

14657

No. _____

Supreme Court of Illinois

Holbrook

vs.

Nichol et al

71641  7

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

(Reported)

No. 88

W. Middleton & Co., Stationers, 196 Lake St.

1864

1864

Proceedings in the Circuit Court of
Woodford County in the State of Illinois at the
December Term AD 1863 of said Court in a certain
cause wherein Edmund S Holbrook is Plaintiff and
John Nickol and Benjamin S Prettyman Defendants

State of Illinois } In Circuit Court
Tazewell County } June Term 1859

Edmund S Holbrook the plaintiff by James
Roberts his attorney complains of John Nickol the
Defendant. For that whereas the said plaintiff on the
first day of May AD 1858 was possessed of a certain
tract of land situate in said County and described as
follows to wit: The West half of the North East quarter
of Section Thirty five in Township Twenty five North. of
Range five West of the 3^d principal Meridian, which
said premises the said plaintiff claims in fee and,
and being so possessed, thereof, afterward to wit on the
first day of May AD 1859, the said Defendant entered
into the said premises and ejected the said plaintiff
therefrom, and unjustly withhold from him said plaintiff the
possession thereof, to the damage of the said plaintiff of one
hundred dollars and therefore he sues &c

2^d count For that whereas the said plaintiff on the first day of
May 1858 was possessed of a certain tract of land to
wit the undivided three fourths parts of the said tract
of land above described in the first count which said

(2)

premises the said plaintiff claims in fee, and being so possessed thereof, afterwards to wit on the first day of May A.D. 1859, the said Defendant entered into the said premises and ejected the said plaintiff therefrom and unjustly withholds from the said plaintiff the possession thereof to the damage of the said plaintiff of one hundred dollars, and therefore he sues &c

James Roberts
Atty for plaintiff

To the above named defendant you are hereby notified that the declaration, with a copy of which you are now herewith served, and to which this notice is subjoined, will be filed on the 15th day of June A.D. 1859 in the Circuit Court of Sangamon County Illinois, That upon filing the same a rule will be entered requiring you to appear and plead to the said declaration within twenty days after the entering of such rule; and that if you neglect so to appear and plead a judgment by Default will be entered against you, and the plaintiff will recover possession of the premises specified in the said declaration Dated this 11th day of June A.D. 1859,

James Roberts
Atty for plaintiff

(3)

State of Illinois
 Tazewell County } J J Reeves being duly sworn
 on oath say, that on the 13th day
 of June A.D 1859, I gave in hand to John Nichols the
 Defendant within named, and who is in possession
 of the within demanded premises, a true copy of
 the within Declaration and Notice
 Subscribed & sworn to
 before me June 14, 1859
 J J Reeves

Subscribed and sworn to
 before me this 14th day of
 June 1859

Mc G Young clk
 (Clerk)

State of Illinois } Jm Tazewell Circuit Court
 Tazewell County } June Term A.D 1859

Edmund S Holbrook
 as
 John Nichol and
 B S Prettyman Defendants
 as Landlord
 } In Ejectment

And the said Defendant B S
 Prettyman comes and defends the force and injury when &c
 say: actis non because he say he is not guilty of the said
 supposed Trespass & ejectment in the said plaintiff Declar-
 ation ^{named} in manner & form as the same is therein set forth
 and of this he puts himself upon the country

(Filed June 14th 1859) (Filed July 11th 1861) (Filed March 21st 1862)
 Mc G Young clk (Enoch Phelps clk) (J J Prettyman Pro Se)
 J. A. Weston D. C. (J. J. Phelps)

(6)

Thursday December 17th 1863

Edmund S Holbrook

vs

John Nickol and
Benjamin S Prettyman

Ejectment

No 462

On this day the jury empanelled
in this cause December 15th 1863 return their verdict as
follows "We the jury find the Defendants not guilty"

Friday December 18th 1863

Edmund S Holbrook

vs

John Nickol and
Benjamin S Prettyman

Ejectment

No 462

On this day comes the said Plaintiff
in his own proper person and enters herein his motion for a
new trial, which motion on consideration is by the Court
overruled. It is therefore ordered and adjudged by the
Court that the Defendants John Nickol and Benjamin
S Prettyman have and recover of the Plaintiff Edmund
S Holbrook their costs and charges by them in this behalf
expended and that they have execution therefor

3 3 3 3 3 3 3

(Bill of Exceptions)

Page 1 Edmund S Holbrook

vs
John McKel + Benjamin
S Prettyman

Ejectment Suit tried at the
Woodford Circuit Court, at the December Term
A D 1863

Be it remembered that on the trial of this
cause which commenced on the second day of said
Term, the plaintiff, to maintain the issues on his part
offered the following evidence

1st For the purposes of showing that the defendants claim-
ed title from a common source with plaintiff to wit
William C Postwick as assignee in bankruptcy of
James B Campbell, a certified copy of a deed of
William C Postwick as such assignee to Wm B
Doolittle for the property claimed from the records of
Deeds of Tazewell Co in words and figures following to wit

W C Postwick assignee, No 14,082

To
Wm B Doolittle

} Recorded April 25, 1853

Whereas by a Decree of the
Honorable District Court of the United States of America
for the district of Illinois sitting as a Court of bank-
ruptcy, James B Campbell of the County of Jo Davies
in said District was decreed a Bankrupt which said

Decree bears date the third day of October A D 1842 and is in the words and figures following to wit:

District Court of the United States

For the District of Illinois

In the matter of the petition of James B Campbell to be declared a Bankrupt and to be discharged from his debts. On hearing the petition of the said James B Campbell filed in this Court 22nd August A D 1852 praying to be declared a Bankrupt in pursuance of the act of Congress entitled "An act to establish a uniform system of Bankruptcy throughout the United States" and it appearing ~~satisfactorily~~ to the Court that notice has been published in pursuance of the previous order of this Court and no sufficient cause being shown to the contrary. It is therefore ordered adjudged and decreed that the said James B Campbell be deemed a Bankrupt within the purview of said act, and it is further ordered and adjudged that William C Bastwick of the County of Jo Daviess be and hereby is appointed assignee of said Bankrupt upon his entering into before a Commissioner and filing with the Clerk of the Court a penal Bond in the sum of Dollars, to the United States with two or more sureties to be approved by the Commissioner of the County wherein the Bankrupt resides conditioned for the due and faithful discharge of all his duties as such assignee, and his compliance with the orders and directions of the Court. And whereas I the said William C Bastwick appointed assignee of the said James B Campbell a Bankrupt in and by virtue of the decree aforesaid have complied

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with the provisions of said decree and have filed with the clerk of said court my sufficient bond in the penal sum of Five hundred Dollars with two sufficient securities approved by the proper Commissioner and have complied with all other the regulations and direction of said decree, and with all the rules in Bankruptcy of said Honorable Court, so far as the same apply to or are binding and incumbent upon me here as such assignee sold the property hereinafter described at Public Auction at the Court House in Galena in said County of Jo Daviss having first duly advertised the same according to law and said sale being made in pursuance of a decree of said District Court dated 15th May 1851 and which said decree is in the words and figures following to wit

In the matter of the Petition of } In the United States
William C Bastwick assignee in } District Court within
Bankruptcy of James B Campbell } and for the District
declared a Bankrupt } and State of Illinois

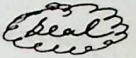
Petition for Sale of Real Estate of Bankrupt
and now on this day this day this case coming on to
be heard on the petition of William C Bastwick assignee
of James B Campbell a Bankrupt and upon the exhibits
and proofs, and it appearing to the Court that the said
James B Campbell has an interest or claim in and to
the following real estate situate in the County of Tazewell
and State of Illinois, to wit; (here follows a description
of the tracts of land and lots of ground in this deed
hereafter mentioned and described, including the whole
and every the tracts of land and lots of ground hereinafter

described) which said lands were not contained in the Schedule filed in said Court by said Bankrupt. It is therefore ordered adjudged and decreed by said Court, that the said assignee William C Bastwick proceed to sell all the estate right title and interest in him vested as such assignee in and to the lands above specified, in such manner upon such terms and at such times as is specified in the rules of this Court heretofore made and still in force in regard to the sale of the real estate of Bankrupts. It is further ordered that said assignee make report of his doings herein to this Court, at the earliest opportunity, at which sale William B Doolittle of Tazewell County State of Illinois hereinafter named became the purchaser of said lots and lands and at the prices hereinafter mentioned he being the highest and best bidder for the same, the said property, lots and lands and Real estate are situated, designated and described as follows to wit (Here follows a description of this and other property)

Now therefore know all men by these presents that I William C Bastwick as assignee of the said James B Campbell a Bankrupt as aforesaid in consideration of the sum of Fifty dollars to me in hand paid by the said William B Doolittle the receipt whereof is hereby acknowledged being the aggregate of said several bids as aforementioned do as such assignee sell and convey unto the said William B Doolittle, and to his heirs and assigns all the right, title and interest in me vested as such assignee, in and to the lots lands

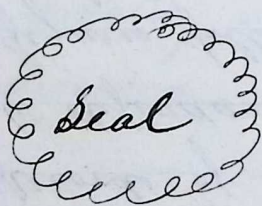
(11)

and real estate hereinbefore specified designated and described at the date of said sale to wit; this 17th day of June 1857 In witness whereof I the said William C Postwick assignee as aforesaid, hereunto set my hand and seal the said 17th day of June A.D 1857

Wm C Postwick 

Assignee in Bankruptcy of James Blanchell

State of Illinois }
Jo Davess County } Before me the undersigned Clerk
of the County Court in said County
& State personally came this day William C Postwick,
to me personally known to be the identical person
described in and who executed the foregoing deed
and acknowledged to me that he had executed the
same freely voluntarily and for the uses and purposes
therein mentioned



Witness my hand and official seal
this Thirteenth day of August A.D
1857

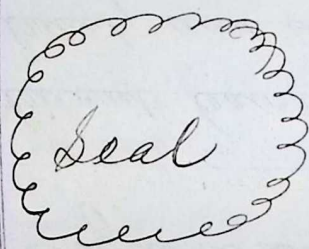
attest Richard Seal Clerk

State of Illinois }
Tazewell County } ss

I George H Harlow Clerk of the
Circuit Court and ex officio Recorder in and for said
County and State, do hereby certify that the foregoing
7 1/4 pages contain a true and correct copy of
the conveyance therein mentioned as fully as the

(12)

Same appears of record in Book H of Deeds pages 462
463. 464, 465 & 466 in my office



Witness my hand and official seal
hereto affixed at Pekin this 15th day
of November A D 1861

George H Harlow Clerk
per A. P. Griswold Deputy

Page 2 For the same purpose a certified copy from said
records of deed of -- John A Jones Master in Chancery
to defendant Prettyman for said land in words and
figures following to wit

John A Jones Master in Chancery No 18666

Is

Benjamin S Prettyman

} Recorded

} January 8th 1856

Know all men by these
presents, that whereas, at a term of the Circuit Court
of the County of Tazewell and State of Illinois, begun
and held at Pekin on the first Monday of the month
of October in the year of our Lord one thousand eight
hundred and fifty five, Present, the Hon David Davis
Judge of the eighth Judicial Circuit composed of
the Counties of Sangamon, McLean, De Witt,
Tazewell &c and on the 11th day of said month
being the 10th day of said Term, Amos Lee Merriman
obtained a final decree against Halsey Lee Merriman
Harriett P Merriman Simon W Merriman Sidney
Pulsifer, Guardian of Halsey Lee Merriman Harriett P
Merriman and Simon W Merriman Amaziah

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Doolittle, George W Doolittle, Mary M Doolittle Irwin
B Doolittle Jesse A Nason Guardian of said Mary M
and Irwin B Doolittle Martha Doolittle Mary Doolittle
and Middleton Tackabery executor of William B Doolittle
deceased, in the words and figures as follows to wit:—

Jayewell Circuit Court October

Term AD 1855

Amos L Merriman

vs

Halsey L Merriman Harriet P Merriman
Simon L Merriman, Sidney Pelsifer Guardian
of Halsey Lee Merriman and Harriet P
Merriman and Simon W Merriman, Amagish
Doolittle George W Doolittle Mary M
Doolittle Irwin B Doolittle Jesse A Nason
Guardian of said Mary M + Irwin B
Doolittle, Martha Doolittle and Middleton
Tackabery executor of William B Doolittle
deceased

And now on this day this
cause came on to be heard upon the report of the
Master to whom this cause was referred to take proof
of the allegations in the Bill contained and to state
the account between the parties; and it appearing
to the Court that Halsey O Merriman and Amos L
Merriman were partners under style of H, O and A, L,
Merriman, and that said A L Merriman is the
survivor of said copartnership concern, that said H, O
+ A L Merriman and William B Doolittle purchased

(14)

the lands in said Bill described on account of said Doolittle having one half interest in the same and said H. O. & A. L. Merriman having one half interest in the same that William B Doolittle has become deceased and that Middleton Jackberry is executor of the last will and testament of said William B Doolittle, that a portion of said lands were purchased in the name of said William B Doolittle, and a portion in the name of said Halsey O Merriman that the payments were made at the time of the purchase sometimes by said H. O. Merriman and A. L. Merriman and sometimes by said Doolittle, and in some of the purchases said William B Doolittle, and said Complainant individually gave their notes, which notes were paid by said H. O. and A. L. Merriman - And it further appearing to the Court, that the estate of ^{the} said William B Doolittle has not received from the rents and profits accrued from said lands, sufficient to pay all disbursements by said Doolittle expended or paid out in and about said purchases; and that there is now due to said Complainant as survivor of Halsey O Merriman from said joint concern for and on account of said purchases and expenses the sum of one hundred and fifty one dollars and forty five cents, and that there is due to said Complainant as survivor of Halsey O Merriman from said joint concern for and on account of said purchases and expenses the sum of one thousand two hundred and ten dollars and thirty nine cents; and that there is no personal property belonging to said concern.

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It is therefore ordered, adjudged and decreed that the Master in Chancery of Tazewell County proceed to sell the ~~the~~ real estate described in said Bill to-wit:

(Here follows a description of this and other property)
or so much thereof as may be necessary to satisfy said sum above mentioned; to-wit: Thirteen hundred and sixty one ^{and 50/100} dollars with interest from the date of this decree, at Public vendue at the front door of the Court House in the City of Pekin County of Tazewell and State of Illinois. upon the first day of December A D 1855, between the hours of ten o'clock in the forenoon and four o'clock in the afternoon after giving at least thirty days notice by publication in some public newspaper printed and published in said County of Tazewell for four successive weeks, which sale shall be to the highest & best bidder upon the following terms; to-wit: one fourth cash and the balance in two equal payments of six and twelve months with interest, and said Master is further ordered and authorized to execute to the purchaser or purchasers at such sale, Deeds for the premises sold - It is further ordered that the costs of this proceeding be first paid out of the proceeds of such sale, in It is further ordered that said Master make a full report of his doings at the next term of this Court" As will more fully appear from the original decree filed of record in said cause in said Court, and whereas, pursuant to said decree said Master did give at least thirty days previous public notice of the time place and terms of said sale for four successive weeks in the Tazewell weekly Mirror a newspaper printed and published in said Tazewell

(16)

beauty; and on the first day of December in the year of our Lord one thousand eight hundred and fifty five at the front door of the Court House in Pekin between the hours of ten o'clock A.M. and four o'clock P.M. expose the premises herein described in said decree to the highest and best bidder; and that Benjamin S. Prettyman being the highest and best bidder, became the purchaser of the following described premises in said decree described, to wit:

(Here follows a description of this and other property and the prices for which the same were sold.)
Said lots and land being all and each struck off to him severally, one by one. Now therefore I, John A. Jones Master in Chancery of said Tazewell County, by virtue of said Decree and the proceedings thereon had and in consideration of the sum of Sixteen hundred and three dollars and Seventy cents (\$1600⁷⁰/₁₀₀) the aggregate amount of said purchase the receipt ^{whereof} is hereby acknowledged have granted bargained and sold, and by these presents do grant, bargain and sell unto the said Benjamin S. Prettyman and his heirs and assigns, all the following described real estate, lying being and situate in the County of Tazewell and State of Illinois, to wit:

(Here follows a description of this and other property.)
To have and to hold the same unto him the said Benjamin S. Prettyman and his heirs and assigns forever
In testimony whereof I have hereunto set my hand and seal this 1st day of December A.D. 1855

John A. Jones *E. J.*
Master Chy. T. C. Ill.

(17)

State of Illinois }
Tazewell County } ss

Be it remembered that on this 13th day of December in the year of our Lord one thousand eight hundred and fifty five personally appeared John A Jones (whose name is subscribed to the foregoing conveyance) before the undersigned Clerk of the County Court in and for said County, and acknowledged, that in his capacity of Master in Chancery of said County, he had executed said instrument for the purposes therein expressed

Seal

Witness John Gridley Clerk and the seal of said County Court at Pekin the day and year last above written

John Gridley Clerk

State of Illinois }
Tazewell County } ss

I George H Harlow Clerk of the Circuit Court and ex officio Recorder in and for said County and State do hereby Certify that the foregoing 12 1/4 pages contain a true and correct copy of the conveyance therein mentioned as fully as the same appears of record in Book A.C. of Deeds pages 604. 605. 606. 607. 608 & 609 in my Office

Seal

Witness my hand and official seal hereto affixed at Pekin this 15th day of November A.D. 1861

Geo H Harlow Clerk
per A P Griswold Deputy

(18)

3. A deed by William C Bostwick as such assignee of James B Campbell to plaintiffs for said land and the Records certificate in words and figures following, to wit,

Whereas, By a decree of the Honorable the District Court of the United States of America for the District of Illinois, sitting as a Court of Bankruptcy, James B Campbell of the County of Jo Daviess in said District, was decreed a Bankrupt, which said decree bears date the third day of October A D 1842, and is in the words and figures following, to wit;

District Court of the United States
For the District of Illinois

No 919

October 3rd 1842

In the matter of the petition of James B Campbell to be declared a Bankrupt, and to be discharged from his debts

On hearing the petition of ^{the said} James B Campbell filed in this Court, on the twenty second day of August A D 1842, praying to be declared a Bankrupt in pursuance of the Act of Congress, entitled "An Act to establish a uniform System of Bankruptcy throughout the United States" and it appearing satisfactorily to the Court that notice has been published in pursuance of the previous order of this Court, and no sufficient cause being shown to the contrary; It is therefore ordered adjudged and decreed that the said James B Campbell be deemed a Bankrupt within the purview of said act. And it

is further ordered and adjudged that William C Postwick, of the County of Jo Daviess be and hereby is appointed assignee of said Bankrupt, upon his entering into before a Commissioner, and filing with the Clerk of this Court, a bond in the penal sum of ----- dollars with two or more sureties to be approved by the Commissioner of the County, where the Bankrupt resides conditioned for the due and faithful discharge of all his duties as such assignee, and his compliance with the orders and directions of this Court."

