

8495

No. _____

Supreme Court of Illinois

E. W. Myatt

vs.

M. Walker et al

71641  7

7
Summons
State of Illinois, Bond County, Ill.

The People of the State of Illinois to the Sheriff
of Bond County, Greeting:

We Command you to Summon
Nancy E. Barcroft, Elias Barcroft, Sarah E. Walker
William Walker, Murphy L. Mayatt, Wm C. Mayatt
Alep. B. Mayatt, Josiah B. Mayatt, Murphy Mayatt
and Williamson Plant if to be found in your
County to appear before the Circuit Court of Bond
County on the first day of the next Term thereof to
be holden at the Court house in Greenville on the
third Monday of April next to answer to a bill
filed in our said Circuit Court on the Chancery
side thereof against them by Edward W. Mayatt
Jacob Kessner, Fermania Kessner, Mary Cook
Martha A. Cook, Emily C. Cook, Elisha Duncan
and Mary W. Duncan to set aside Deeds and
for relief &c -

And have you then return this writ with due returns
thereon -

Witness John B. Reid Clerk of our said Court
and the Seal thereof at Greenville this 19th day of
March A.D. 1862.



John B. Reid Clerk

Endorsements
Summons In Chancery

E. W. Meyalt & others
vs

Nancy E. Barcroft & others
In the Bond Circuit Court Illinois
in the April Term A.D. 1862

Sheriff's Fees

Seawing	5.00
Copies	5.00
140 Mileage	7.50
Returning	<u>1.00</u>
W. W.	17.50

Filed April 5 1862

I have executed the within to the within named
Williamson Plant. Murphy Meyalt and Alexander
B. Meyalt defendants by delivering a true Copy
of the same to each of them and informing them of
the contents thereof as I am within Commanded
all performed in my County on the 28th day of March
A.D. 1862

Wm. Watkins Sheriff of
Bond County Illinois

State of Illinois }
Bond County } 3

I have executed the within writ to
the witness named Nancy E. Barcroft and Elias
Barcroft by delivering a true copy of the same for
each of them to the within named Elias Barcroft
her husband of her family within my County, a
white person of the age of ten years or upwards

and informing him of the contents hereof - And to the
 within named Sarah S. Walker and her husband William
 Walker by delivering a true copy of the same for each of
 them to said Sarah S. Walker wife of his family in my
 County, a white person of the age of ten years or upwards
 and informing her of the contents hereof - And to the
 within named William C. Meyatt defendant by
 leaving a true copy of the same at his usual place
 of abode with his wife a white person of his family
 of the age of ten years or upwards and informing her
 of the contents hereof, and also to Josiah B. Meyatt
 and Murphy S. Meyatt defendants by delivering a
 true copy of the same to each of them at their usual
 place of abode in my County and informing them
 of the contents hereof - Searched on all of the
 above named defendants on the third day of
 April A.D. 1862.

Wm. Watkins Sheriff of Bond Co. Ills.
 by H. B. Alexander Deputy

Bill

State of Illinois } In Bond County Circuit Court
 Bond County } to April Term A.D. 1864

Edward W. Meyatt Jacob Kuesner }
 Penecia J. Kuesner Emily C. Cole } Bill in Chancery
 Elisha Duncanson & Mary W. Duncanson } to set aside deeds
 do } for relief

Samuel E. Barcroft Elias Barcroft } Amended Bill
 Sarah S. Walker, William Walker }
 Memphis S. Heyatt William C. Heyatt } Defts.
 Josiah B. Heyatt Alexander B. Heyatt }
 Memphis Heyatt & Williamson Plant }

Do the Hon Joseph Gillespie Judge of the
 24th Judicial Circuit of the State of Illinois, In
 Chancery Sitting.

