No. 14830

Supreme Court of Illinois

Holbrook

vs.

Fellows

71641

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 78

J. W. Middleton & Co., Stationers, 195 Lake St.

Hallowell
vs
Fellows

$17.00

The People of the State of Illinois by the Grace of God free and Independent:

Know Ye that We having caused to be inspected the Records and proceedings now remaining in the Office of the Clerk of the Circuit Court in and for our County of Will in the State of Illinois do there find certain Records in the words and figures following to wit:

United States of America
State of Illinois } ss.
County of Will

Pleas before the Honorable Jesse O Norton Judge of the Eleventh Judicial Circuit of the State of Illinois and sole presiding Judge of the Will County Circuit Court at a Term thereof begun and held at the Court House in the City of Joliet in said County on the Fifth day of May (the same being the first Monday) in the year of our Lord One thousand Eight hundred and Sixty and of the Independence of the United States the Eighty fourth

Present Honorable Jesse O Norton Judge of the 11th Judicial Circuit of the State of Ill.
Fred. A Bartleson State Atty " " " "
Henry Leach Sheriff of Will County
Attest Alex Caldwell Jr. Entick Clerk

2 Be it remembered that ~~Sum~~ afterwards to Wit on the Fifteenth day of March in the Year of our Lord one thousand eight hundred and Sixty there was filed in the said Court a certain Declaration of a plea in Ejectment and notice thereto attached verified by affidavit which said Plea is in the words and figures following to wit

State of Illinois Will County
In the Circuit Court
for the March Term A D 1860

Edmund S Holbrook
Plaintiff complains of Matthias L Cook defendant
For that whereas the said Plaintiff on the first day of November in the year of our Lord one thousand eight hundred and fifty nine was possessed of a certain tract of land with the appurtenances situate in said County and being ~~so possessed~~ known and designated as Lot five of Block thirteen of that part of the City of Joliet known as the Town of Juliet which said premises plaintiff claims in fee — and being so possessed thereof afterwards to Wit on the first day of December in the year of our Lord one thousand eight hundred and fifty nine 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 E S Holbrook Plff

3 ~~For that whereas the said plaintiff on the~~
~~day of~~ And which said Notice thereto
attached is in the words and figures following to wit;
To the above named defendant
You are
hereby notified that the declaration with a copy
whereof you are now herewith served and to which
copy this notice is subjoined will be filed on the
10th day of the present term of the Circuit Court of
Will County 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 9th day March AD 1860
Louis E. Holbrook Plaintiff
~~State~~ And which affidavit is in the
words and figures following to wit

State of Illinois }
Will County } Oliver Simmons being duly
sworn says that on the 14th day of March AD 1860
he served the above declaration and notice by giving
a true copy of the same to the above named
Defendant and further that said Defendant was
then in the actual occupation of the above

4 described premises

Oliver Simmons

Subscribed and Sworn to before
me this 15th day of March 1860

A M Entrekin Clk

And afterwards to Wit
on the same day last aforesaid to Wit the 15th
day of March AD1860 the same day being one of
the regular days of the March Term of said Court
for the year AD1860 and the said Court being then
duly organized and sitting in open Court for the trans-
-action of business the following proceedings were
had and entered of Record by said Court in the
words and figures following to Wit:

2321 Edmund Malbrook & Matthias G Cook (with another) } Ejectment

And now at this day
comes the plaintiff in the above suits on whose
motion it is Ordered by the Court that a Rule be and is
hereby entered on the Defendants in the above suits
requiring them to plead to the declarations heretofore
filed herein twenty days from this date

And
afterwards to Wit on the Nineteenth day of March
AD1860 there was filed in said cause in the
Court aforesaid a certain plea which is in

5 the words and figures following to Wit:

State of Illinois } The Circuit Court for the County of Wills
for the March Term A.D. 1861

Matthias L Cook }
vs }
Edmund S Holbrook }

And the said Matthias L Cook by Thos H Marsh his Attorney comes and defends the force and injury when &c and says that he is not guilty of the said supposed trespass and Ejectment above laid to his charge or of any part thereof in manner and form as the said Edmund S Holbrook hath above thereof complained against him and of this he the said Matthias L Cook puts himself upon the Country &c

Thos H Marsh Attorney for Dft

And afterwards to Wit on the Eighth day of October in the Year of our Lord One thousand Eight hundred and Sixty One the same day being one of the regular days of the October Term of said Court for the year A.D. 1861 and the said Court being then duly organized and sitting in open Court for the transaction of business the following proceedings were had and entered of Record by said Court in the words & figures following to Wit:

Edmund S Holbrook }
vs } Ejectment
Matthias L Cook } (with Others)

2131

6

And now comes the Plaintiff in each of the above entitled causes by Bowen & Grover his Attorneys and on their motion it is ordered by the Court that they be and they hereby are continued

And afterwards to wit on the 26th day of December A.D. 1861 the same day being one of the Regular days of the December term of said Court for the year A.D. 1861 and the said Court being there duly organized and sitting in open Court for the transaction of business the following proceedings were had and entered of Record by said Court in the words and figures following to wit:

2321

Edmund Wellbrook
vs
Mathias L. Cook
} Ejectment (with others)

Now at this day come the said Plaintiff in the above entitled suits by their respective Attorneys and moved motion it is ordered by the Court that the above causes be and they hereby are respectively continued

And afterwards to wit on the 28th day of March in the year of our Lord one thousand eight hundred and Sixty two the same day being one of the regular days of the March term of said Court for the year A.D. 1862 and the said Court being there duly organized and sitting in open Court for the transaction of business the following proceedings

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were had and entered of Record by said Court in the words and figures as follows to Wit:

2321 Edmund S Holbrook vs Matthias D Cook } Ejectment (with other cases)

And now at this day came the Defendants in each of the above entitled Causes by their respective Attorneys and enter respectively their Motion for a Rule on said Plaintiff in said causes to file Security for costs or show cause by the first day of the next term of this Court

And afterwards to wit on the 30th day of May in the year of our Lord One thousand Eight hundred and Sixty two the same day being one of the Regular days of the May term of said Court for the Year AD 1862 and the said Court being then duly organized and sitting in open Court for the transaction of business the following proceedings were had and entered of Record by said Court in the words and figures following to Wit:

2321 Edmund S Holbrook vs Matthias D Cook } Ejectment (with other causes)

Now at this day comes the Plaintiff in each of the above entitled causes in his own proper person and enters his motion to be discharged from the rule heretofore entered in the above entitled causes on said Plaintiff to file Security for costs or justify

Whereupon it is ordered by the Court that the

8 Said Plaintiff be sworn which is done and upon his oath in open Court justifies as to his responsibility to pay all costs which in the event of each of the above causes may by this Court be adjudged against him the said Plaintiff Whereupon it is Ordered by the Court that said Rule be and it is hereby discharged

And afterwards to wit on the Sixth day of December in the year of our Lord One thousand eight hundred and Sixty two the same day being one of the regular days of the December term of said Court for the year AD 1862 and the said Court being there duly organized and sitting in open court for the transaction of business the following proceedings were had and entered of Record by said Court in the words and figures as follows to wit:

2321

Edmund S Newbould
vs
Mathias D Cook
} Ejectment (with other causes)

And now on this day come the said parties in the above entitled suits by their respective Attorneys and by their agreement and on their motion it is ordered by the Court that each of the above causes be and the same are hereby continued

And afterwards to wit on the 21st day of March in the year of our Lord one thousand Eight hundred and Sixty three the same day being one of the regular days of the March term

of said Court for the year AD 1863 and the said Court being then duly organized and sitting in open Court for the transaction of business the following proceedings were had and entered of Record by said Court in the words and figures as follows to wit:

2321 Edmund S Wolbrook vs Mathias Cook } Ejectment (with other causes)

And now on this day comes the said Plaintiff in the above entitled causes in his own proper person and on his Motion it is ordered by the Court that each of the above entitled causes be and they hereby are set for Trial And thereupon come the said Defendants by their Attorneys and in each of said causes respectively enter their Cross Motion for a continuance of said causes

And afterwards to wit on the 27th day of March in the year of our Lord one thousand Eight hundred and Sixty three the same day being one of the regular days of the March term of said Court for the year of our Lord One thousand eight hundred and sixty three and the said Court being then duly organized and sitting in open Court for the transaction of of business the following among other proceedings were had and entered of Record by said Court in the words and figures as follows to wit:

10
2321

Edmund S Holbrook
vs
Mathias Cook
} Ejectment

And now on this day comes the said defendant by Marsh and Dillon his Attorneys and enters his Motion for a continuance herein Thereupon comes the said Plaintiff in his own proper person and the Court being now fully advised in the premises it is ordered by the Court that this cause be and the same is hereby continued and further that the said defendant pay the costs of this suit of this term And it is thereupon on Motion of said Plaintiff ordered by the Court that he do have judgment against the said defendant for his costs as aforesaid It is therefore considered by the Court that the said Plaintiff do have and recover of the said defendant his costs and charges by him about his suit in this behalf of this term hereof expended and that he have execution therefor

And afterwards to wit on the ~~17th~~ fifteenth day of October in the year of our Lord one thousand eight hundred and Sixty three the same day being one of the regular days of the October term of said Court for the year of our Lord one thousand Eight hundred and Sixty three and the said Court being then duly organized and sitting in open court for the transaction of business the following proceedings were had and entered of Record by said Court in the words and figures

11 as follows to wit:

2321 Edmund S Malbrook vs Matthias L Cook } Ejectment

Now at this day comes Ellen Fellows by Marshall Fellows her Attorney and on her motion it is ordered by the Court that she be and hereby is admitted to defend as defendant herein Thereupon on said Defendants Motion it is ordered by the Court that this cause be and the same hereby is continued at said defendants costs It is therefore considered by the Court that the said Plaintiff do have and recover of ~~the~~ said defendant his costs and charges by him about his suit in this behalf of this term expended and that he have execution therefor

And afterwards to wit on the 29th day of March in the year of our Lord ~~18~~ one thousand eight hundred and Sixty four the same day being one of the regular days of the March term of said Court for the year ~~of~~ 1864 and the said Court being then duly organized and sitting in open Court for the transaction of business the following proceedings were had and entered of Record by said Court in words and figures as follows to wit.