And whereas I the said William C Postwick appointed assignee of the said James B Campbell a Bankrupt, in and by virtue of the decree aforesaid, have complied with the provisions of said decree and have filed with the Clerk of said Court my sufficient bond in the penal sum of Five hundred dollars, with two sufficient securities, approved by the proper Commissioner, and have complied with all other the requisitions and directions of said decree and with all the rules in bankruptcy, of said Honorable Court, so far as the same apply to, or are binding and incumbent upon me, and have as such assignee, sold the property hereinafter described, at public auction at the Court House, in said County of Jo Daviess, having first duly advertised the same, according to law, and the said pieces and parcels of land and lots, having been offered, and sold separately, and having been sold and struck at the prices following, and said property, lands and lots being described and designated

as follows, to wit;

(Here follows a description of this and other property)
 And Edmund S Holbrook of LaSalle County in said State of Illinois having bid at said Sale for the undivided five acres, aforesaid in the East half of the North East quarter of Section No 16 in township No 33 North of range No one East of ~~the~~ 3rd principal Meridian in La Salle County aforesaid, the sum of forty cents; for the said West half of North East quarter of Section No thirty five (35) township No twenty five (25) North of range No five (5) West of 3rd principal Meridian, in said Tazewell County the sum of forty cents, and for each of said lots in Campbell Dunbar & Newhall (Sometimes called Campbell & Newhall) addition to the Town of Pekin, as aforesaid, as said lots are above recited and described, as the same were severally put up, for Sale, the sum of ten cents; amounting in the aggregate to the sum of thirty dollars; and the said Edmund S Holbrook being the highest and best bidder for each and every of said tracts of land and lots of ground, he became the purchaser thereof, at said Sale, and the same were, severally and each, and every of them, struck off to him.

Now therefore know all men by these presents, that I the said William C Basticke as assignee of the said James B Campbell, a Bankrupt as aforesaid, in consideration of the sum of thirty dollars, to me in hand paid by the said Edmund S Holbrook, the receipt whereof is hereby acknowledged, do as such assignee. Sell and convey unto the said Edmund S Holbrook and to his

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heirs and assigns, the said tracts of land and lots of ground, as the same are heretofore designated, and described, To have and to hold the said tracts of land, and lots of ground, unto the said Edmund S Holbrook his heirs and assigns forever

In witness whereof I the said William C Bastwick in my capacity of assignee of said James B Campbell, a Bankrupt, as aforesaid, have hereunto set my hand and seal this 18th day of October A D 1850

The word fourteen erased before signing —

Wm C Bastwick assignee
in Bankruptcy of James B
Campbell

State of Illinois }
In Daviess County } Before me Richard Seal Clerk
of the County Court of said County
personally appeared, this day William C Bastwick to
me personally known to be the identical person described
in, and who executed the foregoing deed and acknowledged
to me that he had executed the same freely and volun-
tarily for the uses and purposes therein mentioned

Witness my signature and the seal
of said Court this 18th day of October
A D 1850

Richard Seal Clerk

(on the back of which deed is the following)

Filed October 28th 1850 Recorded Book 5 Deeds

Pages 139-140-141 T Co Ills

J A Jones Clerk Circuit Court
Ex off recorder Fee \$15.00 Paid

(22)

and to support such deed a certified of decree in Bankruptcy, decreeing said Campbell a Bankrupt and appointing said William L. Bastwick his assignee in words and figures following to wit:

No 919 District Court of the United States
October 3^d 1842 For the District of Illinois

In the Matter of the Petition of
James B Campbell to be declared a Bankrupt, and
to be discharged from his debts,

On hearing the petition of the said James B Campbell filed in this court on the twenty second day of August A D 1842, praying to be declared a Bankrupt, in pursuance of the Act of Congress, entitled "An act to establish a uniform system of Bankruptcy throughout the United States" and it appearing satisfactorily to the court, that notice has been published in pursuance of the previous order of this court, and no sufficient cause being shown to the contrary; It is therefore ordered adjudged and decreed that the said James B Campbell be deemed a Bankrupt, within the purview of said act. And it is further ordered and adjudged, that William L Bastwick of the County of Jo Daviess be, and hereby is appointed assignee of said Bankrupt, upon his entering, into, before a Commissioner and filing with the clerk of this court, a bond in the penal sum of ----- dollars, to the United States, with two or more sureties to be approved by the Commissioner of the County where the Bankrupt resides, conditioned for the due and faithful discharge of all his duties as such assignee; and his compliance

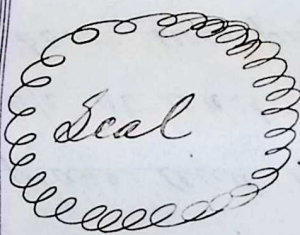
(23)

with the orders and directions of the Court.

On motion of Purple & Merriam Solicitors for Petitioner ordered that cause be shown before the Court on the first day of February next, at 10 o'clock A.M., why James B Campbell should not receive his discharge and certificate as a Bankrupt, and that notice thereof be published for seventy days previous thereto as required by Rule No 17 of this Court

I James H. Owings, Clerk of the District Court of the United States, for the District of Illinois do certify the foregoing to be a true and correct copy of the decree, as entered in the Decretal Book, of this Court in the case of James B Campbell

In Testimony whereof, I haveunto affixed the seal of said Court, and subscribed my name, this third day of October A.D. 1842, and of our independence the Sixty Seventh year



James H. Owings Clerk

And also certified copy of the 51st rule in Bankruptcy in words and figures following to wit

(In this paper there is also a copy of the foregoing)
(Decree after which follows the 51 rule as follows)

Rule LI

It Shall be the duty of the Assignee of the Bankrupt to make Sale of all the right, title and interest of the Bankrupt whether equitable or legal in and to any real estate whatsoever situated with all due

diligence, having due regard to the interest of the creditors (unless some one of said creditors shall previous to the time appointed for such sale, file with the assignee his written dissent thereto; when it shall be the duty of such assignee to refer the matter to the Court); and that the sale of said real Estate, or any interest therein, be made either for cash or upon a credit not exceeding one and one half years, as the assignee shall deem most advisable, and upon the premises to be sold, or at some public sale as said assignee shall deem best for the interest of said estate, at least twenty day notice of the time, place and terms of sale being first given by affixing up at least three notices; and also by publication in some newspaper nearest the premises, when in the opinion of the assignee, the property is sufficiently valuable to justify the expense of such publication—

Northern District of Illinois, D.C.

I William H Bradley, Clerk of the District Court of the United States for the Northern District of Illinois do hereby certify the foregoing transcript to be a true and correct copy from the Record of "Bankrupt Decrees" in the District ^{Court} of the United States for the District of Illinois of the Decree of Date Oct 3rd 1842 Declaring James B Campbell a Bankrupt and appointing W C Bastwick assignee of the same and also of the Rule in Bankruptcy number Fifty one as prescribed by said Court as the same remain of record

(25)

in my office

Seal

In Testimony whereof I have hereunto
set my hand and affixed the Seal
of said District Court for the Northern
District of Illinois, at my office in
Chicago in said Northern District
this twenty seventh day of September
in the year of our Lord one thousand
eight hundred and fifty nine and
of our Independence the 84th year
Wm H Bradley Clerk

- 4 A certified copy of Deed from said Records
of Lewis Coldren to James B Leampull for same
land with full covenants of warranty dated
the sixth day of May A D 1835 recorded May
28, 1835,

Plaintiff then showed that said Coldren
was the owner of said land in fee simple
at the date of said deed by title derived
from the Government

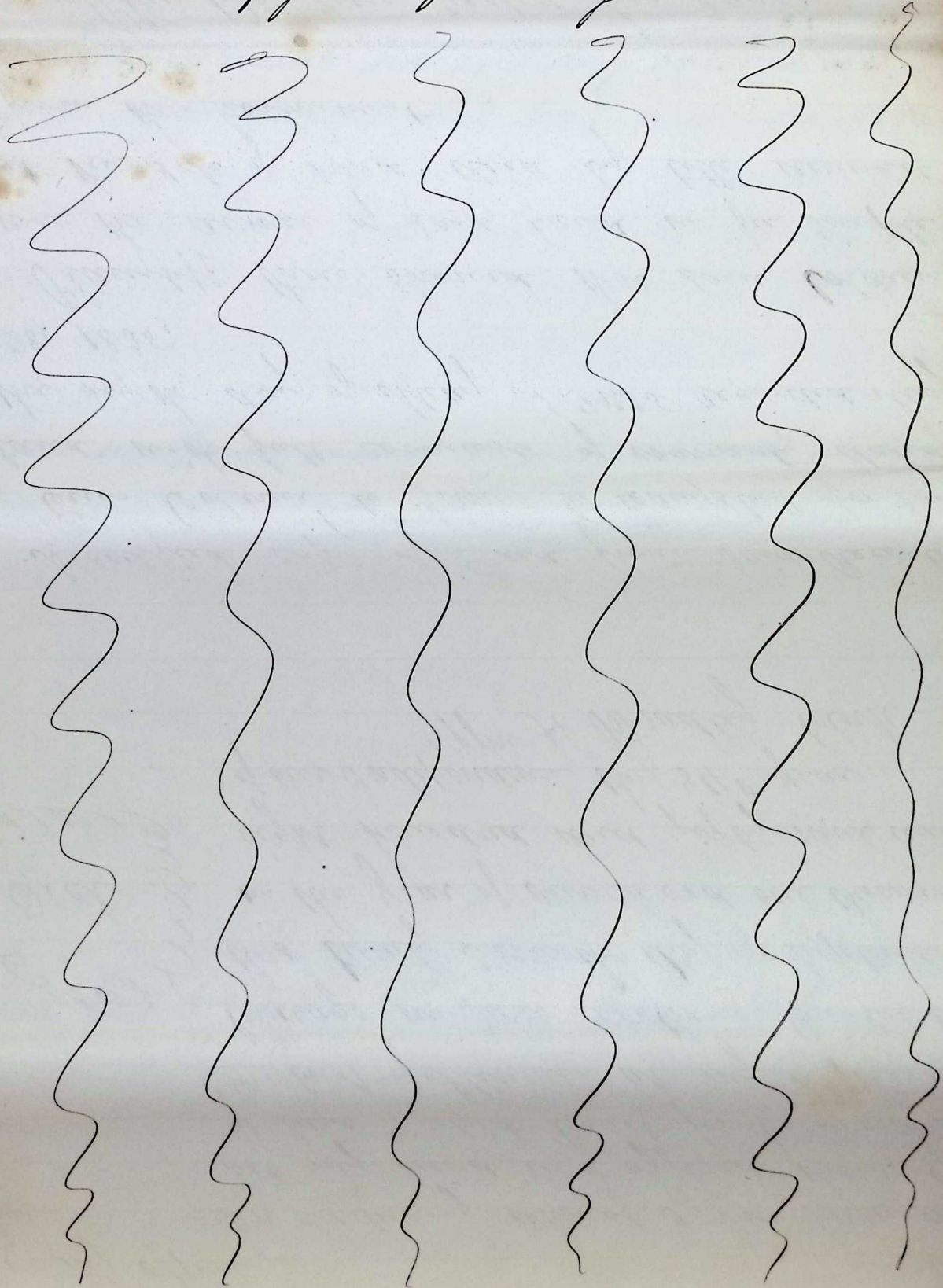
Plaintiff here rested his case

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(26) Jan 3

pg 3 The Defendants to maintain the issues on their part, offered in evidence a certified copy of a power of attorney from said records of James B Campbell and wife to John B Marshall in words and figures following to wit





(27)

James B Campbell } Recorded 17 Feby 1836  
To } Power of Attorney  
John B Newhall }

Know all men by these presents that we James B Campbell of Chicago in the County of Cook and State of Illinois and Sarah A Campbell his wife who signed this instrument of all her right of dower in the after mentioned premises which to convey power ~~to~~ is hereafter given have made constituted and appointed and by these presents do made constitute and appoint John B Newhall our true and lawful and sufficient Attorney for us and in our names and as fully and effectually as we ourselves might do to make execute deliver and acknowledge all deeds and other instruments of conveyance of any lands in the County of Tazewell and State of ~~Illinois~~ <sup>Illinois</sup> belonging to the said James B Campbell which said deeds and other instrument<sup>s</sup> of conveyance shall have the same force and virtue as if made executed delivered and acknowledged by ourselves and each of us in our own proper persons and for and in behalf of the said Sarah A Campbell to join in the execution of said deeds or other instruments of conveyance of lands belonging to said James B ~~Campbell~~ and in said County of Tazewell and in her name to relinquish all her right of dower therein and acknowledge the same with like force and virtue as she herself could do if personally present giving and granting unto the said John B Newhall for me the said James B Campbell and for my use full power and authority in all matters relating to said lands and for the purposes aforesaid to do whatever shall to him seem expedient, and upon the receipt of any dues obligations or monies for me



(28)

and in my name to make execute and deliver acquit-  
ances or other sufficient discharges thereof, hereby ratifying  
and confirming whatever our said Attorney shall do in  
the premises - In witness whereof we have set our hands  
& seals this twentieth day of December A.D. 1835

J B Campbell Seal  
Sarah A Campbell Seal

State of Illinois }  
Cook County }

This day personally came before me the  
undersigned, James B Campbell and Sarah Ann Campbell  
personally known to me as the real persons who executed  
the foregoing Power of Attorney and acknowledged that they  
executed the same freely and voluntarily for the uses and  
purposes therein set forth she the said Sarah Ann wife of  
the said James B Campbell having been first examined  
separate and apart from her said husband acknowledged  
that she executed the same freely & voluntarily for the  
uses and purposes therein set forth without persuasion  
or coercion on the part of her said husband

LS

Given under my hand and seal (Notarial)  
at Chicago this 20 day of January A.D. 1836

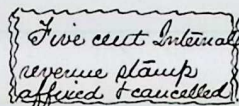
Rich<sup>d</sup> J Hamilton Not  
Pub<sup>l</sup>

State of Illinois }  
Sawell County } I Geo H Hamilton Clerk of the Circuit  
Court & Ex officio Recorder do and for said County do certify  
that foregoing 2 1/2 pages contain a full true and correct  
copy of a power of Attorney given by J B Campbell wife



(28)

to John B Newhall and recorded in Book ~~A + Power of~~  
~~Attorney on page~~ "A" of Mortgages on page 209



Witness my hand and official Seal  
this 2<sup>d</sup> day of November AD 1863

Geo H Harlow

Clerk &c

(On the back of which is the following indorsement)

Power of Atty from James B Campbell to John B Newhall  
Recorded 17 Feby (36 Mortg Book. A. 209

No. 5

B. of

to this reading of which plaintiff objected on the  
ground of the erasures and interlineations and that  
there was no sufficient evidence of a notarial seal  
attached to the acknowledgment and also on the  
ground that the same or the record itself had been  
altered fraudulently or otherwise by interpolating the  
letters "S B" and a scroll as and for the seal of  
of the Notary public taking the acknowledgment, that  
the record formerly had no such letters or scroll and  
proposed to make proof thereof by the appearance  
of the paper and other evidence, and for this  
purpose offered to read to the Court a certified  
copy of the same record of power of attorney to  
which was attached then and there a certificate of  
the Secretary of State of the State of Illinois that  
Richard J Hamilton was appointed a Notary  
Public of Cook County in said State in 1833 & that



no other was appointed until 1837 which certificate  
 plff then at the same time he made the offer to read  
 to the Court his certified copy of the Record aforesaid  
 stated he had in his possession in words and figures  
 following to wit

|                  |   |                          |
|------------------|---|--------------------------|
| James B Campbell | } | Recorded 17th Feby 1836. |
| do               |   | Power of Attorney        |
| John B Marshall  |   |                          |

To now all men by these  
 presents that we James B Campbell of Chicago  
 in the County of Cook and State of Illinois and  
 Sarah A Campbell his wife who signed this instru-  
 ment of all her right of dower in the after mentioned  
 premises, which to convey power is hereinafter given  
 have made constituted and appointed and by  
 these presents do make constitute and appoint  
 John B. Marshall our true and lawful and  
 sufficient attorney for us and in our names  
 and as fully and effectually as we ourselves  
 might do to make execute deliver and acknowledge  
 all deeds and other instruments of conveyance of  
 any lands in the County of Tazewell and State aforesaid  
 belonging to the said James B Campbell which said  
 Deeds and other instruments of conveyance shall  
 have the same force and virtue as if made  
 executed delivered and acknowledged by ourselves  
 and each of us in our own proper persons and for  
 and in behalf of the said Sarah A Campbell to  
 join in the execution of said Deeds or other  
 instruments of conveyance of Land belonging to



(31)

said James B and in said County of Tazewell and  
in her name to relinquish all her right of dower  
therein and to acknowledge the same with like force  
and virtue as she herself could do if personally present,  
giving and granting unto the said John B Marshall  
for me the said James B Campbell and for my use  
full power and authority in all matters relating to  
said lands and for the purposes aforesaid to do whatever  
shall to him seem expedient and upon the receipt of  
any dues obligations or monies for me and in my  
name to make, <sup>execute</sup> and deliver acquittances or other suffi-  
cient discharges thereof. Herby ratifying and confirming  
whatever our said Attorney shall do in the premises

In Witness whereof we have set our hands & seals  
this Twentieth day of December AD 1835

J B Campbell  
Sarah A Campbell



State of Illinois }

Cook County }

31 This day personally came before  
me the undersigned James B  
Campbell and Sarah Ann Campbell personally known  
to me as the real persons who executed the foregoing  
power of Attorney and acknowledged that they executed  
the same freely and voluntarily for the uses and pur-  
poses therein set forth She the said Sarah Ann wife  
of the said James B having been first examined separate  
and apart from her said husband acknowledged  
that she executed the same freely and voluntarily



for the uses and purposes therein set forth without persuasion or coercion on the part of her said husband, Given under my hand and Seal Notarial at Chicago this 20th day of January AD 1836

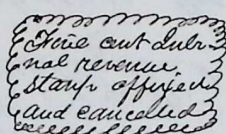
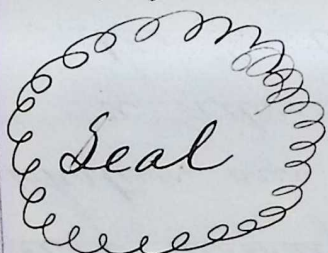
Rich<sup>d</sup> J Hamilton  
Not. Pub.

