained that one Henry Greenbury of the City of St. Louis, Missouri, was the agent for one John B. James of the City of Albany in the State of New York, who was the owner of the said lands applied to the said Greenbury agent as aforesaid to purchase the same, and then and there did contract to purchase said land of the said James through his agent aforesaid for the sum of five hundred dollars; but although the deed from said James was received by said agent a short time thereafter, yet the said Isaac Doyle did not call for the same until about some time in September A. D. 1819, at which time he paid the said sum of five hundred dollars and received a deed from said James for said land; but instead of taking the same in his own name, for the express purpose of cheating and defrauding your Orator and the said Watkins took said deed in the name of his brother Thomas Doyle of Green County in the State of Illinois, a copy of which said deed marked "B," is hereto attached and made part of this bill, the original whereof your Orator charges is in possession of the said Isaac Doyle or Thomas Doyle and that they are notified to produce the same upon the hearing of this cause, and he avers that it is wholly out of his power to produce the same.

And your Orator further charges that the said Isaac Doyle in fact purchased the said land and paid for the same himself and with his own money & that the said Thomas Doyle never had any interest in, or title to said land in equity, and that said purchase was made and the deed taken in the name of Thomas Doyle with the design and

intention of cheating and defrauding your Orator and said Watkins out of their portions of said land under the contract herein before referred to, and that both before and since said purchase said Isaac has used, occupied and improved his particular portion of ^{said} land and received the rents & profits therefor, without in any manner accounting to said Thomas for the same & that in fact said Thomas never paid any thing for said land nor pretended to have any claim or title thereto or to any part thereof, but holds the legal title in trust merely and for the benefit of the said Isaac Doyle, and is combining and conspiring with him to defraud your Orator.

And your Orator further charges, that if the foregoing charges, and those hereinafter made charging and stating that the said land was purchased by the said Isaac Doyle with his own money & the deed taken to Thomas Doyle to enable him said Isaac to defraud your Orator out of his said land & that said Thomas holds the same in trust & for the benefit of the said Isaac, in manner & form as stated & set forth in the several charges and allegations of said bill; should turn out to be untrue or not susceptible of full & satisfactory proof & if it should be made to appear that the said land was purchased with the money of the said Thomas Doyle: Then your Orator further charges that the said Isaac Doyle acted as agent and was agent for the said Thomas Doyle in contracting for and making the purchase of the said land of the said James, through the said Quisenberry, and that he the said Isaac Doyle agent as aforesaid had full notice of all the matters and things herein before stated & set forth.

And your Orator further charges & submits that he is advised by counsel and believes that if the said Isaac Doyle in purchasing the said land was the duly authorized agent of the said Thomas Doyle, and did in fact purchase the said land for him that his said

Principal is chargeable with notice in law and had actual notice in fact of all the matters and things & the contract herein before stated & mentioned between your Orator & the said Isaac Doyle & said Fountain Watkins and is therefore bound on his part to ratify and confirm the same.

And your Orator further charges that the said Isaac Doyle is now and ever has been since his purchase aforesaid the owner in equity of the said land with & as tenant in common with your Orator and the said Watkins under whom your Orator in part claims & that in justice & equity the said Isaac Doyle & Thomas Doyle ought to convey the said portions thereof herein before mentioned as belonging to your Orator & said Watkins under said contract to your Orator.

And your Orator further shews that on the 25th day of March A. D. 1851, he tendered and offered to pay to said Isaac Doyle and is still ready and willing and has always hitherto since the purchase of the said land aforesaid been ready and willing and now offers to pay to the said Isaac Doyle one half the purchase money of said land paid by him with the interest thereon from the time of such payment, and that both he and the said Watkins would long since have paid the same if the said Isaac Doyle would have received the same and conveyed their interests in said land to the said Complainant and said Watkins.

The sum tendered as aforesaid was two hundred and ninety two dollars being as your Orator is informed and believes more than one half of said purchase money and interest and he is still ready and willing and offers to pay the same to the said Isaac Doyle, or whoever maybe entitled to receive the same; Or if that sum should be insufficient he is still ready & willing and offers to pay whatever the one half the purchase money and interest thereon since said purchase by said Doyle would amount to for said land.

But the said Isaac Doyle has hitherto refused to accept or receive said sum of money or any part thereof and falsely and fraudulently pretended that the land herein before described was the property of his brother Thomas Doyle, and has studiously concealed from your Orator all his doings, and ~~and~~ doings and proceedings in the matter and wholly refused and neglected to make the deeds or convey the lands properly belonging to your Orator or to said Watkins and still refuses.

All which doings and doings on the part of the said Isaac Doyle and the said Thomas Doyle are contrary to equity and good conscience and tend to the manifest injury of your Orator in the premises. For as much then as your Orator is without any adequate redress in the courts of law and can only have relief in equity, he prays that the said Isaac Doyle & Thomas Doyle may be made defendants to this bill, and that they may be severally compelled to answer the same and each and every allegation therein contained but not upon their oaths which are hereby expressly waived.

That the said defendants may by decree of this court be required and compelled to convey to your Orator the lands before described as claimed by and belonging to him, situate on the said quarter section, and your Orator further prays that in case the relief herein prayed for, specifically, cannot be granted, he further prays that a decree may be rendered in his favor that the Isaac Doyle pay to the said complainant all such damages, costs & charges as he has or may sustain by reason of the failure & refusal on the part of the said Isaac Doyle to comply with his contract aforesaid.

He prays also for the usual process of subpoena against the said defendants and for such other and further relief as to Justice and equity appertain & he will pray no.

Purple & Dinger,
Compts Solicitors.

And with said Bill was filed a precept in the words & figures following, to wit,

precipe = "Andrew M. Wiley, } In Circuit Court, Peoria County,
" } Nov. Term 1853.
Isaac Doyle, + } In Chancery.
Thomas Doyle, }

Issue Subpoena in this cause
for Isaac Doyle to the Sheriff of Peoria & for Thomas
Doyle to the Sheriff of Sloan County, returnable to
next term.

Sept. 24 1853.

Purple & Sanger for compr.

Jacob Gale, Esq. Clerk."

Whereupon the clerk of said court issued two processes under the seal of said court,
which with the returns of the sheriffs thereon endorsed are as follows, to wit:

Summons
to Peoria

"The People of the State of Illinois,
To the Sheriff of Peoria County, Greeting:
We command you to summon Isaac Doyle if he may be found
in your county, to appear before our circuit court on the first day
of the next term thereof, to be held at Peoria, within and for the said
county of Peoria, on the third Monday of November next then
and there, in our said court, to answer the matters and things
contained in a certain bill of complaint exhibited against him
him and Thomas Doyle, in our said court on the chancery
side thereof by Andrew M. Wiley, for conveyance of lands and
make return of this writ, with an endorsement of the time
and manner of serving the same, on or before the first day
of the term of the said court to be held as aforesaid.



Witness. Jacob Gale, clerk of our said
court, and the seal thereof, at Peoria, this
twenty fourth day of September in the year
of our Lord one thousand eight hundred
and fifty three.

Jacob Gale, clerk."

[Endorsed]

State of Illinois, ss.
Peoria County,

I served this summons by reading to the within named Isaac Doyle, also by delivering to said Isaac Doyle a true copy of this writ, this 25th day of October A. D. 1853.
L. B. Cornwell, Sheriff
by John Bryner Dep't."

Summons
to Green

The People of the State of Illinois,
To the Sheriff of Green County, Greeting:

We command you to summon Thomas Doyle if he may be found in your county, to appear before our Circuit Court on the first day of the next term thereof, to be held at Peoria, within and for the said county of Peoria, on the third Monday of November next then and there, in our said court, to answer the matters and things contained in a certain bill of complaint exhibited against him and Isaac Doyle in our said court, on the chancery side thereof, by Andrew Mc. Wiley, for conveyance of land &c and make return of this writ, with an endorsement of the time and manner of serving the same, or before the first day of the term of the said court to be held as aforesaid.



Witness Jacob Hale, clerk of our said court, and the seal thereof, at Peoria, this 24th day of September in the year of our Lord one thousand eight hundred and fifty three.
Jacob Hale, clerk."

[Endorsed]

I have served this writ on the within named defendant Thomas Doyle by leaving a true copy at his residence with Polly Doyle a white person over the age of ten years and a member of the family and explaining to her the nature and contents of said writ, November the third 1853.

J. A. Marrow, Sheriff of
Greene County, Illinois."

And afterwards on the 20th day of October, A. D. 1853, the following Exhibits were filed

in said cause, marked "A" and "B" respectively, to wit,

Exhibit A.

A.

This Indenture made this 24th day of March 1851, in the year of our Lord one thousand eight hundred and fifty one between Fountain Watkins and Eliza Watkins his wife, of Leona County, Illinois of the first part and Andrew M. Wiley of the second part, witnesseth, that the said parties of the first part, for, and in consideration of the sum of one thousand and fifty dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have remise, released, sold and quit claimed forever quit claimed, and by these presents do remise, release, sell and forever quit claim, unto the said party of the second part and to his heirs and assigns forever, all our interest, right, title, claim and demand, in and to the South West quarter of Section Twenty in Township Nine North Range Five East of the fourth principal meridian, Illinois. To have and to hold the above described premises with all the privileges and appurtenances thereunto belonging to him the 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.

Signed, sealed and delivered
in presence of . . .

Fountain Watkins Seal
Eliza Watkins Seal

State of Illinois,
Leona County.

I, S. Edson Smith, a Justice of the Peace for said county, do certify, that on this day personally appeared before me Fountain Watkins & Eliza his wife whose names appear subscribed to the foregoing deed of conveyance as having executed the same and who are personally known to me to be the real persons who and in whose name the acknowledgment is proposed to be made and acknowledged the execution thereof as their voluntary act and deed for the uses and purposes therein

expressed. And said Eliza Watkins wife of the said
Fountain Watkins having been by me made acquainted with
the contents of the said deed and by me examined separately
and apart from her said husband, whether she had executed
the same and relinquished her dower to the lands and ten-
ements therein mentioned, acknowledged that she had done
so, voluntarily and freely and without compulsion of her
said husband, and does not wish to retract. Given under
my hand and seal of office at Peoria County, this 24th day
of March A. D. 1851. Edson Smith Seal

"B."

Exhibit B-

"This Indenture made the eleventh day of July in the
year of our Lord one thousand eight hundred and forty eight,
between John B. James of the City of Albany, State
of New York of the first part and Thomas Doyle of Green
County, in the State of Illinois of the second part, witness-
eth, that the said party of the first part for and in considera-
tion of the sum of five hundred dollars, lawful money of the
United States of America to him in hand paid by the said
party of the second part, the receipt whereof is hereby confessed
and acknowledged, hath granted, aliened, remised, released,
enfeoffed and confirmed, and by these presents doth grant,
alien, remise, release, enfeoff and confirm, unto the said
party of the second part and to his heirs and assigns
forever, all that certain piece or parcel of land, lying and
being in the Military tract in the State of Illinois and known
as the South West quarter of Section (20) Twenty, Township
(9) North Range (5) Five East, said lot being situated
in Peoria County and forming a part of the estate in the
said State of Illinois, wherof the late W^m James of
Albany, died seized and having been set over at the par-
tition of said Estate of W^m James to the said party of the first

part by Commissioners appointed for that purpose under the laws of the State of Illinois. Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion or reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever of the said party of the first part either in law or equity, of, in and to the above granted premises with the said hereditaments and appurtenances and every part and parcel thereof to the said party of the second part, his heirs and assigns forever. And the said John B. James for himself, his heirs, executors and administrators doth covenant, bargain, promise and agree to and with the party of the second part, his heirs and assigns to warrant and forever defend the above granted premises, and every part and parcel thereof, now being in the quiet and peaceable possession of the said party of the second part, against the said party of the first part his heirs, executors, administrators and assigns, against all and every other person or persons claiming or to claim the said premises, or any part thereof. In Witness whereof the said party of the first part hath hereunto set his hand and seal the day and year first above written.

Deales and delivered in presence of
J. B. James Seal
Henry L. Sensing
Wm. H. Young.

State of New York, Albany City & County, ss. Be it remembered that, on the eleventh day of July A. D. 1848, before me a Commissioner duly appointed by Thomas Ford, Governor of the State of Illinois for the County of Albany, in the State of New York, to take acknowledgments &c. to be used or recorded in the said State of Illinois, appeared John B. James, who is personally known to me to be the individual described in and who executed the within deed and acknowledged to me that he had executed the same. Henry L. Sensing, Commissioner of the State of Illinois for the County of Albany in the State of New York. Seal

Proceedings in Chancery before the Circuit Court at a term thereof begun and held at the Court House in the City of Peoria, in and for the County of Peoria in the State of Illinois, on Monday the twenty first day of November in the year of our Lord one thousand eight hundred and fifty three. The Honorable Anslow Peters, Judge of the sixteenth Judicial Circuit in the State of Illinois, presiding, to wit:

Monday November 21st A.D. 1853.
Andrew M. Wiley,
vs
Isaac Doyle &
Thomas Doyle. ^{vs} For conveyance.

The complainant by Purple & Langer his Solicitors enters a motion that all the depositions and exhibits accompanying the same filed in the cause of said Wiley vs Doyles in the last in Chancery dismissed at last term be filed to be used as evidence in this cause upon the hearing of the same.

Friday November 25th A.D. 1853.
Andrew M. Wiley,
vs
Isaac Doyle &
Thomas Doyle. ^{vs} For conveyance.

This day came the complainant by Purple & Langer his Solicitors and enters a motion for a rule on the defendants to file their answers by Monday Morning next.

Saturday November 26th A.D. 1853.
Andrew M. Wiley,
vs
Isaac Doyle & Thomas Doyle, ^{vs} For conveyance.

This day this cause came on to be heard upon the motion hereinbefore entered, that the depositions &c.

taken in the case of said complainant against the said defendants, which was dismissed at the last term of this court, be filed in this cause &c, which motion was argued by counsel, and the court being now fully advised in the premises, doth order, adjudge and decree, that all the depositions and exhibits taken and filed in the said former case be filed in this case to be used as evidence in this cause so far as the same shall be applicable and pertinent to the issues in the same manner and with like effect as though said depositions and exhibits had been taken and filed in this cause.

And the motion for a rule on the defendants to file answers in this cause coming on to be heard, It is ordered by the court, that the defendants answer the complainants bill by Wednesday morning next.

And on the same 26th day of November A.D. 1853, the complainant filed the following motion &c. in said cause, to wit,

"Wiley,
vs
Doyle."

Compt moves that the depositions &c used in former case be filed to be used in this case — Because they were taken in a cause between the same parties & concerning the same subject matter.

Purple & Slinger for Compt."

And thereupon on the said 26th day of November A.D. 1853 the clerk of said court pursuant to said order of court transferred from the files of the said former case in said court between the same parties, and filed in this cause, the aforesaid depositions taken in said former suit, with the exhibits, ^{commissions} and notices thereto attached, which are in the words and figures following, to wit.

Fountain Watkins
1st deposition:

Andrew M. Wiley
vs
Isaac Doyle &
Thomas Doyle.

In the Circuit Court
of Peoria County.
In Chancery.

You are notified that on Thursday
the 21st day of October A. D. 1852, between the hours of 8 o'clock
A. M. and 9 o'clock P. M. of said day at the office of Purple &
Sanger in Peoria, Peoria County, Illinois, the complainant
will take the deposition of Fountain Watkins before some
officer legally qualified to take depositions to be read in evidence
in his behalf on the hearing of this cause.

H. A. & A. L. Merriman
depts. Solicitors, Sept. 7th 1852

Purple & Sanger
Attorneys Solicitors

Rec'd a copy of this notice, Sept. 7th 1852.
H. A. Merriman.

State of Illinois,
County of Peoria. } The deposition of Fountain Watkins
taken on Thursday the 21st day of October A. D. 1852, at
the hour of 9 o'clock in the forenoon of said day, at my
office in the City and County of Peoria, State of Illinois,
on behalf of complainant to be read in evidence, in a
certain cause now pending in the Peoria County Circuit
Court wherein Andrew M. Wiley is complainant and
Isaac Doyle and Thomas Doyle is defendant and where
the following interrogatories were propounded to said
witness, and by him answered under oath —

Interrogatory 1st. Do you know the parties
to this suit and how long have you known them.
Answer. I am acquainted with the complainant and
Isaac Doyle one of the defendants — do not know
Thomas Doyle. I have known them about eighteen years.

Interrogatory 1st. Was there ever a contract made and signed in writing, between you, Isaac Doyle and the complainant in relation to the purchase of the South West quarter of Section number twenty in Township number Nine North of Range number five East of the 4th Principal meridian in Tazewell County and if so, what was the substance of that contract - and about what time was the said contract made,

Answer. There was such a contract made and some time about the year A.D. 1840, but I am not certain as to the time. The contract in substance was in substance that Wiley was to have 40 acres off of the North end of said Lot, adjoining lands owned by said Wiley and that he witness was to have 40 acres described as commencing at the South West corner of the said quarter section and running thence East about one hundred and twenty rods to the main branch running through said quarter section, thence Northwesterly, along said branch, untill it reaches a point where a line drawn due West to the West line of the quarter section would make forty acres in the South West corner of said quarter section of land, and Isaac Doyle was to have the residue of said land, the contract was that each was to pay to the owner of said land, or to the one that purchased from said owner, for the amount of land received in proportion to the whole amount paid for said land, received by each - the said Doyle was to pay for eighty acres, and witness and Wiley was to pay for forty acres each - Do not know whether contract was sealed or not, but was placed in the hands of James Markness for safe keeping, each of the parties to said contract, have had possession of their particular share and proportion of said land as divided by said contract and have occupied and improved the same, since the time said

Contract was made upto the time witness sold to said Wiley - except that Doyle may have fenced in a small portion of said land belonging to Wiley, sometime in the year 1848, Usage Doyle told me to have my money ready that he had purchased said land and had sent on for the deed, And further deponent saith not,
Fountain Watkins

I, John J. Lindsay, a Notary Public in and for the City of Peoria and County of Peoria, State of Illinois, do certify, that on this 21st day of October A. D. 1852, at the City and County of Peoria, State of Illinois, and in accordance with the annexed notice the above named witness Fountain Watkins did appear, where the above interrogatories were by me propounded and answered as above by said witness, who was first duly sworn by me in accordance with law; and that he signed the same - under his own proper hand and signature.

J. J. L.

Given under my hand and seal
Notarial, this 21st day of October
A. D. 1852, at the City of Peoria,
John J. Lindsay N.P.

Fountain Watkins. State of Illinois,
2nd Deposition: County of Peoria. The deposition of Fountain Watkins taken by consent of parties, on Monday the 5th day of September A. D. 1853 at the hour of 3 o'clock P. M. of said day at the residence of the said Fountain Watkins in the Town of Elmwood in the said Co. of Peoria & State of Illinois, on behalf of the defendants to be read in evidence

in a certain cause now pending in the Leon County Circuit Court, wherein Andrew Mc. Wiley is complainant and Isaac Doyle and Thomas Doyle are defendants and where the following interrogatories were propounded to said Watkins and by him answered under oath.

Interrogatory 1st Do you know the parties to this suit, and how long have you known them.

Answer, I am acquainted with Andrew Mc. Wiley and Isaac Doyle - I do not recollect of ever seeing Thomas Doyle - I have known the two seventeen or eighteen years.

Interrogatory 2nd State whether your deposition in this case taken on the 21st day of October 1852, so far as you speak with regard to the supposed contract and descriptions of land is all that you know or remember of the same?

Answer, It does to the best of my recollection.

State whether Isaac Doyle at any time give you notice to have your part of the purchase money for said land ready, if so when did he do so?

Answer, As near as I can recollect in the year 1847 or 1848 I met with Mr. Doyle, I asked him if he had heard any thing from said land lately, he said he had, and that he had sent on for the title, that he looked for it soon, and that I might prepare myself with the gold and silver for nothing else would do, and that I might inform Mr. Wiley that he might be prepared also - I do not know that that was his exact words, but it was the substance of it.

State whether you do or do not know that Isaac Doyle was purchasing other lands at the same time you had this conversation with him.

Answer,

I do not.

Did you at any time inform Wiley of the conversation you spoke of with Doyle - if so when & what was his reply to the same?

Answer,

I did inform Wiley what Doyle said about the money being ready, I do not recollect what the reply was - I informed him within two or three days I think.

When did you tender or offer to pay said Doyle your part of the money for said land.

Answer,

March 25th 1851.

State at what time Wiley tendered or offered to pay his proportion for said land to said Doyle.