2321 Edmund S Malbrook vs Ellen Fellows } Ejectment

On Motion of said Plaintiff it

12 is ordered by the Court that this cause be and the same hereby is set for trial Thereupon comes the said defendant by Eb Fellows one of her Attorneys herein and on his Motion and by and with the consent of the said Plaintiff it is ordered by the Court that this cause be and the same hereby is continued

And afterwards on this day again comes the said defendant by Shopp and Breckenridge other of her Attorneys and on their motion in behalf of said Defendant the Court being now fully advised in the premises it is ordered by the Court that the order of continuance hereinbefore this day entered herein be and the same hereby is ~~set aside~~ vacated

And afterwards to wit:

on the 30th day of March A.D. 1864. the same day being one of the regular days of the said March term of said Court for the year A.D 1864 and the said Court being then duly organized and sitting in open Court for the transaction of business the following proceedings were had and entered of Record by said Court in the words & figures following to wit:

Edmund S Colbrooks
vs
Ellen Fellows
} Ejectment

2321

Now come the parties herein and on motion it is ordered that this cause be and it hereby is set for trial tomorrow morning

13 And afterwards to wit on the 31st day of March in the year of our Lord One thousand eight hundred and sixty four the same day being one of the regular days of the said March Term of said Court for the year A.D. 1864 and the said Court being then duly organized and sitting in open Court for the transaction of business the following proceedings were had and entered of Record by said Court in the words and figures as follows to wit:

2321 Edmund L. Holbrook
vs
Ellen Fellows
} Ejectment

Now on this day comes the said Plaintiff in his own proper person as well as by W.C. Goodhue his Attorney and the said defendant also comes by Knapp & Breckenridge her Attorneys and on Motion of said Plaintiff it is ordered by the Court that this cause be now taken up for hearing and that a jury do now come herein to try the issues herein joined between the said parties

Thereupon come the jurors of a jury of good and lawful men to wit Edward C. Spenning Edward Kirk Luther Severance Henry L. Gassett Adam White James Haught Benjamin Dutcher Lewis McMaster Samuel D. South Robert Lester William O. Jewett & Nichols Hull who were duly empaneled and sworn to well and truly try the issues herein joined between the parties and a true verdict give according to the evidence

Thereupon the said jurors sat together and

Record evidence adduced when by the agreement of the parties it is ordered by the Court that the jurors have leave to separate for the night

And afterwards to wit on the first day of April in the year AD 1864 the same day being one of the regular days of the March term of said Court for the Year AD 1863 & 4 and the said Court being then duly organized and sitting in open court for the transaction of business, proceedings were had and entered of Record by said Court in the words and figures following to wit:

Edmund S. Holbrook
vs
Ellen Fellows
} Ejectment

2321

Now on this day again the said parties as aforesaid and their Attorneys and the said jurors duly empaneled and sworn herein come and thereupon it is ordered by the Court that the trial of this cause be resumed Thereupon the said jurors sat together and heard the remainder of the evidence adduced by the parties and the arguments of counsel and received the instructions of the Court when by the agreement of the parties and on their motion it is ordered by the Court that the said jurors after they shall have agreed upon their verdict may seal the same and bring it into Court in the morning

And afterwards to wit:-

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on the second day of April in the year of our Lord One thousand Eight hundred and Sixty four the same day being one of the regular days of the March term of said Court for the year A.D. 1864 and the said Court being then duly organized and sitting in open Court for the transaction of business the following proceedings were had and entered of Record by said Court in the words and figures as follows to wit

2321 Edmund S. Walbrook
vs
Ellen Fellows
} Ejectment

Now on this day comes the said Plaintiff in his own proper person and the said defendant also comes by Knopp and Breckenridge her Attorneys and the jurors aforesaid herein also come into open Court and for verdict herein say We the Jury find the defendant not Guilty

Thereupon the said Plaintiff enters his motion for a new trial herein for cause

And afterwards to wit on the Seventh day of December in the year of our Lord One thousand Eight hundred and Sixty four the same day being one of the Regular days of the December term of said Court for the year A.D. 1864 and the said Court being then duly organized and sitting in open court for the transaction of business proceedings were had and entered of Record by said Court in the words and

10

figures following to wit:-

2321

Edmund S Galbrooke
vs
Ellen Fellows
} Ejectment

And on this day comes the said Plaintiff in his own proper person and the said defendant also comes by Knapp & Breckenridge her Attorneys and on motion it is ordered that this cause be now called up for hearing upon the motion for a new trial heretofore entered herein by said Plaintiff. And the Court having heard the said Plaintiff in support of his said Motion and also said defendant by her said Attorneys in opposition thereto and being now fully advised in the premises finds the reasons urged by said Plaintiff in support of his said motion not sufficient in the law to support the same therefore it is ordered by the Court that Plaintiffs motion for a new trial herein be and the same hereby is overruled and that the said defendant do have judgment on the verdict of the Jurors aforesaid herein of "Not Guilty" of detaining the property from the said Plaintiff as described in Plaintiffs declaration

It is therefore considered by the Court that the said Plaintiff take nothing by his suit and that said Defendant have leave to go hence without day And it is further considered by the Court that the said defendant do have and recover of the

17 said Plaintiff her costs and charges by her about her
in this behalf expended and that she do have Execution
therefor Thereupon the said Plaintiff then and there
enters his Exceptions to the ruling of the Court in
overruling the said Motion for a new trial and
to entering judgment upon the verdict of the Jury
aforesaid and prays an appeal to the Supreme
Court of this State which said appeal is granted
by the Court upon condition that the said Plaintiff
do by the fifteenth day of January next file his
Bill of Exceptions

And afterwards to wit on the Eighteenth day of January in the
year of our Lord One thousand Eighteen hundred and Sixty
five the same day being ~~the day~~ one of the days of the
December term of said Court for the year A D 1864
and the said Court being then duly organized and
sitting in said Court for the transaction of business the
following proceedings were had and entered of record
by said Court in the words and figures following to wit:-

Edmund S. Holbrook }
vs } Ejectment
2321 Allen Fellows }

Now on this day Comes the said
Plaintiff by H C Goodhue his Attorney and presents for
filing in this cause his Bill of Exceptions herein
and enters his motion that the same be filed as of the
fifteenth day of the present Month Thereupon comes

18

the said Defendant by Knapp & Breckenridge her Attorneys and the Court being now fully advised in the premises it is Ordered by the Court that the said Bill of Exception be and the same is filed as of the fifteenth day of January A.D. 1865

And thereupon the said Bill of exceptions is filed in said Cause which said Bill of Exceptions is in the words and figures following to Wit,

~~Be it Known~~

Edmund S Walbrook
vs
Ellen Fellows
} Ejectment

Suit in the Circuit Court of Will County State of Illinois — Trial had at the March Term A.D. 1864, verdict for defendants, motion for new trial by Plaintiff and decided at the December Term A.D. 1864

Bill of Exceptions on part of the Plaintiff

Be it Known that on the trial of the above entitled cause which was before the Hon Judge Harris and a Jury, the Plaintiff to prove the issues on his part read in evidence

1st A Record of a Patent by the State of Illinois to James B. Campbell found in Book "I" pg 61" of the Records of deeds of said Will County for the East fraction of the Southeast quarter of Sec 9. T 35 N. R. 10 East 3d P.M. in words and figures following to Wit,

19

John Reynolds Governor of the State of Illinois to all to who shall ~~to~~ see these presents greeting

Whereas it appears from the ~~provisions~~ provisions of an act of the General Assembly of the State of Illinois "Entitled an Act granting preemption rights and for other purposes" Approved March 2nd 1833 that James B Campbell was entitled to a right of preemption of Eighty acres of land to be selected out of and from the lands granted by the Congress of the United States to the State of Illinois for Canal purposes lying north of the River Illinois at the rate of one dollar and twenty five cents per acre And whereas also it appears from the Certificate of the Auditor of Public accounts and the Treasurer of the State aforesaid dated this 5th day of April 1834 that the said James B. Campbell has made his selection under the provisions of the above recited Act and paid to the said Treasurer the sum of One hundred Dollars for the said quarranty of Eighty acres under and by virtue of the preemption right aforesaid known and designated as follows The East fractional part of the South East quarter of Section nine Township thirty five North Range ten East containing Sixty Six acres and ninety hundreds, and thirteen acres and ten hundredths of an acre being part of the South West quarter of Section fifteen in said Township Thirty five North Range ten East described as follows to Wit Commencing on the line between Sections ten and fifteen in Said township thirty five

20. north, Eighty rods east of the South West Corner of said Section ten. and the north west corner of said Section fifteen and running thence South twenty two degrees, West One hundred Rods, thence due east far enough to include the said thirteen acres ten hundredths. Now know Ye that in pursuance of the provisions of the above recited Act, of the General Assembly of the State of Illinois there is granted to the said James B Campbell his heirs & assigns the above described tract of land to have and to hold the same with the appurtenances unto the said James B Campbell his heirs & assigns forever

In testimony Whereof I have caused my name and the great Seal of the State to be affixed at Vandalia this 10th day of September 1834 and of the Independence of the United States the 59th

Seal

By the Governor
John Reynolds
A Field Secretary of State

2nd A Certified Copy of a decree of the U.S. District Court for the State of Illinois declaring James B. Campbell a bankrupt and the appointment of William O Bostwick his assignee and copy of the 31st Rule in Bankruptcy in words and figures following to wit

District Court United States
Southern District of Illinois

21. The Decree declaring James B. Campbell a Bankrupt and appointing William C Bostwick the assignee of said Bankrupt is found in the Bankrupt Record of the District Court of the United States for the District of Illinois under the date of Oct 3d 1842 and cast number 919 and is the words and figures following to wit:-

Oct 3. 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 James B. Campbell filed in this Court on the 22 day of August 1842 praying to be declared a Bankrupt in pursuance of an 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 Bostwick of the County of Daviess be and he 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 faithfull discharge of all his duties as such assignee and his compliance with the order and directions of the Court