State of Illinois }  
Tazewell County }  
J

I George H Harlow Clerk of the Circuit Court and ex officio Recorder in and for said County do hereby certify that the foregoing is a true copy of the Power of Attorney as therein named as fully as the same appears of Record in Book "A" of Mortgages page 209 in my office

Witness my hand and official seal hereto affixed at Pekin this 14th day of August AD 1863

Geo H Harlow Clerk  
per A P Griswold Deputy



The Court declined to consider the question of fraud, or alteration stating it was a matter to be passed on by the jury, that the interlineations and erasures were not in material points, and permitted the same to be read in evidence to which decision plaintiff then and there accepted

- 2 Defendant then offered in evidence a certified copy of Deed from said record of Campbell and wife by his attorney to Johnson P Lee in words and figures following to wit



Deed No 4366. Recorded 1<sup>st</sup> Feby 1841.

This Indenture made this sixth day of September AD 1836 between John B Newhall and James B Campbell & Sarah A Campbell of the first part and Johnson P Lee of New York of the second part - Witnesseth, that the said party of the first part for and in consideration of Two Thousand dollars to us in hand paid at and before the delivery of these presents the receipt of which is hereby acknowledged have granted bargained and sold and by these presents do grant bargain and sell unto said party of the second part all of the following described real estate viz; all of the real estate which we or either of us own in the County of Jayewell and State of Illinois whenever the same is situated and (however the same is described either as Lots in Pekin or Land in said County and which has not been heretofore sold and conveyed by us or either of us. To have and to hold the same unto him the said party of the second part his heirs and assigns forever.

In witness whereof the said John B Newhall in person and the said James B Campbell & Sarah A Campbell his wife by said John B Newhall their Attorney in fact have hereunto set their hands and seals this sixth day of September AD 1836

|                               |      |
|-------------------------------|------|
| John B Newhall                | Seal |
| James B Campbell              | Seal |
| by Jno B Newhall Atty in fact | Seal |
| Sarah A Campbell              | Seal |
| by Jno B Newhall Atty in fact | Seal |



State of Illinois }  
 County of Tazewell }<sup>ss</sup> I Alden Hull an acting Justice of  
 the Peace in and for said County do hereby certify that on  
 this day personally came before me John B Newhall in person  
 and as Attorney in fact for James B Campbell and Sarah  
 A Campbell his wife and he is personally known to me to be  
 the real person he represents himself to be and who executed  
 the foregoing deed and acknowledged that he executed the  
 same for himself and as Atty in fact for said James B  
 Campbell and Sarah A Campbell his wife for the uses  
 and purposes therein expressed

Given under my hand and seal at Pekin this  
 sixth day of September AD 1836

Alden Hull J P 

State of Illinois }  
 Tazewell County }<sup>ss</sup> I George H Harlow Clerk  
 of the Circuit Court and Ex Officio Recorder of said  
 County do hereby certify the foregoing to be a true copy  
 from the Records of said Court of a deed filed for  
 Record in said Recorder's Office and Recorded in Book  
 G of deeds page 473 on the 1<sup>st</sup> day of February  
 AD 1841



In witness whereof I have  
 hereunto set my hand and affixed  
 the seal of said Court at Pekin in said  
 County and State this 7<sup>th</sup> day of December  
 AD 1863

34 revenue  
 stamp affixed

Geo H Harlow Clerk  
 Ex Officio Recorder &c  
 By W H Williams Deputy



(55)

(On the back of which is the following indorsement)  
J B Newhall & James B Campbell & wife Deed to  
Johnson P Lee

No 12

to the reading of which plaintiff objected because  
~~because~~ there was no sufficient evidence of its execution  
by Campbell for the reason that there was no evidence  
of the official character of person taking <sup>the</sup> acknowledgment  
and could not affect the rights of the plaintiff.  
The court overruled said objection permitted said  
copy of deed to be read in evidence to which decision  
plaintiff then & there excepted

Page 4 3 Defendants then offered in evidence two certified  
copies of proceedings in the Bankrupt Court of the  
District of New York in words and figures following  
to wit - as to the Bankruptcy of Johnson P Lee  
and the appointment of W L H Maddell assignee in  
words and figures following to wit

The President of the United States of America  
To all to whom these presents shall come greeting  
Know Ye That we having inspected  
the records and files of the District Court  
of the United States for the Southern District  
of New York. do find certain <sup>paper</sup> writings there  
remaining of record, in the words and  
figures following, to wit:

~ ~ ~ ~ ~



In Bankruptcy

At a District Court of the United States of America held for the Southern District of New-York at the City Hall of the City of New-York on Tuesday the Fourth day of January in the year one thousand eight hundred and forty-two

Present Samuel R Betts District Judge  
In the Matter of

Order

Bankrupt

Ordered that William Coventry H Meddell be appointed the official or General assignee as require by the Rules this day adopted in cases arising under the Act entitled "An Act to establish a uniform System of Bankruptcy throughout the United States" passed August 19, 1841

No 13

Filed this Third day of August 1843

In Bankruptcy

At a District Court of the United States of America, held for the Southern District of New-York, at the City-Hall of the City of New-York on Thursday the Third day of August in the year one thousand eight hundred and forty-three

Present, Samuel R Betts District Judge

In the Matter of }  
Johnson P Lee }  
Bankrupt }

Decree of Bankruptcy



(37)

Johnson P Lee of the City of New York having on the twentieth day of December last past, filed a petition duly verified, praying to be declared a Bankrupt; and satisfactory proof being made of due publication of notice to all persons interested, to appear in Court, and show cause against said petition; and the Court being now moved to grant the prayer of said petition, and no cause being shown to the contrary, and the petition and proofs having been inspected and considered by the Court, and having been found in conformity with the requirements of the Act of Congress; It is Thereupon, on Motion of Me<sup>ss</sup>rs Spring & Provis. of Counsel for the petitioner ordered and Decreed by the Court, that the said Johnson P Lee be and he is hereby declared and decreed a Bankrupt, pursuant to the Act of Congress, entitled "An Act to establish a uniform system of Bankruptcy throughout the United States" passed August 19<sup>th</sup> 1841; And it is furthermore ordered by the Court, that the Clerk certify and deliver this decree to William L H Waddell the official or General assignee in Bankruptcy appointed and designated under the rules and regulations of the Court—

N 27

Filed this Fourteenth day of February 1844  
In Bankruptcy

At a District Court of the United States of America, held for the Southern District of New York, at the City Hall of the City of New York, on Wednesday the Fourteenth day of February, in



the year one thousand eight hundred and forty four

Present, Samuel R Betts District Judge  
 In the Matter of }  
 Johnson P Lee }  
 Bankrupt

Johnson P Lee of the City of New York (& as one of the Special firm of J P Lee - a Bankrupt, having filed a petition praying to be discharged in full from all his debts, and for a certificate of such discharge, pursuant to the act of Congress, entitled "An Act to establish a Uniform System of Bankruptcy throughout the United States" passed August 19, 1841;

And it appearing to the Court upon <sup>the</sup> said petition, and the report of the clerk and assignee accompanying the same, that the said Bankrupt has bona fide surrendered all his property, and rights of property, (with the exception of such articles as were designated and set apart by the assignee,) and that the said Bankrupt has fully complied with and obeyed all the orders and directions which have from time to time been passed by this Court, and has otherwise conformed to all the requisites of the said act, and that no written dissent to such discharge has 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 petitioner be not granted, it is therefore, by virtue of the act aforesaid, ordered, decreed and allowed by the Court, that the said Johnson P Lee



(39)

be, and he accordingly hereby is fully discharged of  
and from all his debts provable under the said act,  
and 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, under the Seal of this Court, and deliver  
the same to the said Bankrupt when demanded  
J R Betts

All of which we have caused by these presents to  
be exemplified and the Seal of the said District Court  
to be hereunto affixed



Witness the Honorable Samuel R Betts  
Judge of the said Court, at the City of  
New-York, in the Southern District of  
New-York, this Sixth day of March in  
the year of our Lord one thousand eight  
hundred and sixty two and of our  
Independence the eighty sixth  
Geo F Betts Clerk

I Samuel R Betts Judge of the  
said District Court, do hereby certify, that  
the foregoing Exemplification is in due form  
of law

Samt R Betts

3 3 3 3 3 3 3



The President of the United States of America  
 To all to whom these Presents shall come, Greeting,  
 Know Ye, That we having inspected the  
 records and files of the District Court of  
 the United States for the Southern District  
 of New-York, do find certain paper writ-  
 ings there remaining of record, in the  
 and figures following, to wit:

U S District Court  
 For the Southern District of New-York  
 In Bankruptcy }  
 In the Matter of }  
 Johnson P Lee }  
 a Bankrupt }

The official or General assignee  
 to whom the estate of said Bankrupt was confided,  
 Reports, That application has been made to him  
 setting forth the fact that a shadow of title or  
 an imaginary interest of no real value in property  
 not set forth in the Schedule filed, has become vested  
 in the assignee by the Decree in said Matter and  
 asking for a conveyance of said interest in consid-  
 eration of paying the costs and charges of the  
 assignee in the matter and due deliberation being had ~~by~~ <sup>by the</sup> the  
 assignee, he now moves the Court for the following  
 order to wit: Ordered, That the official or General  
 assignee release or convey for the nominal consid-  
 eration of one dollar, and upon the costs and charges



(41)

of the assignee being paid all the interest which  
said Bankrupt had at the time of filing his  
petition in Bankruptcy, in the following described property to wit:  
" Lots Nos one and two in Block Sixty Six in  
" Campbell & Newhalls addition to the Town of Pekin,  
" Tazewell County, Illinois or in any other lots in  
" said addition comprized in the East half of the  
" South West Quarter and West half of the North  
" East Quarter of Section 35 Township 25 North  
" of Range 5 West

Wm Coventry H Maddell  
Official or General assignee

Endorsed

No 39 In Bankruptcy -

In the matter of Johnson P Lee a bankrupt -  
Assignees Report for an order to convey a nominal  
interest in certain property not on the Schedule -  
J R Betts

Filed. May 12, 1851

In Bankruptcy

At a District Court of the United  
States of America held for the Southern District  
of New York, at the City Hall of the City of New  
York, on — the Twelfth day of May, in the year  
one thousand eight hundred and fifty one  
Present.

Samuel R Betts District Judge



(42)

In the Matter of }  
Johnson P Lee } Order  
Bankrupt

On Motion of Wm L H Maddell  
the official or General assignee and on reading  
and filing his official report. Ordered, that he  
convey or release certain lands in the State of  
Illinois in conformity with and according to  
the description in said Report of said assignee,  
filed this day —

(Endorsed)

No 39

United States District Court  
For the Southern District of New York

In Bankruptcy  
In the Matter of }  
Johnson P Lee }  
Bankrupt }  
Order

Filed May 12 1851

U S District Court  
For the Southern District of New York.  
In Bankruptcy

In the Matter of }  
Johnson P Lee }  
a Bankrupt }



(43)

The official or General assignee to whom the estate of said Bankrupt was confided, Reports That whereas an order was made by this Court on the 12<sup>th</sup> day of May last authorizing the assignee to convey all the interest which came to him by the Decree in said Matter in certain lands in the State of Illinois, and whereas it has been since discovered that said lands were erroneously described in said order, The assignee now moves the Court for the following order, to wit, Ordered, That the order made in the above matter on the 12<sup>th</sup> day of May last be amended so that the description of said lands therein set forth read as follows, to wit,

Lots 1 & 2 in Block 66 in the Town of Pekin, Tazewell Co., State of Illinois — also the E $\frac{1}{2}$  of S $\frac{1}{4}$  & N $\frac{1}{2}$  of N $\frac{1}{4}$  Sec 35 T 25 N R 5 W and all lots laid out thereon in what is called Campbell Darlings & Newhalls addition to the Town of Pekin, aforesaid

Dated Sept 10, 1857

(over)

Wm. Coventry H. Maddell  
official or General assignee

(Endorsed)

No 40 In Bankruptcy  
In the Matter of Johnson D Lee a bankrupt  
assignees Report to amend order of 12<sup>th</sup> May  
1857

Order S R B

Filed Sept 11, 1857 —



In Bankruptcy.

At a District Court of the United States of America held for the Southern District of New York at the City Hall of the City of New York, on — the eleventh day of September in the year one thousand eight hundred and fifty one

Present, Samuel R. Betts, District Judge

In the Matter of }  
Johnson P Lee } Order  
Bankrupt }

On Motion, of Wm L H Waddell the official or General assignee and on reading and filing his Official Report, Ordered, that the order made in the above Matter on the 12<sup>th</sup> day of May last be amended in conformity with and according to the description in said report of said assignee, filed this day,  
(Endorsed on the back)

No 40 United States District Court

For the Southern District of New York

In Bankruptcy. In the Matter of

Johnson P Lee Bankrupt

Order, Filed Sept 11 1851

In Bankruptcy.

At a District Court of the United States of America held for the Southern District of New York at the City Hall of the City of New York on Tuesday the Fourth



day of January in the year one thousand eight hundred and forty-two

Present. Samuel R. Betts, District Judge  
In the Matter of }  
Bankrupt } Order

Ordered, That William Coventry H. Maddell be appointed the official or General assignee as required by the rules this day adopted in cases arising under the act entitled "An act to establish a uniform System of Bankruptcy throughout the United States," passed August 19, 1841,

All of which we have caused by these presents to be exemplified, and the Seal of the said District Court to be hereunto affixed

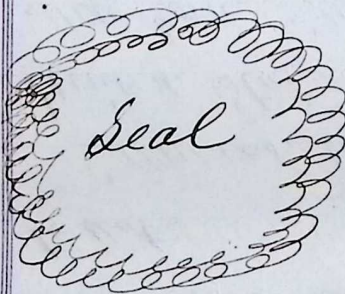
Witness the Honorable

Judge of the said Court, at the City of New York, in the Southern District of New York, this eighteenth day of December in the year of our Lord one thousand eight hundred and sixty one and of our Independence the Eighty sixth

Geo. F. Betts Clerk

I Samuel R. Betts Judge of the said District Court do hereby certify, that the foregoing exemplification is in due form of law

Sam R Betts





to the reading of which plaintiff objected. The Court permitted the same to be read in evidence, to which decision plaintiff then and there excepted.

- 4 Defendants then offered in evidence a deed by by W L H Waddell as assignee in Bankruptcy of Johnson P Lee to H O Mcerrinian for this land with other lands in words and figures following to wit-

Whereas, by an order of the District Court of the United States of America, for the Southern District of New York, sitting in Bankruptcy under and by virtue of an Act entitled "An Act to establish a uniform system of Bankruptcy throughout the United States" passed on the nineteenth day of August, in the year one thousand eight hundred and forty-one, it was on the Third day of August in the year 1843 duly decreed and declared, in the words and figures following, to wit:

In Bankruptcy

At a District Court of the United States of America held for the Southern District of New York, at the City Hall of the City of New York on Thursday the Third day of August in the year one thousand eight hundred and forty-three

Present Samuel R. Betts, District Judge  
Johnson P Lee of the City of New York having on the Twentieth day of December last past, filed a petition, duly verified, praying to be declared a Bankrupt and satisfactory proof being made of due publication of notice to all persons interested to appear in Court, and show



(47)

cause against said petition; and the Court being now moved to grant the prayer of said petition, and no cause being shown to the contrary, and the petition and proofs having been inspected and considered by the Court, and having been found in conformity with the requirements of the Act of Congress, it is thereupon, on motion of Messrs Spring & Irving of counsel for the petitioner Ordered and Decreed by the Court, that the said Johnson P Lee be and he is hereby <sup>declared and</sup> decreed a Bankrupt pursuant to the Act of Congress, entitled "An Act to establish a uniform system of Bankruptcy throughout the United States" passed August 19, 1841. And it is furthermore ordered by the Court, that the Clerk certify and deliver this Decree to William C. H. Waddell, the official or General Assignee in Bankruptcy, appointed and designated under the Rules and Regulations of the Court.

J. Charles D. Betts, Clerk of the said Court, do certify that the above orders and Decrees were this day made by the Court, and duly entered in the docket of Bankrupt proceedings

Chas. D. Betts, Clerk of the District Court of the United States, for the Southern District of New York.