Answer,

I made a tender of that money myself, both mine and Wiley's at the same time, William George was with me at the time.

State whether you had sold your interest in said land to Wiley before you made the tender of the money to Doyle.

Answer,

I had.

What sum did you tender and how.

Answer - Two hundred and ninety two dollars, I did not count it to Doyle but I counted it before I got to the house - I offered to count it to him and he turned and walked away and said he had no use for that money.

State whether this tender was made at the instance and request of Wiley.

Answer,

Yes, Wiley requested myself and Mr. George to make the tender.

Answer,

Why did Wiley purchase of you?
Because I wanted to sell out to him to avoid a law suit, I informed him that was my reason for selling.

Who did Wiley inform you had advised him to buy from you, and tender the purchase money to Coyle.

Answer,

Wiley never informed me of any one advising him to buy of me - Wiley said he was going to have a law suit with Coyle and he had been advised to make a tender of the purchase money.

State whether the land is of greater value now than in 1847 or 1848 - if so how much,

Answer,

There has been some advance in the price of land, but I do not know what.

Has Wiley had possession of said land so long that the rents and profits of the same would pay him for his improvements.

Answer,

I think likely he has realized as much from his forty as the improvements have cost.

How long did you occupy your part after you made the improvements on the same

Answer,

Three or four years.

What would the improved land rent for per year? per acre?

Answer,

About two dollars per acre.

Did Wiley know at the time he purchased your interest in said land - that you had not tendered Doyle your part of the purchase money?
Answer. I suppose he knew it, I had made no tender of the money.

State what Sam Wiley paid you for your forty acres, how he paid - and what the land is really worth.

Answer. I only sold him my improvements, for seventy five dollars - he has not paid it all I have his note in the house for it; the land with the improvements on it is worth ten dollars pr acre - that forty would sell for about eight dollars per acre, without the improvements. And further this deponent saith not.

Hountain Watkins.

State of Illinois,
Peoria County, ss. I, Edson F. Smith, a Justice of the Peace, in and for the county of Peoria and State of Illinois, do certify, that on this 5th day of September A. D. 1853, in the County & State aforesaid the above named witness Hountain Watkins did appear before me where the above interrogatories were by me propounded, and answered as above by said witness, who was first duly sworn by me in accordance with law and that he signed the same under his own proper hand and signature, Given under my hand and seal, this 5th day of September A. D. 1853. Edson F. Smith Seal J. P.

Jacob Gale;
Deposition

Andrew M. Wiley, vs Isaac Doyle,
Thomas Doyle.
In the Florida Circuit Court.
In Chancery.
For conveyance of land.

To the Above named depts
and H. C. & A. L. Merriam, their Solicitors.

Take notice that on the
first day of September next between the hours of 8 o'clock
A. M. & 5 o'clock P. M. of said day and to be continued
from day to day by adjournment so long as may be neces-
sary at the office of Purple & Sanger in the City of Florida,
and before James M. Cunningham, Esq. a Justice of
the Peace or some other person duly authorized by law
to take depositions, we shall the deposition of Jacob Gale,
and William George to be read in evidence on the trial of the
above cause, on the part of the complainant, when and
where you can attend & cross examine if you deem proper.

Yours &c.

Purple & Sanger

Solrs for Compl^t

The depositions of the witnesses Jacob Gale and William
George taken pursuant to the annexed notice before me
James M. Cunningham, a Justice of the Peace of the
County of Florida, in the suit in said notice mentioned and
specified, each of the said witnesses being by me first duly sworn
according to law to speak the truth, the whole truth and nothing
but the truth so far as they should be interrogated, testified
as follows, to wit, the said Jacob Gale, to the several
interrogatories propounded to him, made answer as follows.

Int. 1.

Ans. 1. State whether or not you are Recorder
of Deeds for the county of Florida.
I am.

Q^t. 1, State if you have examined the record of a deed purporting to have been executed by John B. James to Thomas Doyle for the South West quarter of section Twenty in Township Thine North of Range Five East in Peoria County, and if so what time was said deed filed for record.

A^{ns} 1. I have examined the record of said deed, and the entry book and find the same to have been filed for record on the fourth day of October 1849, in the Records Office of Peoria, State of Illinois.

Jacob Gale.

Adjourned till 2. Sept. 1853 at 3 o'clock P.M.

William George
1st deposition

On this 2 day of Sept. 1853, the said William George to the several interrogatories propounded to him made answer as follows,

Q^t. 1. Do you know the parties to this suit?

A^{ns}. 1. I know two of them, Andrew McWiley & Isaac Doyle and do not know Tho^s. Doyle, and I have known And. McWiley & Isaac Doyle for last eleven years.

Q^t. 2. Are you acquainted with the South West quarter of section 20, 9 North 5. East in Peoria County.

A^{ns}. 2. I do know the quarter.

Q^t. 3. Who occupies the said quarter section.

A^{ns}. 3. Isaac Doyle and And. McWiley.

Q^t. 4. What part of the said quarter does And. McWiley occupy and how long has he occupied the same.

A^{ns}. 4. He has occupied the North East corner or North half of the quarter about eight years & having about fifteen acres improved and cultivated, claiming to

own 40 acres off the North side of the quarter, he has also occupied 40 acres in the South West corner running about 100 rods East from the South West corner to a small stream, and there far enough North to make 40 acres, he has occupied the last named forty acres about two years & half, There is about eleven acres of this last 40 acres improved.

Int. 5. Who occupied the last named forty acres before it was occupied by said Wiley and how long had he occupied the same.

Ans. 5. Fountain Watkins occupied it before And. Mc. Wiley about four years.

Int. 6. Do you know whether And. Mc. Wiley ever tendered to Isaac Doyle any money for any portion of said land and whether he demanded a deed or conveyance for the same to him said Wiley, if so when when and what sum was tendered.

Ans. 6. Sometime in March 1851 between the 20 & 26 and before this suit was commenced And. Mc. Wiley caused to be tendered to Isaac Doyle the sum of two hundred and ninety two dollars or two hundred & ninety two dollars and fifty cents - in gold and silver coin and a deed was demanded for his (Wiley's) interest in said land, Doyle said he had no use for it, the money - and turned and went away, he refused to make a deed to said Wiley. W^m George.

State of Illinois, ss. I, J. M. Cunningham a Justice of the Peace in and for Peoria County, said county do hereby certify that the foregoing depositions of Jacob Hale and William George were sworn to and signed by the said deponents to the said Hale's on the 1st day of Sept. 1853, and the said George's, on the 2^d day of Sept. 1853, between the hours of 8 o'clock A. M. & 8 o'clock P. M. of said days, at the office of Supler Sanger, in the City of Peoria in the county aforesaid. Witness my hand and seal this 2^d day of September A.D. 1853. J. M. Cunningham J. P.

H. Dusenbury's
deposition -

State of Illinois

Peoria County, ss. The People of the State of Illinois,
To Thomas Hudson of the City of Saint Louis in the State
of Missouri, as Commissioner to take deposition, Greeting:
We, having confidence in your skill and fidelity, have appointed
you, and by these presents do authorize and require you, at
a certain time and place, to be by you appointed for that pur-
pose, to cause the witness whose name is mentioned, in the caption
of the annexed interrogatories, to come before you and then and there
diligently and faithfully to examine him on oath upon the said
interrogatories, in the order in which they are propounded and you
will cause the answers of the witness thereto to be reduced to
writing, in the order in which they shall be proposed and
answered, and you will then cause the witness to sign his
name to the same in your presence. You will also annex
a certificate, subscribed by yourself at the foot of the depo-
sition stating that it was sworn to and signed by the depo-
nent and the time and place when and where the same was
taken, The deposition thus taken and ^{subscribed} ~~certified~~, and all
exhibits produced, or referred to by the witness together
with this commission and the annexed interrogatories you
will inclose, seal up and direct to the clerk of the Circuit
court of the County of Peoria, in the State of Illinois, with
the names of the parties litigant endorsed thereon.

Witness Jacob Gale, clerk of the
Circuit Court of the County of Peoria,
and the Seal of said court, this third
day of July in the year of our Lord
one thousand eight hundred and
fifty two.
Jacob Gale, clerk.

Interrogatories to be propounded to Henry Dusenbury of the City
of Saint Louis in the State of Missouri, a witness to be produced,

Heard and examined in a certain cause in Chancery now pending, wherein Andrew M. Wiley is complainant and Isaac Doyle & Thomas Doyle are defendants in the Circuit Court within and for the county of Peoria and State of Illinois. On the part and behalf of the said complainant, as follows, to wit:

1.st Interrogatory, Are you acquainted with the parties to this suit, if so, how long have you known them severally?

2. State whether the defendant Isaac Doyle ever purchased any land of you, or through you as agent for any other person. If so, at what time and what was and is the description & location of said land.

3.rd If you state that you sold him the S. W. 1/4 of Sec. (20) in Township (9) North (5) East in Peoria County, Illinois, state also for what price you sold said land and at what time and place when the contract for the same was first made, and when the same was deeded and to whom & who paid the purchase money therefor and when the same was paid.

4. If you state that the deed was made to Thomas Doyle, state whether you ever had any contract, agreement or understanding or conversation with said Thomas Doyle, upon the subject of said land, and whether said Isaac did not at first make said contract for said land, without pretence that he was acting as agent for any other person.

5. Do you know any thing else of benefit to complainant?

Purple & Sanger for Compt.

State of Missouri,
City and County of St. Louis.

Deposition of Henry Greenberry
taken at the office of Thomas B. Hudson in the City and
County of St. Louis, State of Missouri, on the 17th day of
July 1852, on behalf of the complainant in a certain ^{cause} now
pending in the circuit Court of Peoria County, State of Illinois,
wherein Andrew Mc. Wily is complainant and Isaac Doyle &
Thomas Doyle are the defendants, upon the interrogatories
hereto ~~annexed~~ annexed, the said

Henry Greenberry of lawful age a resident of the City,
County & State above mentioned, on his oath in answer to
the first interrogatory hereto annexed, says, With Isaac
Doyle heretofore living near or on the land mentioned in
interrogatory third, I have been acquainted about twelve
years. I have no present recollection of ever having any
acquaintance with Thomas Doyle, I am not acquainted
with Andrew Mc. Wily that I know of.

To the Second interrogatory the deponent for answer states,
I have heretofore and still am acting as the attorney of
John B. James & others heirs of William James formerly of
Albany, New York, deceased, as such attorney Isaac Doyle
has from time to time during my acquaintance with him
and up to or near the time of the sale of the South West
quarter of section twenty, nine North five East in Peoria
County, State of Illinois, individually applied to me for the pur-
chase of said quarter section. In June 1849 I received a
letter signed Isaac Doyle through the Post Office at this City,
which letter is hereto attached, marked exhibit "A". In com-
pliance with the request contained in said letter I wrote to
Mr. James to send on his deed for said quarter section
of land for the consideration of five hundred dollars which
was the price to be paid for said land, in compliance
with my request Mr. James sent me a deed for said ~~land~~ ^{land}

land, which deed was delivered to Isaac Doyle, as agent for his brother Thomas Doyle, in September 1849 at St Louis, Missouri. Isaac Doyle paid the money, five hundred dollars for said land, professing to act as agent as aforesaid. To the third interrogatory deponent states, that for answer to this interrogatory he refers to his answer to the second interrogatory.

To the fourth interrogatory deponent states to the best of my recollection the deed above referred to was made to Thomas Doyle. I do not at present recollect of there being any other contract, conversation or agreement in relation to said land with said Thomas Doyle further than above detailed, except a letter purporting to be signed by Thomas Doyle unto annexed marked exhibit "B." which letter I think was delivered to me by Isaac Doyle at the time of the paying for the land and of my delivery of the deed to said Isaac Doyle for the said Thomas Doyle.

In answer to the fifth interrogatory deponent states, that said land was sold without any reference to the value of the improvements thereon, the sum of five hundred dollars was considered as the value of the land without regard to improvements & further deponent saith not.

Sworn to & subscribed before me } Henry Pusenberg.
this 17th July 1852. }

Thos B. Hudson,
Commissioner.

State of Missouri, ss.  County of St. Louis. I, Thomas B. Hudson, do hereby certify that by virtue of the authority in me vested in and by the commission hereto attached annexed issued out of the office of the clerk of the Circuit Court of Teona County in the State of Illinois, I did on this 17th day of July 1852, cause to come before me at my office in the city and county of

St. Louis, State of Missouri, Henry Dusenbury who
was by me duly sworn and examined, on oath upon the
interrogatories hereto annexed and his answers thereto were
reduced to writing by me and then read over by defendant,
who signed and swore to the same in my presence & before
me at the time & place last aforesaid. Given under my
hand this 17th July 1852.

The B. Hudson,
Commissioner."

Carrollton Illinois June 9th 1847.

H. Dusenberry, Esqr

Dear Sir, I have come here with

the money in order to pay for the gr of land near me
which is the S. W. Co. T. N. S. E. not knowing you had moved
away until to day, therefore I shall remain here until
the mail returns from St. Louis, therefore if you still have
the deed, warranty, &c patent &c, duly certified as the law
requires & can come or convey it here by next Friday &
appoint some person to receive the money, part of it in gold &
the balance in Missouri Bank notes &c, &c, I can't
think of coming to St. Louis as the Cholera is there, or if
you cannot confide in a person at Carrollton & can meet me
at Edwardsville on a certain day shortly, I can meet
you there &c.; but I would much rather you came imme-
diately yourself to Carrollton. I also wish to know imme-
diately, if the other Mr. James will take up with my
offer I wrote you last for the S. E. T. T. N. S. E. which is \$400,
& if so I want you to write to him to forward the deed &c,
provided it is a warranty &c, &c, be good so good as to
write to me at Carrollton by the first mail all the informa-
tion you are in possession of on the subject, Should you
not be at home, to write by the first mail, write to me by the
second mail & direct it to White Hall P. O. in Green County Ill,

attached to
Dusenbury's
deposition

or if you cant do so then, write to me in Farmington, Ful-
ton Co. Ills as I shall return home near Monday week
11th Inst, I had the lung fever in the winter and could
not come, & in last fall also I had it, my lungs is very
weak of late. Respectfully your obedient servant,
The deeds I want made to Thomas Doyle of Greene Co. Ills.
Wm Doyle

H. Dusenberry Esq^r.

12th June Answered

7th Aug^r answered again stating Cholera had left
the city and that I would expect him down soon.

" Greene County, Ills Sept. 20th 49.

Mr. H. Dusenberry, Sir I send you the money for
the S. W. q. 20, 9 N. 5 E. as I am quite unwell and not
able to attend to it, therefore I wish you to send me the
deed by the bearer, I have sent it in gold as you said,
that you did not wish to have paper money, nor silver and
the cholera has been so bad in St. Louis or I would of
been and attended to it sooner, I wish you to write on
for the other deed if you have not, as soon as convenient
provided the title is good, patent &c and duly certified
according to law & taxes regularly paid and as soon as
you get the deed as above write to me or my brother
Wm Doyle, Farmington Post Office, Fulton Co. Ills,
& the money shall be forwarded to you, that is four
hundred & eighty dollars, I thought \$400 was
enough, but my brother says it will do at \$480,

Respectfully Your obt.

Thomas Doyle.

H. Dusenberry, Esq^r St. Louis, Mo.

attached to
Dusenberry's
deposition

Markman
Deposition

State of Illinois, Peoria County, Jo.

The People of the State of Illinois,
To the Clerk of the Circuit Court of Peoria County,
in the State of Wisconsin, or some other officer of said
county authorized to take depositions, Greeting:

We, having confidence in your skill and fidelity, have
appointed you, and by these presents do authorize and
require you, at a certain time and place, to be by you
appointed for that purpose, to cause the witness whose
name is mentioned in the caption of the annexed in-
terrogatories, to come before you, and then and there diligently
and faithfully to examine him on oath upon the said
interrogatories, in the order in which they are propounded,
and you will cause the answers of the witness thereto, to be
reduced to writing, in the order in which they shall be
proposed and answered, and you will then cause the
witness to sign his name to the same in your presence.

You will also annex a certificate, subscribed by yourself,
at the foot of the deposition stating that it was sworn
to and signed by the deponent and the time and place
when and where the same was taken. The deposition
thus taken and subscribed, and all exhibits produced,
or referred to by the witness together with this com-
mission and the annexed interrogatories, you will
inclose, seal up and direct to the clerk of the Circuit
Court of the County of Peoria, in the State of Illinois,
with the names of the parties litigant endorsed thereon.

L. S.

Witness, Jacob Gale, clerk of the
Circuit Court of the County of Peoria,
and the seal of said court, this twenty
eighth day of August in the year of
our Lord one thousand eight hundred and
fifty two. Jacob Gale, clerk.

The return of the magistrate taking the deposition, should be accompanied by a certificate of his official character, under the great Seal of the State of _____ or of the proper court of record of the county of Bad Axe.
Jacob Sale.

Interrogatories to be propounded to James S. Harkness, of the County of Bad Axe in the State of Wisconsin, a witness to be produced, and sworn and examined, in a certain cause in chancery, now pending and undetermined in the circuit court, in and for the county of Peoria and State of Illinois, wherein Andrew Mc. Wiley is complainant and Isaac Doyle and Thomas Doyle are defendants, on the part and behalf of the said complainant, as follows,

1st Are you acquainted with the parties to this suit, if so, how long have you known them severally.

2nd Do you know any thing about any contract in writing having been made between Isaac Doyle, Andrew Mc. Wiley & Fountain Watkins, relative to the purchase of the S.W. 1/4 of Sec. (20) in Township (9) N. (5) E. of the 11th principal meridian in Peoria County, Illinois, and if so, state all you know in relation to said contract.

3rd Was or Was not said contract put into your hands by the parties to be kept by you for their joint benefit? If so what became of the same, state as near as you can remember the contents of said contract and particularly whether the same has been lost and whether you have made diligent search and cannot find said contract.

4th

Was or was not said contract signed by said Doyle, Watkins & Wiley - and did they or not, each take possession and make improvements on the portions which by the terms of said contract they were to have when said land should be purchased by either; if so when or about what time & what was & is the character & extent of such improvements?

5th.

Do you know any thing further of benefit to the complainant.

State of Wisconsin,
Boa Dea County, ss.

I, James P. Harkness of lawful age, being duly sworn, do depose and say,
1st I am acquainted with Andrew Mc. Wiley and Isaac Doyle, I have been acquainted with Andrew Mc. Wiley about seventeen years and Isaac Doyle about nineteen years, except the last two or three years - Thomas Doyle I do not know.

2nd I do, Andrew Mc. Wiley, Isaac Doyle and William Watkins came to my house some ten or twelve years since, and entered into a contract which they all signed, and by agreement the said contract was deposited in my hands for safe keeping, the nature and conditions of said contract, were as follows, they Wiley, Doyle & Watkins were to endeavor to purchase the South West quarter of section No. Twenty (20) in Township No. Nine (9) North of Range No. Five (5) East of the fourth principal meridian in Peoria County, Illinois, Wiley was to have one fourth of said quarter section to be taken off the North side, Watkins was to have one fourth of said quarter section to be taken from the South half of said quarter, but in what shape I do not recollect, Doyle was to have the remaining half, each party was to pay his respective proportion of the purchase money.

Isa. Said contract was contract placed in my care or hands for the joint benefit of the parties, I knew not what has become of it, said contract was lost or mislaid by me, I have made diligent search among my papers and can not find it, If either of the parties purchased the said quarter section, it was to be divided as follows, Wiley was to have one fourth, Doyle one half and Watkins the other fourth by paying the party who might succeed first in buying said quarter section their respective amount of said consideration.

21th The said contract was signed by the said Doyle, Watkins and Wiley and Doyle and Watkins took possession and made improvements on the portions which by the terms of the said contract they were to have when said land should be purchased by either of the said parties, and it is my impression that Wiley took possession of his part of said land but I am not certain, not knowing the North line of said quarter, I think that Doyle lived on said quarter section at the time of the execution of the contract and had two or three acres under cultivation and also had a log cabin which he occupied at the time of the execution of said contract and continued to occupy the same until the year 1829 or thereabouts, Watkins had several acres of land under cultivation but the quantity I do not recollect, soon after the execution of the contract on that portion which the contract assigned to him. I think Wiley did within a few years after the execution of the said contract put into cultivation a few acres of land on that portion of the land which the contract assigned to him. I am unable to say as to the character and extent of the present improvements made by the parties on the said land as I have not been on the premises for the last three or four years past.

