

13478

No. \_\_\_\_\_

# Supreme Court of Illinois

Wales, et al.

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vs.

*B*  
Rogue.

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71641  7

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

~~1861~~

No. ~~251~~.

1861

Boggs

13478

# SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM, 1861, AT OTTAWA.

HORATIO WALES AND  
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vs.  
VIRGIL A. BOGUE, *Appellee*. } *Appeal from Ogle.*

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14 Motion for a new trial heard at March term, A. D. 1860; motion overruled and judgment rendered against defendants. Motion overruled and judgment entered March 30th, 1860. Defendants pray an appeal, which is granted, with leave to file bond within thirty days, and to have  
38 bill of exception signed within thirty days. Bill of exceptions signed,  
15 and appeal bond in due form filed, April 28th, 1860.

Bill of exceptions sets out all the evidence given to the jury, as offered in the case.

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Plaintiff next offered in evidence a judgment rendered in the Ogle county Circuit Court in favor of the people, &c., for the use of *Henry Rhines* vs. *Oliver W. Kellogg, Smith Galbraith et al.*, on 27th day of  
19 March, A. D. 1841, of the March term of said Court. Plaintiff next offered in evidence an execution issued on said judgment, dated November 22d, 1841, and duly returned *nulle bona*. Plaintiff next introduced an alias execution on said judgment against all of said defendants in  
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 20, 30 deed to said Dutcher, duly executed and acknowledged, dated  
 December 3d, A. D. 1849: at same time that plaintiff offered said execution and deed, plaintiff admitted, in Court, that Smith Galbraith, one of the defendants named in said execution, departed this life in the month of January, A. D. 1843, and upon which the defendants moved the Court to exclude said execution and sheriff's deed from the jury, which motion was overruled by the Court, and the said execution and deed read to the jury, and to which ruling of the Court the defendants, by  
 31 their counsel, then and there excepted.

Plaintiff then offered in evidence deeds of conveyance, conveying said premises from Edward F. Dutcher to the plaintiff. The plaintiff then proved the defendant Wales was in the actual possession of the land at the time this suit was commenced, and that defendant Williams claimed to be the owner thereof, to the admission of which evidence the defendants, by their counsel, objected, which objection was overruled by the Court, the evidence permitted to go to the jury—defendants excepted. The plaintiff here rested his cause and offered no further evidence.

The defendants then offered in evidence a deed for the premises in controversy, made by O. W. Kellogg and wife to defendant Williams, dated  
 33, 34 June 30, 1842, duly acknowledged and recorded in Ogle county, on July 7th, A. D. 1842—defendants at the same time offered to prove, by competent testimony, that defendant Williams was in possession of the premises in controversy by actual occupancy and cultivation in the year A. D. 1840; that he continued in the actual occupation and possession of the premises, either by himself or tenant, until after the sale of the premises to E. F. Dutcher by the sheriff, as shown by plaintiff's evidence; that said Williams made all the improvements on said land; that he surrounded the same with a fence, and broke and cultivated the same; that all this improvement was made before the land was entered by Kellogg; that other persons claimed other parts of the same 80 acre tract, according to the General Government survey; that they were in possession of their respective parts at the time the land was entered by Kellogg; that Kellogg was, by such occupants and possessors of said land, including said Williams, appointed Trustee, to enter said land at the land office, in his own name, (but for them) and convey the same to the respective claimants; that each respective claimant was to, and did, furnish and pay to said Kellogg his portion of the purchase money, to enter said land before the same was entered; that said Williams did then and there, and before said land was so entered, furnish and pay to said Kellogg his  
 35 portion of said purchase money; that Kellogg received such money, and entered said land with the same, as the Trustee of said Williams; that said Kellogg, in the entry of said land, was the mere naked Trustee of Williams and other occupants, who were the real owners of said land; that Kellogg had no interest in the land, and that he executed the deed to Williams, offered in evidence by the defendants, in pursuance of said agreement and trust, and to carry out the same, and for no other consideration; all of which evidence so offered by the defendants was objected to by the plaintiff, his objection sustained by the Court, and all of said testimony excluded from the jury; to which ruling of the Court, in excluding their testimony, so offered, from the jury, the defendants, by their counsel, then and there excepted.



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SUPREME COURT OF ILLINOIS :

APRIL TERM, 1861.

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HORATIO WALES AND  
CHESTER R. WILLIAMS,  
Appellants,

*vs.*

VIRGIL A. BOGUE,  
Appellee.

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ABSTRACT.

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Filed Apr. 29-1861

L. Leland  
clerk

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251

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Filed Apr. 29<sup>th</sup> 1861

*L. G. Lund*  
*clerk*



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CHESTER R. WILLIAMS,  
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Appellee.

ABSTRACT.

Filed Apr. 29-1861

L. Ireland

Clerk



State of Illinois }  
County of Ogle ss. } At a Circuit Court begun and held  
in and for the County of Ogle, at the  
Court House in Oregon on the 5<sup>th</sup> day of September A.D. 1853  
in pursuance of the Statute in such case made and provided  
then and there being present, the

Hon. Ira O. Wilkinson Presiding  
Judge of the Sixth Judicial Circuit of the State of  
Illinois, and Judge of the Circuit Court of Ogle -  
William T. Miller States Attorney  
R. B. Light Clerk, and  
Elias Baker Sheriff of said Ogle County

And afterwards to wit: on Saturday September 10<sup>th</sup> A.D. 1853, the  
same being one of the days of the said September Term  
of said Court, the following order appears of Record  
to wit: -

Virgil A. Bogue } In Ejectment  
vs }  
Horatio Wales & } comes the Plaintiff, by then his Attorney  
Chester H. Williams } and on his motion, leave is given him  
to file his Declaration and Notice herein  
and on his further motion it is ordered by the Court that the  
cause be entered on the Docket, and the Defendants ruled to  
plead in twenty days after the entry of this order



which said Declaration and Notice is in the words and figures to wit: -

State of Illinois } Circuit Court of said County kept Term  
Ogle County }<sup>ss</sup> A.D. 1853 -

Virgil A. Bogue complains of Horatio Wales  
and Chester K. Williams. being in custody re

For that

whereas the said Virgil A. Bogue on the first day of January A.D. 1853. was possessed of a certain tract of land with its appurtenances situate in the Township of Buffalo, County of Ogle & State of Illinois, and being described and known as a part of the West half of the South East quarter of Section Seventeen Township Twenty Three North Range Eight East of the 4<sup>th</sup> Principal Meridian. Commencing at the South West corner of the said South East quarter of sec 17. aforesaid, thence Easterly along the South line of said quarter to the South East corner of the West half of said quarter, thence Northerly along the East line of the West half of said quarter thirty seven rods & Eighty eight one hundredths of a Rod - thence South Seventy two degrees & fifteen minutes West Eighty one rods & Eighty one hundredths of a rod to the West line of said South East quarter, thence Southerly along the West line of said quarter to the place of beginning, containing Eighteen acres more or less - which said premises the said Virgil A. Bogue claims in fee and the said Bogue being so possessed thereof, the said Chester K. Williams & Horatio Wales afterwards to wit: on the first day of March A.D. 1853 - entered into said premises and