And Whereas, J. the said Wm. Coventry H. Waddell, had before the day of the date of the Decree aforesaid, been duly appointed by the Circuit and District Courts of the United States for the Southern District of New York, official or General assignee in Bankruptcy, and given a bond, pursuant to the said statute and the Rules of the said Courts respectively, as appears by Orders duly entered on the Minutes of the said



counts respectively, in the following words and figures to wit;

At a Stated Term of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit, held at the City Hall, in the City of New York, on Tuesday the fourth day of January, in the year of our Lord one thousand eight hundred and forty-two

Present, The Honorable Smith Thompson, one of the Justices of the Supreme Court of the United States of America, and Samuel R. Betts District Judge

Ordered, That William Coventry H. Waddell, be appointed the Official or General Assignee as required by the Rules this day adopted, in cases arising under the Act entitled "An Act to establish a uniform system of Bankruptcy throughout the United States" passed August 19, 1841. A copy

J. W. Melcally, Clerk L.S.

At a Stated Term of the District Court of the United States of America for the Southern District of New York, held at the City Hall, in the City of New York, on Tuesday the fourth day of January, in the year of our Lord one thousand eight hundred and forty-two

Present the Honorable Samuel R. Betts District Judge

Ordered, That William Coventry H. Waddell, be appointed the Official or General Assignee as required by the Rules this day adopted in cases arising under the Act entitled "An Act to establish a uniform system of Bankruptcy throughout the United States"



(49)

passed August 19. 1841, A copy

Chas. D. Betts, Clerk [L.S.]

And Whereas. on the 12<sup>th</sup> day of May 1851, and on the 11<sup>th</sup> day of September 1851, two certain orders were made by the District Court aforesaid authorizing the assignee aforesaid, to release or convey to Halsey O. Merriam of Pekin, Illinois, all the Interest which came to the Assignee by the aforesaid Decree, in certain Real Estate situated in Tazewell County, Illinois, as hereinafter particularly described

Now then, Know all men by these Presents, That I, William Leventy H. Waddell, Assignee as aforesaid, in consideration of the sum of One Dollar lawful money of the United States of America to me in hand paid by Halsey O. Merriam of Pekin Illinois the receipt whereof I hereby acknowledge, do hereby grant unto the said Halsey O. Merriam his heirs and assigns forever, all the right title, and interest which the said Bankrupt had, and which by virtue of the Decrees and orders above recited, and of the Act entitled "An Act to establish a uniform system of Bankruptcy throughout the United States" as aforesaid became vested in me and which I have a right to convey of in, and to All Those two certain Lots of land known as Nos one & two in Block Sixty Six in the Town of Pekin Tazewell County Illinois also the East half of South West quarter and West half of North East quarter Section 35 Township 25 North of Range 5 West in said County and State, and in all lots laid out thereon, in what is called

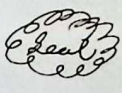


Campbell Duley & Newhall's addition to the Town of  
Pekin aforesaid

In Witness Whereof I have hereunto set my hand  
and seal this ~~Twelfth~~ day of September in the  
year one thousand eight hundred and fifty one (1851)

Sealed and delivered in presence of

John DeClute  
Moses B. Maclay

Wm Coventry H. Waddell   
Official or General Assignee

State of New York

City & County of New York ss: Be it remembered that on

this Twentieth day of September  
in the year AD one thousand eight hundred & fifty one in the  
City of New York aforesaid before me, Moses B. Maclay a  
Commissioner residing in said City, duly appointed a  
Commissioner by the Governor of the State of Illinois, to take  
the acknowledgement & proof of the execution of Deeds and  
other instruments in writing under seal to be read or recor-  
ded in said State, personally appeared William Coventry H.  
Waddell Official or General Assignee in Bankruptcy who is  
personally known to me to be the person whose name is sub-  
scribed to the within Deed, as having executed the same and  
acknowledged that he had executed the same, for the uses  
and purposes therein expressed

In Witness whereof I have hereunto set my hand  
& affixed my official seal as Commissioner of  
the said State of Illinois, at my office in the City of  
New York  
and State aforesaid this Twentieth day of September AD 1851



Moses B. Maclay Commissioner of  
the State of Illinois for the City of New York



(51)

United States of America

State of Illinois, - 33

I, O. M. Hatch Secretary of State of the State of Illinois, do hereby certify that Moses B. Maclay before whom the acknowledgment of the foregoing instrument was taken is now, and was at the time of taking thereof, a Commissioner of this State, in and for the City of New York, <sup>in the State of New York</sup> duly authorized and empowered by law to take the same; that I have compared the Signature of the foregoing certificate, and the impression of his Seal thereto attached, with the signature of said Commissioner, and the impression of his Seal, deposited in my Office and verily believe the same to be genuine



In Testimony Whereof I have hereunto set my hand and affixed the Great Seal of State, at Springfield this 4<sup>th</sup> day of June AD 1862

O M Hatch

Secretary of State

(on the back of which Deed is the following endorsement)  
Wm L H Waddell assignee of Johnson P Lee  
To Halsey O Merriman

Deed 11242

Filed March 24 1852 and Recorded Book V Ind  
Page 337 + 338 S Co Ills

J A Jones ex off Recorder

No 7  
51 1/2



to the reading of which plaintiff objected because it did not sufficiently appear that Waddell was the assignee of said Lee nor that he had power to convey his property in such manner

The Court overruled said objections and permitted said deed to be read in evidence to which decision plaintiff then and there excepted - - - - -

Defendants here rested - - - - -

The Plaintiff then moved for a continuance, and on this motion filed his affidavit in the words and figures following to wit

|                      |   |           |
|----------------------|---|-----------|
| State of Illinois    | } |           |
| Woodford County      | } |           |
| Edmund S. Holbrook   | } |           |
| vs                   | } | Ejectment |
| John Nickel +        | } |           |
| Benjamin S. Pretyman | } |           |

Suit now pending in the Circuit Court thereof December Term A.D. 1863

Edmund S. Holbrook plaintiff in this case, being first duly sworn deposes and says that he cannot with safety to himself proceed further with the trial of this cause at the present time, for the following reasons. He says that since the trial commenced, and after plaintiff had shown title from Government to the land described in the declaration deriving the same through James B. Campbell, the defendant Pretyman in order to show title to the same property in himself from said Campbell before the



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title derived as aforesaid to said plaintiff, offered in evidence a certified copy of a power of Attorney of said James B. Campbell and his wife to one John B. Newhall which said plaintiff makes a part of this affidavit, and which the Court has permitted to be read in evidence by defendant. Affiant says that he thoroughly examined the record of said power of Attorney a certified copy of which defendant pretends that he has offered about five months since at Pekin Illinois in the office of the clerk of the Circuit Court of Tazewell County and he says positively and without any reserve that there was no seal no scroll, no letters "L.S." or anything attached to the acknowledgement of said power of Attorney so recorded, or anything indicating a Notarial seal in any manner whatever upon said record of the acknowledgement of said power of Attorney, that he took then a certified copy of said record which he has with him made by the clerk of said Court at affiant's request, and which he offers in evidence on this motion and makes a part of this affidavit. And so affiant says that <sup>said</sup> document offered by defendant purporting to be a certified copy of such record as it was offered by defendant is not a true copy of said record - but he charges it to be true and he believes it to be true that the said document since signed by the clerk has been fraudulently altered by said defendant or some one for him, by writing in or interpolating in said document the letters "L.S." as and for the seal Notarial of the Notary public purporting to make the certificate of acknowledgement for the



purpose of fraudulently defeating the said title of said plaintiffs. Affiant says that this is a case of great importance to him that the property in controversy is worth from four to five thousand dollars - and that this is the third trial of the cause. He says that heretofore on the preceding trials defendant has relied on the weakness of plaintiffs title, and such defence as the Statutes afforded him by possession under color of title and payment of taxes for 7 years before suit, and has not made use of or attempted to make use of said copy of record. Affiant says that he was taken entirely by surprise when defendant offered said pretended copy in evidence. He knew what the record was and <sup>he</sup> did not anticipate that defendant would resort or attempt to resort to the use of a document in his defence, altered fraudulently or otherwise. Affiant believes he can offer at the present time some evidence tending to show such alteration of such pretended copy of the record, and which to his own mind with what he knows himself is perfectly satisfactory but he fears that he cannot present to the jury at this time such proof as will render it safe for him to proceed further with the trial now, considering the state of the suit and the magnitude of the interest involved. He believes by the next term of this Court he can prove the state of the record as he has hereinbefore set it forth that since this matter arose he has not had opportunity to consult with witnesses but he believes without



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doubt he can prove the same by George A Harlow the clerk of said Tazewell Circuit Court who resides at Pekin and as affiant supposes is now at Pekin a distance of 20 or 30 miles from this place. that he can prove the same also by the deputy of said clerk Mr Griswold now also a resident of said Pekin and as he supposes at said Pekin now. And affiant does not know of any witness now under his control by whom he can prove said fact, as to the <sup>true</sup> state of the record or whom he can procure during the progress of the trial Affiant says that this affidavit is not made for the purpose of delay but that justice may be done

Subscribed and sworn to      E S Holbrook  
before me this 15<sup>th</sup> day of  
December 1863

James D Perry clk  
By W Sumner Dpty  
(Endorsed)

(Filed December 15<sup>th</sup> 1863

James D Perry clk By W Sumner Dpty)  
and also exhibited to the Court on this motion both of  
said certified copies of the record of said power of Attorney  
The Court overruled said Motion to which decision  
plaintiff then & there excepted

Page 5 The Plaintiff then, according to the suggestions of the  
Court raised the question for the jury as to the alteration  
of said certified copy of said power of Attorney or  
the record itself by the interpolation of the letters "L S"



and a scroll as, and for the Seal of the Notary Public purporting to take the acknowledgement of said power of Attorney and on this question offered said certified copy of record of Power of Attorney, before offered by plaintiff to the Court, to which objection was made by defendants. The Court permitted the same to be read. The Plaintiff then offered to read on this question an affidavit made by defendant Prettyman for continuance of this cause at a former term of Court in words and figures following to wit

State of Illinois }

Woodford County }

Of the December Term of the  
Woodford County Circuit Court 1862

Edmund S Holbrook }

vs

John Nickol & }

B S Prettyman }

In Effectment

Benjamin S Prettyman one of the Defendants in the above entitled cause being first duly sworn according to law deposes and says that they cannot safely proceed to trial on the part of the Defendants in the above entitled cause at the Present term of this Court on account of the absence of one Isaac B Doolittle, a resident usually of Tazewell County Illinois and who is now a volunteer soldier in the 8th Regiment of Illinois Volunteers in the United States Army and affiant avers that said Doolittle volunteered in the Summer of 1861 and left said County and soon after left said State and has from the time he left



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the State of Illinois been constantly changing his location with the Army and is so situated in the districts of the United States then and now in a State of insurrection & Rebellion that no ordinary civil officer could be found before whom his deposition could be taken according to law and this affiant avers that he expects to be able to prove by said witness on or about the year 1850 that one William B Doolittle who then claimed to be the owner of the premises in controversy in this cause procured him to haul out on the premises in controversy a large lot of Posts and rails and place them thereon in condition for making the fence thereon, and preparatory to enclosing the same, and also procured said witness to erect a stable on said Premises, and take full and complete possession of said Stable and said Premises in controversy at that time for him said Doolittle and so hold the same for him in possession absolutely & entirely, and that he witness did accordingly erect said Stable & took possession of said Premises and did keep them for the said W B Doolittle his Horses & other stock, and the possession of the said Premises until the year 1853, and that during said time he said W. B. Doolittle caused to be erected several large Lots & other improvements to accommodate his possession & occupancy thereof and that said W B Doolittle was frequently on the premises with said Witness during said time, and then & at all times claimed publicly to own & occupy & be in the absolute possession thereof, and that his



possession of said premises by said W B Doolittle from the year 1851 until his death was open complete and notorious throughout the community and during said time was not controverted or questioned though well known to all the Public and affiant avers that the knowledge of said witness knowing of said facts and of Defendant's ability to prove the foregoing facts by said witness, came to Defendant's knowledge, for the first time on the seventh day of December 1862 instant and since that time they have not had time to procure the Deposition of said witness or his attendance at this Court and that he knows of no other witness by whom he can so fully prove the foregoing facts, and that this application is not made for delay but that justice may be done and affiant avers that he believes that he will be able to obtain the Deposition of said witness by the next term of this Court or procure his attendance in person at said term - and further affiant sayeth not

Subscribed and sworn to      B S Prettyman  
before me this 9<sup>th</sup> day of  
December 1862.

James D Perry clk  
(Endorsed)

(Filed December 10<sup>th</sup> 1862  
James D Perry clk)

Defendants objected. The Court sustained the objection and did not permit the same to be read to which decision plaintiff then and there accepted  
Plaintiff then called Mr Powell as witness who being



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sworn testified that he was attorney for defendants in this case and had been for near two years, that he never saw said copy of power of Attorney offered by defendants till within one or two days since, On being asked what defence in this suit defendants had hitherto relied on Defendants objected, to his answering, The Court sustained the objection, and plaintiff then and there excepted, On being shown said copy he testified that he was acquainted with Prettymans handwriting and that he was positive that said letters "L S" were not in Prettymans handwriting, Plaintiff then called Judge Weed as a witness who being sworn stated that he was attorney for Defendant in this case and had been

Page 6 for a year or two, never saw the power of Attorney till yesterday, The record had lately been found as he understood it & that the letters "L S" he did not think was in the hand writing of Deft Prettyman.

Plaintiff then called H B Hopkins as a witness who being sworn testified that he was acquainted with the handwriting of Defendant Prettyman, that he could not so well tell ones hand by seeing only a few letters, thought said letters and scroll were in Prettymans handwriting that it appeared to him that said letters and scroll were written at another time than the body of the instrument and with different ink as the color was a little different, that he knew Mes H. Harlow clerk of the Circuit Court of Tazewell County, that he knew his hand writing, that the Certificate as to the record was in his hand, that he knew Mr Griswold the Deputy of Harlow, and knew



his hand writing, that the record offered by Plaintiff was in Griswolds handwriting, that the body of the record offered by Defendants was not in the hand writing of Harlow or Griswold. On being asked in whose hand it was defendants objected. The Court sustained the objection and plaintiff then and there excepted.

The Plaintiff here closed

The Defendants called Bernard Bailey as a witness who being sworn said that he knew the handwriting of Defendant Prettyman, did not think the "L S" and scroll were in Prettymans handwriting. It might be, but should not think it was, that in his opinion the letters "L S" were in the same hand writing as the body of the instrument. On being asked by Plaintiff if he knew in whose hand writing the body of said record was written he said he did. Defendants objected to his stating. The Court sustained the objection and Plaintiff then & there excepted.

Plaintiff then proposed to prove by said witness that the body of the instrument was in the handwriting of Samuel P Bailey, who was then and had been for three or four years in the employ of said Prettyman. Defendants objected to witness

Page 7 answering. The Court sustained the objection to which decision plaintiff then and there excepted.

This was all the testimony in the case and the testimony was closed

While said Defendant Prettyman was addressing the the jury he used said affidavit of his, which he claimed to be in his handwriting, whereupon on plaintiffs suggestion



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that he might use it the same went ~~read~~ to the jury. During the argument by counsel before the jury it was claimed by Defendants that a certain document pertaining to the official character of Richard J. Hamilton had been read in evidence by the Plaintiff but had been now suppressed by him all this was denied by Plaintiff. after the argument was entirely closed the court enquired concerning it when Defendant Prettyman and his counsel made the same claim, that the document was pinned to the certified copy of record of power of attorney offered by Plaintiff, and had been separated therefrom by said Plaintiff and suppressed. It was stated by Plaintiff and his counsel, that he had never offered said document in evidence, that <sup>at</sup> the first there was such a document pinned by him at some former time to such copy of record, and was so when he took said record from among his papers during the trial - but that he never offered it in evidence -----

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and in fact before he made any use of said record he unpinned it and put it away as he had a right to do. The court stated that he had no recollection of having seen the paper or heard it read and made no decision as to whether it had been formally offered to the jury or not that the person offering testimony would ordinarily know the best what he had offered - but ordered said Plaintiff to produce such paper, to the court. The Plaintiff denied the



power of the Court to make such order and protested against it; that the paper was his private property and under his exclusive control; but produced the paper to the Court under such order, and then & there expected to such order. The Court then asked the Plaintiff if he wished to offer it in evidence Plaintiff said he did not. The Court then asked the Defendant if he wished it to go to the jury as evidence Defendant said he did for the reason that it was attached to Plffs certified copy of the record of the power of Atty when he Plff offered it in evidence. The Plaintiff objected because the paper was his own private property, and that in no sense nor for any purpose had the party or the Court a right to use it. That it was offered too late and that it was not relevant competent or sufficient legal testimony on the part of Defendants for any matter properly before the jury. Said document is in words and figures following to wit

State of Illinois  
Secretary's Office

Springfield September 2<sup>d</sup> 1863

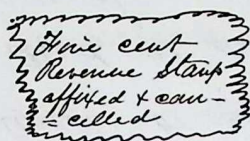
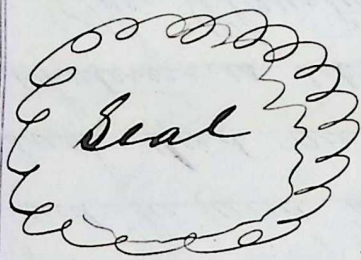
I, A. M. Hatch Secretary of State of the State of Illinois do hereby certify that Richard J. Hamilton was appointed and commissioned by the Governor of this State a Notary Public for the County of Cook and State of Illinois on the tenth day of February A.D. 1831 - And I further certify that the next following person appointed and commissioned



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Notary Public for Cook County was Leevi D Boone  
whose commission was dated January 27<sup>th</sup> AD 1837;  
all of which facts appear of record in my office

Witness my hand and the Great  
Seal of State at the City of Spring-  
field the day and year above  
written



O. M. Hatch  
Sec State

The court overruled the objections of Plaintiff on  
the ground that Defendants had a right to the use  
on trial of any papers that pertained to the matter  
in issue that Plaintiff might have in his possession  
& for this reason & from the statements of counsel that  
they supposed said document had been given in evi-  
dence to the jury before the evidence had closed & from  
the admissions of Peff that it had been attached to the  
certified copy of the record of the power of atty<sup>produced by Peff</sup> after  
it had been exhibited to the court and offered in  
evidence to the court ——— permitted said paper  
to go to the jury —————

Page 9 to which decision Plaintiff then and there excepted  
The Plaintiff then asked <sup>and</sup> the court ——— gave the  
following instructions to the jury to wit  
Holbrook

Nickol & Priddyman } Ejectment

The court instructs the jury on the part of the plaintiff



1 That the plaintiff has shown by proofs offered by him title in fee simple in himself to the property described in the declaration derived from the United States; and unless the defendant has by his proofs defeated such title is entitled to receive the verdict of the jury of title in him to said land in fee simple

2 The testimony offered by plaintiff to show that defendants claimed title to the premises in controversy from a common source of title with the plaintiff, to wit the certified copy of Deed by William L Bostwick to William B. Doolittle, and certified copy of deed of John A Jones Master in Chancery to defendant Prettyman were competent and sufficient evidence to prove prima facie a claim of title from a common source of title with the plaintiff, to wit William L Bostwick as assignee in Bankruptcy of James B Campbell - but were not alone sufficient evidence to prove title in defendants

3 William B. Doolittle by taking title from William L. Bostwick is deemed in law and in fact to have admitted that said Bostwick at the time had some right interest or claim in the premises conveyed by such deed as assignee of James B Campbell, and he and all those claiming under him through such deed are deemed in law to have admitted whatever is set forth or rehearsed in said deed

The Plaintiff then asked the Court to give the following instructions to the jury, to wit

4 Upon the proof made by plaintiff of title in him, and that defendants claimed title from a common



(65)

Refused

source with him, the defence offered by defendants of a prior conveyance by Campbell before plaintiffs title from Campbell attached is not a good defence to the case made by the plaintiff unless defendants have shown by good and competent evidence that said title is still outstanding

Refused

4 Upon proof made by plaintiff as stated in the last instruction, it is not enough for defendants in order to defeat the title of plaintiff to show a prior conveyance without showing by competent evidence that they <sup>connect</sup> themselves with such title

Refused

5 The defendants have not shown their title to be connected with any such anterior title by good and legal evidence

Refused

6 As to the certified copy of deed of Campbell by his attorney in fact John B Newhall offered in evidence by defendants, the jury are instructed that unless the record of the power of Attorney by said Campbell to said Newhall shows that there is a Notarial seal recorded as a part of the certificate of acknowledgement, then there is no evidence before the jury of the conveyance claimed by defendants under said power of Attorney

7

The certified copy of the record of the power of Attorney offered by defendants, alone considered and without proof to the contrary showed the state of the record at the date of the certificate



Refused

of such record; and the certified copy of the record offered by plaintiff, alone considered, showed the state of the record at the date of the certificate of such record, and the jury are to consider and decide from <sup>all</sup> the proofs and circumstances shown pertaining to such discrepancy of the two copies, which is the correct one and find accordingly.