5th. I do not know any thing further that would be of benefit to the complainant and further this deponent saith not

James P. Markness,

Taken and Subscribed before me this 20th day of September A.D. 1852.

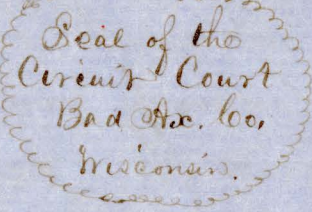
Wm. L. McMichael

Clerk Circuit Court Bad Axe Co., Wis.

State of Wisconsin, ss.

Bad Axe County, ss. I, William L. McMichael, Clerk of the Circuit Court, in and for said county, do hereby certify, that the above deposition was taken before me at my office in said county on the 20th day of September A.D. 1852, at 11 o'clock in the fore noon. That it was taken at the request of the complainant upon written interrogatories hereto annexed, that it was reduced to writing by a disinterested person, viz: Isaac Spencer, in my presence and under my direction, that it was taken to be used in a certain suit in chancery, now pending and undetermined in the Circuit Court, in and for the county of Peoria and State of Illinois, wherein Andrew McWiley is complainant and Isaac Doyle and Thomas Doyle are defendants on the part of said complainant, that the reason for the taking said deposition was that the witness resided in this state of Wisconsin, that due notice has been served upon the defendants, that said witness was sworn upon the examination to testify the truth, the whole truth and nothing but the truth, relative to the matters contained in said interrogatories, that no person appeared for either of the parties at the time of taking said deposition, and that the same was carefully read to the said witness and subscribed by him in my presence. In witness whereof, I have hereunto affixed the seal of the

Circuit Court, in and for the county of Bad Axe, State
of Wisconsin, and my signature this the 20th day
of September A. D. 1852.



Wm. C. McMichael, clerk.

The above decree has been adopted for
a seal until one can be procured, pursuant
to the Statute law of this State, authorizing
the same.

And on the same 26th day of November A. D. 1853, the defendants filed
their Bill of Exceptions in said cause in the words & figures following, to wit:

Bill of
Exceptions

Andrew Mc. Wiley, Peoria Circuit Court,
November Term 1853.
Isaac Doyle, vs.
Thomas Doyle, In Chancery.

On this day came this cause on to
be heard upon the motion hereinbefore made by com-
plainant for leave to file in this cause, the depositions
and exhibits now filed in a former cause between
the same parties to be used in evidence in this cause,
so far as the same are pertinent to the issues in the
said cause, and upon argument of counsel the said
motion was granted in the words and figures following, to wit:

Andrew Mc. Wiley
vs.
Isaac Doyle &
Thomas Doyle In Chancery.

This day this cause came on to be heard
upon the motion hereinbefore entered that the depositions &c,
taken in the case of said complainant against the said de-
fendants, which was dismissed at the last term of this court,

be filed in this cause &c, which motion was argued by
counsel & the court being now fully advised on the premises
doth order adjudge and decree, that all the depositions
and exhibits taken & filed in the said former case be filed
in this case to be used as evidence in this cause so far as the
same shall be applicable and pertinent to the issues in
the same manner and with like effect as though said
depositions & exhibits had been taken and filed in this cause,
to the granting of which motion order & decree the defendants
then and there excepted & prays the court to sign & seal this
his bill of exceptions,
November 26, 1853. H. M. Keen. Seal

And at the same term of said court last aforesaid the defendants filed
their demurrer to said Bill in the words & figures following, to wit,

"Andrew M. Wiley,

vs.

Isaac Doyle,
Thomas Doyle.

Superior Circuit Court.

Nov. Term 1853.

In Chancery.

Defendants as to the said bill filed
in this cause say that the matters & things therein contained
do not entitle him to the relief prayed for in said bill
and this he is ready to maintain as this court may direct.

Manning, Merriam & Carr,
for Defts."

And afterwards, to wit, on the first day of December A.D.
1853. the defendants filed their separate answers
in said cause to said Bill of Complaint, which
are in the words and figures following, to wit,

" In the Circuit Court of
Peoria county ^{Term} September 1853.

Answer of
Isaac Doyle

The State of Illinois } ss
Peoria County

The several answers of Isaac Doyle
one of the defendants to the Bill of Andrew M. Wiley complainant.
The said Isaac Doyle now comes for answer to the sd Bill
of the said A. M. Wiley says that he did not about the year 1840. or
at any other time enter into a written contract with said complain-
ant ~~for~~ ^{to} ~~the~~ ^{the} Fountain Watkins as stated in complainant's said
Bill - That this Def: did not at any time enter into a contract
in writing or otherwise for the purchase and partition of the S.W.
quarter of Section No 20 in Township No 9. North of Range
No 5. East of the 4th principal meridian in Peoria County Ill-
inois with the sd complaint and Fountain Watkins or any
~~other~~ ^{other} person or persons whomsoever as charged in complaint
said Bill - That it is not true that such contract was ever
made and is now lost or destroyed as stated in said complaint sd
Bill - That it is not true that about the year 1840. or at any
other time this Defendant Fountain Watkins and complaint
were the owners & occupants of land adjoining the lands describ-
ed in said Bill as therein stated - It is not true that this
Defendant: said ^{Watkins} ~~nothing~~ & complaint took possession of separate
portions of said land and occupied and continues so to do as
stated in complaint's Bill - That it is not true that this de-
fendant has in his possession or has enclosed eight or nine
acres nor any other quantity of complaint's land as stated in his
said Bill - This Defendant further answering says that it
is not true that the said complaint has greatly improved
the value of said land by the improvements by him made on the
same - That said complaint has not made improvements on the
same exceeding the sum of one hundred and twenty dollars as
stated in his said Bill -
This defendant admits that said land since the year 1840.
has greatly increased in value, and that the said eighty acres
claimed by the complainant is worth at this time twelve

a fifteen hundred dollars or more - This defendant insists that the rents and profits of said land during the period that that complaint has used and occupied the same has greatly over paid him for all the improvements by him made thereon. This defendant also admits that the De Watkins has made some improvements on a part of said land, but also insists that the rents and profits thereof received by him are more than sufficient to pay for all said improvements - This defendant further admits that the complainant and said Watkins have used and occupied portions of said land, say 35. or 40. acres each for the period of 10 & 12. years and received the rents and profits of the same.

This defendant further answering says that it is not true that the complainant or the said Watkins used all reasonable exertions to ascertain who was the owner of said land - but on the contrary wholly neglected and refused so to do - This defendant cannot either admit or deny the pretend purchase of complaint from said Watkins on the 24th day of March 1851. as stated in sd Bill, but insists upon full proof of the same. This defendant further answering admits that some time about the year 1848, he did make an offer to purchase said land of one ^{Henry} Dusenberry of St Louis (he ascertained his price for the same (Dusenberry then and there being the agent of the owner of the same as defendant was then informed) that Deft gave Compt & Watkins notice of the fact and required them to furnish a part of the purchase money, if they or either of them wished any part of the same, Deft offered to let them have a part of said land say 30 or 40. acres each if they would then furnish a corresponding portion of the price asked for the same. Defendant further answering says that at that time (1848) he purchased of the said Dusenberry another tract of land containing 100 acres for the sum of six hundred dollars - which sd last mentioned tract he, Deft still owns - That by reason of the said last mentioned purchase and relying on Compt & Watkins to assist in furnishing the money to purchase the land in said Bill mentioned, which they wholly neglected and refused to do - this Deft was unable to buy the

the same, of all this Compt & Watkins had notice - This Defendant gave notice to Compt and Watkins that he was in want of money to buy said land and requested them to furnish their respective portions of the same - That neither Watkins or Compt made any payments nor tendered to this Defendant one Dollar - at the same time they well knew that Defendant was greatly in want of money to purchase said land - That by reason of the total neglect and failure of sd Compt and Watkins to furnish their respective portions of the purchase money aforesaid, this Defendant was rendered unable to buy the same - and thereby lost any and all benefits and advantage he might have otherwise derived from the same - This defendant in fact says, that the sd Watkins & Compt at that time to wit 1848, had great doubts with regard to the purchase of sd land, as the price of real estate was then low - That when the said Watkins & Compt failed to furnish their respective portions of the purchase money or price of sd land, this defendant was compelled to abandon the purchase of the same - This Defendant was at all times ready and anxious to furnish his part of the purchase money - This Defendant had before that time incurred great trouble & expense to ascertain who was the owner of the same - That Compt & Watkins done nothing in the matter - This Defendant further answering says that it is not true that he Deft purchased said land and took a deed in the name of Thomas Doyle to cheat & defraud Compt & said Watkins out of their portions of sd land - Nor is it true that this Deft paid the purchase money to said Dusenberry or any part of the same out of the money belonging to this Defendant as charged in Compt's Bill - This Deft further says that after he had abandoned all hopes and intention to buy said land, and after Compt & Watkins had failed to furnish any money to enable Deft to buy the same, Thomas Doyle one of the Defts to this suit did purchase said land, but he did not pay for the same with this Deft's money; that this Defendant did pay to said Dusenberry as agent

for the owner of said land the sum of five hundred dollars furnished him for that purpose by the said Thomas Doyle & obtained a Deed for said Thomas Doyle for said land said Deed had been executed some time prior to the payment of the purchase money - That so far as this Deft knows or believes the whole transaction was fair, honest and in all respects legal and right - This Deft: did not at any time furnish Thomas Doyle one dollar to buy said land - nor did Thomas ever ask him for a dollar or any other sum - This defendant further answering says that the said Thomas Doyle does not hold the title to said land in trust for this Deft - That the said Thomas Doyle had no notice derived through this defendant that the Compt. Watkins and this Deft: ever had any understanding or agreement about or concerning the purchase of said land - That this defendant then did and still does believe that after the said Compt. & Watkins failed to furnish their portion of the price of said land, that any and all agreements or contracts either verbal or written were at an end - & fully cancelled, and parties wholly released from the obligations of the same, if any such obligations ever existed - This defendant further says had Compt furnished his portion of the price of said land & Watkins had done the same at the time Deft gave them notice as above stated Deft would have purchased said land - That by reason of their said neglect and refusal so to do this Deft has sustained a loss in the rise of the value of said land since that time - That this Deft has in all respects acted in good faith - that the Compt. has acted in bad faith - This Defendant further answering says that sometime in the year 1851. said Watkins offered to pay him a sum of money but what sum Deft does not know, this Deft then informed him that he had no interest in said land - that this pretended tender was 3. or 4. years after this Defendant gave them (Watkins & Wiley) notice as above stated - This Deft again avers and so the truth is, that the said Thomas Doyle did not purchase said land untill long after this Deft had abandoned the purchase of the same - and untill long after the said Wiley &

Watkins had failed and refused to furnish any money to aid in the purchase of the same — This defendant denies that he ever concealed his actings, and doings, in the premises from said Wiley and Watkins or either of them — Deft says that it is true that he has occupied a small part of said land since the said Thomas purchased the same, that he has paid a small amount of ^{rent} say 50\$ to the said Thomas — That he is surely bound in honesty to pay what the land is reasonably worth that he expects to do — whether the Wiley or Watkins or either of them have or has paid any rent Deft cannot say — This Defendant denies all combination and fraud with which he stands charged and prays to be hence dismissed with his cost &c.

Thos Meriman &
 Marring
 Sols for Deft =

Provia Circuit Court
 Nov Term 1853.

Answer of { Andrew W. Wiley
 Thomas Doyle }
 Isaac Doyle
 Thomas Doyle

Respondent - Thomas Doyle saving & reserving all manner of exception with many errors & insufficiencies in said Bill contained, for answer to so much thereof as he is advised to be material - To wit -

That he knows nothing of the contract as alleged between said Complainant, Defendant & Isaac Doyle & Watkins - Nor does he know anything of the ownership & occupancy of said parties of the lands adjoining the land in controversy nor of their taking possession of the parts of said land which they intended upon the purchase, by themselves to appropriate and divide among themselves nor whether said contract has or not been lost - but respondent here insists that any such contract as alleged between said Isaac, Complainant & Watkins was binding upon no one unless it be the parties thereto - And if they did take possession of said land such possession was an act of trespass on the part of such

persons so possessing the same & that the said possession was founded upon no title or right or permission from any person having any right or title therein but was wholly tortious. and Respondant here calls for strict proof all those allegations in said Bill contained — Respondant further answering says that he knows nothing of the improvements made upon the said land by said complainant, & said Watkins, & calls for proof of the same, & further insists that if such improvements were made, they were made without any authority or permission from any person having any title or right to said land. Respondant further answering saith that he knows not whether said complainant & Watkins have always been ready & willing to comply with the terms of said contract so alleged to have been made with said Isaac Doyle as aforesaid. but Respondant is informed and believes & so charges the fact to be, that, some time after the said contract was made between said parties said Isaac Doyle negotiated with one Henry Dusenberry for the purchase of ^{the} said land, with the intention of purchasing the same. That said Isaac Doyle ascertained from said Dusenberry the terms upon which he could purchase the same, that he communicated said information to said Wiley & Watkins, and demanded from them respectively their proportions of such purchase money for the purpose of purchasing said land for the benefit of the said parties to said contract & that said Wiley & Watkins refused to furnish any money for the purchase money thereof — Respondant further answering states that he knows nothing of the purchase by complainant of said Watkins of his interest in said land & calls for proof of the same. but insists that said Watkins had no interest in said land to convey to said complainant, that said Watkins so considered his interest at such sale, and that he sold his interest in the improvements to said complainant for a nominal sum — Respondant further answering denies that said Isaac Doyle purchased said land of one

Henry Dusenberry agent of John B. Games, as alleged in said Bill, but on the Respondent states the he (respondent) purchased of said Dusenberry agent of said Games as aforesaid the land described in said Bill for the consideration of five hundred dollars - that in the month of September A.D. 1849. the Deed of said Games, the origin thereof to respondent was received, and the said sum of five hundred dollars the purchase money therefor as agreed between said parties was paid by respondent to said Dusenberry agent as aforesaid. — Respondent admits that some time elapsed between the time of the agreement by respondent, and said Dusenberry for the purchase of said land and the time when such money was paid by respondent which delay was occasioned by the fact of the said deeds reception by said Dusenberry not being imparted to respondent until a short time prior to the payment for the same by respondent, by the sickness of respondent, & by the prevalence of the cholera in said Saint Louis, where said Dusenberry resided in the vicinity of which respondent was not willing to intrust himself — That in the month of September A.D. 1849. as aforesaid he forwarded said sum of five hundred dollars by said Isaac Doyle to said Dusenberry — Respondent further answering denies that said defendant Isaac Doyle purchased the said land and paid for the same himself, but on the contrary thereof, that the purchase thereof was made by respondent with his own money — that sometime in the year 1848. respondent was informed that said land was for sale, that the same could be purchased for the sum of five hundred dollars, and that as respondent was acquainted with the land in question, and had some intention of removing on the same provided he could purchase the same and sell his farm in Green County Illinois, where he then resided & still resides, directed said Isaac Doyle who was at his house in said Green County, on his way to ^{early} Saint Louis as he stated, to purchase another tract of land from said

Dusenberry as agent as aforesaid to make a contract for respondent with said Dusenberry for the purchase of said land in controversy, provided he could purchase the same upon the terms aforesaid. — Respondent denies that his purchase of said land was done with the intention of cheating and defrauding said complainant & said Wattins, but that purchase was made by respondent as a safe and good investment for the amount of the purchase money thereof in good faith. — Respondent denies that he holds the legal title to said land in trust for said Isaac Doyle or that said Isaac receives the rents and profits of the same on his own account, but Respondent on the other hand alleges that said Isaac who is in possession of a small portion of said land holds such possession thereof as tenant of Respondent — And having fully answered said Bill. Respondent prays to be hence dismissed with his reasonable costs in this behalf.

Wanning & Herriman
for Deft.

And afterwards on the seventh day of December in the year of our Lord one thousand eight hundred and fifty three the said complainant filed his Replication to said Answers in the words and figures following, to wit:

Andrew M. Wiley	}	In Chancery
Isaac Doyle &		
Thomas Doyle		

The Replication of the Complainant to the answers of the said Isaac Doyle and Thomas Doyle filed in this cause. Said complainant for Replication to said defendants answers, says, that he will aver and maintain his said Bill to be true certain and sufficient and that the said defendants answers are uncertain, untrue and insufficient &c. and this he is ready to verify, wherefore he prays as in and by his original Bill he

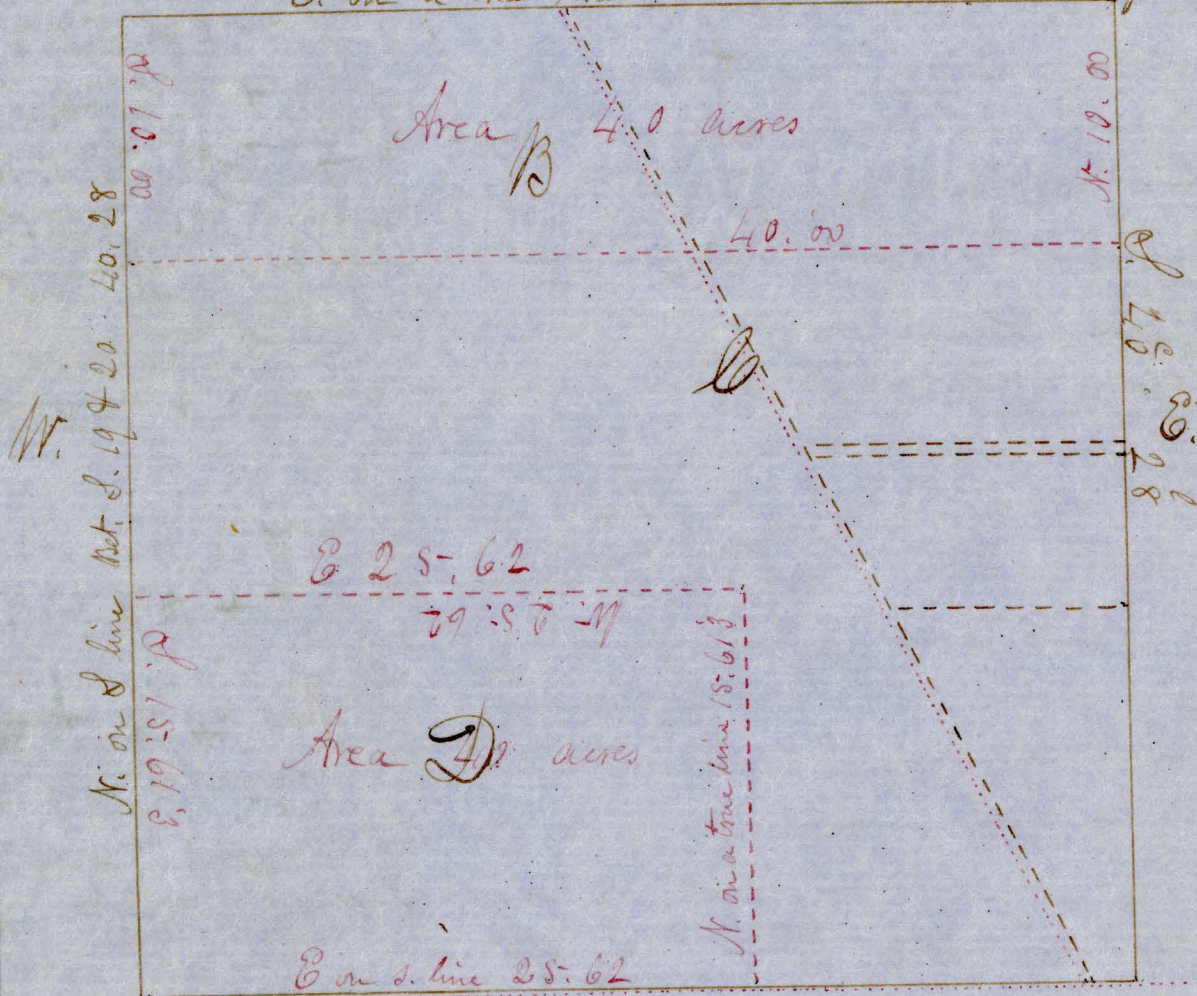
has prayed &c.

Purple Sanger
for compt.

And afterwards, to wit, at the March Term of said Court A.D. 1854, the depositions of Daniel B. Allen, William J. Phelps, William George and Thomas Bryant taken in this cause were opened and filed under General Order of said Court, and with the Plat and notice thereto attached are in the words and figures following, to wit,

Mr.

A plat of the S. W. quarter of Sec 20 T. 9 N. R. 5 E. 4 P. M.
C. on a true line 40.00 Center of S 20.