Your Complainants Edward W.
 Heyatt Jacob Kessner, Fannecia J. Kessner, Emily
 C. Cole, Elisha Duncan and Mary W. Duncan
 would respectfully shew unto your Honor, that
 on the 14th day of September AD 1861 one Alexander
 Heyatt departed this life intestate at Bond County
 Illinois, leaving as his only legal heirs at law
 your Complainants Edward W. Heyatt, Fannecia
 J. Kessner (interrnanted with one Jacob Kessner)
 Mary W. Duncan (interrnanted with one Elisha
 Duncan) Emily C. Cole, and one Martha A. Foole
 (interrnanted with one Alexander Foole) who are
 the children of said Alexander Heyatt by Mary W.
 Heyatt, now deceased who was the only legal wife
 ever had by the said Alexander Heyatt - and that
 your petitioners Edward W. Heyatt and Jacob Kessner
 have become entitled to the interest of the said
 Martha A. Foole by purchase, as will appear by
 a deed to the same a copy of which marked (M) is
 herewith filed -

Your complainants also shew unto your Honor

that there certain other persons claiming to be heirs at law of said Alexander Heyatt "to-wit" one Murphy calling herself "Murphy Heyatt" and claiming to be widow of said Alexander Heyatt deceased, and also persons known by name as follows "to-wit" William C. Heyatt Josiah B. Heyatt, Alexander B. Heyatt, Nancy E. Barcroft (intimani'd with Elias Barcroft) Sarah E. Walker (intimani'd with one William Walker) and Murphy S. Heyatt all of whom are the children and issue of said Murphy and said Alexander Heyatt under a pretended marriage of said Murphy and Alexander Heyatt - But which said marriage your complainants charge and aver was illegal and void -

Alfons Complainants further charge and aver that during the life time of said Alexander Heyatt "to-wit" on the 3rd day of April A.D. 1861. The said Alexander Heyatt had a large amount of real and personal estate, among which were the following lands to-wit, The South half of the North West quarter of Section twenty four and the East half of the South West quarter of Section twenty eight in Township number four Range No. two West of the third principal Meridian containing one hundred and fifty acres, and also the East half of the East half of the South East quarter of Section thirty two containing forty acres, and also the South West quarter of Section thirty three with the exception of one and one half acres deed for Church and grave yard purposes, and

also two and $\frac{3}{4}$ acres more or less deeded to Alexander B. Mayatt all in Township four North of Range two West in Bond County Illinois and containing in all three hundred and fifty five acres, all of which lands were and are very valuable having upon them several dwelling houses, and well improved by out-buildings, fencing &c.

From complainant's further charge and set forth that on the said third day of April A.D. 1861 the said Alexander Mayatt was greatly demented and of unsound mind, and that the said Murphy (the pretended wife aforesaid) and others taking advantage of his unsoundness of mind aforesaid, and for the purpose of defrauding and greatly injuring your complainant with respect to the interest they had in and to the estate of said Alexander Mayatt as his legal heirs as aforesaid, got the said Alexander Mayatt to execute and acknowledge in connection with herself as pretended wife as aforesaid certain false fraudulent and pretended Deeds of Conveyance as follows "To wit" One Deed dated and acknowledged April 3^d A.D. 1861 by said Alexander Mayatt and said Murphy to Sarah S. Walker and Murphy Louisa Mayatt both daughters of the said Murphy the pretended widow as aforesaid, conveying for and in consideration of Two Thousand dollars as said deed falsely expresses, "The East half of the East half of the South East quarter of Section thirty two in Township No. Four North of Range two West containing Forty acres, And also the South West

7
Quarter of Section Thirty three with the exception of
One and one half acres deeded for Church and Grave
Yard purposes and Two and three fourths acres more
or less deeded to Alexander B. Megatt all in Township
Four North of Range Two West in Bond County Illinois
and containing in all One hundred and ninety five
acres a certified copy of which said deed is herewith
filed marked "Exhibit A" and prayed to be taken as
a part of this Bill of Complaint. And also a deed
dated and acknowledged April 3^d AD 1861 by
Alexander Megatt and said Murphy to Nancy E.
Barrcroft also a daughter of said Murphy con-
veying for and in consideration of One thousand
dollars as said deed falsely expresses. The South
half of the North West Quarter of Section Twenty four
and the East half of the South West Quarter of Section
Twenty Eight in Township four North of Range
Two West containing One hundred and Sixty acres
and all in Bond County Illinois a certified copy
of which said last mentioned Deed is herewith
filed marked Exhibit "B" and prayed to be taken
as a part of this Bill of Complaint.