Refused

8 And in deciding which of said two copies is correct the jury have a right to consider the appearance of the two documents every word and every letter as well as their general appearance - the interest and action of the parties as shown by the proof, and any evidence in the case.

Refused

9 The jury have a right to consider by the proofs in the case whether said record as to said power of Attorney or said certified copy of record offered by defendants has been altered or not, and find according to preponderating evidence - and if the jury find by preponderating testimony that the certified copy of record of power of Attorney offered by plaintiff is the correct one and that the record thereof offered by defendants is not the correct one they will find for the plaintiff.

Refused

10 Upon this question of alteration of the record or copy of the record the jury are instructed that that as to that question in this case it matters not by whom such alteration (if any) was made - the



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question is which of the two records offered in evidence is the correct one

- 11 The Jury are instructed that the Plaintiff introduced the deed from Bostwick assignee of Campbell to Doolittle and from John A Jones Master in Chancery to B S Prettyman for the purpose of showing the title, under which Defendants claim and it was competent for Plaintiff to do that although the said deeds might be so defective as not to convey any good title. But if the defendants rely upon the deed from Jones Master in Chancery to Prettyman as a link in their own title from Campbell to themselves they must show a good deed and that deed to be a good deed must be accompanied with evidence that a Court of competent jurisdiction has made a decree authorizing such deed. There is no evidence of such decree before the Jury consequently Defendants do not connect themselves with said title by means of the said deed. The said deed though introduced by Plaintiff it is yet just as much for Defendants benefit as if introduced by them, but the said deed convey title to no one unaccompanied by said decree, the fact that said deed recites such a decree is not evidence that there was such decree, the deed should be accompanied by other evidence of such decree
- 12 The Jury are instructed that a Notary Public, can make a valid certificate of the acknowledgment of a deed by affixing his official seal thereto and if

Refused



Refused

such certificate is made and such official seal omitted such defect cannot be cured by a certificate of the Secretary of State to the official character of such Notary

13

Refused

The Jury are instructed that the Plaintiffs title from Bostwick assignee of Campbell being older than defendants title from the same source & therefore the better title and entitles the Plaintiff to your verdict unless the Defendants have shown that Campbell was divested of his title by conveyance under the power of Attorney from Campbell to Newhall, and if the Jury believe from the evidence that the letters L & S & scroll indicating the Notarial seal have been added to the certified copy of said power of Atty since the same was certified by the Clerk, then the said power of Attorney is not in evidence before the Jury & there is then no evidence that said Campbell was divested of title before his said Bankruptcy and the plaintiff is entitled to your verdict

14

Refused

The Jury are instructed that the certificate of the Secretary of State that Richard J Hamilton was a Notary Public is not sufficient evidence of his official character without evidence that said Hamilton filed his official bond according to law

15

Refused

The Jury are instructed that the certificate of the Secretary of State of the official character of Richard J Hamilton as Notary Public is not sufficient evidence of such official character without proof of his having taken the official oath required by law



(69) 16

Instruction on the part of Plaintiff

The Court instructs the jury as to the pretended conveyance claimed by Defendants by James B Campbell to Johnson P. Lee by his Attorney in fact John B Marshall that unless the record shows the acknowledgment before the Notary to have been evidenced by the official seal of the Notary, such conveyance by the law then existing did not constitute constructive notice of such deed to subsequent purchasers from Campbell or those who succeeded to his title for a valuable consideration without actual notice of such sale. And to effect Plaintiff in this suit such actual notice (if any) is not to be presumed but proved by Defendants as a fact.

Refused

But the Court refused to give each and all of them to which decision plaintiff then & there excepted

The Defendants then asked the following instructions to the jury

- 1 That although prima facie the deed from John A Jones Master in Chancery to Benjamin S Prettyman only conveys the title which William B Doolittle acquired under the deed to him from Postwick as assignee in Bankruptcy of Campbell yet if the jury shall believe from the evidence that said William B Doolittle or Merriman had before acquired the title to the property in question under the Bankrupt deed from the assignee of Johnson P Lee, then in that event the deed from Jones to Prettyman would convey all the title that Doolittle and Merriman had. And if the jury shall

Given



further believe from the evidence that James Campbell had conveyed the land in controversy to said Johnson P Lee before he became a Bankrupt than the jury will find for the Defendants

2 The Court instructs the jury that by the law no man is estopped by any deed or any recital in any deed, except such as receive title through such deed, and that in deeds where no title passes no estoppel results

3 The Court instructs the jury that in every case in Ejectment the Plaintiff must recover alone upon the strength of his own title and not from any weakness or defects in the title of Defendants

4 The Court instructs the jury that all the papers and Deeds admitted in evidence to the jury are to be considered by them in making up their verdict and unless from all of the deeds and evidence given the jury believe the Plaintiff has the older and better title, they will find for the Defendants

5 That when a party offers a deed in evidence all of the provisions and recitals in such deed are in evidence with it and if the jury believe from the evidence that the deed given Jones to Prettyman offered in evidence by Plaintiff contains a recital of the Decree authorizing the sale and conveyance of all of the interest of H. O. Merriman in the land in question and they further believe from said deed and recitals that said interest of H. O. Merriman was so sold and conveyed to Prettyman it makes no difference in law which party introduced that deed when it was



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read to the Jury it was together with all its recitals in evidence before them, and is to be considered by them in making up their verdict

- 6 The Court instructs the Jury that if they believe from the evidence that Richard J Hamilton was at the date of said certificate of acknowledgement to the Power of Attorney from James B Campbell to John B Newhall a Notary Public that then he was by law authorized to take acknowledgements of Deeds and that if they further believe from the evidence that he did take the acknowledgement of the Power of Attorney from Campbell to Newhall then the certified copy is proper evidence of the validity existence & contents of said Power of Attorney.

which were given by the Court to which decision plaintiff then and there excepted

The Jury found for the Defendants

The Plaintiff moved the Court for a new trial (and read his said affidavit for continuance

- 1 Because the Court refused proper testimony offered by Plaintiff
- 2 Because the Court admitted improper evidence on the part of Defendant
- 3 Because the Court overruled Plaintiffs motion for a continuance
- 4 Because the Court refused to give proper instructions asked for by Plaintiff
- 5 Because the Court gave improper instructions asked for by Defendants



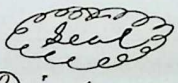
- (72) 6 Because ~~the~~ said verdict is against the proof in the case  
7 Because it is against the law of the case,

The Court overruled said motion to which decisions Plaintiff then and there excepted.

By agreement of Parties the Clerk may omit in making up the record all but the declaration and service, and plea and the proceedings of this term

The Plaintiff asks that this his Bill of Exceptions may be signed and sealed which is done

This 21<sup>st</sup> day of Decr AD 1863

J L Richmond   
Judge 2<sup>nd</sup> Judicial Dist

State of Illinois

Woodford County 3<sup>ds</sup> I James D Perry Clerk of the Circuit Court in and for said County and State do hereby certify that the above and foregoing on pages one to seventy two inclusive contains a true copy of the proceedings at the December Term AD 1863 of the Circuit Court of said County in the cause wherein Edmund S Holbrook is Plaintiff and John Nichol and Benjamin S Prettyman Defendants as appears of record and on file in my office. I further certify that the certified copy of Deed from William C Postwick assignee in Bankruptcy to William B Doolittle and the certified copy of Deed from John A Jones Master in Chancery to B. S. Prettyman also taken from William C Postwick assignee in Bankruptcy of



(73)

James B Campbell to Edmund S Holbrook are truly  
copied excepting the description of the property therein  
which was directed to be omitted in the Bill of  
Expositions



In Testimony whereof I have hereunto set  
my hand and affixed the seal of said  
Court at my office in Metamora in  
said County of Woodford this thirtieth  
day of January A D 1864



James D Perry Clerk

Fee \$23.00 Paid by E S Holbrook

State of Illinois }  
Supreme Court } April Term  
3<sup>d</sup> Grand Division } 1864.

Now comes Plaintiff in Error  
Edmund S Holbrook and alleges that  
in said record and proceedings  
there is manifest error in this  
The said Circuit Court erred in per-  
mitting the certified copy of Power of  
Attorney of James B Campbell & wife to  
John B Newhall offered by defendants to be  
read in evidence



- 2 The said court erred in permitting the certified copy of record of deed of Campbell and Newhall to Johnson Lee offered by defendants to be read in evidence.
- 3 The said court erred in permitting the deed of Waddell as assignee in Bankruptcy of Johnson Lee to McCallenman to be read in evidence.
- 4 The said court erred in overruling plaintiffs motion for a continuance.
- 5 The said court erred in excluding testimony offered by plaintiff in reference to the attestation of the certified copy of the record of Power of Attorney of Campbell to Newhall.
- 6 The said court erred in compelling by order of court the plaintiff to produce the certificate of the Sec. of State of the State of Illinois - for use of defendants.
7. The said court erred in permitting said defendants to offer and read in evidence said certificate.
- 8 The said court erred in refusing to give to the jury the 3<sup>d</sup> 4<sup>th</sup> 5<sup>th</sup> 6<sup>th</sup> 7<sup>th</sup> 8<sup>th</sup> 9<sup>th</sup> 10<sup>th</sup> 11<sup>th</sup>



12<sup>th</sup> 13<sup>th</sup> 14<sup>th</sup> & 15<sup>th</sup> instructions asked for by  
Plaintiff = And each and every of them -

9 The Court erred in giving to the jury the  
1<sup>st</sup> 2<sup>d</sup> 3<sup>d</sup> 4<sup>th</sup> 5<sup>th</sup> 16<sup>th</sup> instructions asked for  
by defendants = Each & every of them

10. The Court erred in overruling plaintiffs  
motion for a new trial

11. The Court erred in awarding judgment  
in favor of defendants

= And Plaintiff  
prays that for these and other manifest  
errors the said judgment be reversed  
and cause remanded for a new trial

E J Holbrook

Pro Se

H B Hopkins

Of Counsel

And now comes the said defendant by Wead  
his Attorney says that in the record & proceedings  
aforesaid & in the judgment aforesaid no  
such errors have intervened as is above  
alleged & set forth & this he prays may  
be required of by the Country

By Wead & Powell  
his Attorneys



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Edmund S. Holbrook

to

John Chicko stal

Read & Sons

Filed Apr. 18. 1864.  
L. Seland  
Clerk.



STATE OF ILLINOIS,  
SUPREME COURT.

} ss. The People of the State of Illinois,

To the Sheriff of Fazewell County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Circuit Court of Woodford County, before the Judge thereof, between Edmund S. Holbrook

plaintiff, and John Nichol & Benjamin S. Prettyman

defendants, it is said that manifest error hath intervened, to the injury of the said plaintiff

as we are informed by his complainant, the record and proceedings of which said judgments we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said John Nichol and Benjamin S. Prettyman

that they be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if they shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said John Nichol & Benjamin S. Prettyman

notice, together with this writ.

Prickney H. Walker

Witness, The Hon. John W. Eaton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 12<sup>th</sup> day of January in the year of our Lord One Thousand Eight Hundred and Sixty-four (1864)

L. Deland

Clerk of the Supreme Court.  
J. B. Rice Deputy





State of Illinois  
 Tazewell County

I have duly served the within writ by reading the same to the within named Benjamin S. Pettyman, and also by leaving a true copy of the same with him in the presence of J. D. Barclay esq. I am therein commended. - Witness my hand and seal this 10th day of February 1864 James S. Hawkins Sheriff of Tazewell County Illinois

Service 50  
 Copy 50  
 Return 10  
 Mileage 10  
 \$ 1.20

Paid by Holbrook 75 cents

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Edmund S. Holbrook

No. vs.

John Nichol

vs. Benjamin S. Pettyman

SCIRE FACIAS.

FILED... April... 1864.

L. Ireland Clerk.



State of Illinois } 3<sup>d</sup> Grand Division  
 Supreme Court } April Term A.D. 1844  
 Edmund J. Halbrook }  
 vs } Error to Woodford  
 John Nichols & }  
 Benjamin J. Buffum } Rule to produce Papers  
 or show Cause  
 State of Illinois } as  
 County of Logansport }

This Defendant Benjamin  
 J. Buffum being first duly sworn  
 according to Law deposeth and saith  
 that he was not notified or advised of  
 the entry of the rule in the above cause  
 until the 27<sup>th</sup> instant, and before  
 showing cause to the Court desired to  
 fully examine all his Papers in this cause  
 & elsewhere, and now having fully  
 examined all of his Papers, he can  
 state positively to the Court that the copy  
 of the Power of attorney from James B. Campbell  
 & wife to John B. Newhall, which was  
 used in evidence on the trial of said  
 cause in the Court below is not  
 now in his possession, power or  
 control to be now presented and  
 shown to the Court, and therefore  
 affiant shows these facts as the cause  
 why the order a rule of this Court  
 in this cause should be refused & corrected



he Complaid with in the Production  
of the Paper referred to  
and this Offiant owns that there  
is another Cause of Edwards Holbrook  
& Susan Brimmer and this Offiant  
now pending in the Woodford County  
Circuit Court - in which the same  
questions arise as in this Case &  
in which the Power of attorney is  
to be used as evidence - and Offiant  
assuring the testimony of the said  
James B Compbell in his behalf  
in relation to the Execution and genui-  
ness of that Power of attorney gave  
notice to said Holbrook & in due  
form send out a Commission  
to take the testimony of said Comp-  
bell in his behalf in relation to said  
Power of attorney which he proposed  
to use as evidence on the trial of  
said Cause now pending in Woodford  
County of a said. and that said  
James B Compbell might be  
advised as to what he was called upon  
to testify concerning particularly Offiant  
forward to him at Boonville City  
Jackson Territory where he resides, as  
Offiant is informed & believes, the identical  
Paper referred to in the rule & called for by



by the Court as if sworn about  
two months ago, and so affiant says  
that the said copy of said Power of Attorney  
of said is now in the hands of said  
James B. Compbell at Danvers  
City. I do so certify as affiant has  
reason to, and does believe, by which  
affiant hopes to prove that the original  
power of attorney of which that purports to  
be a copy was in good faith executed and  
acknowledged and recorded by him said  
James B. Compbell, for the uses  
and purposes therein set forth  
and therefore affiant says the proper  
record to correct now be produced to  
this Court. And now showing  
fully shown cause in this behalf  
affiant submits that he has done all  
in his power to do under the rule  
of said

And further affiant says that  
Subscribed & sworn to before me  
April 24<sup>th</sup> 1864

Edw. Peterson

John Scielley clerk  
County Court and Seal thereof



88  
E. J. Holbrook  
vs  
Jno. Nichols  
B. H. H. H.

State of Ill.  
Superior Court  
30 Geo. D. H. H.

Filed May 2<sup>d</sup> 1864.  
L. Veland  
Clk.



1. If Atty Public ~~was not~~ had no authority to take acknowledgments under Acts of 1827. & 1829. such ack has been cond by acts of 1845. Sec. 16. and of 1847 Sec 1.
2. So far as erasures in the body of the power of Atty are concerned the copy offered by Holbrook showed that they were not material.
3. The Holbrook's copy did not authorize the exclusion of the other copy, as it still left the matter in doubt. - Holbrook's copy 1<sup>st</sup> The other copy 2<sup>o</sup> but which was right - and that must be left to the jury.
4. We cannot say anything about what should have been done from the appearance of Pratte's copy, as the original is not before us. We cannot know from the transcript, that Pratte's copy had any such marks of alterations upon it, as to justify its rejection -
5. The admission of certificate of Sec of State proved nothing and the party was <sup>not</sup> prejudiced thereby - The evidence was addressed to the court -
6. Holbrook was not prejudiced by order of court requiring him to produce certificate of Sec of State as it proved nothing against him, and we cannot the injury to his feelings -
7. <sup>Rejected</sup> Proof ~~not~~ of alteration had no tendency to show it -
8. The 18<sup>th</sup> Sec of Act of 1845. provides what shall entitle a drrd to read, and 25<sup>th</sup> Sec entitles all drrds to be read in evidence, when so acknowledged as to be entitled to read - That this is the true construction see Sec 1. of Act of 1851 -



Maddell was the assignee of all bankrupts in the Southern District of New York.