4

Subscribed & sworn to before me } W. B. Chatfield  
this 8<sup>th</sup> day of August A.D. 1853. }

M. C. Keetfield J. P. }

Which said Declaration and Notice are endorsed as follows - to wit  
V. A. Bogue - vs - Horatio Wales & Chester K. Williams -  
Star - Eject - Saturday August 27<sup>th</sup> 1853. delivered a copy  
of the within to Horatio Wales & C. K. Williams. at 4.0 Clock  
P.M. - W. B. Chatfield - Filed Sept 10. 1853 - R -  
- B. Light Clerk -

And afterwards to wit. on the 15<sup>th</sup> of Sept. 1853. the said Defendants  
filed their plea in the words and figures following to wit:

State of Ills } Ogle County Circuit Court of the Sept Term  
Ogle County } A.D. 1853 -

Virgil A. Bogue } Action of Ejectment -

vs

Chester K. Williams & } And the said  
Horatio Wales } Defendants by Heaton & Atherton their  
Attys: come & defend the wrong &  
injury when re - and say they are not  
guilty in manner & form as the said Plff hath above thereof  
declared against them & of this they put themselves before the  
country &c

And the Plaintiff doth  
the like

Heaton & Atherton  
for Defts

Robt. Mix for Plff -



2  
And afterwards to wit: - March 29<sup>th</sup> 1854. the following order  
appears of record in said Court - to wit

Virgil A. Bogue } Ejectment  
vs } It is ordered by the Court  
Horatio Wales & } that this cause be continued  
Chester K. Williams }

And afterwards to wit: on Wednesday Sept 6<sup>th</sup> A.D. 1854  
the same being one of the days of the September  
Term of said Court. the following proceedings were  
entered of Record to wit: -

Virgil A. Bogue } Ejectment  
vs } Now on this day comes the  
Horatio Wales & } Plaintiff by his Attorney, and enters  
Chester K. Williams } his motion for continuance, and the reasons  
being deemed sufficient, it is ordered by  
the Court that the cause be continued at Plaintiffs costs  
and that Defendants have and recover of Plaintiff their costs  
in this behalf expended and that they have Execution therefor

And afterwards to wit: Oct 24. 1854. the following Affidavit  
was filed in said cause to wit: -

State of Illinois, Ogle County Circuit Court of the  
Ogle County 3 March Term A.D. 1855

5



6 Virgil A. Bogue } Action of Ejectment

<sup>vs</sup>  
Leicester K. Williams }  
Horatio Wales } of the above named Defendants being  
duly sworn, deposes and says that

Ebenezer Williams is a material Witness for the Defence in the above entitled cause whose testimony the defendant desire to take to be used upon the trial thereof. That said Witness is a resident of the County of Kane in this State now stopping a few days at the Town of Buffalo in said Ogle County. That said Witness is old and in feeble health and will in all probability be unable to attend at the trial of said cause at the next term of this Court and give testimony in court, in consequence of such feeble health even if he should live until that time which this affiant considers doubtful

Subscribed & Sworn to before me } L. K. Williams  
this 23.<sup>rd</sup> day of October A.D. 1854 }  
L. G. Holbrook Justice of the Peace

And afterwards to wit: Nov 6<sup>th</sup> 1854, the following notice was filed in said cause, to wit in the words of figures following to wit: -

State of Illinois } Ogle County Circuit Court of the March  
Ogle County } Term A.D. 1855 -



the Plaintiff, by Mix his Attorney, and the Defendants by Heaton their Attorney, and on motion of Plaintiff Attorney and oral statements made by counsel, it is ordered that this cause be continued at Plaintiffs cost and that Defendants have and recover of Plaintiff their costs in this behalf expended and that they have execution therefor —

And afterwards to wit: — on Friday October 9<sup>th</sup> 1855.  
the same being one of the days of the October Term 1855. of said Court, the following order appears of Record — to wit

|                                       |   |                                                                                   |
|---------------------------------------|---|-----------------------------------------------------------------------------------|
| Virgil A. Bogue                       | } | Ejectment                                                                         |
| vs                                    |   |                                                                                   |
| Horatio Wales & Lechester K. Williams | } | By agreement of parties it is ordered by the Court that this cause be continued — |
|                                       |   |                                                                                   |

And afterwards to wit: on Wednesday May 14<sup>th</sup> A.D. 1856.  
the same being one of the days of the May Term 1856. of said Court, the following proceedings were entered of record to wit: —

|                                       |   |                                                                |                       |
|---------------------------------------|---|----------------------------------------------------------------|-----------------------|
| Virgil A. Bogue                       | } | Ejectment                                                      | Now on this day comes |
| vs                                    |   |                                                                |                       |
| Horatio Wales & Lechester K. Williams | } | the Plaintiff by Mix his Attorney and the Defendants by Heaton |                       |
|                                       |   |                                                                |                       |



their Attorney, and issue being joined thereupon come the jurors of a Jury, good and lawful men to wit: - John Perrin, John Light, M. M. Meinklev, Edwin Hemkle, Daniel T. Green, Seth H. Hells, William Spring, Charles C. Royce, Richard Donovan, Hosea Alverson, Hugh Rea & Luther Odell, who were duly elected tried and sworn, well and truly to try the issue in the cause. After hearing the evidence and arguments of counsel, and being fully advised in the law by the Court the said Jury retired to consider of their verdict, and afterwards returned into Court, and delivered the following Verdict to wit: We the Jury in this cause find the Defendants not guilty, and thereupon the Plaintiff enters his motion for a new trial, and the cause is continued without having a decision on said motion -

And afterwards to wit: - on Tuesday October 13<sup>th</sup> A.D. 1857 - the same being one of the days of the October Term of said Court, the following proceedings were entered of record to wit: -

|                       |                                            |                                       |
|-----------------------|--------------------------------------------|---------------------------------------|
| Virgil A. Bogue       | } In Ejectment ~                           | This day comes the said               |
| us                    |                                            |                                       |
| Horatio Wales +       |                                            |                                       |
| Leicester H. Williams | } Defendants come by Beaton their Attorney | and now comes on to be heard the said |
|                       |                                            |                                       |

Plaintiffs motion for a continuance herein and after argument of counsel and consideration by the Court it is ordered that the said motion be sustained, and that a new



10 trial be awarded and thereupon the cause is continued generally —

And afterwards to wit: on Tuesday March 2<sup>nd</sup> A.D. 1858.  
the same being one of the days of the March  
Term A.D. 1858. of said Court. the following pro-  
ceedings were entered of record to wit: —

Virgil A. Bogue } Ejectment —  
vs } This day comes the said  
Horatio Wales } Plaintiff by his Attorney  
Chester K. Williams } and the Defendant comes by  
Heaton their Attorney and thereupon  
to try the issue herein come the jurors of a jury, good &  
lawful men to wit: — Benjamin Garman, Lewis Foshay,  
Elias Malone, John R. Chapman, John H. Patterson, Jacob  
Barnhart, E. K. Lester, Sanford Hammond, James  
Thompson, D. W. Stoner, Perry Norton and Jonathan Wagner  
who being duly elected tried and sworn and having heard  
the evidence the argument of counsel and the instructions  
of the Court, retired to consider their verdict and afterwards  
to wit: on the said day returned into Court and rendered  
the following Verdict to wit: — We the jury empanelled  
in the case of, V. A. Bogue - vs - Chester K. Williams and  
Horatio Wales - find the issue in favor of the Plaintiff  
and that the said Defendants are guilty of unlawfully  
withholding the premises mentioned and described in the  
Declaration of the Plaintiff, and that the Plaintiff is seized



of the premises in the declaration mentioned in fee. And thereupon come the said defendants by their Attorney and enter their motion in arrest of judgment and for a new trial herein as by the Statute is provided —