Your Complainants further charge that said deeds
were executed and acknowledged by the said
Alexander Megatt to the aforesaid daughters
of the said Murphy without any consideration
whatsoever either then and then paid or agreed to be
paid and not then as absolute conveyances but
to put the said Lands temporarily into the hands

of said Nancy E. Barcroft, Sarah S. Walker and
 Murphy L. Meyatt to prevent the same being wrested
 from the said Alexander Meyatt on account of certain
 pretended debts and liabilities which he was made
 to believe in his unsoundness of mind by the said
 Murphy that he was owing and had incurred
 all of which was due at the instance of and through
 the instrumentality and tricking of said Murphy
 and was only accomplished as aforesaid by her
 constant workings and false representations to
 the said Alexander Meyatt, who was then and there
 greatly demented and of unsound mind as aforesaid.
 For your complainant's charge and aver
 that said Meyatt was then perfectly solvent owing
 no debts and had incurred no liabilities whatever.

Your complainant's further charge that at the death
 of said Alexander Meyatt said deeds were still
 in his possession in a drawer or with his other
 papers and were immediately thereafter taken
 out by said Murphy who immediately caused
 them to be filed and recorded in the records of
 Bond County aforesaid. After which they were
 delivered by her to the said Nancy E. Barcroft
 Sarah S. Walker and Murphy L. Meyatt with the
 understanding and agreement (by her and the
 said Nancy E. Barcroft entered into) that said
 Nancy E. Barcroft should convey by deed the said
 South half of the South West Quarter of Section
 Twenty four in Township No. Four North of Range

Two West unto Josiah B. Mayatt Son of said Murphy.
Your Complainants further distinctly charge as follows "to wit",

1st That at the time of executing and acknowledg-
ing said pretended Deed of Conveyance said Alexander
Mayatt was demented and unsound in mind -

2^d That at the time of executing and acknowledg-
ing said pretended deeds of conveyance the said
Alexander Mayatt (being demented and unsound
in mind as aforesaid) was influenced and
persuaded thereto by the false representations of
said Murphy his pretended wife "that he was in
debt" and had "incurred large liabilities as
Administrator of various Estates" and "that unless
he put his property out of his hands he would
be turned out of house and home with his family
as paupers &c" and thereupon got the said Alex-
ander Mayatt to execute and acknowledge said
pretended Deeds not however as a real and
absolute conveyance but for the purpose of
preventing being turned out of home on account
of and by the pretended debts and liabilities
aforesaid" which said debts and liabilities
your Complainants allege did not exist
in fact and that the execution and acknowl-
edgment of said deeds were obtained through misrepresen-
tation and fraud -

3^d That there was no consideration money paid
or agreed to be paid for said lands by the said

10
Nancy E. Barcroft Sarah S. Walker and Murphy
S. Meyatt. But that the consideration mentioned
in said pretended was a mere sham and did
not in fact exist -

4th That said Deeds were executed and
acknowledged without consideration as aforesaid
and were not delivered and never were intended
to be delivered by said Alexander Meyatt to the
said Nancy E. Barcroft Sarah S. Walker &
Murphy S. Meyatt But were found at the death
of said Meyatt in his possession with his other
papers. Your Complainants therefore in view
of the premises respectfully and humbly pray
Your Honor to grant an order or decree that
said deeds and all things therein contained
be cancelled & set aside, and that said deeds
be declared null and void. Your complain-
ants further ask that said Nancy E. Barcroft
Elias Barcroft, Sarah S. Walker William
Walker, Murphy S. Meyatt Mrs. C. Meyatt
Josiah B. Meyatt, Alexander B. Meyatt, Murphy
Meyatt & Williamson Plant (whom your Com-
plainants are informed is connected with the
administration of the estate of said Alexander
Meyatt be made Party defendants to this Bill
and that they be ruled & required to answer
(but not under oath the same being hereby express-
ly waived) this Bill of complaint, and that
your honor would grant unto your complain-

unto such other and further relief in the
premises as shall seem Equitable and as in
duty bound they will ever pray &c

W. H. Sparks, A. W. Meloy, Edward W. Mayatt Esq's
& S. A. Phelps Solicitors } Complainants

Answer

State of Illinois } In Circuit Court 1862
Bond County } ss

Nancy E. Bancroft }

Elias Bancroft Esq. }

vs }

Edward W. Mayatt Esq. }

Bill to set aside

deed and for relief

The print and several
answers of Sarah S. Walker, William Walker
Memphy S. Mayatt, Josiah B. Mayatt, Alexander
B. Mayatt, Memphy Mayatt and Williamson Plant
Seven of the defendants to this Bill of Complaint.