A survey of the S.W. ^{E. 40:00} qr of Section 20. T 9 R 5 E 4 PM
Surveyed Feb 4th 1884 by
J. B. Allen

of

C. S. P. C.

"A"

Andrew M. Wiley

Isaac Doyle &
Thomas Doyle

In the Circuit Court of Peoria County
In Chancery -

Take notice, that on the 25th day of February A.D. 1854, at the office of Purple & Sanger in Peoria, between the hours of 10 o'clock A.M. and 9 P.M. of said day I shall take the depositions of Daniel B. Allen, William J. Phelps, William George, & Fountain Watkins, Thomas Bryant before some officer duly authorized to take depositions, to be read in evidence on the hearing of this cause on the part of complainant -

Purple & Sanger for complt.

G. H. O. & A. L. Merriman, counsel for Defts.

Recd copy February 16th 1854

Manning & Merriman.

Depositions of Daniel B. Allen, Thomas Bryant, William J. Phelps, and William George, taken on the 25th day of February A.D. 1854, between the hours of ten o'clock A.M. & six o'clock P.M. of said day, at the office of Purple & Sanger pursuant to the enclosed notice, to be read in evidence in a cause pending in the Circuit Court of Peoria County and State of Illinois, wherein Andrew M. Wiley is complainant and Isaac Doyle & Thomas Doyle are defendants. The said witness do depose and say -

Deposition of Daniel B. Allen -

1st Interrogatory = Are you acquainted with the parties to this suit, and what is your occupation, & what do you know of the survey, if anything, of the Southwest quarter of Section twenty in Township Nine North Range Five East of the 4th principal meridian in Peoria County & State of Illinois?

Answer = I am acquainted the Complainant Wiley, and partially acquainted with Isaac Doyle, the other defendant I do not know - My occupation is County Surveyor of Peoria County - I surveyed said quarter Section and

made a plat of it February fourth A.D. 1854, which is hereto attached and marked (A). That part of said plat marked (B), is forty acres off of the North side of said quarter, the adjoining land is owned by the complainant in this suit - That part of said plat marked (D) is forty acres off of the South West corner of the Quarter Section, commencing at a stone set for a corner, running East on section line twenty five chains and sixty two links to a branch, said branch running Northerly through said Quarter Section, thence North on the said branch fifteen chains and sixty one & three tenths links, to a stake set for a corner, thence West on a true line twenty five chains and sixty two links to a stake on the West line of the tract, thence South on the Section line fifteen chains and sixty one & three tenths links, to place of beginning, containing forty acres - That part of said plat marked (C) represents the residue of said Quarter Section - Mr. Isaac Doyle's dwelling house is two or three rods East from the East line of the Quarter of Section - and about equally distant from the North and South lines, the land occupied by Mr. Isaac Doyle adjoins this quarter section on the East.

Cross Examination -

Interrogatory 1st For whom and under whose directions did you make the survey above referred to?

Answer = I made the survey at the request of and for the complainant.

D. B. Allen.

Deposition of William J. Phelps

Interrogatory 1st Are you acquainted with Isaac Doyle of Peoria county?

Answer = I am.

Interrogatory 2nd Are you acquainted with the handwriting of said Isaac Doyle? If so, what are your means of knowledge?

Answer = I am acquainted with his handwriting, from having

seen him write occasionally

Interrogatory 3^d Look at the letter now shown to you, dated September 20th 1849 and attached to the deposition of Henry Dusenbury filed in this case and state whether in your opinion the same is or is not the handwriting of Isaac Doyle?

Answer - I think it is.

Cross Examination -

Interrogatory 1st Are you acquainted with the handwriting of Thomas Doyle?

Answer - I am not.

William J. Phelps."

Interrogatory 1st Are you acquainted with Isaac Doyle of Peoria County?

Answer - I am.

Interrogatory 2nd Are you acquainted with the handwriting of said Isaac Doyle? If so, what are your means of knowledge?

Answer - I am acquainted with the handwriting of said Isaac Doyle, my means of knowledge are by having seen him write and receiving letters from him.

Interrogatory 3^d Look at the letter now shown you dated September 20th 1849, and attached to the deposition of Henry Dusenbury filed in this case, and state whether in your opinion, the same is or is not the handwriting of Isaac Doyle?

Answer - I have no doubt but that it is his handwriting, but some portions thereof are written in a disguised hand.

Cross Examination -

Interrogatory 1st Did you ever see the handwriting of Isaac Doyle disguised before?

Answer - I have not.

Thomas Bryant."

Deposition of Wm George

Interrogatory 1st Where do you reside?

Answer: I reside in Elmwood township, Peoria county.

Interrogatory 2nd Are you acquainted with the land in controversy in this suit and how long have you known it?

Answer: I am acquainted with it, and have lived within a hundred yards of it for nearly eleven years.

Interrogatory 3^d Where does Isaac Doyle now live, and how long has he lived there?

Answer: He now lives a few rods East of the East line of the land now in dispute. He has lived there between three and four years previous to that time - for eight years or more he lived just over the East line and upon the disputed quarter in controversy.

Interrogatory 4th How far from the line of the Public road, running through said quarter section is Doyle's residence, and state whether he has any means of getting to the public road running through said quarter section without crossing the land lying between said road and the East line of said quarter section?

Answer = Doyle's residence is some twenty five or thirty rods from the line of said road. He has not any means of getting to the public road running through said quarter section without crossing the land lying between the road and the East line of said quarter section - Said public road is the only public road leading from his residence towards Peoria, and the road always used by him when coming to Peoria - Wm George.

State of Illinois

Peoria County ss I, George S. Blakeley, Notary Public in and for the City, County & State aforesaid, do certify that Daniel B. Allen, William J. Phelps, William George & Thomas Bryant were by me sworn to testify the truth, the whole truth and nothing but the truth, as witnesses in the above entitled cause, before being examined as witnesses, and that the foregoing depositions by them severally subscribed was by me reduced to writing and taken at the time and place in enclosed notice specified.

Given under my hand and seal Notarial this 25th day of
February A.D. 1854 - George S. Blakeley
Notary Public.

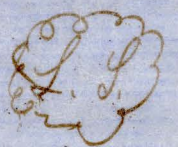
On the hearing in this cause the defendants produced to the Court a Deed of conveyance, which with the certificate of the Record thereof endorsed thereon, as the same is on file in this cause is in the words and figures following, to wit;

Deed to
Thomas Doyle

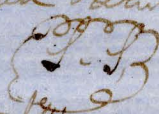
"This Indenture made the eleventh day of July in the year of our Lord one thousand eight hundred and forty eight between John B. James of the City of Albany, State of New York of the first part and Thomas Doyle of Greene County in the State of Illinois of the second part witnesseth, That the said party of the first part for and in consideration of the sum of five hundred dollars lawful money of the United States of America to him hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, hath granted, aliened, remised, released, enfeoffed and confirmed and by these presents doth grant, alien, remise, release, enfeoff and confirm unto the said party of the second part, and to his heirs and assigns forever, All that certain piece, or parcel of land lying and being in the Military Tract in the State of Illinois and known as the South West quarter of Section (20) twenty, Township (9) North, Range (5) five East, said lot being situated in Peoria County and forming a part of the Estate in the said State of Illinois whereof the late Wm. James of Albany died seized, and having been set over at the partition of said estate of Wm. James, to the said party of the first part by Commissioners appointed for the purpose under the laws of the said State of Illinois - Together with all and singular the hereditaments and appurtenances therunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, claim and demand whatsoever of the said part - of the first part, either in law or equity, of in and to the above granted premises, with the said hereditaments

and appurtenances. To have and to hold the above mentioned and described premises with the appurtenances and every part and parcel thereof, to the said party of the second part his heirs and assigns forever. And the said John B. James for himself his heirs, executors and administrators doth covenant, grant, bargain, promise and agree to and with the said party of the second part his heirs and assigns to warrant and forever to defend the above granted premises, and every part and parcel thereof, now being in the quiet and peaceable possession of the said party of the second part, against the said party of the first part his heirs, executors, administrators and assigns and against all and every other person claiming or to claim the said premises, or any part thereof - In witness whereof the said party of the first part hath hereunto set his hand and seal the day and year first above written.

Sealed and delivered in the presence of - Henry L. Lansing, }
Wm A. Mooring. }

John B. James 

State of New York }
Albany City & County } Be it remembered that on the eleventh day of July A.D. 1848, before me a Commissioner duly appointed by Thomas Ford Governor of the State of Illinois, for the County of Albany in the State of New York to take acknowledgments of Deeds and other instruments &c. to be used or recorded in the said State of Illinois, appeared John B. James, who is personally known to me to be the individual described in and who executed the within deed, and acknowledged to me that he had executed the same -

Henry L. Lansing 
Commissioner of the State Illinois
for the County of Albany in the State of New York.

State of Illinois }
County of Peoria } Records Office - I Charles Pettibone Recorder of said county do hereby certify the within deed is duly recorded in said Office in Book V pages 48-6 and 48-7 on this fourth (4) day of October A.D. 1849 - Charles Pettibone R.R. Co.

And at the said March Term of said Court A.D. 1854
the following further proceedings were had in said cause, to

Saturday April 1st A.D. 1854

Andrew M. Wiley

vs

for conveyance of land

Isaac Doyle &

Thomas Doyle

This day came the complainant by Purple & Sanger his
solicitors and the defendants by Manning and Kerr their solicitors,
and this cause coming on to be heard was argued by counsel
and the Court not being fully advised in the premises
took time to consider.

Proceedings in Chancery before the Circuit Court at a term
thereof begun and held at the Court House in the City of
Peoria in and for the County of Peoria, in the State of
Illinois, on Monday the eighth day of May in the
year of our Lord one thousand eight hundred and
fifty four. The Honorable Unelw Peter, Judge of the
sixteenth Judicial Circuit in the State of Illinois, presiding
to wit:

Thursday May 11th A.D. 1854.

Andrew M. Wiley,

vs

For conveyance,

Isaac Doyle,

Thomas Doyle.

This cause having been submitted to the
Court at the last term thereof upon the bill, answers, repli-
cations, depositions, testimony and exhibits, and the Court
having duly considered the same and being now fully
advised in the premises, doth order, adjudge and decree, that

the said complainant pay to the said defendants the sum of two hundred and ninety two dollars being one half the purchase money & interest of the premises in complainant's bill described and being the same money tendered by complainant to defendants before the commencement of this suit, being now in court to ready to be delivered to the said defendants, or that defendants be at any time they may see proper permitted and allowed to take said money from the clerk of said court with whom the same is deposited & appropriate the same to their own use, And it is further ordered, adjudged and decreed, that within twenty days from the date of this decree the said defendants make, execute and deliver to the said complainant a deed in fee simple of all their right, title, interest, property, claim and demand in and to the following described tracts of land and real estate, to wit: commencing at the North West corner of the South West quarter of Section Twenty (20) in Township Nine (N. North of Range Five (5) East of the fourth principal meridian in Peoria County, thence East one hundred and sixty rods (160), thence South Forty (40) rods, thence West one hundred and sixty (160) rods to the West line of the said quarter section, thence North Forty (40) rods to the place of beginning, containing forty acres more or less.

The other tract—commencing at the South West corner of the same quarter section above described, thence East twenty five chains and sixty two links to a branch running through said tract of land, thence North in a direct line running along said branch fifteen chains sixty one and three tenths links to a post, thence West twenty five chains and sixty two links to the West line of the said quarter section, thence South fifteen chains sixty one & three tenths links to the place of beginning, containing forty acres, more or less.

Said two tracts of land ~~of land~~ being particularly represented and described by a plat marked "A," and attached

to the deposition of Daniel B. Allen filed in this cause.

It is further ordered, adjudged & decreed that in case said defendants shall fail, neglect or refuse to make the deed in manner and at the time aforesaid, then the Master in Chancery of this court George S. Blakeby, Esq. be and he is hereby appointed a Commissioner to make, execute and deliver the said deed for the premises aforesaid in the name and for and on account of the said defendants. It is further ordered, adjudged and decreed that said defendants pay the costs of this suit & that execution issue therefor as in cases of judgments at law.

It is further ordered that said commissioner in case he shall make said deed, do make report of his proceedings to the next term of this court.

Tuesday, May 23rd A.D. 1854

This day came the defendant Isaac Doyle and prayed an appeal in this cause to the Supreme Court of this State, which is allowed him on his filing in the office of the clerk of this court in thirty days an appeal bond payable to the complainant in the penal sum of three hundred dollars with Abner H. Smith and Samuel N. Kerr as sureties, and conditions according to law -

And afterwards on the 12th day of June A.D. 1854, the said Isaac Doyle filed his appeal bond in said cause in the words & figures following, to wit,

Appeal Bond - "Know all Men by these presents that we Isaac Doyle as principal and Abner H. Smith and Samuel N. Kerr as securities are held and firmly bound unto Andrew McWiley in the penal sum of three hundred dollars for the payment of which well and truly to be made we hereby bind ourselves, our heirs, executors and administrators, jointly, severally and firmly by these presents.

Witness our hands and seals this third day of June A.D. 1854,

Whereas the said Andrew Mc. Wiley did at the May Term of the Circuit Court in and for the county of Proia in the State of Illinois, in a certain cause on the chancery side of the said court in a certain cause wherein said Andrew Mc. Wiley was complainant and the said Isaac Doyle and Thomas Doyle were defendants. From which said decree the said Isaac Doyle afterwards at the said term of said court, that is on the 11th day of May A. D. 1854, prayed and obtained an appeal to the Supreme Court of the State of Illinois on condition that he said Isaac should enter into bond with the said Smith & Kerr as security within thirty days and file the same with the clerk of the said circuit court.

Now therefore the condition of the above obligation is such, that if the said Isaac Doyle shall prosecute his said appeal duly, and shall pay, satisfy and perform the judgment, costs, interest and decree in said cause, in case said decree and judgment shall be affirmed, then the above obligation shall be void, else to be and remain in full force and virtue.

Isaac Doyle Dea'd
Abner H. Smith Exec'd
S. W. Kerr. Exec'd

State of Illinois
Proia County I, Jacob Gale clerk of the Circuit Court in and for the County of Proia in the State of Illinois, do hereby certify, that the foregoing is a full and correct transcript from the Record of all the proceedings in a certain cause in said Court in Chancery of Andrew Mc. Wiley against Isaac Doyle & Thomas Doyle as the same are on record and on file in my office -

In witness whereof, I hereto set my hand and affix the seal of said Court at Proia this 14th day of June A. D. 1854
Jacob Gale. Clerk.