On Motion Purple & Merriman Solrs for Petitioner Ordered that cause be shown before the Court on the 1st day of Feby next at 9 o'clock A.M. why James B Campbell should not receive his discharge & certificates as a Bankrupt and that notice thereof be published for 30 days previous thereto as required by Rule No 17 of this Court

James J Owings Clerk

The Fifty first Rule of the "Rules and Forms in Bankruptcy" relating to the sales &c is in the words and figures following to Wit

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 where soever situate with all due diligence having due regard to the interest of the creditors (unless some one of ~~the~~ 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

23. 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 be sold or at some public sale as said assignee shall deem best for the interest of said Estate at least twenty days 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

Southern District of Illinois ss

I William H Bradley Clerk of the District Court of the United States for the Southern 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 3d 1842 declaring James B Campbell a Bankrupt and appointing Wm C Bostwick assignee of the same and also of the Rule in Bankruptcy numbered fifty one as prescribed by said Court as the same remains of Record in my said Office In testimony Whereof I have hereunto set my hand and affixed the seal of said District Court for the Southern District of Illinois at Chicago this 11th day of Dec 1860 and of our Independence the 85th year

Wm H Bradley Clerk

Seal

24
3rd

A deed by William L Bostwick as assignee of said Campbell to Plaintiff with endorsement as to Record, Recorded in Book "I" of said Records of deeds pp 580, 581, 582 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 Jo Daviess County in said District was decreed a Bankrupt which said decree bears date the 3rd 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 on the 22d 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

25 Ordered Adjudged and Decreed that the said James B Campbell be decreed a bankrupt within the purview of said act And it is further Ordered and Adjudged that William E Bostwick 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 with the order and directions of the Court

And whereas the said William E. Bostwick 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 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 on me, and have as such assignee sold the property hereinafter described at public Auction in said County of Jo Daviess shown

first duly advertised the same according to law at which sale Edmund ~~H~~ G. Walbrook of La Salle County Illinois hereinafter named became the purchaser of said property at the prices and sums for said several pieces of property hereinafter named respectively, he being the highest and best bidder therefor & not.

The following described lots of ground in the Original Town of Juliette in the County of Will in said State of Illinois viz

Lot No One (1) in Block No One (1) Lot No Two (2) in Block No Six (6) Lots No Two (2) three (3) and four (4) in in Block No Nine (9) Lots No three (3) and four (4) in Block No Sixteen (16) Lot No Seven (7) in Block No Twelve (12), Lots No One (1) Five (5) and Eight (8) in Block No thirteen (13). Lot No Four (4) in Block No Eighteen (18) Lots No three (3) and four (4) in Blocks nineteen (19) Lot No Seven (7) in Block No twenty (20) Lot No two (2) in Block No twenty one (21) Lot No Eight (8) in Block No twenty three (23) Lots No three (3) and four (4) in Block No twenty four (24) Lot No two (2) in Block No twenty five (25) Lot No two (2) in Block No twenty Seven (27) the said lots having been offered for sale separately and said Walbrook having bid on such lot so offered the sum of fifty cents, and such Lot having been struck off to him separately at the said sum and price ~~of price~~ of fifty cents each.

~~Also And~~ the following Lots in East Juliette in said County of Will as laid out upon the South East quarter of Section

37 No ~~two~~ ten (10) in Township No thirty five (35) North of Range No ten (10) East of 3rd P M viz

Lot No One (1) in Block No One (1) Lot No Six (6) in Block No Two (2) Lots No One (1) Two (2) and Six (6) in Block No twelve (12) Lots No Two (2) four (4) and Six (6) in Block No fifteen (15) Lot No Six (6) in Block No Nine (9) Lot No Five (5) in Block No thirteen (13) Lot No two (2) in Block No Ten (10) Lots No Two (2) five (5) and Six (6) in Block No Eleven (11) Lots No three (3) and six (6) in Block No Eight (8) Lot No three (3) in Block No Sixteen (16) the said Lots having been offered for sale separately and said Holbrook having bid on such lot so offered the sum of fifty cents and each lot having been struck off to him separately at the said sum and price of fifty cents each

Also the following lots and pieces of ground in "Bowens Addition to the Town of Joliet" in said Will County viz Lot No One (1) in Block No ~~thirty~~ four (34) the North half of Lot No One (1) and Lots No ~~two~~ (2) and three (3) in Block No thirty (30) Lot No Two (2) in Block No thirty five (35) Lot No three (3) in Block No ~~Block No~~ twenty one (21) The North West quarter of "A" part of Block No twenty five (25) the South half of Block No seventeen (17) the said lots having been offered for sale separately and said Holbrook having bid on each lot so offered the sum of fifty cents and each lot having been struck off to him separately at the said sum and price of fifty

cents each, Also the undivided one fourth part of certain Lots in the aforesaid town of Juliett being Lots conveyed by R. Campbell & E. Hubbard and by said Hubbard to said James B. Campbell which was sold and struck off to the said Holbrook for the price and sum of one dollar and fifty cents ##

Also the remaining interest of the said James B Campbell in aforesaid Bowens Addition to the said Town of Juliett as laid off, platted and surveyed by A. Bowen which was struck off and sold to said Holbrooks for the price and sum of Fifty cents

Also the East half of the South West quarter of Section No twenty six (26) Township No thirty four (34) North of Range No ten (10) East of 3rd principal Meridian in said County of Will which was struck off and sold to the said Holbrook for the price and sum of one dollar and fifty cents

Also all the interest of said James B. Campbell not heretofore sold in the East half of the South West quarter of Section No thirty five (35) in Township No twenty five (25) North of Range No Five (5) West of the 3rd principal Meridian in Jazewell County Illinois being the Eighty acres of land conveyed platted and laid off, by said Campbell and called Campbell & Burley and Newhalls addition to the Town of Pekin The said interest in said last described premises was struck off and sold to the said Holbrook for the sum and price of one dollar and fifty cents All of the said

Also the remaining undivided interest of said James B Campbell in said Town of Juliett as platted by him and surveyed by Bowen to wit the South East quarter of Section No Nine (9) in Township No thirty five (35) North of Range No ten (10) East of the 3rd principal Meridian which was struck off and sold to said Holbrook for the price and sum of one dollar and fifty cents

29. lands lots and premises lying and being in said State of Illinois

Now Therefore Know all men by These Presents that I William C Bostwick 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 of the County of La Salle in the State of Illinois as aforesaid the receipt whereof is hereby acknowledged, do as such assignee sell and convey unto the said Edmund S. Holbrook and to his heirs and assigns the foregoing described real Estate lands lots and premises, that is to say all the right title and interest of the said James B Campbell Bankrupt as aforesaid in and to said land lots and premises

In Witness Whereof I the said William C Bostwick in my capacity of assignee of James B Campbell a Bankrupt as aforesaid have hereunto set my hand and seal this Eighth day of March AD 1851

Wm C. Bostwick Seal
Assignee in Bankruptcy
of James B Campbell

Signed Sealed and delivered
in presence of
The words and figures "Thirty" & "3"
interlined before signing and the
word seal before signing
Richard Seal Wm C. Bostwick

State of Illinois
La Salle County } ss Before

me the undersigned Clerk of the County Court of said County, personally appeared William G Eastwood to me personally known to me to be the identical person described in and who executed the foregoing deed, and acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein mentioned

Witness my hand and the Seal of said Court
Seal This Eleventh day of March A D 1851
Attest Richard Seal Clerk

Upon which Deed as above recited appears the following endorsement ~~as~~ in words and figures to wit

Ord 111, 953

State of Illinois Will County ss.
Recorded March 24.
1851 at 8 o'clock A M in Book I on Page No 581,
581, & 582
M McEvoy Clk & Rec
By R. E. Barber Dep

Plaintiff then called J W Brown as a Witness who being sworn testified that he was acquainted with the locality of the said East fracture of the South East quarter of Sec 9 T. 35, R. E 11 and with the locality of the Original Town of Joliet and the locality of lot 5, Bl 13, of said Town and that said lot was a part of said land - the same was known in late years as the Town of

31. Joliett a part of the City of Joliett
Plaintiff here rested his case

Defendant also called S. H. Bowers as a Witness who being sworn testified as follows That was a large barn put on this lot 4 or 5 years ago 8 yrs 6 mos ago My Mr Cook former defendant now occupied by me Defendant The lot was vacant before that time Elisha G. Fellows claimed it 11 or 12 years ago I understood he conveyed it to his Wife just before the barn was put on - Cook occupied and claimed under Mrs Fellows

Defendant then offered in evidence a deed to Defendant by Francis Goodspeed Mayor of the City of Joliett dated April 27th 1859 in words and figures following to wit

Know all men by these presents that whereas Lot number Five in Block number thirteen in old town of Joliet in the City of Joliet in the County of Will and State of Illinois was duly assessed to pay Sixty dollars and fifty cents as special Assessment for grading Chicago Street levied in the year one thousand eight hundred and fifty six by an ordinance of the common Council of said City passed on the twenty fourth day of November A D one thousand eight hundred and fifty six and the said taxes not having been paid the said Common Council by an ordinance made on the second day of March one thousand

Eight hundred and fifty seven directed the Collector of said City to advertise said lot piece and parcel of land and sell at public auction so much of the same as might be necessary to pay the Taxes above mentioned with interest and expenses thereon that pursuant to said Order said piece or parcel of land was duly advertised in the corporation paper of said City for the period of three weeks as directed by law and this twenty third day of November A.D. One thousand eight hundred and fifty seven at a sale at public auction E.F. White was the purchaser of the whole of said piece or parcel of land above described and assessed for Sixty dollars and fifty cents and twenty one cents costs that being the smallest portion of said piece or parcel of land for which any person would pay the tax and costs accruing thereon amounting in all to Sixty dollars and seventy one cents And whereas the said premises above sold was not redeemed in manner and form as the law directs within two years from the date thereof And whereas it appears by the affidavit of K.O. Barber that the proper notice was served on Elisha C. Fellows the owner of said lot or piece or parcel of land and to whom the same was assessed And whereas Ellen Fellows became the owner and holder of the Certificate of sale of said piece or parcel of land And whereas at a session of the Common Council of the City of Joliet holden on the 10th day of