X And afterwards to wit. on said Tuesday March 2<sup>d</sup> A. D. 1858. the said verdict was filed. which was in the words and figures following to wit: —

We the jury empaneled in the case of. V. A. Bogus vs. Chester K. Williams and Horatio Wales. find the issue in favor of the plaintiff, and that the said defendants are guilty of unlawfully withholding the premises mentioned and described in the declaration of the plaintiff, and that the plaintiff is seized of the premises in the declaration mentioned in fee —

John R. Chapman  
Lewis Fosha  
James Thompson  
C. S. Hammond  
Jonathan Wagner  
Edward K. Lester

J. H. Patterson  
D. W. Storer  
Benjamin Garmon  
Jacob Barnhart  
Elias Malone  
Perry Norton —

And afterwards to wit: — on Saturday June 19<sup>th</sup> A. D. 1858 the same being one of the days of the June Term 1858. of said Court. the following proceedings were entered of record to wit: —

+ And afterwards to wit. on said Tuesday March 2<sup>d</sup> 1858. the following instructions were filed in said Court.  
Refused  
J. W. Foster Judge  
Bogus vs. Williams & Wales  
The defendants ask the Court to instruct the jury that unless the plaintiff has proved that an execution was issued upon the judgment offered in evidence herein. within one year from its date. Count: March the 2<sup>nd</sup> year A. D. 1841. they must find for the Defendant —



Virgil A. Pogue } Ejectment

vs

Horatio Wales and } said Plaintiff by Miss his Attorney  
Chester K. Williams } and the Defendants by Heaton their

Attorney. and now comes on to be heard the Defendants motion for a new trial herein, and after argument of counsel and the Court being fully advised in the premises, it is ordered that the said motion be sustained and that a new trial be awarded upon payment by the said Defendants of all costs which have been made herein since the last October term of this Court within sixty days from this date and thereupon on motion of the said Defendants it is ordered that the plaintiff pay all costs made herein at and previous to the said October Term —

And afterwards <sup>being</sup> on the 9<sup>th</sup> day of October A.D. 1858, <sup>one of the days of the Oct. Term A.D. 1858, the following</sup> proceedings were entered of record to wit:

Virgil A. Pogue } Ejectment

vs

Horatio Wales & } comes the said Plaintiff by Miss his  
Chester K. Williams } Attorney, and the Defendants come by

Heaton their Attorney, and now to try the issue herein, come the Jurors of a Jury, good and lawful men to wit; Richard Donovan, Jesse Ohmst, John Eychar, Eli L. Linscott, Edmond Longdon, Jacob Williams, Harvey Jewett, Perry Barker, Harvey Colburn Lewis Stocking, George Gilly & James Joslin, who being duly elected tried and sworn after hearing the evidence and considering their verdict say, that



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We the Jury empaneled in the above entitled cause, do find the issue in favor of the plaintiff and that the Defendants are guilty of unlawfully withholding the premises described in the plaintiffs declaration, and that the Plaintiff is seized of the premises described in the declaration in fee. And thereupon the Defendants enter their motion in arrest of judgment and for a New Trial herein —

And afterwards to-wit: on said 9<sup>th</sup> day of October A.D. 1838 the said verdict was filed in said cause, being in the words following to-wit: —

State of Illinois } Circuit Court Oct. T. 1838 —  
Ogle County }  
Virgil A. Bogue } Oct 9. 1838.

vs  
Horatio Wales & Lecheater R. William } We the Jury empaneled in the above entitled — do find the issue in favor of the plaintiff and that the defendants are guilty of unlawfully withholding the premises described in the plaintiffs declaration, and that the plaintiff is seized of the premises described in the declaration in fee

Harvey Colburn } Harvey Jewett } James S. Freelym  
Jacob Williams } Edmund Longdon } Perry Barker  
Eli' b Lensecott } John Eychaner } Lewis Stocking  
Jesse Ohment } Richard Donoran } George Lilly



14 And afterwards to wit: on Friday March 30<sup>th</sup> A.D. 1860. the same being one of the days of the March Term 1860 of said Court the following proceedings were entered of record to wit: —

Virgil A. Bogue } Ejectment — Now on this day comes  
vs } the said Plaintiff by H. A. Mix his  
Horatio Wales and } Attorney, and the said Defendants come  
Chester K. Williams } by W. W. Keaton their attorney, and  
now comes on to be heard the motion of  
the said Defendants for a new trial herein, and after argument of  
counsel and consideration by the Court, it is ordered that the said  
motion be overruled. And thereupon it is considered by the Court  
that the said Virgil A. Bogue do recover of the said Horatio Wales  
and Chester K. Williams, the possession of the premises described in  
the Plaintiff's declaration according to the verdict of said Jury, and  
it is further considered that the said Bogue have and recover of  
the said defendants, his costs and charges in and about this suit  
in this behalf expended, and that he have his writ of possession  
for said lands and tenements, and that he have his writ of Exe-  
cution for his said costs. And now the said Defendants pray  
an appeal of this cause to the supreme Court, which is allowed  
upon their filing Bond within thirty days, in the sum of one  
hundred dollars, conditioned as required by law with William  
E. Meason as security — & that a Bill of Exceptions herein be signed  
within thirty days

And afterwards to wit: April 28<sup>th</sup> 1860, the said Defendant  
filed their Bond, which is in the figures or words



following to wit:—

Know all men by these presents, That we Horatio Wales, Chester K. Williams and William E. Mason, of the County of Ogle in the State of Illinois, are held and firmly bound unto Virgil A. Bogue in the penal sum of One hundred dollars, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors, administrators and legal assigns, jointly and severally, firmly by these presents - ~ Witness our hands and seals this 26<sup>th</sup> day of April A.D. 1860.