Clerks' fees: for transcript certificate and \$16.⁰⁰

89.
Isaac Doyel ^{imp. 1854}
- W

Andrew M. Wiley
~~~~~  
Ricord

Filed June 21. 1854.  
L. Leland Clk.  
By P. H. Leland Depy.



Andrew M Wiley Appellee }  
 vs } Appeal from Poria  
 Isaac Wagle Appellant }  
 Impleaded with Thomas Wagle }

And now comes the Appellee by his  
 Counsel and suggests that there is diminution  
 in the Record in this cause in this

Said Record Omits to set forth the Bill, Exhibits  
 and Depositions - and orders made in the case  
 of the Complaint against the Defendants &  
 which was dismissed at the September Term 1853.  
 Refers to in this Record

Said Record also Omits the answers of the  
 said Defendants filed in said cause and  
 which were offered in evidence upon the hearing  
 of this cause by said Defendants & Excluded  
 by the Court

I Pray a writ of Habeas Corpus to the Clerk  
 of the Circuit Court of Poria County requi-  
 ring him to send up a more complete Record  
 in this cause

J. C. Gingle  
 Solicitor for Appellant



89  
Wiley or Hoyle

Suggestion Elimination  
Records

Filed June 23<sup>d</sup> 1884.  
L. Leland Clk.  
By P. K. Leland Secy



State of Illinois, ss.

Supreme Court, Third Grand Division, at Ottawa:

The People of the State of Illinois,  
To the Clerk of the Circuit Court of *Peoria* - County, GREETING:

WHEREAS, in a certain plea between *Andrew M. Wiley* -  
*Complainant* - ~~plaintiff~~ - and *Isaac Doyle* ~~implied~~  
*with Thomas Doyle* - ~~defendant~~ <sup>& *Deere*</sup> lately depending in the Circuit Court  
of said county, wherein judgment was rendered for the said *Andrew M. Wiley*  
and against the said *Isaac Doyle* ~~implied~~ <sup>& *Deere*</sup>  
and the said *Isaac Doyle* having taken an appeal from the judgment & ~~decreed~~  
of said Court, rendered against *him* - as aforesaid, to the Supreme Court, held at  
Ottawa, on the *2<sup>d</sup> Monday in June inst.* and in pursuance of the said  
*appeal* - a transcript of the record and the proceedings in the plea afore-  
said was transmitted. And, also, whereas it hath been suggested, on the part of said  
*Andrew M. Wiley* that the said record has been diminished, inasmuch as

*Said Record omits to set forth the Bill, exhibits, &  
depositions - and orders made in the case of the  
complainant against the defendants which was  
dismissed at the September Term 1853 referred to in this  
record.*

*Said Record also omits the answers of the said  
defendants filed in said cause & which were offered  
in evidence upon the hearing of this cause by said  
defendants & excluded by the Court & the same*

hath not been sent up; and forasmuch as the said Supreme Court are not satisfied that  
there is a sufficient record sent in the plea aforesaid, but in the record there is a diminu-  
tion: YOU ARE, THEREFORE, HEREBY COMMANDED, that, without delay,  
the said ~~diminution~~ therein you cause to be transmitted to the Supreme Court, ~~now~~  
held at Ottawa, ~~on the~~ *forthwith*  
~~and~~, without any diminution or addition whatsoever, to the end that speedy justice may  
be done in the premises, according to law; whereof you are in no wise to fail; and send  
you then there this writ.

WITNESS, the Hon. SAMUEL H. TREAT, Chief Justice of  
said Court, and the seal thereof, at Ottawa, this *23<sup>d</sup>*  
day of *June* - in the year of our Lord one thou-  
sand eight hundred and fifty-*four*.

*L. Keland* Clerk of the Supreme Court.



Chadwell Riley

Isaac Doyle witness.

Buttani.

State of Illinois

Penn County  $\phi$  I do hereby certify and return to the within writ that (having examined the record and proceedings in the suit of which mention is within made) have made a transcript of the Records and proceedings in the said cause of the matters left out of the former Record as stated in the within writ as fully as the same remains in my custody, and do hereby certify and transmit the same hereto attached, as within I am commanded -  
July 1<sup>st</sup> A.D. 1854 -

Jacob Gale, clerk of the circuit  
Court Penn County Ills.



Be it Remembered, that heretofore, to wit, on the  
twenty fifth day of March in the year of our Lord  
one thousand eight hundred and fifty one, there  
was filed in the office of the clerk of the Circuit  
Court in and for the County of Peoria in the State  
of Illinois a Bill in chancery, precise and  
Exhibits thereto attached which are in the words  
and figures following, to wit,

Bill in chancery =

" In the Circuit Court of Peoria County,  
May Term A.D. 1851.

State of Illinois, ss.

Peoria County, ss.

To the Honorable William Kellogg  
Judge of the said court,

Humblly complaining sheweth unto your Honor,  
Your Orator Andrew McWiley of the county of Peoria  
and State of Illinois, that some time in the month of  
April or May A. D. 1851, or about that time your  
Orator entered into a contract in writing with one  
Fountain Watkins and one Isaac Doyle then and  
now residents of Peoria County, which said contract  
was in substance as follows,

That each of the said parties should use  
all due and proper diligence to purchase from and  
procure a deed from who ever might be the owner of  
the S. W.  $\frac{1}{4}$  of Section Number Twenty (20) in Township  
Number Nine (9) North of Range number Five East (5)



of the fourth principal meridian in Peoria County,  
Illinois, That your Orator was to have forty acres  
off the North end of said lot adjoining lands  
then owned by him, that said Watkins was to have  
forty acres described as commencing at the South  
West <sup>corner</sup> quarter of the said quarter section and running  
thence East about one hundred and twenty rods to  
the main branch running through said quarter section,  
thence Northwesterly along said branch until it reached  
a point where a line drawn due West to the West line  
of the quarter section would make forty acres in the  
South West corner of the said quarter section, and  
that the said Doyle was to have the residue eighty  
acres of the said land, and each to pay the owner or to  
either of the others who might become the purchaser  
as aforesaid. For the benefit of the whole an equal  
proportion of the cost of said land compared with  
the number of acres each was to receive under said  
contract and by virtue of the said intended purchase.

And your Orator charges that the said con-  
tract was signed by the parties thereto severally, but  
whether the same was or was not under seal he  
is unable to state because the said contract, which  
was for the mutual benefit of all the parties, as far  
he is informed and believes been lost or destroyed  
and he is unable to produce the same to the court,  
said contract was deposited with one James Hask-  
ins for safe keeping, who your Orator is informed  
and believes upon strict and diligent search  
cannot find the same and knows not what has  
become of it.

And your Orator further states that he,  
said Watkins and Doyle were at the time of said  
contract severally owners and occupants of lands



adjoining the tract before described and that the said contract was made in good faith at least so far as he and the said Watkins was concerned for the purpose of procuring said land from the owner at a just and reasonable compensation and to divide the same between the parties to said contract in such manner as would mutually result in the benefit of each, and that it was understood and agreed by and in the contract aforesaid, that whichever of the said parties should purchase said land should deed to the others his proportionate share thereof as herein before stated by good and sufficient deed of conveyance. Accordingly each of the said parties to said contract (the land being vacant and unoccupied,) entered upon and took possession of his particular share and portion of said land as allotted to them by said contract and since that time have continued to occupy and improve the same un-molested - except - that the said Doyle either by accident or design has enclosed & now has in his possession about eight or nine acres of your Orators forty acres above described, and refuses to surrender the possession of the same to your Orator.

Your Orator further states and shews to the court that since he has taken possession of his portion of said land as herein before stated he has made improvements on the same exceeding the sum of one hundred & twenty dollars and that the same land on account of said improvements and the rise or appreciation in the value of of Real estate has greatly increased in value so that in fact <sup>the</sup> said forty acres at this time are worth at least the sum of eight hundred dollars.



And your Orator further shows that the said Fountain Watkins above named who was also a party to said contract since same has been made and on the faith and confidence that he had in the parties to the same has proceeded to make improvements on his said portion of said land amounting in value at least to the sum of two hundred dollars,

And your Orator further shows that both he and the said Watkins have always hitherto been willing and anxious to comply with the terms and conditions of their said contract with the said Isaac Doyle, and used all reasonable exertions on their part to ascertain where said title was and who was owner of the same until they ascertained that said land had been fraudulently and against the terms and conditions of the contract before recited, in manner herein after stated, purchased by the said Isaac Doyle one of the parties to the contract above mentioned,

And your Orator further charges that on the 24<sup>th</sup> day of March A.D. 1851, he purchased of the said Fountain Watkins all his interest in right and title to the said land before described and took from the said Watkins and Eliza his wife a quit claim deed in due form of law for all their interest and title in and to the same, a copy of which said deed dated the day and year aforesaid, is hereto attached and made part of this bill, marked "A," and the original will be produced upon the hearing of this cause,

And your Orator further shows that sometime about the month of July A.D. 1848, the said Isaac Doyle having by some means ascertained that one Henry Dusenberry of the City of St. Louis, Missouri, was the agent for one John B. James of the City of Albany in the State of New York who was the owner



of the said lands applied to the said Puseberry agent as  
aforesaid to purchase the same; and then & there did  
contract to purchase said land of the said James through  
his agent aforesaid for the sum of five hundred dollars,  
but although the deed from said James was received  
by said agent a short time thereafter, yet the said  
Isaac Doyle did not call for the same until about some  
time in September A.D. 1819, at which time he paid  
~~the said~~ the said sum of five hundred dollars and  
received a deed from said James for said land, but in-  
stead of taking the same in his own name, for the  
express purpose of cheating and defrauding your orator  
and the said Watkins took said deed in the name  
of his brother Thomas Doyle of Green County in the  
State of Illinois, a copy of which said deed marked "B,"  
is hereto attached and made part of this bill, the original  
whereof your Orator supposes is in the hands pos-  
session of the said Isaac or Thomas Doyle, and they  
are notified to produce the same upon the hearing of this  
cause and he avers that it is wholly out of his power  
to produce the same.

And your Orator further charges that the said  
Isaac Doyle in fact purchased the said land and  
paid for the same himself and with his own money  
and that the said Thomas Doyle never had any  
interest in or title to said land in equity, and that  
said purchase was made and the deed taken up in  
the name of Thomas Doyle with the design and in-  
tention of cheating and defrauding your Orator  
and said Watkins out of their portions of said  
land, under the contract herein before referred to;  
and that both before and since said purchase said  
Isaac has used, occupied and improved his particular  
portion of said land and received the rents and profits  
therefor without in any manner accounting to said Thomas



for the same, and that in fact said Thomas never paid any thing for said land nor pretended to have any claim or title thereto or to any part thereof, but holds the legal title in trust merely for the benefit of the said Isaac Doyle and in is combining and conspiring with him to defraud your Orator.

And your Orator further charges and submits, that he is advised by counsel and believes that if the said Isaac Doyle in purchasing the said land was the duly authorized agent of the said Thomas Doyle and did in fact purchase the said land for him that his said principal is chargeable with notice in law and had actual notice in fact of all the matters and things & the contract herein before mentioned made between your Orator and said Isaac Doyle and said Fountain Watkins and is therefore bound on his part to ratify and confirm the same.

And your Orator further charges that the said Isaac Doyle is now and ever has been since his purchase aforesaid the owner in equity of the said land with, (and as tenant in common) with your Orator and the said Watkins under whom your Orator in part claims and that in justice and equity the said Isaac Doyle & Thomas Doyle ought to convey the said portions thereof herein before mentioned as belonging to your Orator and said Watkins under said contract to your Orator. And your Orator further shows that on the 25<sup>th</sup> day of March A.D. 1851, he tendered and offered to pay to said Isaac Doyle, and is still ready and willing and has always hitherto since the purchase of said land aforesaid been ready and willing and now offers to pay to the said Isaac Doyle one half the purchase money



of said land paid by him with the interest thereon from the time of such payment and that both he and the said Watkins would long since have paid the same if the said Isaac Doyle would have received the same and conveyed their interests in said land to the said complainant and said Watkins.

The sum tendered as aforesaid was two hundred and ninety two dollars being as your Orator is informed and believes more than one half said purchase money and interest, and he is still ready and willing and offers to pay the same to the said Isaac Doyle or whoever may be entitled to receive the same; Or if that sum should be insufficient he is still ready and willing and offers to pay whatever the one half the purchase money and interest thereon since said purchase by said Doyle would amount to for said land.

But the said Isaac Doyle has hitherto refused to accept or receive said sum of money or any part thereof and falsely and fraudulently intended that the land before described was the property of his brother Thomas Doyle, and has studiously concealed from your Orator all his actings, doings and proceedings in the matter and wholly refused and neglected to make the deeds or convey the same lands properly belonging to your Orator or to said Watkins and still refuses.

All which actings and doings on the part of the said Isaac Doyle and the said Thomas Doyle are contrary to equity and good conscience and equity tend to the manifest injury of your Orator in the premises.

For as much then as your Orator is ~~without~~<sup>without</sup> any adequate relief ~~relief~~<sup>redress</sup> in the courts of law and can only have relief in equity he prays that the said Isaac Doyle and Thomas Doyle may be made defendants to this bill, and that they may be severally compelled to answer the same and each and every allegation therein contained;



The said Thomas Doyle upon his Corporal oath and the said Isaac Doyle not on oath which said oath as to him the said Isaac is hereby waived.

That the said defendants may by decree of this court be required and compelled to convey to your Orator the lands before described as claimed by and belonging to him, situate on the said quarter section.

He prays also for the usual process of subpoena against the said defendants and for such other and further relief as to justice and equity appertain and he will pray, &c.

Purple & Fanger  
Compts Solicitors.

precipe :-

"Andrew McWiley,

vs  
Isaac Doyle &  
Thomas Doyle.

In the Circuit Court of  
Ponia County.

May Term A.D. 1851.  
In Chancery.

Issue subpoena against the above named defendants for Isaac Doyle to the Sheriff of Ponia County, for Thomas Doyle to the Sheriff of Greene County. Returnable to next term.

March 26<sup>th</sup> 1851.

Purple & Fanger  
Compts Solicitors.

Jacob Gale Esq.  
Clerk. &c."

Exhibits attached  
to Bill -

"This Indenture made this 24<sup>th</sup> day of March 1851 in the year of our Lord one thousand eight hundred and fifty one, between Fountain Watkins and Eliza Watkins, his wife of Ponia County, Illinois, of the first part, and Andrew McWiley of the of the second part, witnesseseth,



That the said parties of the first part, for and in consideration of the sum of one hundred & fifty dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, have remised, released, sold and forever quit claimed, and by these presents do remise, release, sell and forever quit claim, unto the said party of the second part, and to his heirs and assigns forever, all our interest right, title claim and demand in and to the South West quarter of section Twenty in township Nine North Range Five East of the fourth principal meridian Illinois.

To have and to hold the above described premises, with all the privileges and appurtenances thereto <sup>an</sup> belonging, to him the 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 ~~their~~ ~~hands~~ and seals the day and year first above written.

Fountain Watkins ~~Esq~~  
Signed, sealed and delivered Eliza Watkins ~~Esq~~  
in presence of ~~many~~

State of Illinois,  
Poria County.

I Nelson Smith, a Justice of the Peace for said County, do certify, that on this day personally appeared before me Fountain Watkins & Eliza his wife whose names appear subscribed to the foregoing deed of conveyance as having executed the same, and who are personally known to me to be the real persons who and in whose name the acknowledgement is proposed to be made, and I acknowledge the execution thereof as their voluntary act and deed for the uses and purposes therein expressed. And the said Eliza Watkins wife of the said Fountain Watkins having been by me made acquainted with the contents of the said deed, and by me examined separate and apart from her said husband,



whether she had executed the same and relinquished  
her dower to the lands and tenements therein men-  
tioned, acknowledged that she had done so, voluntarily  
and freely and without compulsion of her said hus-  
band and does not wish to retract. Given under  
my hand and seal of office, at Peoria County, this  
24<sup>th</sup> day of March A. D. 1851.

Edson Smith Seal

This Indenture made the eleventh day of July in the  
year of our Lord one thousand eight hundred and forty  
eight between John P. James of the City of  
Albany, State of New York of the first part and  
Thomas Doyt of Green County in the State of  
Illinois of the second part, witnesseth, that the said  
party of the first part, for and in consideration of the  
sum of five hundred dollars, lawful money of the United  
States of America to him in hand paid by the said party  
of the second part, the receipt whereof is hereby con-  
fessed and acknowledged, hath granted, aliened, re-  
mised, released, enfeoffed and confirmed, and by these  
presents doth grant, alien, remise, release, enfeoff and  
confirm unto the said party of the second part, and to  
his heirs and assigns forever, all that certain piece or  
parcel of land lying and being in in the military tract in  
the state of Illinois and known as the South West quar-  
ter of Section (20) Twenty Township (N North Range  
(5) Five East, said lot being situated in Peoria County,  
and forming a part of the estate in the said State of  
Illinois whereof the late W<sup>m</sup> James of Albany died  
deceased and having been set over at the partition of said  
estate of W<sup>m</sup> James to the said party of the first part  
by Commissioners appointed for the purpose under the laws of the



State of Illinois. Together with all and singular  
the hereditaments and appurtenances therunto belonging or  
in any wise appertaining and the reversion and reversions,  
remainder and remainders, rents, issues and profits thereof,  
and all the estate, right, title, interest, claim and de-  
mand whatsoever of the said party of the first part either  
in law or equity, of, in and to the above granted premises  
with the said hereditaments and appurtenances. To have  
and To hold the above mentioned and described premises  
with the appurtenances, and every part and parcel thereof to  
the said party of the of the second part, his heirs and assigns  
forever, and the said John B. James for himself, his  
heirs, executors and administrators, doth covenant, bargain,  
promise and agree to and with the of the second part, his  
heirs and assigns, to warrant and forever defend the above  
granted premises and every part and parcel thereof, now being  
in the quiet and peaceable possession of the said party of the  
second part, against the said party of the first part, his  
heirs, executors, administrators and assigns, against all  
and every other person or persons claiming or to claim the said  
premises or any part thereof. In Witness whereof, the said  
party of the first part hath hereunto set his hand and seal,  
the day and year first above written.

John B. James (Seal)

Sealed and Delivered in Presence of  
Henry W. Lansing, Mr. A. Young

State of New York,  
Albany City & County, ss. Be it remembered that on the  
eleventh day of July A. D. 1850, before me a Commissioner  
duly appointed by Thomas Fox, Governor of the State  
of Illinois, for the county of Albany, in the State of New  
York, to take acknowledgements to be used or recorded  
in the said State of Illinois appeared John B. James  
who is personally known to me to be the individual des-  
cribed in and who executed the within deed and acknowledged



to me that he had executed the same.

Henry I. Lansing Com-  
- Missioner of the State of Illinois for the county  
of Albany in the State of New York (Seal)

Whereupon the clerk of said court issued to summonses in said cause on the  
same day under the seal of said court, which with the returns thereto  
thereon severally endorsed are in the words & figures following, to wit:

Summons to }  
Peoria County }

"The People of the State of Illinois

To the Sheriff of Peoria County, Greeting:

We command you to summon Isaac Doyle if he may be  
found in your county, to appear before our circuit  
court on the first day of the next term thereof, to be  
held at Peoria, within and for the said county of Peoria,  
on the 2<sup>nd</sup> Monday of May next then and there  
in our said court, to answer the matters and things  
contained in a certain bill of complaint exhibited  
against him and Thomas Doyle in our said court on the  
Chancery side thereof, by Andrew M. Wiley, complainant,  
and make return of this writ, with an endorsement of  
the time and manner of serving the same, on or before  
the first day of the term of the said court to be held at  
aforesaid.



Witness Jacob Gale, clerk of our said  
court, and the seal thereof, at Peoria,  
this 25th day of March in the year of  
our Lord one thousand eight hundred  
and fifty one.

Jacob Gale, clerk,

[Endorsed]

return =

"State of Illinois, }  
Peoria County, }  
25th 1851.

Served by reading and leaving a copy  
with the within named Isaac Doyle April  
James L. Riggs, Shff by D. D. Frost, Dft.



Summons to  
Greene County }

The People of the State of Illinois,  
To the Sheriff of Greene County, Greeting:  
We command you to summon Thomas Doyle if he  
may be found in your county, to ~~be~~ appear before our  
circuit court on the first day of the term thereof, to be  
held at Peoria, within and for the said county of  
Peoria, on the 2<sup>nd</sup> Monday of May next then and  
there, in our said court, to answer the matters and things  
contained in a certain bill of complaint exhibited  
against him and Isaac Doyle in our said court on  
the chancery side thereof by Andrew Mc. Wiley, com-  
plainant and make return of this writ, with an en-  
dorsement of the time and manner of serving the  
same, on or before the first day of the term of the  
said court to be held as aforesaid. Witness Jacob Sale,  
Clerk of our said court, and the seal thereof,  
at Peoria, this 25th day of March in  
the year of our Lord one thousand  
eight hundred and fifty one.  
Jacob Sale, clerk."

J. J. C.

[Endorsed]

return -

This writ duly served by leaving a copy at the  
residence of the within named Thomas Doyle with  
a white person being a member of the family over the  
age of ten year and explaining the contents of said writ  
to her. April 24<sup>th</sup> 1851.

William Halbit, Shff. S. C.  
by J. W. Tunstall, Deputy S. C."

Proceedings in Chancery before the Circuit Court begun  
and held in the city of Peoria, in and for the county of Peoria,  
on Monday the twelfth day of May in the year of our Lord one  
thousand eight hundred and fifty one, the Honorable William Kellogg, Judge  
of the tenth Judicial Circuit in the State of Illinois, presiding, to wit:



Wednesday May 21<sup>st</sup> A.D. 1851.

Andrew Mc. Wiley,

vs

For conveyance of land.

Isaac Doyle,

Thomas Doyle.

This day came the complainant by Purple & Sanger his solicitors, and upon their motion, It is ordered that the defendants answer the bill of complaint herein by Friday morning next.

And the said defendants afterwards, to wit, on the 21<sup>st</sup> day of May A.D. 1851. filed their demurres to said Bill in said cause in the words and figures following, to wit.

demurres =

Andrew Mc. Wiley,

vs

Peoria Circuit Court,

Isaac Doyle,

May Term A.D. 1851.

Thomas Doyle.

And said defendants by H. C. & A. L. Merriman their solicitors come and asto said bill of complaint filed by said complainant, says that the same is insufficient in law & equity to entitle the said complainant to the relief prayed for, and that the matters and things therein contained are insufficient in law to give a court of equity jurisdiction in the premises, and that said defendants are not bound to answer the same and this they the said defendants are ready to sustain in any manner said court shall direct, wherefore they pray judgment &c.