April A.D. one thousand eight hundred and fifty nine and it appearing that the above described piece or parcel of land so sold has not been redeemed according to law it was then and there ordered by said Common Council of said City that the said City cause a deed to be made and executed conveying the said piece or parcel of land to Ellen Fellows according to the ~~Constitution~~ Charter and Ordinances of said City and State of Illinois

And whereas the said Ellen Fellows the owner and holder of said Certificate of sale of said piece or parcel of land

And whereas the said Ellen Fellows has delivered to the Mayor of said City the Certificate aforesaid of sale of said piece or parcel of land and also showing by proper affidavit of her having complied with all the requirements of the (of the) ~~Constitution~~ Statutes Charters and Ordinances of said City of Joliet and State of Illinois necessary to entitle the said Ellen Fellows to a deed of the premises so sold as aforesaid

Now therefore I Francis Goodspeed Mayor of the City of Joliet aforesaid for and in consideration of the ~~same aforesaid~~ above named sum of Money amounting to Sixty dollars and seventy one cents paid to P. Fiss Collector of the City of Joliet by said purchaser of said ~~said~~ Certificate of sale and by virtue of the Statute Charter and Ordinance of said City of Joliet and State of Illinois

Made and provided have granted bargained sold and by these presents do grant bargain ~~sell~~ sell unto the said Ellen Fellows her heirs and assigns the premises so sold as aforesaid situate in the City of Joliet in the County of Will and State of Illinois to wit Lot Number Five in Block number thirteen in Old town of Joliet in the City of Joliet to have and hold the said premises unto her the said Ellen Fellows her heirs and assigns forever subject however to all the rights of redemption provided by law and the Charter and Ordinances of said City of Joliet

In Witness Whereof and by the authority aforesaid have hereunto subscribed my name and affixed the seal of said City of Joliet this 27th day of April 1859

J Goodspeed Mayor of Joliet

Seal

Attest Saml D Smith City Clerk

State of Illinois }
County of Will } ss. I Alexander M Grant Clerk of the Circuit Court in and for said County and State aforesaid do hereby certify that Francis Goodspeed Mayor of the City of Joliet in said County and State who is well known to me appeared this day in person and acknowledged that he executed the foregoing instrument of writing in his official capacity as such Mayor for the uses

35

and purposes therein set forth And I further certify that Samuel D Smith by whom the attestation is made and who is personally known to me also appeared before me at the same time and acknowledged that he made the above attestation under the direction of said Mayor and placed thereto the Corporate Seal of said City

Given under my hand and the Seal of said Court this 4th day of June A.D. 1859

(Seal)

A McIntosh Clk

To the ruling of which plaintiff objected on the ground that said Deed was irrelevant and incompetent no right power or authority having been shown for the execution of said deed by said Goodspeed.

The defendant then produced the records of the proceedings of the Common Council of the City of Joliett and offered from said Records an entry from Vol 2 P 57 dated April 6 1859 in words and figures following to Wit

"On motion of Alderman Bartleson it was Ordered that City of Joliett make a deed to Mrs Tallons for Lot 5 in Block 13 in Old Town of Joliett (sold on the 23d day of March A.D. 1857 on Special assessment for grading Chicago Street) on filing a Certificate of Purchase and the proper affidavits &c"

To the ~~testimony~~ ruling of which plaintiff objected on the ground of variance that the order did not authorize

this deed, or refer to sale on which this deed was made

Defendant then called J H Marsh as a witness who being sworn testified the Plaintiff objecting that he was Attorney for defendant when and before this deed was made that he acted for defendant in getting the certificate of sale of another party and in getting this order of the City Council passed for the making of this deed. That he drew the deed himself and in drawing it he made a mistake in writing "November" instead of "March"

The Court then permitted said Order to be read in evidence leaving the question whether said Order refered to said deed to be determined by the jury and permitted said testimony of Marsh to go to the jury to which decisions Plaintiff then and there excepted

The defendant then offered to read said deed - the Plaintiff objected as before that no sufficient power had been shown that all the preliminary action of the City should be shown and particularly a judgment or order of sale and precept on which sale was made but the Court permitted said deed to be read in evidence to which decision plaintiff then and there excepted

The Defendant here rested his case

57 The Plaintiff then offered and read in evidence a Record of a Deed from Book 47 of Record of deeds of said County of Will from Robert P Fellows & Elisha C Fellows in words and figures following to wit:-

This Indenture made this Fifteenth day of September in the year of our Lord One thousand eight hundred and fifty six Between Robert P Fellows of Brookport Monroe Co Ills. and Mary A his Wife of the first part and Elisha C Fellows of Joliet Illinois of the second part Witnesseth that the said party of the first part in consideration of the sum of Six hundred dollars to them duly paid have sold and by these presents do grant and convey to the said party of the second part his heirs and assigns All that tract or parcel of land situate in the County of Will & State of Illinois described as follows: Lot five (5) in Block thirteen (13) and lot four (4) in Block fourteen (14) in that part of the City of Joliet originally laid off & recorded as Joliet commonly known as Old Joliet With the appurtenances and all the estate title and interest of the said party of the first part And the said Robert P Fellows doth hereby Covenant and agree to and with the said party of the second part his heirs and assigns that the premises thus conveyed in the quiet and peaceable possession of the said party of the second part his heirs and

assigns he will forever Warrant and Defend against any person whomsoever lawfully claiming the same or any part thereof

In Witness whereof the ~~said~~ party of the first part have hereunto set their hands and seals the day and year first above written

Sealed and delivered in presence of — } R. F. Fellows (Seal)
Mary A Fellows (Seal)

State of New York }
Monroe County } ss: On this 23rd day of September in the year of our Lord one thousand eight hundred and fifty six before me the Subscriber personally appeared Robert F Fellows and Mary A his wife to me known to be the same persons described in and who executed the within instrument who severally acknowledged that they executed the same

And the said Mary A Fellows on a private examination by me apart from her said husband acknowledged that she executed the same freely and without any fear or compulsion of her said husband

Daniel Holmes
Justice of the Peace

State of New York }
Monroe County Clerks }
Office Rochester } I William A Sage Clerk of the County of Monroe of the County Court of said County and of the Supreme Court both being Courts of Record having a Common Seal do certify that Dan'l Holmes Esquire was at the date of the

39. Certificate of proof of acknowledgement of the annexed instrument in writing of Justice of the peace in and for said County duly authorized to take the same that I am well acquainted with his handwriting and verily believe that the signature to said Certificate is genuine and that the annexed instrument is executed and acknowledged according to the laws of this State

Seal Circuit Clerk Rochester

In testimony whereof I have hereunto set my hand and affixed the seal of said County and Courts this 24th day of Sept A D 1856

William A Sayd Clerk

No 25446 Recorded November 25th 1856

R V Barber Recorder

A Record of a Deed of Elisha G Fellows to Ellen Fellows defendant from Records of deeds of said County Book 60 P 19

This Indenture, Made this 8th day of March in the year of Our Lord One thousand eight hundred and fifty nine between Elisha G Fellows of the City of Beloit in the County of Rock and State of Illinois of the first part and Ellen Fellows of the same place of the second part Witnesseth That the said party of the first part for and in consideration of Eleven Thousand Dollars in hand paid by the said party of the second

part the receipt whereof is hereby acknowledged and the said party of the second part forever released and discharged therefrom hath Granted Bargained Sold Remised Released Aliened and Confirmed and by these presents doth grant bargain Sell Remise release alien and confirm unto the said party of the second part and to her heirs and assigns forever all the following described lots pieces or parcels of land situated in the County of Will and State of Illinois to Wit:

Lots One, Two and four in Block nineteen also lot five in Block thirteen also Lot four in Block fourteen also lot Seven in Block fifteen also lot five in Block ten in that part of the City of Joliet formerly known as Juliet as laid out by James Bloomfield intending to convey all of the Real Estate that I own in the City of Joliet Together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining and the reversion and reversions remainder and remainders rents issues and profits thereof and all the Estate right title interest claim and demand whatsoever of the said party of the first part either in Law or equity of in and to the above bargained premises with the hereditaments and appurtenances To have

and to hold
41. the said premises above bargained and described with the appurtenances unto the said party of the second part her heirs and assigns for ever And the said Elisha G Fellows Party of the first part for himself his heirs executors and administrators doth covenant grant bargain and agree to and with the said party of the second part her heirs and assigns that at the time of the ensealing and delivery of these presents I am well seized of the premises above conveyed as of a good sure perfect absolute and indefeasible estate of inheritance in the law in fee simple and have good right full power and lawful authority to grant, bargain sell and convey the same in manner and form aforesaid; and that the same are free and clear from all former and other grants, bargains, sales, liens Taxes assessments and incumbrances of what kind or nature soever and the above bargained premises in the quiet and peaceable possession of the said party of the second part her heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof the said party of the first part shall and will ~~for~~ Warrant and forever Defend

In Witness whereof the said party of the first part has hereunto set his hand and seal the day

and year first above written
Signed sealed and delivered } O. H. Fellows [Seal]
in presence of }

State of Illinois }
Will County } ss. I Jesse C Norton Judge of the 11th Judicial ~~Circuit~~ in the State aforesaid do hereby certify that Elisha H. Fellows who is personally known to me as the real person whose name is subscribed to the above deed appeared before me this day in person and acknowledged that he executed and delivered the said deed as his free and voluntary act for the uses and purposes therein set forth

Given under my hand and ~~Seal~~ seal this 8th day of March in the year of our Lord one thousand eight hundred and fifty nine

[Seal] J. C. Norton Judge
11th Judicial Circuit Ills

State of Illinois } No 33705
County of Will } ss. The above Instrument was filed for Record the 8th day of March A.D. 1859 at the hour of 5 o'clock P.M.