The Condition of this obligation is such, that whereas the said Virgil A. Bogue did, at the March Term A.D. 1860, of the Circuit Court of Ogle County, in the twenty second judicial Circuit in and for the State of Illinois recover a judgment in Ejectment against the above bounden Horatio Wales and Chester K. Williams - establishing the title of the said Virgil A. Bogue to the following Real Estate to wit: - That certain tract or parcel of land situated in Township Twenty three, North Range Eight East, of the Fourth Principal Meridian in the West Eighty of the South East Quarter, and the East Eighty of the South West Quarter of Section Seventeen, containing Nineteen acres three rods, two rods, and sixty five one hundredths of a rod ( $19 \frac{R}{3} - 2 \frac{R}{100}$ ) bounded as follows viz: - Commencing at the South West corner of the South East Quarter of section Seventeen - running North, Forty and one half ( $40\frac{1}{2}$ ) degrees West, Twenty seven ( $27$ ) rods, to a point designated by a stake and stones: thence running North, Seventy two degrees fifteen minutes East ( $72^{\circ}15'$ ) fifteen and fifty one hundredths rods. ( $15\frac{51}{100}$ ) to a point of



intersection on the West line of the South East Quarter of Section Seventeen  
 thence continuing in the same direction. Eighty one and Eighty Eight one  
 hundredths rods ( $81.88^R$ ) to the East line of the West Eighty of the  
 South East quarter of said Section. thence on said line Thirty seven  
 and Eighty eight one hundredths ( $37.88$ ) Rods to the South East  
 corner of the West Eighty of the South East quarter of Section  
 Seventeen: thence West. Eighty and thirty two one hundredths  
 Rods ( $80.32^R$ ) to the place of Beginning: all the corners of  
 which tract of land are designated by stake and stones: and  
 of which Eighteen acres, Two Rods. Five and Eighty one hundredths  
 Rods ( $18^a .2^R .5.80$ ), are in the West Eighty of the South  
 East quarter. and one acre and thirty six and Eighty five  
 one hundredths Rods ( $1^a .36.85^R$ ), is in the East Eighty of the  
 South West Quarter of Section Seventeen - and awarding  
 to the said Virgil A. Bogue a writ of Habere Facias  
Possessionem against the said Horatio Wales and Chester K.  
 Williams, and also a judgment for costs of said suit. From  
 which said judgment, the said Horatio Wales and Chester K.  
 Williams have prosecuted an appeal to the Supreme Court  
 of the State of Illinois, in order to obtain a reversal of the  
 same - Now if the said Horatio Wales and  
 Chester K. Williams shall prosecute their said appeal without  
 delay and pay and satisfy said judgment with costs interest  
 and damages, as may be awarded by the said Supreme  
 Court in case the said judgment shall be affirmed in  
 the said Supreme Court - and shall also yield up  
 to the said Virgil A. Bogue the possession of the  
 said parcel of land, in case said judgment of said



Circuit Court shall be affirmed by the said Supreme Court, (Saving the rights of the said Horatio Wales and Chester K. Williams, under and by virtue of the Thirty sixth Chapter of the Revised Statutes of Illinois, in force September 10<sup>th</sup> 1845) - then this obligation to be void, else to remain in full force and virtue

Horatio Wales *Seal*  
 Chester K. Williams *Seal*  
 Wm E. Mason *Seal*

And afterwards to wit: on the 12<sup>th</sup> day of April A.D. 1861 - the said Defendant filed their Bill of Exceptions, in said cause, which is in the words and figures following to wit: -

State of Illinois } Ogle County Circuit Court of the March  
 Ogle County } Term A.D. 1860 ~

Virgil A. Bogue }  
 vs } Ejectment ~

Chester K. Williams }  
 and Horatio Wales } Be it remembered that  
 on the Trial of the above entitled cause  
 the plaintiff, by H. A. Ellis his Attorney  
 offered in evidence first the following certificate of entry  
 to wit: -

No. \_\_\_\_\_ Land office, Dixon Illinois }  
 March 17<sup>th</sup> 1854 }

J. Hugh Wallace, Register of the Land Office at Dixon



78 Illinois. do hereby certify. that Oliver W. Kellogg of the County of  
— and State of — did on the thirteenth day of  
July. in the Year of our Lord. one thousand eight hundred and  
forty one purchase of the General Government. at this office  
the West half of South East quarter of Section Seventeen. Township  
Twenty three. North Range Eight East of 14<sup>th</sup> P. M. and that  
said Land at the time of said Purchase was within the District  
of Land subject to sale at this office. and rendered subject  
to Sale by Law: all of which appears of Record in my office  
Given under my hand the day and year first above written  
Hugh Wallace Register

Second. the following Judgment. Execution and the Return  
thereon.

The People of the State of Illinois. who sue for } Saturday March  
the use and benefit of Henry Rhines } 27<sup>th</sup> 1841—  
vs }

Horatio Wales. Virgil A. Boquer. Frederick Lushman } Debt on a  
Oliver W. Kellogg. John D. Stephenson & Smith } penal Bond  
Gilbraith impleaded with George Chandler }

This day come the  
parties by their Attorneys and issue being joined. whereupon  
come the Jurors of a Jury (to wit). John Fossler. Irvin Palmer  
Nicholas Shaver. Thomas O. Youngs. Pearson Shoemaker. Nathan  
L. Tyrrell. George D. Johnston. A. E. Hurd. L. O. Bryan  
Samuel Foutz. Abner Sandford and Samuel Wilson. who  
being duly elected. tried and sworn well and truly to try the  
issues joined and a true verdict render according to evidence



after hearing the evidence and arguments of counsel, and being sufficiently advised by the court, retired to consider of their verdict, after a short absence returned into court and presented the following verdict (to wit). We of the jury do find the issues in this cause in favor of the plaintiffs and that the said Defendants do owe to the said plaintiffs the sum of Ten thousand dollars the debt in the Declaration mentioned and do assess the damages sustained by Henry Rhine by reason of the breaches assigned in the declaration to the sum of Three hundred and Eight dollars and fifty five cents Wherefore it is considered by the court that the said plaintiffs do recover of the said Defendants the said sum of Ten thousand dollars their debt aforesaid. And it is ordered by the court that the said plaintiffs have and Execution against the said Defendants for the said sum of Three hundred and eight dollars and fifty five cents their damages in form aforesaid assessed, together with their Costs of Suit to be taxed for the use of the said Henry Rhine

State of Illinois, The People of the State of Illinois to the  
Ogle County ss. Sheriff of said County Greeting:

We command  
you that of the Goods and Chattels, Lands and Tenements of Horatio  
Waller, Virgil A. Bogue, Frederick Lushman, Oliver W. Kellogg,  
John D. Stephenson and Smith Gilbraith (impleaded with George  
Lehander - which shall be found in your County, you cause to  
be made the sum of Three hundred and Eight dollars and  
fifty five cents, which the People of the State of Illinois

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23.  
who sue for the use and benefit of Henry Rhines, hath lately in the leivcuit court of said county, recovered against them for their damages by reason of certain trespasses by them the said Horatio Wales, Virgil A. Bogue, Frederick Lushman, Oliver W. Kellogg, John D. Stephenson & Smith Gilbraith (impleaded with George Chandler) to the said People of the State of Illinois who sue for the use and benefit of Henry Rhines, lately done - And also the further sum of Twenty three dollars and fifty two and a half cents, which were adjudged to them the said People of the State of Illinois who sue for the use and benefit of Henry Rhines for their costs and charges in that behalf expended, whereof the said Horatio Wales, Virgil A. Bogue, Frederick Lushman, Oliver W. Kellogg, John D. Stephenson, and Smith Gilbraith (impleaded with George Chandler) is convicted as appears to us of record, and have that money ready in ninety days from the date hereof, to render to the People of the State of Illinois who sue for the use and benefit of Henry Rhines for their damages and costs aforesaid. Hereof fail not and make return of this writ in ninety days from the date hereof with an endorsement thereon as to the manner you executed the same - Witness B. T. Phelps, clerk of said court and the seal thereof, at Oregon City this Twenty second day of November A. D. 1841 -