H. C. & A. L. Merriman

Defts Solrs."



Proceedings in Chancery before the circuit court begun and held in the City of Peoria, in and for the County of Peoria, in the State of Illinois on the Second Monday of May in the year of our Lord one thousand eight hundred and fifty three, it being the ninth day of said month. — Present the Honorable Unslow Peters Judge of the Sixteenth Judicial Circuit in the State of Illinois, to wit:

Wednesday May 11th A.D. 1853.

Andrew Mc. Wiley,

For conveyance of land.

vs  
Isaac Doyle,

Thomas Doyle.

This day came the defendants by H. L. Merriman their solicitor and withdraw their demurrer to the complainants bill, and on their motion leave is given them to file their answers <sup>to said bill</sup> by Wednesday of the third week of this term.

And thereupon afterwards to wit on the 24<sup>th</sup> day of May A.D. 1853, there was filed in said cause the answer of said Isaac Doyle, which is in the words & figures following, to wit:

Answer of  
Isaac Doyle }

"In the Circuit Court of  
Peoria County, May Term 1851.

State of Illinois,  
Peoria County, ss.

The Several answers of Isaac Doyle, defendant to the Bill of Andrew Mc. Wiley, complainant.

The said Isaac Doyle now comes and for answer to the bill of the said Andrew Mc. Wiley, says, that he did not on or about the year 1854, nor at any other time before or since enter into the supposed agreement in the complainants Bill mentioned, or any other contract or agreement with the said complainant and said



Mountain Watkins for the purchase and partition of the said tract of land in said bill described or for any other purposes whatever.

This respondent further answering says that he has been in the actual possession of said tract of land, and exercised acts of ownership over the same for the period of more than twenty one years that he has made large, lasting & valuable improvements on the same in clearing, fencing, building &c. — and has thereby greatly increased the value thereof. — This respondent admits that the said Wiley & Watkins have taken possession of a part of said land and now occupy the same — and have made some improvements thereon — but denies that they took possession or made improvements in pursuance of or on the faith of any contract whatever.

This defendant further answering says that the said Wiley & Watkins have been fully paid for all improvements by them made on said land by the use and occupation of the same — that defendant can neither admit or deny the purchase of said Wiley from the said Watkins but insists upon full proof of the same — this defendant positively denies that he ever purchased said land from any person or that he paid his own money for the same, and took a deed therefor in the name of Thomas Doyle or any other persons.

This defendant further answering says that some time about the year 1828 or 1829, Thomas Doyle did purchase said land of one Henry Dassenberry as agent for one John B. James of the state of New York — paid his own money therefor, took a deed in his own name and still holds & owns said land — that this defendant had no interest or agency in said purchase other than to pay over the money and



receive the deed for said Thomas - that defendant had no agency in the purchase for said Thomas but after the purchase and deed were made defendant took the money of said Thomas, paid the same for said land, received the deed which had been executed prior to that time and delivered the same to the said Thomas, that this defendant never paid one dollar of his own money for said land, nor did he act as agent for the said Thomas in the purchase of the same, other than as above stated by this defendant, that the said Thomas since his said purchase has called on this defendant for rents for said land, nor has he exacted the payment of rents from the said Wiley & Watkins - but that he has an undoubted right so to do.

Defendant further answering denies that he has any right, title, interest, claim or demand, of, in or to said land in law or equity, Defendant further denies that the said Wiley on the 25<sup>th</sup> day of March 1851, or at any other time tendered or offered to pay to defendant the sum of two hundred and ninety two dollars or any other sum of money in payment for said tract of land or any part thereof - Defendant denies that he concealed his actings & doings in the premises from complainant or any other person whomsoever, - This defendant denies all fraud and combination wherewith he stands charged, and prays to be hence dismissed with his costs &c.

Merriman & Kerr  
Sols for Defts.

And afterwards on the 26<sup>th</sup> day of May A.D. 185-3, there was filed a replication in said cause written under said Answer, which is in the words and figures following, to wit,



Replication =

"And the said complainant for replication to the said answer of Isaac Doyle says, that he will aver, maintain and prove his said bill to be true, certain & sufficient and that said defendant Isaac Doyle's answer is untrue, uncertain and insufficient to be replied unto &c. Wherefore he prays as in and by his original bill he has heretofore prayed.

May 26<sup>th</sup> 1853.

Purple & Sanger  
For Compt.

And afterwards on the 30<sup>th</sup> day of May A.D. 185-3, there was filed in said cause a Replication in the words and figures following, to wit:

Replication =

"Andrew Mc. Wiley,  
is  
Isaac Doyle,  
Thomas Doyle.

In the Circuit Court  
of Peoria County.  
In Chancery.

The replication of Andrew Mc. Wiley to the answer of Isaac Doyle, filed in this cause,

This complainant for replication to the answer of the said defendant Isaac Doyle, says that he will aver and maintain his said bill to be true, certain and sufficient and that the said defendants answer is untrue, uncertain and insufficient &c, &c and prays as in and by his original bill he has already prayed.

Purple & Sanger  
For Compt.

Proceedings in Chancery before the Circuit Court begun and filed in the City of Peoria, in and for the County of



Peoria, in the State of Illinois, on the second Monday  
of May in the year of our Lord one thousand eight  
hundred and fifty three, it being the ninth day  
of said month — Present the Honorable Anslow  
Peters, Judge of the sixteenth Judicial Circuit  
in the State of Illinois, to wit:

Monday May 30<sup>th</sup> A.D. 1853.

Andrew Mc. Wiley,

vs

For conveyance of land.

Isaac Doyle,

Thomas Doyle.

This day came the said complainant  
by W. H. Purple his solicitor, and this cause <sup>came</sup> on to  
be heard upon the motion of the complainant, that  
the bill be taken as confessed against the said  
Thomas Doyle and it appearing to the court, that a  
rule had been previously entered requiring said  
defendant to file his answer herein by Wednesday of  
the last week of the present term of this court, and  
that the said defendant had neglected and failed  
to file any answer herein. It is ordered, adjudged  
and decreed, that as to the said Thomas Doyle the  
said complainants Bill be taken for confessed for  
want of any answer to the same.

And the defendants by Merriam &  
Kerr their solicitors come and move the court to dis-  
charge the orders for commissions and suppress the depo-  
sitions taken in this cause by the complainant, and assign the  
following causes for the same. 1<sup>st</sup> That at the time said orders  
were made, commissions issued and depositions taken, there  
was no issue made by the pleadings in the cause (except  
that by demurrer to complainants bill.) 2<sup>nd</sup> That there is no  
foundation laid for examining witnesses or filing said  
depositions *de bene esse* or otherwise. 3<sup>rd</sup> And for  
other irregularities &c.



Proceedings in Chancery before the Circuit Court at  
a term thereof begun and held at the court house in the  
City of Peoria, in and for the county of Peoria, in  
the State of Illinois on Monday the twelfth day  
of September in the year of our Lord one thousand  
eight hundred and fifty three. The Honorable  
Anslow Peters, Judge of the sixteenth Judicial  
Circuit in the State of Illinois, presiding, to wit:

Saturday September 17th A.D. 1853.

Andrew Mc. Wiley,

vs  
For conveyance of land,

Thomas Doyle, &

Isaac Doyle.

This day came the said Thomas Doyle  
by his counsel, and entered a motion to vacate the  
interlocutory decree of last term taking the bill for  
confused as to him and for leave to file his answer  
to said bill.

And afterwards on the 2<sup>nd</sup> day of September A.D. 185-3 there  
was filed in said cause the affidavit of A. L. Merriman and  
the affidavit of J. N. Kerr, which are in the words & figures following to wit:

Merriman, afft. - Andrew Mc. Wiley,

vs

Peoria Circuit Court  
In Chancery.

Isaac Doyle,

Thomas Doyle.

Sept. Term 1853.

A. L. Merriman being first duly  
sworn deposes and says, that as counsel for defen-  
dant Thomas Doyle, at the May term of this court  
last past, & which was the last term of said court,  
on the 11<sup>th</sup> day thereof he withdrew the demurrer  
filed therein the same in his ~~an~~ opinion not being  
well founded - that on said day a rule was taken



by complainant's counsel on the defendants to answer  
by Wednesday of the third week of said term, - that  
H. C. Merriman had previous to said term acted as the  
principal counsel in said cause & that deponent was  
not at said time advised of the facts upon which  
defendant Thomas Doyle relied upon as a defence to  
said suit - that deponent had never seen or conversed  
with or had any correspondence with said Thomas  
Doyle at that time - that said H. C. Merriman was  
unable to attend said term of this court on account of  
ill health and was absent from the state - that depo-  
nent did not know the residence of said Thomas  
Doyle - that he was informed by W. H. Purple  
that said Thomas Doyle that said Doyle resided  
at Carrollton, Green Co. Ill. - that deponent had  
a copy of the bill filed in this cause, enclosed in a letter  
& directed to said Thomas Doyle at said Post Office -  
that he heard nothing from said Doyle until after the  
19th day of May last, on which day default was  
taken as to said Thomas Doyle for want of an answer -  
That some time after that time a letter was re-  
ceived by deponent from said Thomas Doyle enclosing  
the letter written by deponent to said Doyle & stating  
that the letter so written by deponent was directed  
to the wrong Post Office and that he did not receive  
the same until a long time after the same was ad-  
written and after the time for filing said answer had  
expired & that he could not read the letter written  
by deponent so as to be able to know what was wanted  
of him - that deponent immediately wrote said Thomas  
Doyle more intelligibly & upon receipt of which last  
letter defendant made his answer - Deponent further  
states that either on the day the said Bill was taken  
upon defendant to answer, or at the time said default  
was taken, but at which particular time deponent cannot



Now state, deponent objected to the shortness of the time he had to procure the answer of said defendant & that Mr. Purple complainants solicitor made the remark in substance that said Thomas Doyle would not answer and if he did answer within a reasonable time the default could be set aside or some-thing to that effect - upon which statement deponent withdrew any objection to said rule or default, that the letter of said Doyle is mislaid & cannot at present be produced by deponent and that he states the contents from recollection & that as deponent best recollects the said letter stated that he the said Thomas Doyle resided at New Greenfield in said county of Greene & further says not

A. L. Merriman  
Subscribed & sworn to before me this 3<sup>d</sup>  
20th day of September A. D. 1853.  
Jacob Sale, clerk, "

Kerr's afft. =

J. M. Wiley,

Circuit Court Poria County,  
In Chancery.

Thomas Doyle,

Isaac Doyle.

Personally appeared in open court J. W. Kerr who being duly sworn saith that at the last term of this court - at the time the interlocutory decree in this cause was entered - it was objected to said decree on the part of the defts, 1<sup>st</sup> That the rule of the court herein did not allow sufficient time for the said Thomas Doyle to file his answer. 2<sup>d</sup> It was further objected that under the circumstances a decree pro confesso could not be taken in reply to these several objections (Judge Purple did (as this deponent now recollects) state and agree that if said Thomas Doyle should at this



term of the court file his answer showing a meritorious defence, he would not object to the same, at the same time further stating that the said Thomas Doyle would not answer said bill — that he (Purple) wished for the answer of said Thomas Doyle — that this deponent understood that the court in part acted from these suggestions & statements of the said Purple — that it was upon the statements of the said Purple aforesaid, that deponent desisted from further pressing his objections to said decree. And further, this deponent saith not. S. W. Kerr.

Subscribed & sworn to before me  
this Sept. 20<sup>th</sup> 1853.

Jacob Hale, clerk, "

Written under said last affidavit is an affidavit as follows, to wit:

"State of Illinois,  
Peoria County, ss. W. H. Purple being duly sworn says that he never made any such agreement that Thomas Doyle might file his answer at this term as is within stated & further saith not.  
W. H. Purple

Sworn to before me this 21 Sept. 1853.

J. S. Blakeley Notary Public,  
Peoria Co. Ill."

Proceedings in Chancery before the Circuit Court at a term thereof begun and held at the Court House in the City of Peoria in and for the County of Peoria, in the State of Illinois on Monday the twelfth day of September in the year of our Lord one thousand eight hundred and fifty three, The Honorable Enslow Peters, Judge of the sixteenth Judicial Circuit in the State of Illinois, presiding, to wit;



Friday September 23<sup>rd</sup> A. D. 1853.  
Andrew McWiley  
vs For conveyance of land,

Isaac Doyle &  
Thomas Doyle.

This day this cause came on to be heard upon the motion of the defendants solicitor for leave to file the answer of Thomas Doyle in this case, and the court now being sufficiently advised doth order, adjudge and decree that the decree herein taken pro confesso at the last term of this court against Thomas Doyle be set aside and that he have leave to file his answer in said cause at the defendants costs in this suit up to the present time. It is therefore further ordered, adjudged and decreed that the said complainant have and recover of the said defendants his <sup>& charged</sup> costs by him in this suit expended and that execution issue therefor. The complainant filed exceptions to the answer of the said Thomas Doyle on consideration whereof the court sustained all said exceptions except the ninth and tenth, which were overruled by said court, whereupon on motion of the said Thomas Doyle leave is given him to amend his said answer by the twentieth day of October next.

The answer of said Thomas Doyle was filed in said cause on the said 23<sup>rd</sup> day of September A. D. 1853 and is in the words and figures following, to wit:

Thomas Doyle's  
Answer -

"The separate answer of Thomas Doyle to a bill in Chancery, now pending in the Circuit Court of Peoria County, in the State <sup>of Illinois</sup>, wherein Andrew McWiley is complainant and Isaac Doyle and this respondent are defendants,



This Respondent saving and reserving to himself all objections to the erroneous versions and manifest errors and absurdities contained in said bill; for answer thereto, or to so much thereof as he is advised by counsel is material for him to answer, answereth and saith, that he has no knowledge directly or indirectly of the alleged contract purporting to have been made by Andrew M. Wiley, Fountain Watkins and Isaac Doyle, touching the tract of land described in said bill, or its sub-division among them, — Nor has he any knowledge except as he derived it from said bill, of the contract made by said Wiley and Watkins in reference to their respective claims to any part of said land.

This Respondent admits that he purchased of Henry Dusenberry of the City of St. Louis and State of Missouri the tract of land described in said bill, who was the agent of John B. James of the City of Albany and State of New York for the consideration of five hundred dollars, and that in September 1849, the deed from said James to this Respondent was received — and the money paid in conformity to said contract.

This Respondent purchased said land with the intention of removing on to it, provided he could sell out his farm in Greene County to advantage, but failing to sell, has hitherto prevented his removal on to it. —

This Respondent admits that he requested Isaac Doyle who was at his house in the Spring of 1848 on his way to St. Louis to make a purchase of other lands of said Dusenberry as the agent of said James for himself and others, to purchase for him the tract of land now in controversy, which this Respondent had been on and examined fully some time before he requested the Isaac to purchase it for him. This Respondent was very desirous of securing the title to the



Same provided it could be obtained for five hundred dollars - and upon the return of said Isaac, he informed this respondent that he had closed the contract with said Dusenberry, and that said Dusenberry agreed to write to said James and procure for this respondent a deed for said tract of land, for the consideration aforesaid, which he represented he had no doubt would be sent.

This respondent admits that afterwards to wit: Some time in September 1849, he forwarded the sum of five hundred dollars to W<sup>m</sup> Dusenberry for said tract of land who received the same and forwarded to this respondent John B. James deed for the same, which this respondent sent to Clerks to be recorded - It is true that said deed had been made out and forwarded to said Dusenberry some time before it was taken up by this respondent as appears by said deed but this respondent was not advised of its arrival in St. Louis until some little time before the money was paid over - and the delay in sending the money and getting the deed was occasioned by the cholera prevailing in St. Louis at the time - This respondent further alleges that he forwarded to said Henry Dusenberry five hundred dollars of his own money and for which he got John B. James deed for said tract of land, and that said tract of land was purchased with his own money and for his own use and benefit, and not with the money of the said Isaac Doyle as alleged in said bill, This respondent denies in the most unqualified manner, that in <sup>the</sup> purchase of said tract of land he was conniving with said Isaac Doyle, to cheat and defraud said Complainant Wiley and Watkins or either of them, or that said tract of land was purchased by him and in his name for the use or benefit of said Isaac Doyle.



This respondent claims and now affirms that he holds in his own right the legal and equitable title to said tract of land, and has held the same since he got possession of said deed, and that no other person has any legal or equitable title whatever to said land or to any part thereof, — This respondent admits that he employed said Isaac Doyle since said purchase to improve a part of said land which he has done to my satisfaction, and was to have the use of said improvements as a part compensation therefor, This respondent admits the receipt of about fifty three dollars in cash advanced for, and paid to this respondent in part for rent, by said Isaac since September 1849, — which together is in full for the rent and improvements of said land up to this date —

This respondent admits that said Isaac Doyle had a small improvement of about seven or eight acres, with a cabin on said tract at the time this respondent purchased it, but he has since built & resided on his own land, This respondent denies any knowledge of said improvements being made on said land in pursuance of any contract or understanding between said Isaac Doyle, Wiley and Watkins, but all the improvements made on said land by said Isaac Doyle, since Sept. 1849, have been made by the directions of this respondent and for his sole benefit. This respondent in answer to the charge of holding the title to said land in trust for said Isaac Doyle, again denies that he holds the title to the same in trust for said Isaac Doyle or any other person, or that he is now, or ever has been conspiring with him to defraud the complainant or any other person, This respondent denies any, and all knowledge of any contract, agreement or understanding between said Isaac Doyle, Andrew Mc. Wiley and Fountain Watkins



in reference to said land or any interest in the same or any division thereof between them until the same was disclosed by said bill, This respondent denies that he is under any legal or equitable obligation to ratify or confirm any contract or agreement between said Doyle, Watkins and Wiley which he never knew nor heard of until since the bill was filed in this cause, This respondent knows nothing of any tender of ~~said~~ money to said Isaac Doyle except from rumor but denies that any money has been tendered by said Wiley or Watkins to him, but had any such tender been made by said Wiley & Watkins or either of them, this respondent would have received so much thereof as would have been sufficient to satisfy the rent they owe for the land they have occupied on the premises since the purchase in 1829. — This respondent has fully answered all the allegations contained in said bill, so far as he is advised is necessary, and those not answered, if any, are unqualifiedly denied — and prays to be dismissed, with his costs

Thomas Doyle

State of Illinois,  
Greene County,

Thomas Doyle whose signature appears to the above answer in Chancery, being duly sworn according to law, deposes and says that all matters contained in said answer so far as stated from his own knowledge are true, and so far as stated from the information of others he believed to be true.  
Given under my hand this 10th day of September A.D. 1853.

Wm. S. Link

Judge of County Court of Greene County  
Illinois.



State of Illinois, 3<sup>d</sup> ss.

Greene County,

I, Francis P. Vedder Clerk of the County Court and ex officio Recorder of civil commissions in and for said county do hereby certify, that Matthias S. Link, Esq. whose genuine signature appears to foregoing certificate was on the day of the date thereof the Presiding Judge of the county court, in and for the county and state aforesaid, duly elected, commissioned and qualified and that full faith and credit is, and of right ought to be given to all his official acts as such.



In Testimony whereof, I have hereunto set my hand and affixed the seal of said court at Carrollton this 10th day of September A.D. 1853.  
Francis P. Vedder, clerk.

The exceptions of the Complainant to said answer of said Thomas Doyle were filed in said cause on the same 23<sup>rd</sup> day of September A.D. 1853 and are in the words and figures following, to wit:

Exceptions to  
Thomas Doyle's  
Answer

"Andrew Mc. Wiley,

vs  
Isaac Doyle &  
Thomas Doyle.

In the Circuit Court  
of Peoria County,  
Ill. Chancery.

And now comes the said Complainant and files his exceptions to the answer of Thomas Doyle filed in this cause, as follows, to wit:

1<sup>st</sup>. Said defendant has not answered the allegations in said bill that complainant & Fountain Watkins and Isaac Doyle were the owners of and occupants of land adjoining the tract in controversy as stated in said bill.

2. Said defendant has not answered fully whether the said Wiley, Watkins & Doyle did not enter



upon and occupying said land as stated in said bill - and whether each of them have not continued to occupy and improve the same unmolested as stated in said bill.

3. Said defendant has not answered the allegation that complainant since he took possession of said land has made improvements thereon exceeding in value \$120.00, & that said forty acres is now worth \$800.00 as charged in said bill.

4. Said defendant has not answered the allegation that Fountain Watkins made improvements on his portion of said land amounting in value to \$200.00

5. Said defendant has not answered the allegation in said bill "that sometime about the month of July, 1848, the said Isaac Doyle having by some means ascertained that one Henry Dusenbury of the city of St. Louis, Missouri was the agent for one John B. James of the city of Albany in the State of New York who was the owner of the said lands, applied to the said Dusenbury agent as aforesaid to purchase the same and then and there did contract to purchase said land of the said James through his agent aforesaid for the sum of five hundred dollars."

6. Said defendant has not answered the allegations in said bill, that Isaac Doyle took the deed from James in his Thomas Doyle's name for the purpose of defrauding complainant as charged in said bill.

7. The said defendant has not answered the allegation in said bill that said deed



from James to him for said land is in his or said Thomas Doyle's possession.

8. The said defendant has not answered to the best of his knowledge, information & belief the several allegations in said complainant's bill that said contract between Wiley, Watkins & Thomas Doyle was made as stated in said bill, but has answered the same evasively.

9.<sup>th</sup> Defendant has not answered the allegation in said bill that he is chargeable with notice of the said contract, if in fact said Isaac purchased said land for him and as his agent.

10.<sup>th</sup> Said defendant has not answered to the best of his knowledge, information & belief the charge in complainant's bill, that said Wiley tendered to said Isaac Doyle the sum of \$292.00 as stated in said bill, but has answered the same evasively.

11.<sup>th</sup> Said defendant has not answered the allegation in said bill, that Isaac Doyle has refused to accept the money tendered & to convey said lands as charged in said bill.

12.<sup>th</sup> Said defendant's answer is otherwise impertinent, irrelevant & evasive in this that he answers no allegation in said bill "to the best of his knowledge, information & belief," often pretends to admit matters & things which are in his own favor, but which are not charged in the bill.

Purple & Sanger, for Compt.



8  
And afterwards on the 24<sup>th</sup> day of September A.D. 1833  
by leave of Court the Complainant filed an amendment to his  
Bill in said cause, which is in the words & figures following,  