A. McIntosh Recorder

This was all the testimony in the case

The Court instructed the jury on behalf of the plaintiff as follows

43. 1st That the evidence offered by plaintiff shows that he is the owner in fee simple of the premises ~~description~~ described in the declaration and unless the defendant has in the opinion of the jury overcome such evidence by other evidence they should find for the plaintiff as fee simple title to the premises named in the Declaration

2nd In this action the defendants have no right to prove title by parol and all parol evidence for the purpose should be disregarded

3rd Unless the jury find that the order of the City Council of Joliet offered in evidence by the defendant ordered the Mayor to make this specific tax deed offered in evidence then the jury should not consider the tax deed at all

The amount paid by either plaintiff or defendant for their titles or the value of the property is not before the jury for their consideration

The Plaintiff asked the Court to instruct the jury as follows

1st In order to make such tax deed evidence defendant should have proved that the notices required by the Constitution and the laws as to tax deeds were given

"Refused"

5th The tax deed offered in evidence does not constitute legal evidence of the giving of such notice

"Refused"

6th The law requires those in possession of real Estate claiming title to pay the taxes legally assessed thereon and the person so in possession cannot by permitting such property to go to sale and getting a tax deed thereon acquire any better or superior title than they had before But the jury are to pass upon the question of possession by defendant or those under whom she claims at the time of the assessment

Which the court refused to give to which decision the plaintiff then and there excepted

The Defendant asked the Court to instruct the jury as follows

1st The Court instructs the jury as follows that the deed offered in evidence by the defendant Ellen Fellows is prima facie evidence in this

First That Lot 5 in Block 13 was subject to taxation at the assessment at the time the same was advertised for sale and had been listed

45 and assessed in the time and manner required by law

2d — That the taxes or assessment was not paid at any time before the sale

3rd That the lot conveyed has not been redeemed from the sale at the date of said deed is conclusive evidence of

First That the lot 5 was advertised for sale in the manner and for the length of time required by law

Second That the lot was sold for taxes or assessments as stated in the deed

2nd

Third That Ellen Sellers the Grantee in the deed was the purchaser or his assignee and

Fourth — That the sale was conducted in the manner required by law and the plaintiff in this case in order to defeat the deed of Francis Goodspeed to Ellen Sellers either that the lot 5 in Block 13 was not subject to assessment or taxation at the date of the sale; that the taxes or assessment had been paid; that the lot had never been listed and assessed for taxation or assessment, or that the same had been redeemed

3rd The Plaintiff is not permitted to question the title acquired by the deed from Francis Goodspeed to the defendant Ellen Sellers without his showing

46. that he had title to the lot at the time of
= sale or that the title was obtained from
the United States or the State of Illinois
after the sale, and that all taxes due
upon the said lot 5 have been paid by
the plaintiff or the person under whom
he claims title

4 That the statement by the plaintiff Holbrook
= in his argument to the jury that he had
sent money to an agent in Joliet to pay
the taxes on the lot in controversy is not
evidence of that fact

5 That Ellen Fellows the defendant was not
= required to pay the taxes on the lot in
controversy before she obtained a deed from
Elisha L Fellows and if the jury believe from the
evidence that the lot was sold for taxes prior
to time that Elisha L Fellows conveyed to her
that upon ~~this~~ this point the law is for
the defendant

6 The Plaintiff in order to recover must prove title
= in himself to the property described in the
declaration and that to recover he must
rely upon the strength of his own title and
not upon the weakness of the defendants
title giving of which plaintiff

49. objected

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

The jury found for defendant

The plaintiff moved the Court for a new trial

1 Because the Court had erred in permitting improper evidence on the part of the defendant to go to the jury

2 Because he had refused proper instructions on part of plaintiff and gave improper instructions on part of defendant

3 Because the verdict was against the evidence

The Court overruled said Motion to which plaintiff then and there excepted and prays that this his bill of exceptions be allowed & sealed which is done

(Signed) S P Kairis (Seal)

Judge of the 11 Judicial Circuit

State of Illinois }
Will County } ss.

I Benjamin F Russell Clerk of the Circuit Court in and for the said County in the State aforesaid do hereby certify the above and foregoing to be a full and correct transcript

of the proceedings of said Court in the certain cause therein entitled and also of the Declaration & Notice & proof of service of the same and of the plea and Bill of Exceptions of said defendant in said cause as the same all appear from the Records and files of said Court in said cause now remaining in my said Office

In Witness Whereof I have hereunto Set my hand and affixed the Seal of said Court at my office in the City of Joliet in said County this 23 day of March A.D. 1865

B. F. Russell
Clerk



Clerks fees on transcript Seventeen dollars
Rec'd Pay of E. S. Holbrook

B. F. Russell
Clerk

State of Illinois } After April Term
Supreme Court } A. 1865
3d Grand Division

Edmund S Holbrook }
vs } Error to Mercer
Ellen Fellows }

And now comes the said Plaintiff in error, in person and says that there is manifest error in the above record and the proceedings of said Court in this

1 The Court erred in excluding the deed of Bostwick to Plaintiff from the jury.

2 The Court erred in its instructions to the jury, on behalf of said ~~deft~~ defendant, as to the effect of said deed

3 The Court erred in permitting parol testimony to be given as to said deed

4 The court erred in not awarding a new trial to the Plaintiff

5 The Court erred in entering judgment for defendant. — And for these & other errors Plaintiff alleges that said judgment ought to be ~~raised~~ reversed.

E S Holbrook Plaintiff in Error

1 2 3 4 5 The Court erred in refusing Defendants instructions & in giving Defendants instructions

In Supreme Court
To April Term A D 1865

State of Illinois }
Third Grand Division }

Ellen Fellows
at
Edmund S Holbrook }

And the said Ellen Fellows defendant in error now comes & says that there is no error either in the record & proceedings aforesaid or in giving judgment aforesaid in manner & form as above assigned and prays that the said judgment may be affirmed - and that her Costs may be adjudged &c

By Goodspeed & Snapp
Attys for Defdt in Error

Kolbe 78
vs
Fellows.

Error to Will
Record

Filed Oct 4. 1865
L Leland
Clk

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION,

APRIL TERM, 1865, AT OTTAWA.

EDMUND S. HOLBROOK
vs.
ELLEN FELLOWS.
} *Error to Will.*

ABSTRACT OF RECORD;

BY PLAINTIFF IN ERROR.

2 Declaration and notice in ejectment for lot five, block thirteen, of that part of the city of Joliet, Will Co., known as the original town of Joliet, by plaintiff in error, against Mathias L. Cook, served March 14, 1860, with affidavit of possession by Cook, filed in court March 15, 1860.

4 Rule to plead in twenty days.

5 Plea of general issue.

11 Motion by Ellen Fellows to be admitted to defend as defendant, which is allowed.

13 March term 1864. Trial by jury. Verdict for defendant.

14 Motion for new trial by plaintiff taken under advisement. Motion overruled Dec. 7, 1864.

15 Exceptions by plaintiff.

16 Judgment on the verdict, and exceptions by plaintiff.

17 Bill of exceptions filed by plaintiff.

Plaintiff read in evidence, without objection, a record of a patent by the State of Illinois, to James B. Campbell, found in record book 1,

p. 61, of the record of deeds of Will county, for the east fractional part of the southeast quartes of Sec. 9, T. 35 North, R. 10 east, dated April 10th, A. D. 1834.

20 Plaintiff then read, without objection, a certified copy of a decree in bankruptcy of the United District Court for the State of Illinois, declaring that said Campbell became a bankrupt, and that William C. Bostwick was appointed his assignee, on the 22d day of August, A. D. 1842; and also the 51st rule in bankruptcy, as to the sale of real estate by assignees.

24 Plaintiff then read, without objection, a deed to him by William C. Bostwick, said assignee, for said lot 5, in block 13, of the town of Joliet, dated 8th day of March 1851, recorded March 24, 1851.

30 Plaintiff then proved, by witness, that the town of Juliet was laid off upon said tract of land, and that said lot was a part of said land, and that the same was known in late years as the town of Joliet, a part of the city of Joliet.

Plaintiff here closed his case.

31 Defendant then called S. W. BOWEN as a witness, who said:

"There was a large barn put on this lot four or five years ago—I guess six years,—by Mr. Cook, former defendant, now occupied by Mr. Lafontaine. The lot was vacant before that time. Elisha C. Fellows claimed it ten or eleven years ago. I understood he conveyed it to his wife just before the barn was put on. Cook occupied and claimed under Mrs. Fellows."

Defendant then offered in evidence a deed to defendant by Francis Goodspeed, mayor of the city of Joliet, dated April 27th, 1859, in words and figures following, to wit:

"Know all men by these presents, that, whereas lot number five, in block number thirteen, in old town of Joliet, in the city of Joliet, in the county of Will and State of Illinois, was duly assessed to pay sixty dollars and fifty cents as special assessment for grading Chicago street, levied in the year one thousand eight hundred and fifty-six by an ordinance of the common council of said city, passed on the twenty-fourth day of November, A. D. one thousand eight hundred and fifty-six, and

31 the said taxes not having been paid, the said common council, by an order made on the second day of March, one thousand eight hundred and fifty-seven, directed the collector of said city to advertise said lot, piece and parcel of land and sell at public auction so much of the same as might be necessary to pay the taxes above mentioned, with interest and expenses thereon; that, pursuant to said order, said piece or parcel of land was duly advertised in the corporation paper of said city for the period of three weeks, as directed by law, and this twenty-third day of November, A. D. one thousand eight hundred and fifty-seven, at a sale at public auction, E. H. White was the purchaser of the whole of said piece or parcel of land above described and assessed for sixty dollars and fifty cents, and twenty-one cents costs, that being the smallest portion of said piece or parcel of land for which any person would pay the tax and costs accruing thereon, amounting in all to sixty dollars and seventy-one cents; and whereas the said premises above sold was not redeemed in manner and form as the law directs, within two years from the date thereof; and whereas it appears by the affidavit of R. E. Barber that the proper notice was served on Elisha C. Fellows, the owner of said lot or piece or parcel of land, and to whom the same was assessed; and whereas Ellen Fellows became the owner and holder of the said certificate of sale of said piece or parcel of land; and whereas, at a session of the common council of the city of Joliet, holden on the 6th day of April, A. D. one thousand eight hundred and fifty-nine, and it appearing that the above described piece or parcel of land so sold has not been redeemed according to law, it was then and there ordered by said common council of said city, that the said city cause a deed to be made and executed, conveying the said piece or parcel of land to Ellen Fellows, according to the constitution, charter and ordinances of said city and State of Illinois:

"And whereas the said Ellen Fellows is the owner and holder of said certificate of said piece or parcel of land:

"And whereas the said Ellen Fellows has delivered to the mayor of said city the certificate aforesaid of said sale of said piece or parcel of land, and also showing the proper affidavit of her having complied with all the requirements of the constitutions, statutes, charters and ordinances of said city of Joliet and State of Illinois necessary to entitle the said Ellen Fellows to a deed of the premises so sold, as foresaid:

Now, therefore, I, Francis Goodspeed, mayor of the city of Joliet, aforesaid, for and in consideration of the above named sum of money, amounting to sixty dollars and seventy-one cents, paid to P. Filer, collector of the city of Joliet, by said purchaser of said certificate of sale, and by virtue of the statute, charter and ordinance of said city of Joliet and State of Illinois, made and provided, have granted, bargained, sold,

and by these presents do grant, bargain and sell unto the said Ellen Fellows, her heirs and assigns, the premises so sold as aforesaid, situated in the city of Joliet, in the county of Will and State of Illinois, to wit: Lot number five, in block number thirteen, in old town of Joliet, in the city of Joliet; to have and hold the said premises unto her, the said Ellen Fellows, her heirs and assigns, forever; subject, however, to all the rights of redemption provided by law and the charter and ordinances of said city of Joliet.