Seal

B. T. Phelps clk -

(Endorsed) Nov 21, 1841 - The People of the State of Illinois who sue for the use and benefit of Henry Rhines - vs - H. Wales, V. A. Bogue Fred Lushman O. W. Kellogg, J. D. Stephenson and Smith Gilbraith impleaded with Geo Chandler - Fi Fa - Damages - 308.55



6  
loots  $23.62^{\frac{2}{2}} = \$332.17^{\frac{1}{2}}$  - The Sheriff will collect interest on  
the within F. Fa. from the twenty seventh day of March 1841. at  
the rate of Six per cent - B. J. Phelps Clk - -

November the 24<sup>th</sup> 1841. 3 o'clock P. M. received this writ for  
collection - W. J. Ward Sheriff -

I have made search and can find no property on which to levy  
February 5<sup>th</sup> 1842 - W. J. Ward Sheriff

Sheriff's fees on this writ - ~~services~~ on Six 3.00. mileage 94 - return  
12 = 4.06 - W. J. Ward Sheriff -

Filed Feb 9. 1842 - B. J. Phelps Clk -

State of Illinois } The People of the State of Illinois to the  
Ogle County } Sheriff of said County - Greeting: -

We command you  
that of the goods and chattels, lands and tenements of  
Horatio Wales, Virgil A. Bogue, Frederick Cushman, Oliver W.  
Kellogg, John D. Stevenson & of the lands & tenements of Smith  
Gilbraith now deceased, impleaded with George Chandler, in  
your County, you cause to be made the sum of Ten thousand  
dollars, which by the Judgment of our Circuit Court within  
and for said County of Ogle at the March term thereof  
A. D. 1841. The People of the State of Illinois who sue for the  
use and benefit of Henry Rhines, recovered against the said  
Horatio Wales et al. which is to be satisfied upon the payment  
of three hundred & Eight dollars & fifty five cents & also the  
further sum of twenty eight dollars & Sixty two cents cost. in  
a certain action of Debt - as appears to us of record, and  
have that money ready in ninety days from the date hereof

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to render to the said Henry Rhines for his damages and costs aforesaid. Herof. fail not, and of, this writ and your service make due return within ninety days from this date - Witness Henry Roberts clerk of our said Court at Oregon this 26<sup>th</sup> day of November A.D. 1847 -

(Seal)

Henry Roberts Clerk

(Endorsed) Received this Execution this 29<sup>th</sup> day of November A.D. 1847. - E. W. Dutcher Sheriff of Ogle County

- N<sup>o</sup> Fi Fa - People of Henry Rhines - vs - Horatio Wales et al  
Debt - \$10000.00 - Damages 308.55 - Costs 28.62<sup>2</sup> Total Amount  
\$10337.17<sup>2</sup> - Judgment March 27<sup>th</sup> 1841 - This Writ issued Nov  
26<sup>th</sup> 1847 - Return day Febr 24<sup>th</sup> 1848 - Sheriff fees - Serving  
Execution .50 - Advertising property - .25 - miles travel - Commission  
on \$526.08 - 18-15 - Certificate of purchase .25 Returning Execution  
12<sup>1</sup>/<sub>2</sub> - Total Amount \$19.27<sup>1</sup>/<sub>2</sub> - This Execution to be satisfied  
on the payment of three hundred & eight dollars & fifty five cents  
& twenty eight dollars & sixty two cents cost & interest thereon from  
the 27<sup>th</sup> March 1841 - Henry Roberts Clk -

By virtue of the within Execution I have this day levied on  
the North East quarter of Section Twenty (20) in Town Twenty  
three (23) of Range Eight East of the fourth principal me-  
ridian containing one hundred & sixty acres - December 4<sup>th</sup>  
1847 - E. W. Dutcher Sheriff -

By virtue of the within Execution I have this day levied on  
the following described parcels of land taken as the property  
of the Defendants. this February 4<sup>th</sup> 1848. to wit: - in addition  
to the former levy made on the back of the Execution Dec 4. 1847  
The East half of the South West quarter of Section Seventeen



in Town Twenty three of Range Eight East of the fourth principal meridian also the following portions of the North West quarter of section Seventeen. Town and Range above mentioned bounded as follows to wit: - Beginning at the North East corner of the North West quarter of said Section Seventeen thence West 27 poles to a stake thence South to the creek thence down the creek meandering to the west line of said quarter section thence forth to the South west corner thence East to the South East corner of said quarter section thence North to the place of beginning containing one hundred and seven acres more or less - Also the East half and the West half of the North East quarter of section Twenty. Town and Range above mentioned Also the West half of the South East quarter of section Seventeen Town and Range above mentioned. accepting the portions of said Eighty laid out into Town lots and Streets in the Town of Buffalo in said County. also the following Lots situated in the Town of Buffalo formerly called Mt. Marion. as more fully appear from the Platt of said Town to wit: Lots one hundred fifty seven. one hundred fifty eight. one hundred fifty nine. one hundred sixty. one hundred sixty two. one hundred sixty three. one hundred sixty four. one hundred sixty five. one hundred sixty six. one hundred sixty seven. one hundred sixty eight. all in Block one of said Town. Also Lots fifty one. fifty three. fifty four. fifty five. fifty six. fifty seven and sixty in Block Two of said Town. Also Lots Sixty one. Sixty two. and portions of Sixty three. Sixty four. Seventy one and Seventy two in Block Three of said Town being on the West half of the South East quarter of Section Seventeen. also Lots forty one



24 forty two thirty seven & thirty eight in Block Nine in said Town also portions of lots forty three forty four forty five forty six & forty seven being on the West half of the South East quarter of Section Seventeen in Block Nine. Also Lots Ninety Seven in Block Ten in said Town and portions of Lots Ninety Eight Ninety Nine. One hundred. One hundred and one. One hundred and two one hundred and seven. and one hundred and eight in Block Ten being on the West half of the South East quarter of Section Seventeen. Also Lots one hundred forty nine. one hundred fifty on Block Sixteen. portions of Lots one hundred and forty five one hundred forty six. one hundred forty seven. one hundred forty eight. one hundred fifty two. one hundred fifty one. in Block Sixteen being on the west half of South East quarter of Section Seventeen. also lots eighty five. Eighty six. eighty seven. Eighty Eight. Eighty nine. Ninety. Ninety<sup>one</sup>. Ninety two. Ninety three. Ninety four. Ninety five Ninety six. in Block five in said Town. Together with all the Streets. alleys and public Grounds in said Town. being on the South East quarter of Section Seventeen. Also the West half of said quarter of Section Seventeen being the residue of said quarter Section Seventeen. Town and Range above mentioned