Application for a continuance a matter of discretion in the Court below, and cannot be revised here.

Both parties claim under Campbell, and the debtors' claim is prior in point of time.



STATE OF ILLINOIS  
SUPREME COURT,

ss. The People of the State of Illinois,  
To the Clerk of the Circuit Court for the County Woodford Greeting:

Because, In the record and proceedings, as also in the rendition of  
the judgment of a plea which was in the Circuit  
Court of Woodford County, before the Judge thereof, between  
Edmund S. Holbrook

complaint, and John Nichol & Benjamin S. Prettyman

defendant.s., it is said manifest error hath intervened, to the injury of the  
aforesaid plaintiff

as we are informed by his  
complaint and we being willing  
that error should be corrected, if any there be, in due form and manner,  
and that justice be done to the parties aforesaid, command you that if  
judgment thereof be given, you distinctly and openly, without delay, send  
to our Justices of the Supreme Court the record and proceedings of the  
plaint aforesaid, with all things touching the same, under your seal, so that  
we may have the same before our Justices aforesaid at Ottawa, in the County  
of La Salle, on the first Tuesday after the third Monday in April next,  
that the record and proceedings, being inspected, we may cause to be done  
therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. JOHN D. CATON, Chief Justice of  
our said Court, and the Seal thereof, at Ottawa, this  
12<sup>th</sup> day of January  
in the Year of Our Lord One Thousand Eight Hun-  
dred and Sixty four.

L. Deland

Clerk of the Supreme Court.

J. B. Rice Deputy





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Edmund S. Halbrook

No.

vs.

John Nichol & Co

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WRIT OF ERROR.

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FILED

January 12<sup>th</sup> A. D. 1864

L. Leland

Clerk.

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# SUPREME COURT OF ILLINOIS.

Third Grand Division.

APRIL TERM, A. D. 1864.

EDMUND S. HOLBROOK, }  
vs. }  
JOHN NICHOL & BENJ. S. PRETTYMAN. }

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BRIEF FOR DEFENDANTS, BY WEAD AND POWELL.

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I. The plaintiff in error in this case claims to have shown title in one James B. Campbell, on the 6th day of May, 1835, by Deed from one Caldren, in whom the title in fee was vested at that time.

Afterwards, in 1842, Campbell was declared a Bankrupt, and the lands in dispute were sold by his assignee on the 18th Oct. 1850, to Holbrook, the plaintiff in error.

If Campbell had no interest in the lands at the time he was declared a Bankrupt, the sale by his assignee to Holbrook or any one else, could not convey any title.

It is certain that Campbell conveyed the lands to Johnson P. Lee, on the 6th day of September, 1836.

The only question upon this branch of the case is, whether the defendant offered legal proof to show this fact or not.

The proofs offered to establish this conveyance consisted:

1st. Of a certified copy of a Power of atty. executed by Campbell and wife to Jno. B. Newhall, authorizing him to sell said lands, dated 20th Dec. 1835.

2d. A certified copy of a Deed executed by Newhall, as attorney for Campbell and wife, to Johnson P. Lee, dated 6th Sept. 1836. The propriety of admitting these papers in evidence, we propose to consider from the record, and,



1st. *As to the power of Attorney.* The copy introduced by the defendant in the Court below was duly executed and acknowledged before Richard J. Hamilton, a Notary Public, and had the words (L S) attached thereto, signifying the place of a Notarial seal.

The plaintiff below objected to the reading of this instrument, on the ground as he stated, that the words L. S. had been improperly placed there, and that important alterations had been made in the copy.

To sustain these positions, he offered to read another certified copy of the same record, dated at some period previously to the one offered by defendant, but the court held that the alterations and interlineations were immaterial, and that he would *not then hear* or consider the Plaintiff's proof.

The defendants read their power of Attorney in evidence, and completed their proofs, when they rested, and the Plaintiff introduced his rebutting testimony.

To impeach the copy of the deed offered by defendant below, the plaintiff there and then read in evidence the identical copy of the Power of Attorney, acknowledgment, and *certificate of the Secretary of State of the State Illinois that Richard J. Hamilton was appointed a notary Public of Cook County, County* in said State in 1833, and that no other was appointed until 1837.

The court will find a full statement of the papers offered, commencing on page 29, and continued on pages 30, 31, and 32 of the Record on file.

On page 56 of the Record the court will find that these identical papers were read in evidence by the plaintiff below against the objection of the defendant below.

Then the matter stood thus. The defendant below had produced and read in evidence, a copy of the power of Attorney acknowledged before R. J. Hamilton, a Notary of Cook County, which copy purported to have a Notarial seal affixed. The plaintiff contended there was no seal to the original acknowledgment, and to prove the assertion, he introduced another copy of the same power, to which no seal was attached, *accompanied by proof that Hamilton was a Notary Public* when the acknowledgment was taken. After this, could the plaintiff be permitted to deny that Hamilton was a Notary Public when he took the acknowledgment? (The certificate is set out on page 12 of abstract.) After *he had proved for his own purposes, against the objection of defendant*, that Hamilton was a Notary Public of Cook County, Ill. from 1833 to 1837, and that no other person was a notary there, how could he deny it? If it was legal proof for him, it was equally legal proof for the defendant. The plaintiff did not except to the opinion of the court admitting it in evidence, because he offered it himself, and having put it in evidence he is estopped from denying its validity. He cannot blow hot and cold at



the same moment. He must be bound by his own act. It appears then, that the court below had proof that Hamilton *was a notary* when the acknowledgment was taken, and the court also seems to have held that the copy had not been altered, since they permitted it to be read in evidence.

The court certainly heard all the the evidence offered tending to show that the words (L. S.) had been interpolated. It heard the evidence of Judge Powell, Wead, Hopkins and Bailey. It permitted the plaintiffs certified copy to be read in evidence and *his proof to show that Hamilton was a notary, and then permitted the Power of Attorney to be read in evidence*. In doing this, the court must have considered the proof insufficient to establish the position taken by plaintiff, that the words "(L. S.)" had been interpolated. The Power of Attorney was therefore admitted in evidence, and the question arises was it properly admitted in evidence.

1st. The plaintiff alledged in his affidavit that it had been altered. The affidavit was no proof of the alteration. It was at best a proceeding laying the foundation for attacking the copy of the Power of Attorney. Neither the affidavit, nor evidence of a party can be received to prove any fact in dispute between litigants. The proof *which he did offer*, consisted of a certified copy of the same Power, made by the Clerk, previous to the one offered by defendant.

There was no proof *as to who wrote either copy*, no proof that they were written by the same hand, but the certificate of Harlow, the Clerk was attached to both. Thus far the proof was even, copy vs. copy. Then plaintiff produced his witnesses, and they failed to show any alteration. What was the court to do? There was *not even a preponderance of testimony in favor of the position of plaintiff*. Can this court say from *the record*, that the court below erred in admitting the copy of the Power? Surely not, unless they adopt the idea that Holbrook's affidavit was legal proof to establish the position assumed by plaintiff.

2d. It being proved that Hamilton was a Notary when the acknowledgment was taken, and it being in due form, it is contended that the proof was sufficient to admit the Power of Attorney to be read in evidence.

The Jury had nothing to do with the question whether in the Power of Attorney an interpolation had been made. The Court had already decided that question.

II. The Deed from Campbell to Lee was properly admitted for two reasons :

1st. The case was commenced in Tazewell Co., and taken by change of venue *upon the application of plaintiff*, to Woodford Co. If the case had been tried in Tazewell Co., where the lands lay, the deed would have been evidence, for it is a universal rule that the court will officially take notice who are the Justices of the County, in which the court is held. The plaintiff cannot by removing the cause



to another County, impose greater burdens upon the defendant than he would have to meet in the County where the suit was commenced. If the deed was *legal* evidence ~~when~~ the suit was commenced, the plaintiff cannot make it *illegal*, by taking a charge of venue to another County. This would be manifestly unjust.

2. The 18th section of the conveyance act. (Purple's revised Laws, page 157) expressly provides that if the justice who takes the acknowledgement resides in the County where the lands *conveyed are situate*, *no certificate of magistracy shall be required*.

That section enacts that it shall be sufficient proof of magistracy to produce a certificate of the County Clerk of the proper County to that effect; but if the justice resides in the County where the lands lie, no such certificate is necessary.

This section evidently prescribes a rule of evidence and is deemed conclusive upon this point.

III. The 3d point raised in plaintiff's brief has been already repeatedly decided in these Holbrook cases, and does not call for further reply.

IV. There was no error in refusing a continuance. When a party in Court says he is ready for trial, he must go on and abide the result. If he is taken by surprise, the Court may grant a postponement, a continuance, or withdraw a juror in its discretion, but as it is necessarily a matter of discretion with the Judge, his decision cannot be reviewed. It is final and conclusive.

WEAD & POWELL,  
For Defendants in error.



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E. S. Holbrook

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J. Nichol & Co

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Expts brief

Since May 6, 1864  
J. L. L. W. C. R.