"In witness whereof, and by the authority aforesaid, I have hereunto subscribed my name and affixed the seal of said city of Joliet, [SEAL.] this 27th day of April, 1859.

"F. GOODSPEED, Mayor of Joliet. [SEAL.]

"Attest: SAMUEL D. SMITH, City Clerk."

34 Acknowledgment of deed before clerk of circuit court, with seal, June 4th, 1859.

"To the reading of which plaintiff objected, on the ground that said deed was irrelevant and incompetent, no right, power or authority having been shown for the execution of said deed by said Goodspeed."

"The defendant then produced the records of the proceedings of the
35 common council of the city of Joliet, and offered from said records an entry, from vol. 2, p. 59, date April 6th, 1859, in words and figures following, to wit:

" 'On motion of Alderman Bartelson, it was ordered, that the city of Joliet make a deed to Mrs. Fellows for lot 5, in block 13, in old town of Joliet, (sold on the 23d day of March, A. D. 1857, on special asssessment for grading Chicago street), on filing a certificate of purchase and the proper affidavit, &c.'

"To the reading of which plaintiff objected, on the ground of variance, that the order did not authorise *this* deed, or refer to sale on which this deed was made."

Defendant then called T. H. MARSH as a witness, who testified, the plaintiff objecting, that he was attorney for defendant when and before this deed was made; that he acted for defendant in getting the certificate of sale of another party, and in getting this order of the city council passed for the making of this deed; that he drew this deed himself, and in drawing it he made a mistake, in writing 'November,' instead of 'March.'

"The court then permitted said order to be read in evidence, leaving the question whether said order referred to said deed, to be determined by the jury; to which decisions plaintiff then and there excepted."

"The defendant then offered to read said deed. The plaintiff objected as before, that no sufficient power had been shown; that all the preliminary action of the city should be shown, and particularly a judgment or order of sale and precept on which sale was made. But the court permitted said deed to be read in evidence; to which decision plaintiff then and there excepted."

Defendant here rested his case.

37 Plaintiff then read in evidence a record of a deed from records of deeds of Will county, of Robert J. Fellows to Elisha C. Fellows, date Sept. 15, 1856, of said lot, with covenants of warranty, duly acknowledged, recorded Nov. 25, 1856.

39 Plaintiff then read record of deed from Will county records of Elisha C. Fellows to Ellen Fellows, defendant, dated 8th day of March 1859, with covenants of warranty, duly acknowledged and recorded same day.

Which was all the testimony in the case.

43 "The court instructed the jury on behalf of the plaintiff as follows:

"1st. That the evidence offered by plaintiff shows that he is the owner in fee simple of the premises described in the declaration, and unless the defendant has, in the opinion of the jury, overcome such evidence by other evidence, they should find for the plaintiff a fee simple title to the premises named in the declaration.

"2d. In this action the defendants have no right to prove title by parol, and all parol evidence for the purpose should be disregarded.

"3d. Unless the jury find that the order of the city council of Joliet, offered in evidence by the defendant, ordered the mayor to make this specific tax deeed offered in evidence, then the jury should not consider the tax deed at all."

The plaintiff asked the court to instruct the jury:

"4th. In order to make such tax deed evidence defendant should have proved that the notices required by the constitution and the laws as to tax deeds were given.

"5th. The tax deed offered in evidence does not constitute legal evidence of the giving such notices.

"6th. The law requires those in possession of real estate, claiming title, to pay the taxes legally assessed thereon, and the persons so in possession cannot, by permitting such property to go to sale and getting

a tax deed thereon, acquire any better or superior title than they had before. But the jury are to pass upon the question of possession by defendant, or those under whom she claims at the time of the assessment."

But the court refused to give them, and plaintiff then and there excepted.

The court instructed for defendant:

44 "1. The deed offered in evidence by the defendant, Ellen Fellows, is *prima facie* evidence of this:

"First, That lot 5, in block 13, was subject to taxation or assessment at the time the same was advertised for sale, and had been listed and assessed in the time and manner required by law.

"Second, That the taxes or assessment were not paid at any time before the sale.

"Third, That the lot conveyed had not been redeemed from the sale at the date of said deed.

"2. And said deed is conclusive evidence of,—

"First, That the lot 5 was advertised for sale in the manner and for the length of time required by law.

"Second, That the lot was sold for taxes or assessments, as stated in the deed.

"Third, That Ellen Fellows, the grantor in the deed, was the purchaser or his assignee; and,

"Fourth, That the sale was conducted in the manner required by law; and the plaintiff in this case, in order to defeat the deed of Francis Goodspeed to Ellen Fellows, must show, either that the lot 5, in block 13, was not subject to assessment or taxation at the date of the sale; that the taxes or assessments had been paid; that the lot had never been listed and assessed for taxation or assessment; or that the same had been redeemed.

46 "3. The plaintiff is not permitted to question the title acquired by the deed from Francis Goodspeed to the defendant, Ellen Fellows, without his showing he had title to the lot at the time of sale, or that the title was obtained from the United States or the State of Illinois after the sale, and that all taxes due upon the said lot 5 have been paid by the plaintiff or the person under whom he claims title.

"4. (Unimportant.)

"5. That Ellen Fellows, the defendant, was not required to pay the taxes on the lot in controversy before she obtained a deed from Elisha C. Fellows; and if the jury believe, from the evidence, that the lot was sold for taxes prior to the time that Elisha C. Fellows conveyed to her, then upon that point the law is for defendant."

6. (Unimportant.)

To the giving of which plaintiff objected.

The instructions were given, and the plaintiff then and there excepted.

POINTS AND AUTHORITIES.

I.

The court erred in permitting the tax deed to be read in evidence without the production of legal authority in the mayor to execute it.

The charter of the city of Joliet is found in Special Laws of 1857, p. 188–226, passed Jan. 31, 1857, in force from and after its passage.

The section under which deed was admitted is sec. 14, p. 215, and the court held that the deed proved itself, and as a deed made to a purchaser by order of the common council under the order given in evidence from the city records, whereas it should appear to be a deed for a lot *sold by order* of the council.

This meaning is in accordance with the *grammatical construction* of the sentence.

Sec. 8, p. 213, requires the council, in case of nonpayment of taxes, to make an order of sale, to be entered of record, a copy of which shall constitute the process for sale.

This makes the proceeding analogous to other tax proceedings—like the judgment and precept in the State Revenue Law—a matter which is the basis of the deed, and first to be shown before a deed can be introduced in evidence.

It is reasonable; and, taking the two sections together, the *legal* meaning of section 14 is apparent: the deed is not made evidence of the *order of sale.*

II.

The first Joliet city charter is found p. 161 of laws of 1852, and gives no specific process as to sales for taxes.

The tax for which this lot was sold, as shown by the deed, (see Ab. p. —,) was levied Nov. 24, 1856, before the new charter was passed.

Now, it is apparent, by reading said sec. 8, p. 213, laws 1857, that this extraordinary power of ordering sales for taxes by the city council

without a judgment of court, was limited to assessments made under the act of 1857. No power was given retro-active upon assessments before that time made.

The common council referred to in said sec. 14, p. 215, means the common council as contemplated by this entire act.

This act is a new charter, not an amendment. Every section is new and original, from beginning to end; not an amendment of a former charter; not an engrafting the new upon the old. The only reference I find to an existing city government is in sec. 5, p. 191, which only provides who shall "be successors to the members of the present city council." By the first section, p. 188, a certain extent of country "is hereby erected into a city." The "inhabitants shall be a corporation," &c., and so on to the end.

III.

The court erred in referring the order for a deed, and the question of variance raised, to the jury.

IV.

The court erred in permitting parol testimony to be given in reference to a mistake made in drawing the deed.

V.

The court erred in permitting said deed to be read without proof of the notices required by the constitution.

VI.

The court should have given the plaintiff's 6th instruction, and refused defendant's fifth instruction. It is shown that E. C. Fellows, in 1856, claimed the lot under a warrantee deed, and the lot was assessed in his name. Ellen Fellows was in possession, under a warrantee deed from E. C. Fellows, at the time she obtained the deed. She succeeded to his position, with the same rights and obligations, and could no more enlarge or strengthen her title by obtaining a tax title, based on his delinquency, than he could. In obtaining this deed she but paid the taxes or redeemed the land from sale.

E. S. HOLBROCK,
Plaintiff in Error.

78

Holbrook

vs

Fellows

Pl. Ab. & Points

Filed April 4 1865

L. Leland

Clk

Emma A. S. Holbert
vs
Ellen Fallon
} In the Supreme Court
Error to Will

In the year 1856 on the 24th day of November the Common Council of the City of Joliet passed an ordinance that Lot five in block thirteen be assessed to pay sixty dollars and fifty cents as special assessment for grading Chicago Street in said City. and the said assessment not having been paid. the Common Council by an order made on the second day of March 1857 directed the Collector of said City to advertise said lot and sell so much of the same as might be necessary to pay the assessment above mentioned with interest and expenses thereon.