E. W. Dutcher Sheriff -

By virtue of the within Execution. I have this day made the amount of the damage and costs by selling the following described parcels of land as below. Lots 160. in Block one in Buffalo in the County of Ogle and State of Illinois. for which E. F. Dutcher bid the sum of five dollars. also lot 157 for which E. F. Dutcher bid the sum of five dollars. also lot 158. for which E. F. Dutcher



bid the sum of four dollars, also lots 159. for which E. F. Dutcher bid the sum of Fifteen Dollars: also 161. for which E. F. Dutcher bid the sum of four dollars, also lot 162. for which E. F. Dutcher bid the sum of four dollars, also lot 163. for which E. F. Dutcher bid the sum of five dollars, also lot 164. for which E. F. Dutcher bid the sum of Forty five dollars, also lot 165. for which E. F. Dutcher bid the sum of Forty five dollars, also lot 166. for which E. F. Dutcher bid the sum of Seven dollars. Also lot 167. for which E. F. Dutcher bid the sum of Seven dollars, also lot 168. for which E. F. Dutcher bid the sum of Seven — all of the above lots in Block one, in said Town of Buffalo, in said County, also lot 51. in said Town for which E. F. Dutcher bid the sum of three dollars, also lot 53. for which E. F. Dutcher bid the sum of three dollars, also lot 54. for which E. F. Dutcher bid the sum of four dollars, also lot 55. for which E. F. Dutcher bid the sum of Ten dollars, also lot 56. for which E. F. Dutcher bid the sum of Ten dollars, also lot 57. for which E. F. Dutcher bid the sum of Ten dollars, also lot 60. for which said E. F. Dutcher bid the sum of five dollars, all the above lots in Block Two in Buffalo in said County of Ogle, also the following lots in Block three in said Town. lot 61. for which E. F. Dutcher bid the sum of three dollars, also lot 62. for which E. F. Dutcher bid the sum of two dollars, also portions of the following lots in Block three in said Town lot 63. for which E. F. Dutcher bid the sum of one dollar and fifty cents also lots 64 for for which E. F. Dutcher bid the sum of one dollar, also lot 71. for which <sup>said</sup> E. F. Dutcher bid the sum of one dollar, also lot 72 for which E. F. Dutcher bid the sum of Two dollars and fifty cents also the following lots in Block three in said Town of



Buffalo. Lot 41. for which E. F. Dutcher bid the sum of three dollars  
 also lots 42. for which said John Monahan bid the sum of  
 Three  $\frac{25}{100}$  dollars, also Lot 37. for which E. F. Dutcher bid the  
 sum of five dollars. also portions of the following lots in said Block  
 Lot 43. for which E. F. Dutcher bid the sum of one dollar, also  
 Lot 44. for which E. F. Dutcher bid the sum of one  $\frac{50}{100}$  dollars.  
 also Lot 45. for which said E. F. Dutcher bid the sum of Two dollars  
 also Lot 46. for which E. F. Dutcher bid the sum of two dollars, also  
 Lot 47. for which E. F. Dutcher bid the sum of one dollar, also  
 Lot 97. in Block Ten in said Town for which Thrain Leutts  
 bid the sum of Thirteen &  $\frac{50}{100}$  dollars, also portions of the following  
 lots in Block Ten in said Town of Buffalo, Lots 98 for  
 which E. F. Dutcher bid the sum of four dollars, also Lot 99 for  
 which E. F. Dutcher bid the sum of Two dollars, also Lot 100. for which E. F. Dutcher bid the sum of Two dollars  
 which E. F. Dutcher bid the sum of Three dollars, also Lot 101. for  
 which John Monahan bid the sum of Two  $\frac{50}{100}$  dollars, also Lot  
 102 for which E. F. Dutcher bid the sum of Ten dollars, also Lot  
 107 for which E. F. Dutcher bid the sum of  $\frac{50}{100}$  dollars, also Lot 108  
 for which E. F. Dutcher bid the sum of Eight dollars, also the following  
 lots and portions of lots in block Sixteen in said Town of Buffalo  
 in said county Lot 144. for which E. F. Dutcher bid the sum of  
 three dollars, also Lot 150. for which E. F. Dutcher bid the sum of  
 four dollars, also portion of Lot 145. for which E. F. Dutcher bid the  
 sum of one  $\frac{50}{100}$  - also Lot 146. for which E. F. Dutcher bid  
 the sum of Two dollars, also Lot 147. for which E. F. Dutcher  
 bid the sum of Three dollars, also Lot 148. for which E. F. Dutcher  
 bid the sum of Three dollars, also Lot 152. for which E. F. Dutcher  
 bid the sum of one dollar, also Lot 151. for which E. F. Dutcher  
 bid the sum of one  $\frac{50}{100}$  dollars, all the above described



lots situated in the Town of Buffalo formerly called St  
Marion in the County of Ogle and State of Illinois and  
lying and being on the West half of the South East quarter  
of Section Seventeen in Town Twenty three of Range Eight  
East of the fourth principal meridian. also all the streets  
alleys and public Grounds in said Town of Buffalo for  
which E. F. Dutcher bid the sum of Seventeen dollars. also all  
the remaining part of said West half of the South East  
quarter of section Seventeen in Town Twenty three of Range  
Eight East of the fourth principal Meridian not laid  
out in Town lots for which E. F. Dutcher bid the sum  
of Two Hundred dollars. and the above lots and parcels  
of land were sold and struck off to the said persons. E. F.  
Dutcher. John Monahan and Hiram Butts as above mentioned  
they being the highest and best bidders therefor for the amt  
of damage and costs on the within Execution the remainder  
of the lands levied upon were sold to satisfy an Execution in  
my hands in favor of J. H. Ransom - against the same  
Defendants - Oregon Feby 25. 1848.

E. W. Dutcher Sheriff

All the costs paid to Henry Roberts. except my fee by E. F.  
Dutcher. my fee paid me by E. F. Dutcher

E. W. Dutcher Shff -

To the admission in evidence of which said Judgment  
and each of said Executions and Returns the Defendant by  
his counsel then and there excepted. for the reason that  
said Judgment was irregular and informal. that no sufficient  
jurisdiction appeared. that said executions did not follow



the judgment and did not appear to be issued thereon and were irregular and void upon their face and varied from the judgment. and it being further admitted by the plaintiff that Smith Gilbraith one of the defendants departed this life in January A.D. 1843. defendants objected for the further reason that it did not appear that due notice of the issuing of the last dated executions had ever been given to the administrators or other legal representatives of the estate of said Gilbraith. all which objections were by the Court overruled and the said judgment and Executions were read to the jury, to the admission of which said judgment Executions and returns in evidence the said Defendants by their Counsel then and there excepted. the plaintiff then offered in evidence the Sheriff's Deed as follows to wit: —

To all to whom these presents shall come: Whereas the people of the State of Illinois who sue for the use and benefit of Henry Rhines. did at the March Term. of the Circuit Court for the County of Ogle, in the State of Illinois in the year of our Lord one thousand eight hundred and forty one recover a judgment against Horatio Walter, Virgil A. Bogue, Frederick Lushman, Oliver W. Kellogg, John D. Stevenson & Smith Gilbraith impleaded with George Schandler for the sum of ten thousand Dollars Debt to be satisfied on the payment of three hundred & Eight dollars & fifty five cents, and costs of suit: upon which judgment an execution was issued, dated on the twenty sixth day of November in the year of our Lord one thousand eight hundred and forty seven. directed to the Sheriff of Ogle