to wit.

Andrew Mc. Wiley

vs  
Isaac Doyle &  
Thomas Doyle.

In the Circuit Court  
of Peoria County.  
In Chancery.

This complainant by leave of the  
Court now comes and amends his said bill of  
complaint filed in this cause by changing the figures  
1844 on the first page to 1840 or about that time, the  
precise time he cannot now recollect, and also by stri-  
king out the word "quarter," after the word "west," in  
the third line from the bottom on said page and in-  
serting in lieu thereof the word "corner," and also by  
inserting after the word Orator in the fifth line  
from the top of the seventh page the following,  
"And your Orator further charges that if the  
foregoing charges & those hereinafter made charging  
& stating that the said land was purchased by  
said Isaac Doyle with his own money & the deed  
taken to Thomas to enable him said Isaac to defraud  
your Orator out of his said land, and that said  
Thomas holds the same in trust & for the benefit  
of the said Isaac in manner & form as stated &  
set forth in the several charges and allegations of  
said bill, should turn out to be untrue or not sus-  
ceptible of full & satisfactory proof and if it should  
be made to appear that said land was purchased  
with the money of the said Thomas Doyle; then your  
Orator <sup>further</sup> charges that the said Isaac Doyle acted as  
agent and was agent for the said Thomas Doyle



in contracting for and making the purchase of the said land of the said James, through the said Gusebury, and that he the said Isaac Doyle agent as aforesaid had full notice of all the matters and things herein before stated & set forth.

And to the prayer of said bill the said Complainant asks leave to make the following amendment, which is done by leave of the Court aforesaid.

And your Orator further prays that in case the relief herein prayed for specifically can not be granted, he further prays that a decree may be rendered in his favor that the said Isaac Doyle pay to the said Complainant all such damages, costs & charges as he has or may sustain by reason of the failure & refusal on the part of the said Isaac Doyle to comply with his contract aforesaid.

Purple & Sanger  
for Compt.

Proceedings in chancery before the circuit court, at a term thereof begun and held at the courthouse in the city of Peoria, in and for the county of Peoria, in the State of Illinois on Monday the twelfth day of September in the year of our Lord one thousand eight hundred and fifty three - The Honorable Enslow Peters, Judge of the sixteenth Judicial circuit in the State of Illinois, presiding.

Saturday September 24th A. D. 1853.

Andrew Mc. Niley,

vs

For conveyance of land.

Isaac Doyle & Thomas Doyle.

This day this cause came on.



to be heard upon the motion of the complainant for leave to amend his bill herein, whereupon it is ordered, adjudged and decreed by the court that said complainant have leave to amend his said bill herein and that said amendment be filed instant.

This day this cause came again on to be heard upon the motion of the complainant for leave to dismiss this bill without prejudice to any subsequent proceeding or suit for the same cause &c - It is therefore upon consideration ordered, adjudged and decreed that the said complainant have leave to dismiss his said bill without prejudice to any subsequent suit or proceeding for the same causes of action or complaint as are stated in said bill and on further motion of the said complainant, it is ordered, adjudged & decreed that said complainant have leave to withdraw his exhibits filed in this cause on leaving copies of the same with the clerk of this court.

State of Illinois  
Pioria County ss I Jacob Gale, clerk of the Circuit Court within and for the County of Pioria in the State of Illinois do hereby certify, that the foregoing is a full and correct transcript of the Records and proceeding in a certain suit in Chancery in said Court wherein Thomas Doyle and Isaac Doyle were defendants and Andrew M. Wiley complainant except the depositions taken and filed in said Cause and I further certify that the depositions taken and filed in said Cause are the two depositions of Fountain Watkins, the deposition of James P. Harkness, the deposition of Henry Insanbury, the deposition of Jacob Gale and the deposition of William George taken before James M. Cunningham J. P.



Which are the same depositions transcribed into the Record  
certified by me in the suit in the Supreme Court of this  
State, upon which the writ of certiorari hereto annexed  
was issued, and stated in said transcript to have been  
filed in that cause under the order of the Circuit  
Court of said Ponia County therein set out of the  
date of November 26th A.D. 1853, and I further certify  
that said depositions are in said transcript now  
on file in said Supreme Court correctly copied as I  
have thereto certified and were formerly on file in the  
suit in this transcript set forth, dismissed September 24th  
A.D. 1853, by the order of said Circuit Court above transcribed.

In witness whereof I hereto set  
my hand and the seal of said Circuit  
Court at my office in Ponia  
this first day of July A.D. 1854  
Jacob Gale, Clerk.

Clerk's fees for this transcript \$9.00  
Jacob Gale



89  
Isaac Doyle  
7  
Andrew M. Wiley

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Amended Record

Filed July 8, 1854.  
L. Iceland Clerk.



Isaac Doyel et al  
vs  
Andrew M. Wiley

1 The depositions of Fountain Watkins & James P. Harkness proving the agreement set up in the bill, were not proper evidence in this cause.

1 It is admitted that the general rule is that depositions taken in another suit between the same parties and concerning the same subject matter, may be read in evidence; but we submit that in this case the depositions are within exceptions to the rule:

2 The plaintiff in the former suit voluntarily dismissed his, without prejudice it is true, but this only signifies without prejudice to his rights in the subject matter of the bill, on account of his so dismissing it: It implies no saving of any rights which he has acquired by reason of his having filed that bill, and having commenced suit upon it. He may commence another suit, but as to his bill and all things done under it on his motion, he has voluntarily abandoned it and them and can derive no benefit from either.



In the case of *Brooks v. Cannon*.  
2 A.K. Marshall 525 (854 top page) The  
former bill had been dismissed for want of  
prosecution: It was done on the com-  
pulsory order of the court, not by the  
voluntary act of the party.

- 3 But this case is sui generis. The com-  
plainant filed his bill and took the  
defendants' answers under oath.  
These depositions were taken, and the  
defendants did not cross examine. As  
the case then stood, the defendants had  
a right to rely upon the rule that  
more than the testimony of one witness  
is necessary to contradict the answer  
successfully - and relying upon that  
rule, to neglect to cross-examine the  
witness: for the evidence in such case  
is taken in reference to the issue  
formed or to be formed, and not  
with reference to the contingency of their  
being used as evidence in another suit.  
But at the time when those dep-  
ositions were taken the bill was not  
amended. After the depositions were  
taken and the answers of the defend-  
ants filed, the complainant obtained  
leave to amend his bill, and did



amend it materially. - In this: He alleged that the agreement was made in 1840 instead of 1844 - he changed or corrected the description of the land - He charged that Isaac Doyel acted in the purchase as the agent of Thomas Doyel, and that thereby Thomas had notice of the complainant's rights. Having done this on the 24<sup>th</sup> day of September A.D. 1854, on the same day dis-  
misses his bill, and also on the same day files his present bill which is a literal transcript of the former bill and its amendments, except that the oaths of the defendants to their answers. The former suit was an experiment to fish for admissions and evidence in this.

Under these circumstances we submit that the depositions are not evidence in this case for the complainant; by dismissing his bill voluntarily he has precluded himself from using the bill or depositions taken under it for any purpose. If the bill could not be read the deposition could not, Greenleaf Ev. § . In this case by abandoning his bill the complainant has deprived himself of the right to have his own bill read for his benefit, and the depositions cannot be read as the bill cannot.

In order to entitle the depositions to be read in a subsequent suit the issues must be the same in the two suits.

2 Danl. Ch. Prac. 1011. This is the general rule. Now here there was no issue in the first suit. Instead of putting the cause



at issue, the complainant dismisses his bill. How then can it be seen that the matter at issue is the same when there is no issue? Without replication the answer is taken as true, and the complainant is not at liberty to contradict the bill.

Again the amendment entitled the defendants to answer over and make a new defence. *Bosanquet vs Marsham* 6 Eng. Chan. Reps. 259. *Richardson v. Richardson* 5 Paige 58. So that in this case, as it stands, it is precisely the same as if only the bill had been filed, a deposition taken when there was no answer and the defendant in no contempt for not answering. There has no issue in the former suit on which these depositions could have been read.

Perjury could not be assigned on these depositions. However false the evidence contained in the depositions may be, it could never be shown that such evidence was material to the issue. The witnesses were sworn and testified in the former suit. To constitute perjury the evidence must have been corruptly false and material to that issue at the time when it was given in. After that time a new issue cannot be formed in this suit tho between the same parties and in regard to the same matter, and the witness convicted of perjury because the evidence is material to the new issue.



In cases of affirmation, which may be substituted for an oath at the election of the witness, the fears of the penalties of perjury are the only remnant of the virtue of an oath in preventing falsehood. If these fears can be successfully removed by such trickery as has been resorted to in this case, affirmations, and even oaths so far as the dread of temporal punishment secures truthfulness, are useless.

If the rule contended for by the complainant is adopted any case may be gained by perjury without danger of punishment to the witness. The deposition may be taken in an action at law before the filing of a declaration, a declaration then filed to fit the perjury, the suit then dismissed, and the deposition used in a subsequent suit! So far as practice is concerned, such proceedings would be parallel with those proposed to be adopted in the present in case

According to proper practice depositions should not be taken until after an issue is formed. As a general rule they never are in England. A looser practice may prevail here. But whether the depositions are proper as evidence must equally depend upon the issue to be afterwards formed. Here the complainant who seeks to use the depositions by his own act has prevented the formation of the issue. The defendant never could have objected that these



depositions were irrelevant to the issue: nor could he have made any objection to them which depended upon the nature of the issue. The complainant cuts him off from this right and then obtains an order that the depositions may be used so far as they are pertinent to this issue. Is it not certain that in order to entitle them to be read here, it must appear affirmatively that they could have been read there? How can the court determine, that, if the issue had been formed, they would not have been suppressed?

These depositions are like depositions taken de bene esse. A complainant having filed his bill and showing proper cause may have such depositions taken. The depositions may be used upon the happening of certain things, but before they happen suppose he voluntarily dismisses his bill - he could not use those depositions in another suit. Here he might have used his depositions if he had formed the issue and the depositions had been pertinent - but the contingency upon which they could have been used at all has been prevented by himself: The first time he proposes to read them at all is in a suit in which they were not taken, and when he provents it being ascertained whether they were ever good in the case in which they were taken!



II The evidence of the contract is entirely insufficient.

1 The absence of the original is not sufficiently accounted for.

There must be diligent search for the original in the place where it would be likely to be found

Palmer vs Logan 3 Scam 56

Rogers vs Miller 4 " 334

All places where the supposed deed would most probably be found must be thoroughly searched

Jackson vs Astor 12 Johns 192

Dan vs Brown 4 Cow. 483

Marine vs Saunders 5 Gil. 113

It is true that it is proved that the writing was left in the hands of Harkness for safe keeping and he swears that he has made diligent search among his papers and cannot find it.

He does not say that it was ever among his papers. Was that the proper place to search for it? it is not proved. where were his papers deposited? did he search there? He does not say even that he searched through all his papers where it would be likely to be found. It seems that at the time of the deposit he lived in Peoria County, and now in Wisconsin: Did he take his papers with him? Did he leave a part? Is it probable that he took this



~~amended it materially: In this: He alleged that the agreement was made in 1840, instead of 1844 - he changed the description of the land, or corrected a mistake in the former description - he charged that Isaac acted as the agent of Thomas Doyle in making the purchase of the land and that thereby Thomas had notice of the complainant's rights - and changed materially the prayer of the bill: Having done this on the 24<sup>th</sup> day of September 1853, on the same day he dismissed his bill then pending, and on the same day filed his present bill which is a literal transcript of the former bill as amended, except that it gives the oaths of the defendants to their answers. The former bill was clearly an experiment to fish for evidence or admissions in this suit. Under these circumstances we submit that the depositions are not admissible as evidence in this case - and that by dismissing his bill the complainant has precluded himself from using the bill or depositions taken under it for any purpose. If the bill could not be read the depositions could not. *Greeneleaf Ex. &* and in this case the party abandoning his bill has deprived himself of the right to read it for his own benefit.~~

~~Again the cause was not at issue. There was no replication: the bill was amended after: there was never a time when these could have been read in the former suit: However~~



instrument with him? None of these things are shown, and the rule certainly is that it must be shown that search was made but that it was made in such manner as to show that the instrument was not where in all probability it would have been if in existence at the time of the search. All this must appear affirmatively. And in this case it is not shown that search was ever made in any place where the instrument, even in probability, ever was. It was in his hands but never amongst his papers - much less among those where he searched. The statute of frauds was made in vain to require that a contract of this description should be in writing, if after it is made it may be so easily shuffled away, and unsatisfactory parol evidence of its contents substituted for what the statute requires, itself.

2 The proof of the contents of the written contract is uncertain and contradictory.

There are but two witnesses who testify to its contents Watkins and Harkness - both the complainants witnesses. Watkins swears that he was to have 40 acres complainant 40 acres and Isaac Doyle the residue:



Harkness states that Watkins and Wiley were each to have one fourth, and Isaac Doyel the remaining half. The statement in the bill corresponds with the evidence of Watkins, but as the witnesses testify with equal certainty the one counterbalances the other in evidence and the allegation is not proved. The allegata and probata do not correspond and no decree can be rendered.

The decree if it is true finds the allegation proved, for it follows the bill in the description, but this is erroneous.

It is to be observed also that the witnesses do not undertake to state with any exactness the contents of the writing. The terms of the contract must be so precise that neither party could misunderstand its terms, and it must be as precisely proved. 2 Wheaton 336. Its terms must not be uncertain. Pigg v. Ower 12 Leigh 69. Fitzpatrick vs. Beatty 1 Gil 454. In this case the Court will observe that the contract as proved is entirely indefinite as to the time when the contract is to be performed - the amount which may be given for the land - or whether the other parties are to pay the purchaser's expenses. It is scarcely reasonable to suppose that just such a contract would have been made, but if made it is too uncertain in these respects to justify a decree for a



III. But admit that the contract is sufficiently proved, still the complainant has not proved the performance of conditions precedent on his part in such manner as to entitle him to a decree of specific performance.

In such case the complainant must show that he has fully and strictly performed on his part.

*Colson v. Thompson* 2 Wheat. 336

4. How. (Mip) 86. *Yellon v.* 134

4 Scam 202. 3 Gil. 486

He must be prompt and eager to perform

*Runnington v. Kelley* 6 & 7 Ohio 451  
12 Ohio 1.

In the first place it is ~~is~~ ~~proved~~ alleged that each person was to use all due diligence to purchase the land: such also appears to be the terms of the contract as proved.

This was a very material portion of the agreement: Unless the one purchasing by the terms of the agreement was to be paid for his services and expenses, the only consideration for his services and expenses in making the purchase, was that the other parties should make equal exertions and incur equal expenses for the joint benefit of the three.

Either having contracted so to do

*Bates vs. Wheeler & Scam, 54.*



who should leave all the exertions to be made and expenses incurred by another of the contracting parties; and then as in this case should never have offered to bear his share of such expenses, or to pay his proportion of a reasonable compensation for the services rendered in making the purchase - and more who would not make such offer in his bill, would certainly not be entitled to a specific performance. He would not be willing to do equity even when he sought it. In the first place he was not entitled to lie by and do nothing, contribute nothing to the common cause until he discovered it would be profitable and then claim his share

*McCune vs Purcell 3 A. K. Marsh. 61.*

It is immaterial whether the complainant's contribution for the common benefit was to be in money or services, he must contribute what he was bound to. If he is bound to pay half or a third of the expenses of making the purchase he must have done so, and at the proper time or he will not be entitled to relief.

*Hutchinson vs McCutcheon 1 Ham. 14*

It is material in this view: If the three had labored with equal assiduity it is almost certain as mathematical demonstration that the owner would



have been found, and the purchase made in one third the time, and <sup>at</sup> one third the labor and expense to Isaac Doyl. If so, the materiality of the performance of this portion of the contract as a condition precedent is apparent.

2. It is alleged that before the commencement of this suit the complainant tendered \$292 as his portion of the purchase money and interest. But he has not at all proved that the amount tendered was the amount due. Whether it was or not depends upon the superficial contents of the quarter-section. Eighty acres are decreed to him. The court cannot presume that this quarter contains 160. All quarters do not contain that amount by the government surveys; Very few contain precisely that amount as a matter of fact: Very many vary from 1 to 10 acres - some 20 acres. If this quarter contained 150 acres then the complainant should pay  $\frac{8}{15}$  <sup>th</sup> of the purchase money and interest, (saying nothing in regard to expenses) instead of the one half. Now there is not



a particle of evidence as to the contents of the quarter section, or the portion remaining to Doyle after the 80 acres are taken therefrom.

Then it was an utter impossibility for the court to determine whether a sufficient amount of the purchase money and interest had been tendered: Yet the court did determine this for the purpose of making this decree.

IV. There is no mutuality in the contract.

There is nothing which bound the complainant to take the land: the witnesses say they (the parties) were to do so and so: but the complainant did not bind and obligate himself to take the land at any price, defendant in his discretion might give. If Doyle brought the bill he could not have a specific performance: He could not have compelled Wiley



and Watkins to endeavor to purchase the land.

There must be mutuality in the contract or it will not be enforced

Dyson v. Watts 1 M. & Ch. Decis. 13

Harring Ch. 124. 420.

1 Hill Ch. 51. 1 Johns. Ch. 370

6. Ham. 383.

The complainant and Watkins have shown no diligence. In 1847 or 1848 Isaac Doyl gave them notice to be ready soon. They do not show that they made the least move towards it until 1851 when the tender was made. They have the affirmative. They must show the earnestness which good faith requires to be prepared with the money. It is said on the other side that he should have given notice when he obtained the title. But the contract was that they should pay the money to him. He gave notice that it would be required soon, and they pay no attention to it for 3 or 4 years. In equity they are not entitled to say "He didn't dunn me often enough" and thereby excuse themselves from doing what their own contract bound them to do.



V. It is said that Thomas Doyel did not join in this appeal, but the case is to be determined in the same manner Rev. Stat. 420 § 51. and we represent Thomas Doyel here.

There is no notice to Thomas Doyel which would bind him to transfer the interest which he has in the land.

1. Notice to the agent is only notice to the principal when given to the agent in the transaction of the business of his agency. The principal is not chargeable with notice of facts within the knowledge of the agent before his employment as agent. Now admitting Isaac was the agent of Thomas Doyel. His agency consisted in being employed to make this purchase of James. Isaac knew everything in regard to the contract with Watkins & the complainant long before, and it was no notice to Thomas Doyel. It is not shown that any knowledge came to Isaac while engaged in this agency which could in any manner affect the rights of Thomas.

2. The fact that Watkins and the complainant were in possession was no notice to Thomas of their contract to purchase the land. Possession is notice of the possessor's right or title in the land, not of any agreement that he will get



a title if he can. A person purchasing land of which another is in possession is bound only to inquire what the possessor's rights in the land are. Here upon such inquiry he would have found that <sup>the possessors</sup> they were mere trespassers, disavowing all title in the land and professing merely an intention to purchase it of the owner. Any person purchasing of the owner would not be bound by Isaac Doyel's contract with Watkins & Wiley.

3 Here it is shown that the purchase was made in Thomas Doyel's name - the money was paid as his, and the deed made to him. Such is the evidence of Dusenberry. And there is certainly no direct evidence to contradict these facts. That it was paid by Isaac as Thomas's agent does not vary the rights of Thomas. In the absence of fraud the purchase would be good, and fraud is not to be presumed without clear and satisfactory proof.

4. But admit that Thomas had had full notice of the contract between Isaac Doyel, Watkins & Wiley - that he had it through Isaac or by any other means, he would still have the same right to purchase of the owner without being bound by that contract. What was it? An agreement between three trespassers that they would purchase the



land trespass'd upon of the owner, if they could. That don't bind any one else to comply with their contract if he purchases of the owner

5. Admit further for the purpose of the argument, that Thomas either before or after his purchase from James purchased the possession, improvements, or right of Isaac in that quarter - this would not at all bind him to perform Isaac's contract with Watkins and Wiley: They had no interest in the land. If Isaac did not perform his agreement with them, they might have an action against him for damages, but his agreement with them imposed a mere personal obligation which could not bind the land in the hands of another purchaser. Thomas might have bought the possessions of Isaac with the express intention of buying of the owner, and holding the land against Watkins & Wiley: and this would not bind him to Isaac's agreement: It would be merely a means of purchasing from the owner, and by his purchasing the land instead of Isaac he would not be subjected to the performance of Isaac's mere personal obligations. He would be no more bound to convey a part of the land to Watkins & Wiley than the original owner would. The contract never could bind the land until there was



a purchase by one of the contracting parties, and then only as to them or those claiming under them.

6. How fraudulently soever Isaac may have acted in the discharge of his personal contract, Thomas is not affected by it. If Thomas contracted with the owner he will hold the land as against Isaac & Watkins & Wiley. It was no fraud on the part of Thomas to purchase the land knowing that Isaac fraudulently intended not to purchase the land according to his agreement.

VI The only ground upon which the complainants case can be sustained is That Thomas has no interest in the land. That it was Isaac's money which purchased the land, that he only fraudulently pretended to be the agent of Thomas, and fraudulently took the deed to Thomas, when in fact the purchase was his own.