That pursuant to such order said lot was duly advertised in the Corporation papers of said City for the period of three months as directed by law, and was sold. E. H. White being the

purchaser of the whole of said Lot-

Subsequently E. H. White assigned his certificate of sale to the defendant-Ellen Fallons. so she became the lawful purchaser. The said Lot- was not redeemed.

Affidavit was filed that the proper notice was served on ~~the~~ Elvira C. Fallons to whom the same was addressed.

On the 6th day of April 1859 it was ordered by the said Common Council that a deed be made of Lot-5 in block 13 to Ellen Fallons. And on the 27th day of April 1859 the Mayor conveyed said Lot ~~accordingly~~ agreeably to the Statute in such case provided. See the Private Laws of 1865-6 Sec. 11.

This deed conveyed a title of Lot-5 in block 13 to Ellen Fallons the defendant in error.

On the trial this deed was read in evidence. and in addition thereto the records of the proceedings of the Common Council wherein it was ordered that the City of Joliet make a deed of Lot-5 to Mrs Fallons.

The ~~objects to~~ Plaintiff objected to the defendants pleading that in referring to the order of the common Council in the deed that there was a mistake ~~that~~ That it ought to have recited the 23 of March, instead of the 23. of November.

Now this part of the deed was either immaterial, or then again if it was material it was a latent ambiguity which could be explained by parol. It was surplusage in the deed anyway.

The Court will also notice that the title of the Charter of 1865-7 on page 1866 ~~of~~ reads thus. "an act to reduce the law incorporating the City of Joliet and the several acts amendatory thereof into one act, and to amend the same"

The plaintiff says that the Court erred in not giving his 6th instructions.

Now there is no justice nor law in said 6th instruc-

action. The assessment on lot 5
was made on the 24th day of Nov.
1856 and sold on the 23d day of
March 1857. to E. H. White.

Now the
deed from Elisha C. Fallows
was not given until March 8th 1859
almost 3 years subsequent to the
said assessment. Now with
what kind of a face can the
plaintiff say that it was
the defendants duty to pay
taxes upon land which there
assessed years before she got
a deed for it.

Then again how
does it lie in the mouth of
the plaintiff to complain of
the defendant for not paying
the taxes which were assessed
long before she obtained title
for the same. When it was his
duty to have paid them
himself. Claiming the interest
as he does. Why look at it.

Here is the plaintiff who
says that he owns lot 6. in block
13. and there is an assessment-

of several sales made upon it. & he contends that the defendant ought to have paid it. It amounts to just this. The plaintiff stands by & sees his land offered for taxes and claims that somebody else must pay his taxes. I can characterize the argument in no other terms except to call it preposterous. It became the duty of the plaintiff to pay the taxes which were levied upon his own land himself and by suffering them to be sold without paying them, the statute says on page 215; Sec. 14 Private Laws of 1895 that the deed shall be prima facie evidence of certain things, & conclusive as to other things which the Court must please see by referring to such Laws.

The statute referred to further provides that, among other things "~~all taxes due upon the lands have been paid by the~~ before the person "shall be permitted to question the "title acquired by the tax deed

"he must prove that all taxes due
"upon the lands have been paid by
"such person. that is the plaintiff
in this case.

There is no proof in this
case that the plaintiff ever paid
any taxes upon Lot 5. in block 13.
the premises in controversy
See the Private Laws of 1857 page 214—
Sec 14

The plaintiff again
says that "Ellen Fallons succeeded to
"the position of Elisha C. Fallons":
Well what was that position?
What rights had Elish C. Fallons
Why Hulbert contends that
he had no rights. no "position" as
regards this property. How does
he contend this? By alleging that
the title was in Pinney and
not in Fallons. Then if Ellen
Fallons obtained a deed from
one who had no title.
How can Hulbert without
blushing say that she who shall
pretend to claim under him
must pay his tax. In fact he

argues as though he had no faith
in his title which he pretends
he put before the defendant
at taxes. Why anybody
as far as the proof is concerned
in this case could ~~buy this lot~~
have brought this lot at a tax
sale and no one see it. But the
Court will see that the gentleman's
5th and last point is illogical
and illegal. We confidently
believe that the defendant is
entitled to hold this lot

The argument of the
gentleman is about in keeping
with his claim of property in the
City of Joliet. He pretends to claim
about half of the city and never paid
me even offered to pay any tax on
the property. And all that he ever
had a shadow of pretense of paying
for this lot in question is fifty cents
and now has the unblushing effron-
tery to declare that the defendant
Ellen Fallon owe just eight times
she paid over fifty dollars of his
tax. That it was just right. It was

so. Is this reason. Is this justice. Is this Lincoln's Deity of this in-
justice & reason. When justice &
reason has fled to "Eastern Lectu-
ture"

H Schaffer Atty
for Appellee.

No 8

Edmund S Hallowell
vs
Allen Fallows
Briefs & Argument
of the
Defendant = Below

Filed Mch. 20. 1865.
Leland
Clk.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM, 1865, AT OTTAWA.

EDMUND S. HOLBROOK
vs.
ELLEN FELLOWS.
} *Error to Will.*

ABSTRACT OF RECORD,

BY PLAINTIFF IN ERROR.

2 Declaration and notice in ejectment for lot five, block thirteen, of that part of the city of Joliet, Will Co., known as the original town of Joliet, by plaintiff in error, against Mathias L. Cook. served March 14, 1860, with affidavit of possession by Cook, filed in court March 15, 1860.

4 Rule to plead in twenty days.

5 Plea of general issue.

11 Motion by Ellen Fellows to be admitted to defend as defendant, which is allowed.

13 March term 1864. Trial by jury. Verdict for defendant.

14 Motion for new trial by plaintiff taken under advisement. Motion overruled Dec. 7, 1864.

15 Exceptions by plaintiff.

16 Judgment on the verdict, and exceptions by plaintiff.

17 Bill of exceptions filed by plaintiff.

Plaintiff read in evidence, without objection, a record of a patent by the State of Illinois, to James B. Campbell, found in record book 1,

p. 61, of the record of deeds of Will county, for the east fractional part of the southeast quartes of Sec. 9, T. 35 North, R. 10 east, dated April 10th, A. D. 1834.

20 Plaintiff then read, without objection, a certified copy of a decree in bankruptcy of the United District Court for the State of Illinois, declaring that said Campbell became a bankrupt, and that William C. Bostwick was appointed his assignee, on the 22d day of August, A. D. 1842; and also the 51st rule in bankruptcy, as to the sale of real estate by assignees.

24 Plaintiff then read, without objection, a deed to him by William C. Bostwick, said assignee, for said lot 5, in block 13, of the town of Joliet, dated 8th day of March 1851, recorded March 24, 1851.

30 Plaintiff then proved, by witness, that the town of Juliet was laid off upon said tract of land, and that said lot was a part of said land, and that the same was known in late years as the town of Joliet, a part of the city of Joliet.

Plaintiff here closed his case.

31 Defendant then called S. W. BOWEN as a witness, who said:

"There was a large barn put on this lot four or five years ago—I guess six years,—by Mr. Cook, former defendant, now occupied by Mr. Lafontaine. The lot was vacant before that time. Elisha C. Fellows claimed it ten or eleven years ago. I understood he conveyed it to his wife just before the barn was put on. Cook occupied and claimed under Mrs. Fellows."

Defendant then offered in evidence a deed to defendant by Francis Goodspeed, mayor of the city of Joliet, dated April 27th, 1859, in words and figures following, to wit:

"Know all men by these presents, that, whereas lot number five, in block number thirteen, in old town of Joliet, in the city of Joliet, in the county of Will and State of Illinois, was duly assessed to pay sixty dollars and fifty cents as special assessment for grading Chicago street, levied in the year one thousand eight hundred and fifty-six by an ordinance of the common council of said city, passed on the twenty-fourth day of November, A. D. one thousand eight hundred and fifty-six, and

the said taxes not having been paid, the said common council, by an
31 order made on the second day of March, one thousand eight hundred and fifty-seven, directed the collector of said city to advertise said lot, piece and parcel of land and sell at public auction so much of the same as might be necessary to pay the taxes above mentioned, with interest and expenses thereon; that, pursuant to said order, said piece or parcel of land was duly advertised in the corporation paper of said city for the period of three weeks, as directed by law, and this twenty-third day of November, A. D. one thousand eight hundred and fifty-seven, at a sale at public auction, E. H. White was the purchaser of the whole of said piece or parcel of land above described and assessed for sixty dollars and fifty cents, and twenty-one cents costs, that being the smallest portion of said piece or parcel of land for which any person would pay the tax and costs accruing thereon, amounting in all to sixty dollars and seventy-one cents; and whereas the said premises above sold was not redeemed in manner and form as the law directs, within two years from the date thereof; and whereas it appears by the affidavit of R. E. Barber that the proper notice was served on Elisha C. Fellows, the owner of said lot or piece or parcel of land, and to whom the same was assessed; and whereas Ellen Fellows became the owner and holder of the said certificate of sale of said piece or parcel of land; and whereas, at a session of the common council of the city of Joliet, holden on the 6th day of April, A. D. one thousand eight hundred and fifty-nine, and it appearing that the above described piece or parcel of land so sold has not been redeemed according to law, it was then and there ordered by said common council of said city, that the said city cause a deed to be made and executed, conveying the said piece or parcel of land to Ellen Fellows, according to the constitution, charter and ordinances of said city and State of Illinois:

"And whereas the said Ellen Fellows is the owner and holder of said certificate of said piece or parcel of land:

"And whereas the said Ellen Fellows has delivered to the mayor of said city the certificate aforesaid of said sale of said piece or parcel of land, and also showing the proper affidavit of her having complied with all the requirements of the constitutions, statutes, charters and ordinances of said city of Joliet and State of Illinois necessary to entitle the said Ellen Fellows to a deed of the premises so sold, as foresaid:

Now, therefore, I, Francis Goodspeed, mayor of the city of Joliet, aforesaid, for and in consideration of the above named sum of money, amounting to sixty dollars and seventy-one cents, paid to P. Filer, collector of the city of Joliet, by said purchaser of said certificate of sale, and by virtue of the statute, charter and ordinance of said city of Joliet and State of Illinois, made and provided, have granted, bargained, sold,

and by these presents do grant, bargain and sell unto the said Ellen Fellows, her heirs and assigns, the premises so sold as aforesaid, situated in the city of Joliet, in the county of Will and State of Illinois, to wit: Lot number five, in block number thirteen, in old town of Joliet, in the city of Joliet; to have and hold the said premises unto her, the said Ellen Fellows, her heirs and assigns, forever; subject, however, to all the rights of redemption provided by law and the charter and ordinances of said city of Joliet.