County aforesaid. to execute. and by virtue of said execution the said Sheriff of Ogle County on the fourth day of December in the year of our Lord one thousand eight hundred and forty seven. levied upon the lands hereinafter described, and the same were struck off and sold to Edward F. Dutcher on the Twenty fifth day of February in the year of our Lord one thousand eight hundred and forty eight, for the sum of Two hundred dollars he being the highest and best bidder therefor and the time and place of the sale thereof having been duly advertised according to law. And the said — having duly assigned — certificate of purchase to — Now. therefore. know all by this Deed. That J. Elisha W. Dutcher Sheriff of the County of Ogle in the State of Illinois. and successor in office to the said Elisha W. Dutcher late Sheriff as aforesaid. in consideration of the premises. have granted. bargained and sold. and do hereby convey to the said Edward F. Dutcher his heirs and assigns. the following described tract piece or parcel of land situate lying and being in the County of Ogle and State of Illinois. to wit: - The West half of the South East quarter of Section Seventeen in Township Twenty Three in Range Eight. East of the fourth principal meridian. excepting & reserving is much of said Eighty of land as is laid off into town Lots in the Town of Buffalo according to the plat of said Town - To Have and to hold the said described premises with all the appurtenances thereto belonging to the said Edward F. Dutcher his heirs and assigns forever. Witness my hand and seal; this third day of December in the year of our Lord one thousand eight



30 hundred and Forty nine  
Signed, Sealed and Delivered { Elisha W. Dutcher *E. W. D.*  
in the presence of Miles B. Light } Sheriff of the County of Ogle, in the State of Illinois  
State of Illinois }  
County of --- } ss J. R. B. Light - Clerk of the Circuit  
Court, in and for the said County, in the  
State aforesaid, do hereby certify, That Elisha W. Dutcher  
Sheriff of the County of Ogle, who is personally known to me to be  
the real person whose name is subscribed to the annexed deed, ap-  
-peared before me this day in person, and acknowledged that he  
executed and delivered the said deed, as such Sheriff of said  
County, freely and voluntarily, for the uses and purposes  
therein set forth. Given under my hand and the seal of  
said Court, at my office in Oregon, in said County, this  
3<sup>rd</sup> day of December, in the year of our Lord one thousand  
eight hundred and forty nine -

*Seal*

R. B. Light Clerk -  
(Endorsed) - E. W. Dutcher - To - E. F. Dutcher - State of Illinois - Ogle  
County, ss - Recorder's office - Filed for record Dec 3<sup>rd</sup> 1849, at 8  
o'clock A. M. Recorded Dec 3<sup>rd</sup> 1849, Book F, pages 535 & 536.  
R. B. Light Clk Circuit Court and Ex Officio Recorder - Fee \$0.48 -

to the admission of which in evidence the defendant objected  
for the reason that said deed was informal, was not sustained  
by the previous evidence and was not properly and in due  
form executed and acknowledged, which objection was by the  
Court overruled and the said deed permitted by the Court  
to be read in evidence to the jury, to the admission of which



said deed in evidence the defendants by their counsel then and there excepted, the plaintiff then proved by one

a witness that the defendant Horatio Wales was in the possession of the premises at the time of the service of the declaration in this case, and that the defendant Williams claimed to have some title or interest in said premises at said time, to the admission of which testimony in evidence the defendants by their counsel then and there objected for the reason that the same was not relevant to the issue and was not sustained by the other proof in the case which objections were by the court overruled and the said testimony permitted to go to the jury to all of which ruling of the court in allowing said testimony to go to the jury the defendants by their counsel also then and there excepted. This was all the evidence offered by the plaintiff and all the evidence actually given to the jury in the case. The Defendants after the plaintiff closed his evidence then offered to give in evidence the following deed of conveyance to wit: -

This Indenture, made this thirtieth day of June in the year of our Lord, one thousand eight hundred and forty two, between Oliver W. Kellogg & Sarah his wife of Buffalo Grove, County of Ogle, State of Illinois, of the first part, and Chester K. Williams of Buffalo Grove, County and State aforesaid Witnesseth, That the said party of the first part, for and in consideration of the sum of Twenty five dollars paid by the said party of the second part, the receipt of which is hereby acknowledged, do by



these presents, grant, bargain and sell, unto the said party of  
 the second part, his heirs and assigns, all his right, title and  
 interest both legal and equitable of, in and to that certain  
 tract or parcel of land situated in Township Twenty three  
 North, Range Eight East, of the Fourth principal Meridian  
 in the West Eighty of the South East Quarter and the East  
 Eighty of the South West Quarter of Section Seventeen, con-  
 taining sixteen acres three Rods, Two rods, and Sixty  
 five one hundredths of a rod ( $19\frac{a}{3} - 2\frac{R}{100}$ ) bounded as  
 follows - viz - commencing at the South West corner of the  
 South East Quarter of Section Seventeen, running North  
 Forty and one half ( $40\frac{1}{2}$ ) degrees West, Twenty Seven ( $27$ )  
 Rods, to a point designated by a stake and stones - thence  
 running North Seventy two degrees, fifteen minutes East ( $N 72^{\circ} 15'$   
 E), fifteen and sixty one hundredths rods ( $15\frac{R}{100}$ ) to a point  
 of intersection on the West line of the South East Quarter  
 of Section Seventeen - thence continuing in the same direction  
 Eighty one and eighty eight one hundredths Rods ( $81.88 R$ )  
 to the East line of the West Eighty of the South east quarter  
 of said Section - thence on said line, Thirty Seven, and Eighty  
 eight one hundredths ( $37.88$ ) Rods, to the South East corner of  
 the West Eighty, of the South East quarter of Section Seventeen  
 thence West Eighty, and thirty two one hundredths Rods ( $80.32 R$ )  
 to the place of beginning: all the corners of which tract of  
 land are designated by stake and stones, and of which  
 Eighteen acres, Two Rods, Five and eighty one hundredths  
 Rods ( $18\frac{a}{2} - 5\frac{R}{100}$ ), are in the West Eighty of the South East  
 quarter, and one acre, and thirty six and eighty five one-



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hundredths Rods (1<sup>a</sup> 36 85). is in the East Eighty of the South  
West Quarter of Section Seventeen: Together with, all and  
singular, the hereditaments and appurtenances, thereunto belonging  
or in any wise appertaining: To have and to the hold the said  
premises as above described with the appurtenances, unto the  
said party of the second part, his heirs and assigns forever  
And the said party of the first part does hereby covenant  
and agree, to and with the said party of the second part  
and his heirs and assigns that he will forever warrant  
and defend the title to the premises, above conveyed to  
be free from the claim of himself and his heirs and  
from all other claims whatsoever. In Testimony whereof  
the said parties of the first part have hereunto set their  
hands and seals the day and year above mentioned  
Signed, Sealed and delivered } Oliver W. Kellogg (Seal)  
in presence of - Henry Roberts } Sarah Kellogg (Seal)  
State of Illinois }

Ogle County, ss. } This day personally appeared before the  
undersigned one of the Justices of the Peace in  
& for said County, Oliver W. Kellogg & Sarah his wife who are  
personally known to me to be the same persons who executed  
the foregoing conveyance and acknowledged that they executed  
the same freely & voluntarily for the uses & purposes therein men-  
tioned. And Sarah wife - the said Oliver W. having been  
by - made acquainted with the contents of said conveyance  
and examined separate and apart from her said husband  
acknowledged that she executed the same freely & voluntarily  
and relinquished her dower in said premises without



34 compulsion of her said husband - Given under my hand  
and seal the 30<sup>th</sup> June A.D. 1842

Henry Roberts & J.P.