# SUPREME COURT---STATE OF ILLINOIS;

~~~~~  
THIRD GRAND DIVISION;
~~~~~

**APRIL TERM, A. D., 1864.**

~~~~~  
EDMUND S. HOLBROOK,

vs.

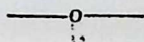
JOHN NICHOL &
BENJAMIN S. PRETTYMAN,

} ERROR TO WOODFORD.

ERRORS ASSIGNED BY PLAINTIFF IN ERROR.

1. The Circuit Court erred in permitting the certified copy of Power of Attorney of Campbell & wife to Newhall offered by defendants to be read in evidence.
2. The said court erred in permitting the certified copy of record of deed of Campbell and Newhall to Johnson P. Lee, offered by defendants, to be read in evidence.
2. The said court erred in permitting the deed of Waddell as assignee in Bankruptcy of Johnson P. Lee, to H. O. Merriman, to be read in evidence.
4. The said court erred in overruling plaintiff's motion for a continuance.
5. The court erred in excluding testimony offered by plaintiff in reference to the alteration of the certified copy of record of power of attorney Campbell to Newhall.

6. The court erred in compelling, by order of court, the plaintiff to produce the certificate of the Secretary of State of the State of Illinois, for the use of defendants.
7. The said court erred in permitting said defendants to offer and read the same in evidence.
8. The said court erred in refusing to give to the jury the 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th and 15th instructions asked for by plaintiff—and each and every of them.
9. The court erred in giving to the jury the 1st, 2d, 3d, 4th, 5th and 6th instructions asked for by defendants—and each and every of them.
10. The court erred in overruling plaintiff's motion for a new trial.
11. The court erred in awarding judgment in favor of defendants.



POINTS AND AUTHORITIES BY PLAINTIFF IN ERROR.

I.

The court refused all instructions pertaining to the fraudulent alteration of the document offered in evidence by defendants—the certified copy of record of power of attorney of Campbell to Newhall, on the ground, as is supposed, that certified copy offered by plaintiff, (as to the correctness of which no question was made,) together with the certificate of the Secretary of State, constituted legal and proper evidence of the due acknowledgment of such power of attorney—all of which I deem erroneous.

1. The Statute provides that an acknowledgment of a deed before a Notary shall be evidenced by his Notarial Seal.

See Purple's Real Estate Statutes, p. 476, Sec. 9.

—and the like provision as to Powers of Attorney.

See do. do. Sec. 16.

This Court has held the seal to be absolutely necessary.

Mason vs. Brock, 12 Ill. 273, and authorities quoted.

Booth vs. Cook, 20 Ill. 129

The Statute should be strictly pursued.

Notaries may do other acts without the use of the seal, simply because the Statute permits it.

11 Ill. 120.

17 " 60.

Dyer vs. Flint, 21 Ills. 83.

2. And there is no other provision of the Statute as to his power, or as to evidence that he is a notary, or to supply the want of a seal.

3. The Sec. of State can only give copies of what is in his office—not the facts as they appear to him. And hence the certificate is not competent.

Rev. St. p. 491, Sec. 5.

17 Ills. 55.

1 Gr. Ev. § 498, & page 623, note.

4. Such certificate of the Sec. of State was irrelevant in this; that at the time of this acknowledgment there was no law providing for the acknowledgment of Powers of Attorney before Notaries Public. The law of 1827, did not provide for the acknowledgment of deeds before a notary, (Purple's R. Es. St. 476, Sec. 9.) Sec. 16 provides that powers of attorney may be acknowledged as deeds and recorded; "*after which*" conveyances by the donees of powers should be as affectual as if made by the constituents.

The act of 1829 (id. p. 486) provides that "all deeds and conveyances, of lands," may be acknowledged before notarys public making no mention of Powers of attorney; and so the law remained till 1845. A Power of attorney is not a "deed of land;" else the Legislature has performed a work of supererogation in providing seperately for its acknoledgment in the acts of 1827, & 1845. Under the act of 1829 a Power of attorney is *casus omissus*; and the Statute 1845 is not retroactive, in letter, or spirit.

5. Plaintiff had a right to use his certified copy of the record for the specific purpose of proving a fraudulent alteration of the one used by defendants without its being used for general evidence, on behalf of defendants—at least unless claimed and adopted as such by defendants.

Pardon vs. Dwire, 28 Ills. 572.

6. The certificate was plaintiff's and is different from a bond or deed in which the other party might have an interest. The defendants nor the court had a right to it. The most that defendants could do was to give evidence of the contents, on failure of plaintiff to produce it. An attorney cannot be compelled to produce his client's papers nor testify as to the contents—much less can the party himself.

Jackson vs. Dennison, 4 Wend. 558.
2 Tidd's Practice, 802, 805.

7. The time when it was offered and the method adopted by the court are highly exceptionable. True, it is held that such matters of practice are in the discretion of the court; but the discretion of a Judge is to be exercised with *judicial discretion*, and if not, it may be reviewed; else, prodigious wrongs might be perpetrated under the name and cover of *discretion*.

3d Graham & Waterman, 975.

8. Further, the certificate does not furnish proof that the appointee ever gave bonds or took the oath, or ever undertook, or was then in, or was then performing the duties of such office; nor does it afford proof of the identity of the person.

9. As to the erasures and interlineations in said power of attorney, the rule is that if in material parts they must be explained; and if in immaterial parts even: and certainly if done fraudulently by the party using it, they render the whole void. The court erred then in excluding from the jury the proof offered by plaintiff on these points; as to the alteration—the alteration by defendant or his agent; and the motive for the alteration, on the part of defendant.

(Abs. p. 10.)

3 Phil Ev. (C. H. & E. notes) 461.
1 Green. Ev. § 559, 560
Hodge vs. Gilman, 20 Ills., 437

If the question of the alteration of the record of Power of Attorney offered by defendant was in the case then the refusal of the court to grant plaintiff's instructions was in error; and if it was not in the case then the question is as the record of a deed acknowledged before a notary and certified without a notarial seal. If this is not settled by the Statute and the decision of this court then there are no fixed facts or fixed principles in the law.

Plaintiff relies on this point as absolutely decisive of this case, and will ensure a reversal of the judgment; but there are other points in the case that he is willing and desirous to have decided, and they will be briefly considered.

II.

The admission in evidence of the copy of record of deed of Campbell (by his attorney Newhall) to Lee was in error, as there was no evidence (Abs. p. 6) that Hull, who took the acknowledgment, was a Justice of the Peace.

The court sitting in Woodford could not take judicial notice of the officers of Tazewell county. Though a deed acknowledged before a Justice of the county where the land lies may be *recorded* without evidence of his official character, (Scates 964,) and though a record of a deed so acknowledged and recorded may be used any where in the State as evidence, yet, out of the county it cannot be discovered, except by evidence, that he was a Justice of the Peace.

Chambers vs. The People, 4 Sc. 356.

III.

It was not shown by proper evidence that Wm. C. H. Waddell was appointed the assignee in Bankruptcy of Johnson P. Leee. The law requires the grantee in assignee's deed to show the decree of court appointing the assignee. The decree appointing a general assignee, though accompanied with evidence that the court dealt with him in fact as the one duly authorised to control the bankrupt's effects, does not come within the law. (Abs. p. 7 & 8.)

IV.

The plaintiff's affidavit (Abs. p. 8, 9) presents good cause for continuance, and it was error to refuse it. The Statute p. 415 affixes no limit as to the time of making the motion. A surprise produced by the trick and fraud of the opposing party should be treated differently from that arising from any other cause.

3 Graham & Waterman 951.

V.

The law affecting defendants in having taken title from the same source with plaintiffs, and as to the recitals of their deeds and proceedings of court under which they claim is correctly stated in the instructions asked for by plaintiff (4th & 11th Abs. p. 13) and they should have been given, and incorrectly stated in instructions given for defendants, and they should not have been given.

By taking a deed of Bostwick, particularly with the rehearsal of a decree (Abs. p. 2,) that he, or his assignor had title, interest, or claim, as of that date, either 1843, the time

of the Bankruptcy or 1851 the time of the decree of sale, is an admission of title in him at that date, and proof that Campbell sold the land in 1836, does not overcome such admission; for *non constat*, but that he received the title back again.

On account of such admission (or estoppel in full it would rather seem to be) claimants, in order to overcome it, should make proof that they were mistaken as to the title of Bostwick, and that in fact the title under Campbell's first deed is still a valid, paramount, subsisting title.

On account of such admission, in order to overcome it, claimants should show themselves connected with such title by legal proof of title, else no force would be given to such admission, and it might as well be deemed not to have been made.

The recital in proceedings of court through which they claim that the title of Johnson P. Lee (Abs. p. 7) was "*a shadow of title, or imaginary interest, of no real value*," fastens upon claimants the admission that such pretended title was not a subsisting paramount title, but only a *shadowy, imaginary* thing; and both admissions together are to the effect that Johnson P. Lee (if they will have it that he obtained title) conveyed it back directly or indirectly to Campbell or Bostwick before said decree of court, on the motion of Bostwick, was made.

Defendants propositions that the recitals of their own deeds constitute evidence in their behalf, is also erroneous. That to constitute the deed of Jones to Prettyman evidence in their behalf in proof of title, it was necessary to show the decree of court on which it was founded, is a proposition that needs no defence.

Owen vs. Robbins 19 Ills. 545, 555.
Holbrook vs. Brenner, of last Term.
1 Phil. Ev. (C. H. & F. notes) 471 & note 130.
16 Barb. S. C. R., 212.
Wynkoop vs. Cowing 21 Ills. 570.
Byrne vs. Morehouse 22 Ills. 603.
Lee vs. Genty 26 Ills. 76.

VI.

The instructions given for defendants (Abs. p. 15,) were objectionable, as being on abstract questions of law, abstruse, erroneous, and calculated to mislead the jury, and should not have been given.

The 2d instruction is an abstract law proposition, but is not law. It goes in a circle, and is absurd, to a lawyer; but probably misled the jury.

The 1st and 5th are drawn in such a way as to produce the belief in the minds of the jury that certain matters were in evidence, which in fact were not so, and which they had a right to believe and act on as evidence; and hence they were erroneous, and, as it would seem, the jury were misled thereby.

E. S. HOLBROOK pro ss.
H. B. HOPKINS, Att'y.

No 88
Hoolbrook
Nichol Pettyman
Ftts Romb &
Anthonies

Genl April 26. 1864
J. G. Linnell M^r

H. H. HOLBROOK

SUPREME COURT---STATE OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1864.

EDMUND S. HOLBROOK,

VS.

JOHN NICHOL &
BENJAMIN S. PRETTYMAN.

ERROR TO WOODFORD.

PLAINTIFFS' ABSTRACT.

Page. [Action of Ejectment originally in Tazewell Circuit Court, brought in 1859 by plaintiff
in error against defendant, John Nichol, for the west half of the north east quarter of sec-
tion thirty-five, Town twenty-five north of Range five west of third P. M., of Tazewell Coun-
ty; plea by defendant Prettyman as landlord; first trial by the Court; judgment for the
defendants; new trial awarded under the Statute; change of venue to Woodford; second
trial by jury; verdict and judgment for plaintiff; new trial under the Statute; third trial
by jury at the December Term, 1863, verdict for defendant; motion for new trial over-
ruled; judgment for defendants, and Bill of Exceptions.]

"The plaintiff, to maintain the issues on his part, offered the following evidence:

1st For the purpose of showing that the defendants claimed title from a common source with plaintiff, to wit: William C. Bostwick, as assignee in Bankruptcy of James B. Campbell, a certified copy of a deed of William C. Bostwick, as such assignee, to William B. Doolittle, for the property claimed from the records of Deeds of Tazewell county, in words and figures following, to wit:

Page.

WILLIAM C. BOSTWICK assignee
TO
WILLIAM B. DOOLITTLE.

No. 14082.
Recorded
April 25th, 1853.

8 Whereas, by a decree of the Honorable District Court of the United States of America for the District of Illinois, sitting as a Court of Bankruptcy, James B. Campbell of the county of Jo Daviess in said District was decreed a Bankrupt, which said decree bears date the third day of October, A. D., 1842, and is in the words and figures following, to wit :

[Then follows in the deed a copy of such decree in the usual form, with the usual rehearsals, and then as follows :]

9 "Have as such assignee sold the property hereinafter described at public auction at the Court House in Galena in said county of Jo Daviess, having first duly advertised the same according to law, and said sale being made in pursuance of a decree of said District Court, dated 15th May, 1851, and which said decree is in the words and figures following, to wit :

In the matter of the Petition of
WILLIAM C. BOSTWICK, Assignee
in Bankruptcy of JAMES B. CAMP-
BELL, declared a bankrupt.

In the United States
District Court within and for
the District and State
of Illinois.

Petition for the sale of real estate of Bankrupt.

10 And now on this day this cause coming on to be heard, on the petition of William C. Bostwick, assignee of James B. Campbell a bankrupt, and upon the exhibits and proofs, and it appearing to the court that the said James B. Campbell has an interest or claim in and to the following real estate situate in the county of Tazewell and State of Illinois, to wit: (here follows a description of the tracts of land and lots of ground in this deed hereafter mentioned and described, including the whole and every the tracts of land and lots of ground hereinafter mentioned and described and including the whole and every the tracts of land and lots of ground hereinafter described,) which said lands were not contained in the schedule filed in said court by said Bankrupt. It is therefore ordered and adjudged by said court that the said assignee, William C. Bostwick, proceed to sell all the real estate, right, title and interest in him vested as such assignee in, and to, the lands above specified, in such manner, upon such terms, and at such times as is specified in the rules of this Court heretofore made and still in force in regard to the sale of the real estate of Bankrupts. It is further ordered that said assignee make report of his doings herein to this court at the earliest opportunity; at which sale William B. Doolittle, of Tazewell county, State of Illinois, hereinafter named, became the purchaser," &c.

11 [The rest of the deed is in the usual form, enumerating this and other property, dated 17th of June, 1851, duly acknowledged and certified.]

"2d. For the same purpose, a certified copy from said records of deed of John A. Jones, Master in Chancery, to defendant Prettyman for said land in words and figures following, to wit :

Page.

JOHN A. JONES, Master in Chancery,
To
BENJAMIN S. PRETTYMAN.

No. 18666,
Recorded
January 8th, 1856.

Know all men by these presents, that whereas, at a term of the circuit court of the county of Tazewell"—

13 [This deed rehearses the fact that in said Court, Oct. Term, A.D. 1855, Amos L. Merriman obtained a decree against the heirs of William B. Doolittle, and the heirs of Halsey O. Merriman, and purports to recite a copy of such decree, which finds that said Amos L. Merriman, Halsey O. Merriman and William B. Doolittle bought this and other lands in partnership, some in the name of Doolittle, and some in the name of H. O. Merriman, and orders the sale by the Master of this and other lands for the payment of the partnership debts, in purchase of which said deed purports to have been made, dated Dec. 1st, 1855, duly acknowledged and certified.]

18 "3d. A deed by William C. Bostwick as such assignee of James B. Campbell to plaintiff for said land, and the Recorder's certificate in words and figures following, to wit:—"

25 [Deed in the usual form containing copy of decree of Bankruptcy of James B. Campbell and appointment of said Bostwick assignee, conveying this with other lands to plaintiff, dated 18th October, 1850, duly acknowledged, recorded 28th Oct., A.D. 1850, supported by certified copy of decree in Bankruptcy, Oct. 2d, 1842, and also the 51st rule in Bankruptcy, as to sale of real estate.]

"4th. A certified copy of deed from said Records of Enos Coldren to James B. Campbell for said land, with full covenants of warranty, dated the 6th day of May, A.D. 1835.

Plaintiff then showed that said Coldren was the owner of said land in fee simple at the date of said deed, by title derived from Government.

Plaintiff here rested his case."

26

"The defendants, to maintain the issue on their part, offered in evidence a certified copy of a power of attorney from said records of James B. Campbell & wife to John B. Newhall in words and figures following, to wit:

27

JAMES B. CAMPBELL
To
JOHN B. NEWHALL.

} Recorded
Feb. 7th, 1836.
Power of Attorney.

Know all men by these presents, that we, James B. Campbell of Chicago, in the county of Cook and State of Illinois, and Sarah A. Campbell his wife, who signed this instrument of all her right of dower in the after mentioned premises which to convey power is hereafter given, have made, constituted and appointed, and by these presents do make constitute and appoint John B. Newhall our true and lawful and sufficient attorney for us, and in our names, and as fully and effectually as we ourselves might do, to make, execute, deliver and acknowledge all deeds and other instruments of conveyance of any lands in the county of Tazewell and State of Illinois, belonging to the said James B. Campbell, which

Page. said deeds and other instruments of conveyance shall have the same force and virtue as if made, executed and delivered and acknowledged by ourselves and each of us in our own proper persons and for and in behalf of the said Sarah A. Campbell to join in the execution of said deeds or other instruments of conveyance of lands belonging to the said James B., and in said county of Tazewell and in her name to relinquish all her right of dower therein and acknowledge the same with like force and virtue as she herself could do if personally present, giving and granting with the said John B. Newhall for me the said James B. Campbell and for my use, full power and authority in all matters relating to said lands, and for the purposes aforesaid, to do whatsoever shall to him seem expedient, and upon the receipt of any dues obligations or monies for me and in my name to make execute and deliver acquittances or other sufficient discharges thereof, hereby ratifying and confirming whatever our said attorney shall do in the premises. In witness whereof we have set our hand and seals, this twentieth day of December, A.D. 1835.

28

J. B. CAMPBELL. [Seal.]

SARAH A. CAMPBELL. [Seal.]

STATE OF ILLINOIS. }
COOK COUNTY. }

This day personally came before me, the undersigned, James B. Campbill and Sarah Ann Campbell personally known to me as the real persons who executed the foregoing power of attorney, and acknowledged that they executed the same freely and voluntarily for the uses and purposes therein set forth; she the said Sarah Ann, wife of the said James B., having been first examined separate and apart from her said husband, acknowledged that she executed the same freely and voluntarily for the uses and purposes therein set forth, without persuasion or coercion on the part of her said husband.

[L.S.] Given under my hand and seal (notorial,) at Chicago, this 20 day of January, A.D. 1836.

RICHD. J. HAMILTON, Notary Public.

STATE OF ILLINOIS, } ss.
TAZEWELL COUNTY, }

I, Geo. H. Harlow, clerk of the Circuit Court and ex-officio Recorder in and for said county, do certify that forgoing 2½ pages contain a full, true and correct copy of power of attorney given by J. B. Campbell & wife to John B. Newhall, and recorded in book No. 1 Power of attorney on page "A" of Mortgages on page 209.

Witness my hand and official seal, this 2d day of November, A.D. 1863.

[SEAL.] [Stamp.]

GEO. H. HARLOW, Clerk &c.

29

Page. —to the reading of which plaintiff objected on the ground of the erasures and interlineations, and that there was no sufficient evidence of a notarial seal attached to the acknowledgment, and also on the ground that the same, or the record itself, had been altered, fraudulently or otherwise, by interpolating the letters "LS", and a scroll, as, and for, the seal of the notary public taking the acknowledgment; that the record formerly had no such letters or scroll; and proposed to make proof thereof by the appearance of the paper and other evidence; and for this purpose offered to read to the court a certified copy of the record of power of attorney, —to which was attached then and there a certificate of the Secretary of State of the state of Illinois, that Richard J. Hamilton was appointed a notary Public of Cook county in said state in 1833, and that no other was appointed until 1837, which certificate plaintiff, at the same time he made the offer to read to the court his certified copy of the record aforesaid, stated he had in his possession,—in words and figures following, to wit:

30 [This record of Power of Attorney is the same as that already given, except the erasures,
31 and the word "aforesaid" is not interlined, and there is no seal or scroll to the acknowledgment; with this certificate:]

32 "STATE OF ILLINOIS. }
TAZEWELL COUNTY. } ss.

I, George H. Harlow, clerk of the circuit court and ex-officio Recorder in and for said county, do hereby certify that the foregoing is a true copy of the Power of attorney as therein named as fully as the same appears of Record in Book "A" of Mortgages, page 209 in my office.

[SEAL.] Witness my hand and official seal hereto affixed at Pekin, this 14th day of August, A.D. 1863.

[Stamp:]

GEO. H. HARLOW, *Clerk.*
per A. P. Griswold, *Deputy.*"

"The court declined to consider the question of fraud or alteration, stating it was a matter to be passed on by the jury; that the interlineations and erasures were not in material parts, and permitted the same to be read in evidence, to which plaintiff then and there excepted."

"Defendants then offered in evidence a certified copy of deed from said Record of Campbell and wife, by their attorney, to Johnson P. Lee, in words and figures following, to wit:

33 Deed No. 4366, Recorded 1st Feb. 1841.

This indenture, made this sixth day of September, A.D. 1836 between John B. Newell

Page. and James B. Campbell and Sarah A. Campbell of the first part, and Johnson P. Lee of New York of the second part, Witnesseth, that the said party of the first part, for and in consideration of two thousand dollars, to us in hand paid at and before the delivery of these presents, the receipt of which is hereby acknowledged, have granted, bargained and sold, and by these presents do grant, bargain and sell, unto said party of the second part all of the following described real estate, viz : all of the real estate which we or either of us own in the county of Tazewell and State of Illinois wherever the same is situated and however the same is described, either as Lots in Pekin or Lands in said county, and which has not been heretofore sold and conveyed by us or either of us, To have and to hold the same unto him the said party of the second part his heirs and assigns forever.

In witness whereof the said John B. Newhall in person, and the said James B. Campbell & Sarah A. Campbell his wife by said John B. Newhall their attorney in fact, have hereunto set their hands and seals this sixth day of September, A.D. 1836.

JOHN B. NEWHALL. [Seal.]

JAMES B. CAMPBELL, [Seal.]

By JNO. B. NEWHALL atty. in fact. [Seal.]

SARAH A. CAMPBELL, [Seal.]

by JNO. B. NEWHALL atty. in fact. [Seal.]

34 STATE OF ILLINOIS,)
COUNTY OF TAZEWELL.) ss.

I, Alden Hull, an acting Justice of the Peace in and for said county, do hereby certify that on this day personally came before me, John B. Newhall in person and as attorney in fact for James B. Campbell and Sarah A. Campbell his wife, and he is personally known to me to be the real person he represents himself to be, and who executed the foregoing deed and acknowledged that he executed the same for himself and as atty. in fact for said James B. Campbell and Sarah A. Campbell his wife for the uses and purposes therein expressed.

Given under my hand and seal at Pekin, this eight day of September, A.D. 1836.

ALDEN HULL, J. P. [Seal.]

[Duly certified by the Recorder.]

35 —“to the reading of which plaintiff objected because there was no sufficient evidence of its execution by Campbell, for the reasons that there was no evidence of the official character of person taking the acknowledgment, and could not affect the rights of the plaintiff.

The court overruled said objection, permitted said copy of deed to be read in evidence, to which decision plaintiff then and there excepted.”

“Defendants then offered in evidence two certified copies of proceedings in the Bank-

Page. rupt Court of the District of New York as to the Bankruptcy of Johnson P. Lee and the appointment of W. C. H. Waddell assignee, in words and figures following, to wit :

36 [Certified copy of this order, Jan. 4, 1842.]

"In the matter of
.....
Bankrupt. } ORDER.

Ordered that William Coventry H. Waddell be appointed the official or General assignee as required by the Rules this day adopted in cases arising under the act entitled," &c.

37 [Then a decree declaring Johnson P. Lee a Bankrupt Aug. 3d, 1843, and also:]

"And it is furthermore ordered by the Court that the clerk certify and deliver this decree to William C. H. Waddell, the official or general assignee in bankruptcy, appointed and designated under the rules and regulations of the court."