"In witness whereof, and by the authority aforesaid, I have hereunto subscribed my name and affixed the seal of said city of Joliet, [SEAL.] this 27th day of April, 1859.

"F. GOODSPEED, Mayor of Joliet. [SEAL.]

"Attest: SAMUEL D. SMITH, City Clerk."

34 Acknowledgment of deed before clerk of circuit court, with seal, June 4th, 1859.

"To the reading of which plaintiff objected, on the ground that said deed was irrelevant and incompetent, no right, power or authority having been shown for the execution of said deed by said Goodspeed."

"The defendant then produced the records of the proceedings of the
35 common council of the city of Joliet, and offered from said records an entry, from vol. 2, p. 59, date April 6th, 1859, in words and figures following, to wit:

" 'On motion of Alderman Bartelson, it was ordered, that the city of Joliet make a deed to Mrs. Fellows for lot 5, in block 13, in old town of Joliet, (sold on the 23d day of March, A. D. 1857, on special asssessment for grading Chicago street), on filing a certificate of purchase and the proper affidavit, &c.'

"To the reading of which plaintiff objected, on the ground of variance, that the order did not authorise *this* deed, or refer to sale on which this deed was made."

Defendant then called T. H. MARSH as a witness, who testified, the plaintiff objecting, that he was attorney for defendant when and before this deed was made; that he acted for defendant in getting the certificate of sale of another party, and in getting this order of the city council passed for the making of this deed; that he drew this deed himself, and in drawing it he made a mistake, in writing 'November,' instead of 'March.'

"The court then permitted said order to be read in evidenoe, leaving the question whether said order referred to said deed, to be determined by the jury; to which decisions plaintiff then and there excepted."

"The defendant then offered to read said deed. The plaintiff objected as before, that no sufficient power had been shown; that all the preliminary action of the city should be shown, and particularly a judgment or order of sale and precept on which sale was made. But the court permitted said deed to be read in evidence; to which decision plaintiff then and there excepted."

Defendant here rested his case.

37 Plaintiff then read in evidence a record of a deed from records of deeds of Will county, of Robert J. Fellows to Elisha C. Fellows, date Sept. 15, 1856, of said lot, with covenants of warranty, duly acknowledged, recorded Nov. 25, 1856.

39 Plaintiff then read record of deed from Will county records of Elisha C. Fellows to Ellen Fellows, defendant, dated 8th day of March 1859, with covenants of warranty, duly acknowledged and recorded same day.

Which was all the testimony in the case.

43 "The court instructed the jury on behalf of the plaintiff as follows:

"1st. That the evidence offered by plaintiff shows that he is the owner in fee simple of the premises described in the declaration, and unless the defendant has, in the opinion of the jury, overcome such evidence by other evidence, they should find for the plaintiff a fee simple title to the premises named in the declaration.

"2d. In this action the defendants have no right to prove title by parol, and all parol evidence for the purpose should be disregarded.

"3d. Unless the jury find that the order of the city council of Joliet, offered in evidence by the defendant, ordered the mayor to make this specific tax deeed offered in evidence, then the jury should not consider the tax deed at all."

The plaintiff asked the court to instruct the jury:

"4th. In order to make such tax deed evidence defendant should have proved that the notices required by the constitution and the laws as to tax deeds were given.

"5th. The tax deed offered in evidence does not constitute legal evidence of the giving such notices.

"6th. The law requires those in possession of real estate, claiming title, to pay the taxes legally assessed thereon, and the persons so in possession cannot, by permitting such property to go to sale and getting

a tax deed thereon, acquire any better or superior title than they had before. But the jury are to pass upon the question of possession by defendant, or those under whom she claims at the time of the assessment."

But the court refused to give them, and plaintiff then and there excepted.

The court instructed for defendant:

44 "1. The deed offered in evidence by the defendant, Ellen Fellows, is *prima facie* evidence of this:

"First, That lot 5, in block 13, was subject to taxation or assessment at the time the same was advertised for sale, and had been listed and assessed in the time and manner required by law.

"Second, That the taxes or assessment were not paid at any time before the sale.

"Third, That the lot conveyed had not been redeemed from the sale at the date of said deed.

"2. And said deed is conclusive evidence of,—

"First, That the lot 5 was advertised for sale in the manner and for the length of time required by law.

"Second, That the lot was sold for taxes or assessments, as stated in the deed.

"Third, That Ellen Fellows, the grantor in the deed, was the purchaser or his assignee; and,

"Fourth, That the sale was conducted in the manner required by law; and the plaintiff in this case, in order to defeat the deed of Francis Goodspeed to Ellen Fellows, must show, either that the lot 5, in block 13, was not subject to assessment or taxation at the date of the sale; that the taxes or assessments had been paid; that the lot had never been listed and assessed for taxation or assessment; or that the same had been redeemed.

46 "3. The plaintiff is not permitted to question the title acquired by the deed from Francis Goodspeed to the defendant, Ellen Fellows, without his showing he had title to the lot at the time of sale, or that the title was obtained from the United States or the State of Illinois after the sale, and that all taxes due upon the said lot 5 have been paid by the plaintiff or the person under whom he claims title.

"4. (Unimportant.)

"5. That Ellen Fellows, the defendant, was not required to pay the taxes on the lot in controversy before she obtained a deed from Elisha C. Fellows; and if the jury believe, from the evidence, that the lot was sold for taxes prior to the time that Elisha C. Fellows conveyed to her, then upon that point the law is for defendant."

6. (Unimportant.)

To the giving of which plaintiff objected.

The instructions were given, and the plaintiff then and there excepted.

POINTS AND AUTHORITIES.

I.

The court erred in permitting the tax deed to be read in evidence without the production of legal authority in the mayor to execute it.

The charter of the city of Joliet is found in Special Laws of 1857, p. 188–226, passed Jan. 31, 1857, in force from and after its passage.

The section under which deed was admitted is sec. 14, p. 215, and the court held that the deed proved itself, and as a deed made to a purchaser by order of the common council under the order given in evidence from the city records, whereas it should appear to be a deed for a lot *sold by order* of the council.

This meaning is in accordance with the *grammatical* construction of the sentence.

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This makes the proceeding analogous to other tax proceedings—like the judgment and precept in the State Revenue Law—a matter which is the basis of the deed, and first to be shown before a deed can be introduced in evidence.

It is reasonable; and, taking the two sections together, the *legal* meaning of section 14 is apparent: the deed is not made evidence of the *order of sale.*

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Now, it is apparent, by reading said sec. 8, p. 213, laws 1857, that this extraordinary power of ordering sales for taxes by the city council

without a judgment of court, was limited to assessments made under the act of 1857. No power was given retro-active upon assessments before that time made.

The common council referred to in said sec. 14, p. 215, means the common council as contemplated by this entire act.

This act is a new charter, not an amendment. Every section is new and original, from beginning to end; not an amendment of a former charter; not an engrafting the new upon the old. The only reference I find to an existing city government is in sec. 5, p. 191, which only provides who shall "be successors to the members of the present city council." By the first section, p. 188, a certain extent of country "is hereby erected into a city." The "inhabitants shall be a corporation," &c., and so on to the end.

III.

The court erred in referring the order for a deed, and the question of variance raised, to the jury.

IV.

The court erred in permitting parol testimony to be given in reference to a mistake made in drawing the deed.

V.

The court erred in permitting said deed to be read without proof of the notices required by the constitution.

VI.

The court should have given the plaintiff's 6th instruction, and refused defendant's fifth instruction. It is shown that E. C. Fellows, in 1856, claimed the lot under a warrantee deed, and the lot was assessed in his name. Ellen Fellows was in possession, under a warrantee deed from E. C. Fellows, at the time she obtained the deed. She succeeded to his position, with the same rights and obligations, and could no more enlarge or strengthen her title by obtaining a tax title, based on his delinquency, than he could. In obtaining this deed she but paid the taxes or redeemed the land from sale.

E. S. HOLBROOK,
Plaintiff in Error.

78 130

Holbrook

vs

Fellows

St. Louis

Filed April 4. 1865

L. Leland

Clerk

Edmund S Holbrook

vs

Ellen Fellows.

Error to
Will.

In the Supreme Court
State of Illinois
2d Grand Division

For the
April Term A 1865.

The Clerk
will issue writ of Error in
above entitled cause. also
Scire Facias for service and
send same at Penn. addrest
to Sheriff of Will The writ of Error
need not be served

E S Holbrook
Plaintiff in Error

March 2
1865

Holbrook
vs
Fellows
Petition

Filed Mch. 3. 1865.
L. Leland
Clk.

STATE OF ILLINOIS,
SUPREME COURT. } ss. The People of the State of Illinois,

To the Sheriff of Will County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of Will County, before the Judge thereof, between

Edmund S. Holbrook

~~plaintiff~~, and

Ellen Fellows

~~defendant~~, it is said that manifest error hath intervened, to the injury of the said

Holbrook

as we are informed by his complaint the record and proceedings of which said judgment 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

Ellen Fellows

that She 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~~ first Monday in April A. D. 1865, to hear the record and proceedings aforesaid, and the errors assigned, if She 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

Ellen Fellows

notice, together with this writ.

Witness, The Hon. Pinkney H. Walker, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 3rd day of March in the year of our Lord One Thousand Eight Hundred and Sixty-five.

L. Leland

Clerk of the Supreme Court.

78

Edmund S. Holbrook

vs.

No. Ellen Fellows

SCIRE FACIAS.

FILED. Apl. 7 A. D. 1866

A. Lechner Clerk.

I return this writ served, by reading the same to the within named Ellen Fellows on the 11th day of March A.D. 1865. Sheriffs fees Paid

65 cts

John Reid Sheriff By his Dep.
J. R. Schmerhorn
Deputy