Oregon July 7. 1842 - Recorder's Office, Ogle County Ill -

This certifies that the foregoing deed was left for record the  
Thirtieth day of June 1842 - and recorded the Seventh  
day of July 1842. in Book A. of Deeds pages 313 + 314 -

James V. Gale Recorder -

And also at the same time offered to prove to the Court  
and Jury by the depositions of Witnesses on file, and the  
testimony of Witnesses then in Court that said defendant  
Williams was in the possession of the premises in controversy  
by actual occupation and cultivation in the year A.D. 1840  
that he so continued in the uninterrupted and actual occupa-  
tion and possession of the premises either by himself or  
tenant until after the sale of said premises by the Sheriff  
as shown by the execution offered by the plaintiff and  
under which he claims title. That he made all the improve-  
ments on said land, that he surrounded the same  
with a fence and broke and cultivated the same. That  
all this improvement was made before the land was entered  
by Kellogg, that other persons claimed other parts of the same  
Eighty acre tract, according to the general government  
survey, that they were in possession of the respective parts  
at the time the land was entered by Kellogg. That said  
Kellogg was by said occupants and possessors, including  
said Williams appointed Trustee to enter said land at the  
land office and convey the same to the respective claimants



that each of said Claimants was to and did furnish and pay to said Kellogg his portion of the purchase money to enter said land before the same was entered. That said defendant Williams did then and there furnish to said Kellogg his share of the purchase money being the sum of one dollar and twenty five cents per acre for the number of acres so claimed and occupied by said Williams, that said money was so furnished said Kellogg before the entry of said land by him that he received it as the Trustee of Williams and agreed to enter the land in controversy therewith and convey the same to said Williams. That said Kellogg did so enter said land as such trustee that said Kellogg in the entry of the land in controversy was a mere naked trustee of said Williams, who was the real owner and occupant of the premises, and that the deed offered in evidence was given in pursuance of said agreement and trust assumed by said Kellogg and to carry out the same and for no other consideration, to the admission of all which evidence the plaintiff by his counsel objected for the reason that the evidence and deed could not be received at law and in this form of action to defeat the plaintiffs apparent legal title, and which objection was by the Court sustained and the testimony excluded from the jury, to which said ruling of the Court in excluding said testimony and evidence from the jury the defendants by their counsel then and there excepted. The defendant then offered to read in evidence the following certificate of a discharge of said Oliver W. Kellogg in Bankruptcy



In the District Court U. S. Ct - 3  
 District of Illinois 3

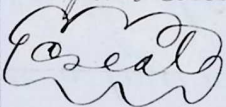
In the Matter of Oliver W. Kellogg, declared Bankrupt -

It appearing to the Court from the Petition of Oliver W. Kellogg, a Bankrupt and the reports accompanying the same that the said Bankrupt has bona fide surrendered all his property and rights of property, for the benefit of his creditors, and that he has fully complied with, and obeyed all the orders and directions, which have been from time to time, passed by this Court: and has otherwise conformed to all the requisites of the act entitled, "An Act to establish a uniform System of Bankruptcy throughout the United States": approved August 19<sup>th</sup> 1841, and no written dissent to his discharge having been filed by a majority in number and value of his creditors, who have proved their debts: and no cause being now shown to the Court why the prayer of the Petition should not be granted: it is therefore by virtue of the act aforesaid, ordered and decreed by the Court, that the said Oliver W. Kellogg be, and he accordingly hereby is forever discharged of, and from all his debts, owing by him at the time of the presentation of his petition to be declared a Bankrupt. And it is further ordered, that the ~~clerk~~ duly certify this decree for the use of said Bankrupt -

United States of America } ss.  
 District of Illinois . 3

J. James F. Owings, Clerk  
 of the District Court of the  
 United States, for the District of Illinois, do hereby certify



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that the foregoing is a true and perfect copy of the decree of final discharge, rendered by the District Court of the United States, for the District aforesaid, on the 9<sup>th</sup> day of January A.D. 1843, in the case of Oliver W. Kellogg a Bankrupt. In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of said Court at Springfield, this 20<sup>th</sup> day of January and of our Independence the 67<sup>th</sup> year —  
 James F. Owings Clerk—

And also offered at the same time to prove that said Kellogg filed his petition to become a Bankrupt in the District Court of the United States for the District of Illinois under and by virtue of which said discharge was obtained, before the premises in controversy were entered by him to wit: on the day of May A.D. 1842, to the admission of which said evidence the plaintiff by his counsel objected on the ground that it was not material and that a discharge in Bankruptcy did not divert the plaintiff of his right under his judgment and to have the same attack as a lien to any property said Kellogg might possess as long as the lien existed, and which objection was by the Court sustained and the evidence not permitted to go to the jury, to all which rulings of the Court excluding said evidence from the jury the said Defendants by their counsel then and there excepted, and afterwards, and after the verdict in this cause was returned into Court, the defendants by their counsel come and move for a new trial in this cause

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and assign as a cause that the verdict was not warranted by the evidence and that the Court erred in refusing to admit the defendants evidence offered and in admitting evidence on the part of the plaintiff, which motion was then and there by the Court taken under advisement and afterwards at the above entitled Term, was by the Court overruled to the overruling of which said motion for a new Trial by the Court the said Defendants by their Counsel then & there excepted, and ask that this their bill of exceptions be signed sealed and made a part of the record in this Cause which is done

April 28<sup>th</sup> 1860.

John V. Eustace (Seal)  
Judge 22<sup>nd</sup> Jud. Cir -

State of Illinois }  
County of Ogle ss } I, Frederick G. Petrie Clerk of the Circuit  
Court in and for said County, in the State  
aforesaid do hereby certify, that the above and foregoing  
is a true and correct copy of the papers on file, and  
of the Record in said Court, in a cause wherein Virgil  
A. Bogue was complainant and Chester K. Williams  
& Horatio Wake were defendants, and that such other  
matters above set forth as evidence, are true and correct  
copies of the same as presented to us - and appertaining  
to said cause -

Witness my hand and the Seal of said Court  
at my office in Oregon, in said County



Law

- 6<sup>th</sup> The <sup>Court</sup> erred in excluding from the jury the evidence offered by the defendants below upon the trial of this Cause
- 7<sup>th</sup> The finding of the jury of <sup>one of</sup> the defendant below, Williams, guilty was contrary to the law and the evidence.
- 8<sup>th</sup> The Court erred in rendering judgement against the defendant Williams on said verdict
- 9<sup>th</sup> The Court erred in overruling the motion of the defendants below for a new trial
- 10 The Court Erred in allowing evidence for the plaintiff in the cause below and objected to by the defendants to go to the jury.

Attest & Spealman  
for Plaintiff in Error

And now come the said Defendant  
~~error~~ of fellow Virgil A. Boque by  
Glover, Cook & Campbell his attys  
and say that in the record and  
proceedings aforesaid there is no  
Error

Glover Cook & Campbell  
Attys for Appellee

Entered in error filed  
April 20. 1861  
L. Leland Clerk



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Chester K. Williams  
Etal vs

Virgil A. Bogue

Record

Filed April 17, 1861  
L. Leland  
Clerk