Now when it is shown, that in the purchase Isaac acted as the agent of Thomas paid the money as Thomas's, took the deed to him, which had been executed long before, and that Thomas claims under that deed; it will not be disputed but that there must be strong evidence to induce a court to decree that Thomas Doyel shall convey his right to complainant



The deed to Thomas Doyel bears date July 11<sup>th</sup> 1848. This, it is admitted by complainant, is prima facie evidence that it was executed at the time it bears date, of a purchase by him and the payment of the money. There is the date of the deed, and although it did not take effect as a deed until delivered, yet it is evidence of a contract made with Thomas Doyel on the 11<sup>th</sup> day of July A.D. 1848. It is argued on the other side that the grantee's name might have been left blank to be filled up afterwards, or there might have been a mistake in the date of the deed: - This is possible, not probable, and mere possibilities are not to outweigh a case of prima facie evidence.

It is said by the complainant that when Isaac wrote his first letter in June 1849 he had no notion that Thomas had a deed to the land." We do not pretend that Thomas had a deed: We say that before July 11. 1848 he had made an agreement for the purchase of this land, that on this day the deed was made out, and acknowledged as shown by the certificate of acknowledgment, and that this deed was delivered in September 1849. But we call the attention of the Court particularly to this, that the letter of June 2<sup>d</sup> 1849 signed Isaac Doyel is not in any manner proved to be genuine. Where it was so easy to



prove Isaac Doyel's hand writing in the other letter, if it was genuine it might have been proved in this case. It is sufficient to say that it is not proved, and cannot be examined as evidence for any purpose.

It is also evident that Dusenberry labors under some misapprehension, or does not remember accurately. He says on the receipt of the letter of 2<sup>d</sup> June 1849 he wrote to James for the deed - if so how does it happen that the deed is to Thomas Doyel, bearing date July 11<sup>th</sup> 1848, and acknowledged July 11<sup>th</sup> 1848. As the letter of June 2<sup>d</sup> 1849 is not proved and to be disregarded, is it not reasonable to suppose that he has forgotten the cause and occasion of the making of this deed. But it is not necessary to resort to this hypothesis: Although James had an agent it did not preclude him from making contracts himself - and here is his deed made to Thomas Doyel ~~in~~ July 11<sup>th</sup> 1848.

It is said that if Thomas wrote the letter "of Sept. 20<sup>th</sup> 1849 he had no suspicion that a deed had been made to him in 1848". He did have suspicion that Dusenberry had a deed for himself conveying this tract of land, and there is nothing to show when he supposed it had been executed. It must have been before that time. He also speaks of another deed for another tract of land and says "I wish you to write



on for the other deed, if you have not, as soon as convenient — " This implies at least that this deed had been sent on for and that he and Euseuberry both knew it. So that instead of showing that he knew nothing of a deed's having been made to himself by James it does show that he did know it; but as to its date the letter is silent; yet as the other evidence shows that this is the deed to which he referred it is to be taken as being properly dated, and as having been made to Thomas then, at least until the contrary is shown.

It is said that the letter of Sept. 20. 1849, though signed by Thomas was written by Isaac Doyel. Be it so. Thomas had a right to employ Isaac to write a letter as well as to make the purchase without becoming party to Isaac's personal contracts. But it is not proved that the signature "Thomas Doyel" is in the hand writing of Isaac Doyel. In any event he is to be taken as acting under the authority of Thomas Doyel until the contrary is shown.

We now ask where is the evidence that Isaac Doyel made this purchase for himself, paid his own money, and took the deed in Thomas Doyel's name without Thomas having any interest in the



purchase? We protest that the rights of Thomas  
are not to be sacrificed until it is shown  
by some evidence competent against Thomas,  
that he has no interest in the premises

We call the attention of the court  
to the proof that the use of the land has  
been at least of the value of the improve-  
ments



"Brief History of the Case."

We come now to the stump speech on the part of the complainant.

Throughout this remarkable production the orator apparently forgets which side "he is chused on." He is continually calling on the other side for proof to clear away unfounded presumptions existing only in his imagination.

After stating the condition and relation of the parties, the cause and mutual advantages of the contract, Isaac's negotiating for the purchase, the exertions he made to secure the <sup>land</sup> the distance to the residence of Thomas, he says Isaac goes there (to Carrollton) all the way from Peoria County in June 1849 to purchase the land with the money in his pocket brought on by him, and then first finds that he (Dusenberry) had removed to St. Louis when he writes his letter of June 2<sup>d</sup>. 1849 see the letter."

I recall my friend to modesty. There are none of these things proved, except the condition of the parties, and Isaac's having applied to Dusenberry to purchase <sup>the land</sup> ~~it~~. How does he know he went all the way to Greenlee with the money in his pocket, and wrote the letter. It is marvellous guessing, if true.

"Again in Sept. 1849 he makes another journey to St. Louis armed with a letter from his brother Thomas, written by himself which in all probability <sup>Thomas</sup> never saw — "Indeed!"



Why, he says, this letter in its composition and character, betrays its author - the fear of Cholera still haunts him - he is still after more land! and is anxious that Isaac should be informed of the arrival of the deed! Well, what of it? If he wrote all that, does it prove that he was not properly the agent of Thomas - if he wrote it, does it prove that the complainant has made out his case?

"He came back, improved the land and didn't say anything to Watkins & Wiley about it!!" No he never said a word - that was very wrong - "in course it was" for Isaac; but it was perfectly right for Watkins & Wiley to wait 9 years and never attempt to buy the land, and after having 2 or 3 years notice never to get the money for their portion of the land, to set by and see whether they could make a speculation out of Isaac's services and expenses - and even at the last never to offer to pay their part of Isaac's expenses, and their portion of a reasonable compensation for his services: all this was undoubtedly right for the complainant, especially as the land had appreciated in value and a nice little speculation could be made off of Thomas Doyel's money without costing complainant anything.



O, he says that Isaac had turned in to aid his brother, who didnt want the land and knew nothing about it!" - what a monstrous moral deformity Isaac must be - aid his brother! when an advocate without evidence assumes that that brother didnt want it!

Even if all this were proved, it seems to me that he would do better to aid a brother, than further to undertake to aid such neighbors who had so shown themselves unwilling to perform their contract in good faith.

Why all this solicitude, says he, if he was acting for his brother? - He assumes evidences of solicitude which no testimony shows, and then says, why this? It is proved that Isaac paid the money for Thomas and took the deed, but none of the other evidences of solicitude set out are proved. Now Isaac went to St. Louis - whether on this business alone or on other business mainly, does not appear - he was there; and there is no strong evidence of solicitude in this.

But "that Thomas is the owner of this land or ever purchased or paid for the same or had any thing to do with the transaction is a pretext without a show of evidence or argument, a transparency so light that there is no chance of mistaking its real character" Very Poetic!

In our extreme ignorance, we supposed that after we had shown prima facie



that the land belonged to Thomas, to overthrow that prima facie case there should be some evidence beside assumptions, some argument beside big words.

In reference to the position that although Thomas purchased the land through Isaac, that still Thomas is bound by the contract between Isaac, Watkins & Wiley, we have already argued as we apprehend successfully; and in regard to Isaac's taking this appeal alone and not Thomas and the little capital sought to be made out of it, it is unworthy of an answer. Thomas Doyle's rights are here, represented here by the law of the land, and to say, as is attempted that his rights should be disregarded because those rights were bro't here by his brother's appeal and not his own, is mere vile mocking.

The meagerness of the proof on the part of the Complainant is attempted to be excused on the ground that under the circumstances it could not be expected that the Complainant would have witnesses — Perhaps so, but that is no reason that he should have a decree without proving his case. He must show that he is entitled to relief and has merited it.

It is argued that it was Isaac's duty to give notice of the arrival of the deed — but the deed to him never did



arrive: The deed to Thomas did, but to say that he should have given notice of that is to assume, unproved, precisely what the complainant was bound to prove - that is: that the deed to Thomas was in equity to Isaac, and that Thomas had no rights in equity under his deed.

We wish to say here that in the "brief History of the case" of the Complainant there is more assumption of things proved, more perversion of things as proved, and less adherence to the real case than we have more than very rarely seen, and we bespeak a careful examination of the case as presented in the record:

We are confident that the Complainant has utterly failed in making out his case, and that he is not at all entitled to the equitable sympathy of the Court, from having been earnest or even willing to do equity: that his own hands are not clean; that even if it is sufficiently proved that there was such a contract as alleged in the bill, yet that it is a case where the parties must be sent for their remedy to a court of law, and that the relief prayed cannot be obtained.

Manning & Merriam  
for defts.



Isaac Doyel et al,  
vs  
Andrew M. Wiley

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Argument for the  
appellants

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Manning Merriman  
for appellant

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Isaac Hoyle Applicant impressed  
with Thomas Hoyle  
and  
Anson M. Wiley

Appeal from Peoria

Prints and Rep.

Mr. The Depositions taken in the former suits  
between the same parties were proper evidence  
in this cause

" Depositions taken in one cause may be  
read in another when the parties and the sub-  
ject matter are the same "

And Daniels v. Cly Prae. 1009, 1010, 1011, 1012  
1013, 1014, 1381.

It is not necessary the witness should be dead  
Idem 1014, 1015.

In the case of Brooke vs Cannon - a Bill  
was filed & depositions taken & Bill dismissed  
for want of Prosecution - Another Bill was filed  
for the same thing. Held that the depositions  
taken in the 1st cause could be used in  
the last. D. A. R. Marshall 854.

Harrington vs Harrington 2 Hough Miss. 701

1 Stark Ev. 313, 314, 315, 316,

1 Quenkops Ev. Sec. 353, 354

1 Adolph Ellis p. 19.

1 Beck v. Cly Prae. 497

2 Beesly's Rep 579.



The Motives by which the Court was actuated in  
dismissing his first bill can not be inquired into  
He may have been compelled to do so for  
want of entire preparation for trial

2. The Contract in writing (being lost); The Contents  
are Substantially proved as required by Law.

There can be no controversy about the loss  
or destruction of the Contract.

What then is sufficient evidence of the  
proof of the Contents.

Purvis v. Ex. as Holt. 3 Lill. 403-5  
Lusk as Horner 3 Lill. 158.

Substance of Contract only need be proved  
Rector as Rector 3 Lill. 119.  
} Woud 31.



3. It was a binding contract between the Parties

There was a sufficient Consideration.

Corbett & Thus re Hite Estab. 2 A.R. Marshale  
(645)

4. Locating, that is (settling) on lands on the Shares (Evidenced by writing) is a sufficient consideration on which to base a deed for title,,  
Same.

Patton vs Ashley 3 Eng. 290.

In case. Bradbury vs White 4 Encul. 391.

Parties made the following contract

" It is agreed between Mr Crisp Bradbury and myself, that if I purchase some land of the heirs of Cyrus King Esq at Auction next Monday that said Bradbury shall have thirty feet always to be kept open adjoining said Bradbury's house on the Northwesterly side of his house, at a fair and Equitable price according to what I may purchase at

Aug. 13. 1823. Saml. White Crisp Bradbury,,

On this contract there was a deed for a specific performance.

Mutual Promises, sufficient Consideration  
Chitty on Contracts. 45.



4. It should in Equity bind others, not parties who knowing of its existence combined or conspired with one of the parties to defraud the others.

Courts of Equity will relieve when one person fraudulently prevents an act to be done for the benefit of a third person.

1 Storys Equity Sec. 356. 384. 395.

The purchase was made by Isaac in the name of Thomas with the money of Isaac. There is a resulting trust in favor of Isaac. In Equity it is his land.

2 Storys Equity 611. See 1201. Et seq.

Notice to the agent or attorney is notice to the principal.

1 Storys Equity 437. See 408.



5<sup>th</sup> The Evidence Shows a plain conspiracy on the  
part of Isaac Thomas Noyls to deprive Miley  
& Matkin of their rights under the con-  
tract — Or Else that Thomas Noyls had  
nothing to do with the transaction & that the  
deed was taken in his name by Isaac, for  
the same purpose of depriving Miley & Matkin



Isaac Hagle is most clearly the only person interested in the purchase from Daniel.

Every fact proved, and every circumstance appearing in the case prove this to incontrovertibly that the Judgment can not fail to be convinced

The fact that the deed is made to Thomas Hagle is to be prima facie Evidence of a purchase by him and the Payment of the money.

But this presumption is wholly overthrown by the Evidence

That the deed bears date in July 1848. proves nothing. It is a common Practice with persons owning large numbers of tracts of land to prepare deeds & acknowledge them leaving the name of the Grantor to be filled in in future - This may have been done so on the party who made the deed may have mistaken the year - Nothing is more common than either

at all events the deed took effect only from its delivery in September A.D. 1849.

It is clear that in June 1849 when Isaac wrote his first letter to Durbinburg, that he had no notion that Thomas had a deed to the land; It is equally certain, that if Thomas wrote the letter of Sept 20<sup>th</sup> 1849. or knew of its having been written that at that time Thomas had no suspicion that a deed had been made to him in 1848.

By Isaac's letter of June 3. 1849. it is most manifest that he is buying the land for himself & not another; making the deed to Thomas appear to be entirely an afterthought.



Even then it is the request of Isaac & not of  
Thomas Hoyle

With the exception of the bare pre-  
sumption arising from the face of the deed, the whole  
case utterly fails to show that Thomas Hoyle ever  
had any interest in or knowledge of this transaction

### Brief history of the case.

In & before 1840 Isaac a farmer lived in Provia  
County and this land, half improved it, covered  
land adjoining it. He, as well as Watkins & Wiley  
was to be highly benefited by the purchase, the Road  
which he travelled to Provia Run through it, it was  
the Road he used and is accustomed to travel  
The Purchase of the land by another road cut  
him off from this Road. The contract made with  
his neighbours Wiley & Watkins was not only for  
the mutual benefit, but also for the mutual  
Safety & protection of each in the full enjoyment  
of their adjoining lands. He, & they for years had  
been attempting to ascertain who was the owner

He was for years negotiating for the purchase  
after he ascertained who owned it. He had the money  
to purchase with, and was suited with the price

Thomas His Brother lived in Green  
County 150 miles from him. Had no interest in Provia  
County, & so far as the evidence shows, never  
was there and never saw the land; and although  
living in the same County with Audubury, and  
perhaps in the same town much of the time of Isaac,  
negotiation about the land & within a few miles



of St Louis. When Audubury lived the Resident  
of the time, yet he neither in person or by letter  
made any contract to purchase said land - nor  
any proposition to do so - No negotiations whatever  
passed between him & Audubury relating to the  
lands at any time whatever.

After several former persons interviewed  
with Audubury in Carroll Green County Isaac  
goes there again, all the way from Pione County  
in June 1849. to purchase the land, with the  
money in his pocket, brought on by him; and  
thus finds that he had removed to St Louis  
where he writes his letter of June 2nd 1849.

See the letter

The Cholera prevents his going to St Louis at that  
time & he returns to Pione after waiting several days  
for Audubury to come to meet him at Carrollton  
or Osceola Mills or some where close.

Again in Sept 1849. he makes another  
Journey to St Louis armed with a letter from his  
brother Thomas. Written by himself, which in all  
probability Thomas never saw, & thus professed to  
act for his said Brother as his agent in making  
the purchase of the land. Pays over the money  
and takes the deed.

(Now this letter in its composition & Character  
as well as in the hands writing betrays its author.

He forgets that he is Thomas - not Isaac  
His Health is still poor, The fear of Cholera still  
haunts him. He is still after the other tract of land  
mentioned in Isaac's letter of June 2nd - "provided the  
title is good Patent &c. & duly certified according to law  
and taxes regularly paid," and particularly suspicious



that Isaac should be informed of the arrival of the deeds.

Isaac Returns to Peoria continues to improve and occupy the land, gives no further notice to Wiley or Watkins of the Purchase - never gives them notice when he will need their portions of the Purchase Money & sits up when about 1 year & 5 months afterwards it is ascertained that there is a deed recorded for the land to Thomas Doyle; that Thomas & not Isaac is the Real owner, manifesting neither alarm, uneasiness or dissatisfaction at his own loss; and insists against what would seem to be his own interest, that when he had the money in his pocket, and had for years been improving the property & negotiating for its purchase, that he had turned in to aid his brother, who did not want it, had no need of it, that nothing about it, to purchase the land and deprive him out of the value of his improvements cut him off from the Public travelled roads, and also to deprive him of the benefit of his contract with Watkins & Doyle.

If Thomas Doyle Purchased this land for himself, what was the necessity for all this solicitude on the Part of Isaac? Why need he be so officious as to go all the way from Peoria to Chenn county with the money in his pocket; and then again to St Louis to accommodate his brother, when he himself was to derive no benefit from the Purchase?

It is strange indeed that a man should be at so much trouble to do himself so serious an injury.



That Thomas Doyle is the owner of this land or ever purchased or paid for the same or has any thing to do with the transaction, is a pretext without a shadow of evidence or argument, a transparency so light that there is no chance of mistaking its real character.

But suppose that Thomas really did, (which no sensible man will admit) furnish this money to his brother Isaac, to buy this land for himself — This would make Isaac his agent for that purpose. He would then be chargeable with notice of whatever Isaac knew or ascertained of the Equitable rights of Wiley & Watkins — His Possession of Wiley & Watkins was also notice to Thomas of their Equities if they had any. It is a legal presumption that his agent Isaac communicated to him whatever knowledge he had relative to the Rights of the Parties in possession. He was bound in law to take notice of those rights whether communicated or not. He knew then — or was bound to know of the Contract between Isaac, Watkins and Compliments. He conspired with Isaac to defraud Compliments & Watkins out of their rights under the Contract — Rights which they clearly had as against Isaac his Co-conspirator.

While we admit that notwithstanding the Contingency, Isaac had a right to sell his land to whomsoever he pleased, and that neither he nor a Stranger who might purchase the same would be in any manner bound by such Contract; Yet we respectfully



I submit, that no man had any legal or Equitable right to Combine & Conspire with one of the parties to such Contract, to cheat and defraud the others, and that when he does so, he in Equity should and does take the place & stand in the same relation to the other contracting parties, as the person with whom he has so conspired. If this is not the law - it ought to be. And inasmuch as there is no law against it, and honesty, justice, truth and fair dealing are all in favor of the doctrine, if deemed at all necessary to the rightful decision of this case, I call upon this Court to declare such to be the law. Whenever and wherever a court can, without the violation of a legal principle, put its seal of disapprobation upon an act of meanness and dishonesty, the indulgence of its power in that respect, is but the performance of a pleasing duty.

Thomas Doyle has not even interest enough in this matter to prosecute this appeal. It is Isaac alone who feels himself injured by the decision of the Circuit Court. The Circuit Court has decided that in Equity 80 acres of this land is the property of Isaac - not of Thomas, that Thomas holds it in trust for Isaac & not for his own benefit. Thomas is satisfied with the decree - But Isaac is shocked at the monstrous injustice of the decision - Even mindful of the interests of his dear brother Thomas - Regardless of pecuniary considerations and personal convenience; he can not



in honour and Conscience, permits a Court of Justice Even, to deprive the rightful owner of his property for his benefit. His tender hearted nature revolts at the idea of such a grievous wrong.

Injustice has been done his brother and therefore the appeal from a deed in his own favor, that this money may be made right and the legal owner may get his lands

Thomas Doyle did not choose to risk the payment of costs by joining in this appeal. He did not feel a sufficient interest in the subject matter to make it an object; But this most delicately conscientious Isaac, being in feeble health, sorely afflicted with the "lung fever", and with the "fear of" Cholera" before his eyes", will see the Courts of Justice (Some where else) before he will allow them to transfer his brother's property to him — No never with his consent shall Thomas be thus defrauded of his rights

It is hoped that if some sudden attack of Illness does not, that the decision of this Court may, restore to him a consciousness of the propriety of complying with his contract with Matthews and the Complainants in this case

Isaac's conduct throughout this whole matter is peculiar — Extraordinary.

He first denied the Contract altogether, then questioned the consideration, then sets up that there is nothing to show that Comp<sup>t</sup> & Matthews tried to find out the owner, then alleges that he gave notice, that he expected the deeds and that they must be ready with their money



with his money— The deeds did not arrive in St Louis til some time in July 1849. Isaac as appears from his letters & Leutenbergs deposition was immediately advised of it. Then, he should have called for the money— Then, he should have given notice of the arrival of the deed. There was no obligation on the part of Compt & Matting to pay until that time. Doyle had no right to their money until the land was needed for immediate use. But even before the arrival of the deeds, and before Isaac had any right to call for Comptaints & Matting's proportion of the purchase money— no, Isaac by his letter of June 2nd 1849. had already directed the deeds to be made to his brother Thomas

It is therefore mere impudence in him to pretend that Matting & Comptaint neglected to furnish their respective share of the purchase money of the land.

The Appellants attempted in the Court Below to use as Evidence in this Cause the sworn answer of Thomas Doyle taken in the former Suit which had been dismissed— It was rejected as a matter of course, no reason was given then & I suppose no good one can be suggested now why such evidence could in any event be admissible. At the request of the Appellants Counsel it is copied into the amended record filed in this case. It is supposed that the bills & answers in the former Suit are only to be



Considered for the purpose of ascertaining what was the issue in the former suit & whether the Parties & the Subject matter of that suit was the same as the present one - and that the depositions used upon the hearing of this case were taken & filed in such former suit. All this fully appears from the Amended Records & the Clerk's Certificate thereon.

The Complaint in this case had the strongest possible claim in Equity - The contract as shown was a valid one, for a good and sufficient and valuable consideration; the Parties were neighbors and friends; they relied upon each other honestly and good faith in a matter which to them was and is of much greater importance, than the mere value of the land in controversy either then or now. The Circumstances of the case fully warrant the enforcement of this contract, by an affirmation of the decree of the Circuit Court.



Isaac Doyle imp.<sup>d</sup> of

Audam. M. Wiley

Brief & argument

Truflo