38 [Decree of discharge, Feb. 14, 1844. Then this petition filed May 12, 1851.]

40 "In the matter of
JOHNSON P. LEE,
a Bankrupt. }

The official or general assignee, to whom the estate of said Bankrupt was confided, Reports : That application has been made to him setting forth the fact that a shadow of title, or imaginary interest, of no real value, in property not set forth in the schedule filed, has become vested in the assignee, by the decree in said matter, and asking for a conveyance of said interest in consideration of paying the costs and charges of the assignee in the matter, and due deliberation being had therein by the assignee, he now moves the court for the following order, to wit : Ordered That the official or general assignee release
41 or convey for the nominal consideration of one dollar, and upon the costs and charges of the assignee being paid, all the interest which said bankrupt had at the time of filing his petition in Bankruptcy, in the followig described property, to wit :

'Lots Nos. one and two, in Block sixty six, in Campbells and Newhall's Addition to the Town of Pekin, Tazewell county, Illinois, or any other lots in said addition comprised in the east half of the southwest quarter and west half of the northeast quarter of section 35, Township 25 north, of Range 5 west,'

Wm. COVERTRY H. WADDELL,
Official or General Assignee."

42 [Then this order made therein, May 12, 1851.]

"On motion of Wm. C. H. Waddell, the official or General assignee, and on reading and filing his official report, Ordered that he convey or release certain lands in the State of Illinois in conformity with, and according to, the description in said report of said assignee filed this day.

Page. [Then a petition and order to change the description of these lands, Sept. 10, 1857.]
43

—to the reading of which plaintiff objected. The court permitted the same to be read
46 in evidence, and plaintiff then and there excepted.”

“Defendants then offered in evidence a deed by W. C. H. Waddell as assignee in bankruptcy of Johnson P. Lee to H. O. Merriman for this land, with other lands, in words and figures following, to wit :”

[This deed recites the above named decree of Bankruptcy of Johnson P. Lee, and also this said further order :]

“And it is furthermore ordered by the court that the clerk certify and deliver this decree to William C. H. Waddell, the official or general assignee in Bankruptcy, appointed and designated under the rules and regulations of the court.”

[then this rehearsal :]

“And whereas I, the said Wm. Coventry H. Waddell, had, before the date of the decree aforesaid been duly appointed by the *Circuit and District Courts of the United States* for the Southern District of New York official or general assignee in bankruptcy, and given a bond pursuant to said Statute, and the rules of the said Court respectively as appears by
48 orders duly entered on the minutes of the said courts respectively.”

[Then said order of appointment as official or general assignee is recited, a reference to said orders of sale, and a conveyance to Halsey O. Merriman.]

49 “—all the right, title and interest which the said Bankrupt had, and which by virtue of the decrees and orders above recited and of the act entitled ‘an Act to establish a uniform system of Bankruptcy throughout the United States’ as aforesaid, became vested in me and which I have a right to convey,” &c.

[—date 12th Sept. 1851; duly acknowledged and recorded March 24, 1852.]

52 “—to the reading of which plaintiff objected because it did not sufficiently appear that Waddell was the assignee of said Lee, nor that he had power to convey his property in such manner. The court overruled said objections and permitted said deed to be read in evidence; to which decision plaintiff then and there excepted.”

35 Defendants here rested.

“The plaintiff then moved for a continuance, and on this motion filed his affidavit in words and figures following, to wit :

‘Edmund S. Holbrook, plaintiff in this case, being first duly sworn deposes and says, that he cannot with safety to himself proceed further with the trial of this cause at the present time, for the following reasons. He says that since the trial commenced, and after plaintiff had shown title from the Government to the land described, deriving the same through James B. Campbell, the defendant Prettyman, in order to show title to the same property in himself, from said Campbell, before the title derived as aforesaid to said plaintiff, offered in evidence a certified copy of a power of attorney of said James B. Campbell
53

Page. and his wife to one John B. Newhall, which said plaintiff makes a part of his affidavit, and which the court has permitted to be read in evidence by defendant. Affiant says that he thoroughly examined the record of said power of attorney, a certified copy of which defendant pretends that he has offered, about five months since at Pekin, Illinois, in the office of the clerk of the Circuit Court of Tazewell county, and he says positively and without any reserve, that there was no seal, no scroll, no letters "L S," or anything attached to the acknowledgment of the power of attorney so recorded, or any thing indicating a notarial seal in any manner whatever upon said record of the acknowledgment of said power of attorney; that he took then a certified copy of said record which he has with him, made by the clerk of said court at affiant's request, and which he offers in evidence of this motion, and makes a part of this affidavit, and so affiant says that said document offered by defendant purporting to be a certified copy of such record, as it was offered by defendants, is not a true copy of said record; but he claims it to be true, and he believes it to be true, that the said document, since signed by the clerk, has been fraudulently altered by said defendant, or some one for him, by writing in, or interpolating in said document the letters "L S" as, and for the seal notarial of the the notary public purporting to make the certifi-

54 cate of acknowledgment, for the purpose of fraudulently defeating the said title of said plaintiff; affiant says that this is a case of great importance to him, that the property in controversy is worth from four to five thousand dollars, and that this is the third trial of this cause. He says that heretofore, on the preceding trials, defendant has relied on the weakness of plaintiff's title and such defence as the Statutes afforded him by possession under color of title and payment of taxes for 7 years before suit, and has not made use of, or attempted to make use of said copy of record. Affiant says that he was taken entirely by surprise when defendant offered said pretended copy in evidence. He knew what the record was, and he did not anticipate that defendant would resort, or attempt to resort to the use of a document in his defence altered fraudulently or otherwise. Affiant believes he can offer at the present time some evidence tending to show such alteration of such pretended copy of record, and which to his own mind, with what he knows himself, is perfectly satisfactory; but he fears he cannot present to the jury, at this time, such proof as will render it safe for him to proceed further with the trial now, considering the state of the suit and the magnitude of the interest involved. He believes that, by the next term of this court he can prove the state of the record as he has hereinbefore set it forth; that since this matter arose he has not had opportunity to consult with witnesses, but he believes,

55 without doubt, he can prove the same by George H. Harlow the clerk of the said Tazewell Circuit Court, who resides at Pekin, and, as affiant supposes, is now at Pekin, a distance of 20 or 30 miles from this place. That he can prove the same also by the deputy of said clerk, Mr. Griswold, now also a resident of said Pekin, and as he supposes at said Pekin now; and affiant does not know of any witness now under his control by whom he can prove said fact as to the true state of the record, or whom he can procure during the progress of the trial. Affiant says that this affidavit is not made for delay, but that justice may be done,"

"—and also exhibited to the court on this motion, both of said certified copies of the record of said power of attorney.

Page. The court overruled said motion, and plaintiff excepted."

56 "The plaintiff then, according to the suggestions of the court, raised the question for the jury as to the alteration of said certified copy of said power of attorney, or the record itself, by the interpolation of the letters "LS," and a scroll, as, and for, the seal of the notary public purporting to take the acknowledgment of said power of attorney: and on this motion offered said certified copy of record of power of attorney before offered by plaintiff to the court, to which objection was made by defendants. The court permitted the same to be read."

58 [Plaintiff then offered to read an affidavit for the continuance of this cause at Dec. term, A.D. 1862, made by defendant Prettyman, in which he stated he could not proceed to trial without the presence of Isaac B. Doolittle, by whom he could prove an actual occupation of the premises by William B. Doolittle in 1850. The defendants objected; objection sustained by the court, exceptions taken by plaintiff—but afterwards, while Prettyman was addressing the jury, he used said affidavit of his which he claimed to be in his hand writing, 60 whereupon on plaintiff suggesting that he might use it, the same went to the jury.]

59 "Plaintiff called Mr. Powell as witness, who being sworn, testified that he was attorney for defendants in this case, and had been for near three years; that he never saw said copy of power of attorney offered by defendants till within one or two days since. On being asked what defence in this suit defendants had heretofore relied on, defendants objected to his answering. The court sustained the objection, and plaintiff then and there excepted. On being shown said copy, he testified that he was acquainted with Prettyman's hand writing, and that he was positive that said letters "LS" were not in Prettyman's hand writing.

Plaintiff then called Judge Weed as a witness, who being sworn, stated that he was attorney for defendant in this cause and had been for a year or two—never saw the power of attorney till yesterday. The record had lately been found as he understood it, and that the letters "LS" he did not think was in the handwriting of deft. Prettyman.

60 Plaintiff then called H. B. Hopkins as a witness, who being duly sworn, testified that he was acquainted with the handwriting of defendant Prettyman; that he could not so well tell one's hand by seeing only a few letters—thought said letters and scroll were in Prettyman's handwriting; that it appeared to him that said letters and scroll were written at another time than the body of the instrument and with different ink, as the color was a little different; that he knew Geo. H. Harlow Clerk of the Circuit Court of Tazewell county; that he knew his handwriting; that the certificate as to the record was in his hand; that he knew Mr. Griswold the deputy of Harlow, and knew his handwriting; that the record offered by plaintiff was in Griswold's handwriting; that the body of the record offered by defendants was not in the handwriting of Harlow or Griswold. On being asked in whose hand it was, defendants objected. The court sustained the objection, and plaintiff then and there excepted.

The plaintiff here closed:

Page. The defendants called Barnard Baily as a witness, who being sworn, said that he knew the handwriting of Prettyman; did not think the "LS" and scroll were in Prettyman's handwriting. It might be, but should not think it was; that in his opinion the letters "LS" were in the same handwriting as the body of the instrument. On being asked by plaintiff if he knew in whose handwriting the body of said record was written, he said he did. Defendants objected to his stating. The Court sustained the objection, and plaintiff then and there excepted.

Plaintiff then proposed to prove by said witness that the body of the instrument was in the handwriting of Samuel P. Baily, who was then and had been for three or four years in the employ of said Prettyman.

Defendant objected to witness answering. The Court sustained the objection, to which decision plaintiff then and there excepted."

This was all the testimony in the case, and the testimony was closed.

61 "During the argument by council before the jury, it was claimed by defendants that a certain document pertaining to the official character of Richard J. Hamilton had been read in evidence by the plaintiff, but had been now suppressed by him. All this was denied by plaintiff. After the argument was entirely closed the court enquired concerning it, when defendant Prettyman and his counsel made the same claim; that the document was pinned to the certified copy of the power of attorney offered by plaintiff and had been separated therefrom by said plaintiff and suppressed.

It was stated by plaintiff and his counsel that he had never offered said document in evidence; that at the first, there was such a document pinned by him, at some former time to such copy of record, and was so when he took said record from among his papers during the trial, but that he never offered it in evidence; and in fact before he made any use of said record, he unpinned it and put it away, as he had a right to do.

62 The Court stated that he had no recollection of having seen the paper or heard it read' and made no decision as to whether it had been formally offered to the jury or not; that the person offering testimony would ordinarily know the best what he had offered, but ordered said plaintiff to produce said paper to the court. The plaintiff denied the power of the court to make such order, and protested against it; that the paper was his private property and under his exclusive control; but produced the paper to the court under such order, and then and there excepted to such order.

The Court then asked the plaintiff if he wished to offer it as evidence. Plaintiff said he did not. The Court then asked the defendant if he wished it to go to the jury as evidence. Defendant said he did, for the reason that it was attached to the plaintiff's certified copy of the record of the power of attorney when he, plaintiff, offered it in evidence. The plff. objected because the paper was his own private property, and that in no sense, nor for any purpose had the party or the court a right to use it; that it was offered too late, and that it was not relevant, competent, or sufficient legal testimony on the part of defendants, for any matter properly before the jury. Said document is in words and figures following, to wit:

Page.

STATE OF ILLINOIS,
SECRETARY'S OFFICE, }

Springfield, September 2d, 1853.

I, O. M. Hatch, Secretary of State of the State of Illinois, do hereby certify that Richard J. Hamilton was appointed and commissioned by the Governor of this State a Notary Public for the county of Cook and State of Illinois on the tenth day of February, A.D. 1831, and I further certify that the next following person appointed and commissioned Notary Public for Cook county was Levi D. Boone, whose commission was dated January 27th, A.D. 1837; all of which facts appear of record in my office.

Witness my hand and the Great Seal of State, at the city of Springfield,
[SEAL.] the day and year above written.

[Stamp.]

O. M. HATCH, Sec'y. State.

The court overruled the objections of plaintiff on the ground that defendants had a right to the use on trial of any papers that pertained to the matter in issue that plaintiff might have in his possession; and for this reason and from the statements of counsel that they supposed said document had been given in evidence to the jury before the evidence had closed, and from the admission of plaintiff that it had been attached to the certified copy of the record of the power of atty. by plaintiff after it had been exhibited to the court and offered in evidence to the court, permitted said paper to go to the jury: to which decision plaintiff then and there excepted."

*probably a
mistake for
"detached from"*

The plaintiff then asked, and the court gave the following instructions to the jury:

64 1. That that the plaintiff has shown, by proofs offered by him, title in fee simple in himself to the property described in the declaration derived from the United States, and unless the defendant has, by his proof, defeated such title, is entitled to receive the verdict of the jury of title in him to said land in fee simple.

2. The testimony offered by plaintiff to show that defendants *claimed* title to the premises in controversy from a common source of title with the plaintiff, to wit: the certified copy of deed of William C. Bostwick to William B. Doolittle, and certified copy of deed of John A. Jones, Master in Chancery, to defendant Prettyman, were competent and sufficient evidence to prove *prima facie* a claim of title from a common source of title with the plaintiff, to wit: William C. Bostwick as assignee in Bankruptcy of James B. Campbell; but were not alone sufficient evidence to prove title in defendant.

3: William B. Doolittle, by taking title from William C. Bostwick, is deemed in law, and in fact, to have admitted that said William C. Bostwick, at the time, had some rights, interest or claim in the premises conveyed by such deed, as assignee of James B. Campbell, and he and all those claiming under him, through such deed, are deemed in law to have admitted whatever is set forth or rehearsed in said deed."

The plaintiff then asked the court to give the following instructions to the jury, to wit:

65 4. Upon the proof made by plaintiff of title in him, and that defendants claimed title from a common source with him, the defence offered by defendants of a prior conveyance by Campbell before plaintiff's title from Campbell attached, is not a good defence to the

Page. case made by the plaintiff. unless defendants have shown, by good and competent evidence, that said title is still outstanding. Upon proof made by plaintiff as stated in the last instruction, it is not enough for defendants, in order to defeat the title of plaintiff, to show a prior conveyance without showing by competent evidence that they connect themselves with such title.

5. The defendants have not shown their title to be connected with any anterior title by good and legal evidence.

6. As to the certified copy of deed of Campbell by his attorney in fact, John B. Newhall, offered in evidence by defendants, the jury are instructed that, unless the record of the power of attorney by said Campbell to said Newhall shows that there is a notarial seal recorded as a part of the certificate of acknowledgment, then there is no evidence before the jury of the conveyance claimed by defendants under such power of attorney.

7. The certified copy of the record of the power of attorney offered by defendants, alone considered, and without proof to the contrary, showed the state of the record, at the date of the certificate of such record; and the certified copy of the record offered by plaintiff, alone considered, showed the state of the record at the date of the certificate of such record; and the jury are to consider and decide, from all the proofs and circumstances shown pertaining to such discrepancy of the two copies, which is the correct one, and find accordingly.

8. And in deciding which of said two copies is correct, the jury have a right to consider the appearance of the documents, every word and every letter, as well as their general appearance; the interest and action of the parties as shown by proof; and any evidence in the case.

9. The jury have a right to consider, by the proofs in the case, whether said record, as to said power of attorney, or said certified copy of record offered by defendants, has been altered, or not, and find according to preponderating evidence; and if the jury find by preponderating testimony that the certified copy of record of power of attorney offered by plaintiff is the correct one, and that the record thereof offered by defendants is not the correct one, they will find for the plaintiff.

67 10. Upon the question of alteration of the record, or copy of the record, the jury are instructed that, as to that question in this case it matters not by whom such alteration (if any) was made. The question is, which of the two records offered in evidence is the correct one.

11. The jury are instructed that the plaintiff introduced the deed from Bostwick, assignee of Campbell to Doolittle and from John A. Jones, Master in Chancery to B. S. Prettyman, for the purpose of showing the title under which defendants claim; and it was competent for the plaintiff to do that, although the said deed might be so defective as not to convey any good title. But if the defendants rely upon the deed which Jones, Master in Chancery, to Prettyman as a link in their own title from Campbell to themselves, they

Page. must show a good deed; and that deed to be a good deed must be accompanied with evidence that a court of competent jurisdiction has made a decree authorizing such deed.— There is no evidence of such decree before the jury; consequently defendants do not connect themselves with said title by means of the said deed. The said deed, though introduced by plaintiff, it is yet just as much for defendant's benefit as if introduced by them; but the said deed conveys title to no one unaccompanied by said decree; the fact that said deed recites such a decree is not evidence that there was such a decree; the deed should be accompanied by other evidence of such decree.

68 12. The jury are instructed that a Notary Public can make a valid certificate of the acknowledgment of deed by affixing his official seal thereto; and if such certificate is made and such official seal omitted, such defect cannot be cured by a certificate of the Secretary of State to the official character of such notary.

13. The jury are instructed that the plaintiff's title from Bostwick, assignee of Campbell, being older than defendant's title from the same source, is therefore the better title, and entitles the plaintiff to your verdict; unless the defendants have shown that Campbell was divested of his title by conveyance under the power of attorney from Campbell to Newhall; and if the jury believe from the evidence that the letters "LS" and scroll indicating the notarial seal have been added to the certified copy of said power of attorney since the same was certified by the clerk, then the said power of attorney is not in evidence before the jury; and there is then no evidence that said Campbell was divested of title before his said Bankruptcy, and the plaintiff is entitled to your verdict.

14. The jury are instructed that the certificate of the Secretary of State that Richard J. Hamilton was a notary public is not sufficient evidence of his official character without evidence that said Hamilton filed his official bond according to law.

15. The jury are instructed that the certificate of the Secretary of State of the official character of Richard J. Hamilton as a notary public, is not sufficient evidence of such official character without proof of his having taken the official oath required by law.

69 All of which instructions the court refused to give, and plaintiff excepted.

The defendants asked the following instructions to the jury.

70 1. That although *prima facie* the deed from John A. Jones, Master in Chancery, to Benjamin S. Prettyman only conveys the title which William B. Doolittle acquired under the deed to him from Bostwick, as assignee in Bankruptcy of Campbell, yet if the jury shall believe from the evidence that said William B. Doolittle or Merriman had before acquired the title to the property in question, under the Bankrupt-deed from the assignee of Johnson P. Lee, then in that event the deed from Jones to Prettyman would convey all the title that Doolittle and Merriman had, and if the jury shall further believe from the evidence that James B. Campbell had conveyed the land in controversy to said Johnson P. Lee before he became a bankrupt, then the jury will find for the defendants.

2. The court instructs the jury that, by the law, no man is estopped by any deed, or any recital in any deed, except such as receive title through such deed; and that, in deeds where no title passes, no estopped results.

3. The court instructs the jury that in every case in ejectment the plaintiff must recover alone upon the strength of his own title, and not from any weakness or defects in the title of defendants.

4. The court instructs the jury that all the papers and deeds admitted in evidence to the jury are to be considered by them in making up their verdict; and unless from all of the deeds and evidence given the jury believe the plaintiff has the older and better title, they will find for the defendants.

5. That when a party offers a deed in evidence, all of the provisions and recitals in such deed are in evidence with it; and if the jury believe from the evidence that the deed from Jones to Prettyman, offered in evidence by plaintiff, contains a recital of the decree authorising the sale and conveyance of all the interest of H. O. Merriman in the land in question, and they further believe from said deed and recitals that said interest of H. O. Merriman was so sold and conveyed to Prettyman, it makes no difference in law which party introduced that deed; when it was read to the jury it was, together with all its recitals, in evidence before them; and it is to be considered by them in making up their verdict.

6. The court instructs the jury that if they believe from the evidence that Richard J. Hamilton was, at the date of said certificate of acknowledgment to the power of attorney from James B. Campbell to John B. Newhall a notary public, that then he was by law authorised to take acknowledgments of deeds; and that if they further believe from the evidence that he did take the acknowledgment of the power of attorney from Campbell to Newhall, then the certified copy is proper evidence of the validity, existence and contents of said power of attorney."

—which were given by the court, and plaintiff then and there excepted."

[The jury found for defendants.

Motion by plaintiff for new trial, on which he read his affidavit for a continuance.

Motion overruled, and exception taken. Judgment for defendants.]

No 88
Voolbrook
¹²³
Nichols & Putnam
Plt's Abstract

Filed April 23, 1864
L. Leland clk