These defendants now and at all times hereafter
reserving all manner of benefit to themselves &c
of exceptions to the many errors &c contained in
said bill say for answer thereto or so much
thereof as they are advised is material answering
say -

It is true as alleged in said bill, that Alexander
Mayatt did depart this life as therein stated and said
but Complainants are not his only legal heirs, that
the defendants are his heirs and legal representa-
tives, and the defendants aver that the said

Murphy Heyatt was the legal wife of said Alexander Heyatt by legal marriage. It is true that said Alexander Heyatt had in his life time a large amount of Real & personal property. These defendants distinctly deny that the said Alexander Heyatt was on the 3rd day of April 1861, as charged in said bill of unsound mind or demented, but these defendants aver that on the said 3rd day of April 1861 the said Alexander Heyatt was of sound mind, and not demented as charged in the bill. These defendants further deny that any advantage was sought, or taken of said Alexander Heyatt by any of these defendants to procure the execution and delivery of said deeds mentioned in said bill - but aver that said deeds were executed of his own free choice, and delivered by his request, and these defendants aver that there was a good & valuable consideration for said deeds, or the premises thereby conveyed said defendants aver that the deeds were executed in good faith, and not wth put the lands into the hands of said Nancy E. Borcroft, Sarah & Walter and Murphy L. Heyatt temporarily as alleged in said bill, these defendants denying trickery or false representations used by said Murphy to procure the execution and delivery of said deeds as charged in said bill. These defendants further deny that at the time of the death of said Alexander Heyatt that said

deeds were in a drawer with his other papers and immediately taken out by said Murphy as charged in said bill, these defendants deny that the said Murphy was the pretended wife of said Alexander Meyatt, but aver that she was the legal wife of said Meyatt - And these defendants deny all unlawful combinations in said bill charged - all which matters and things these defendants are ready to aver and prove as the Court shall direct, and pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained

Sarah E. Walker

William Walker

Murphy S. Meyatt

Josiah B. Meyatt

Alexander B. Meyatt

Murphy Meyatt

Williamson Plant

E. P. Morris Et. al.
for Defts

Replication

State of Illinois } In Bond Circuit Court
Bond County } 10 April term A.D. 1862

Edward W. Meyatt Et. al.

vs

Nancy E. Bancroft Et al. } The Replication of

said Complainants to the answer of Nancy E. Barcroft Et al Defendants in the above stated case.

These Repliants saving and reserving to themselves all and all manner of advantage of exception that may be had and taken to the manifold Errors uncertainties and insufficiencies of the answer of said defendants, for Repliation thereto saith, that they will aver maintain and prove their said bill to be true, certain and sufficient in law to be answered thereunto by said Defendants.

That the answer of said Defendants is very uncertain evasive and insufficient in the law to be replied unto by these repliants, without this, that any other matter or thing in said answer contained material or effectual in the law to be replied unto Confessed or avoided traversed or denied is true, All which matters and things these repliants are ready to aver maintain and prove as this Court shall direct. And humbly pray as in their bill they have already prayed.

Sparks & Phelps

Attys for Compls

Testimony for Complainants.

Nancy Sharp being sworn answers as follows.

Question 1st

What is your age, Residence and occupation?

Answer

My age forty four. Residence Bond County Illinois,

said Complainants to the answer of Nancy E. Barcroft Et al Defendants in the above stated case -

These Replikants saving and reserving to themselves all and all manner of advantage of exception that may be had and taken to the manifold Errors uncertainties and insufficiencies of the answer of said defendants, for Replikation thereto saith, that they will aver maintain and prove their said bill to be true, certain and sufficient in law to be answered therunto by said defendants -

That the answer of said defendants is very uncertain evasive and insufficient in the law to be replied unto by these replikants, without this, that any other matters or things in said answer contained material or effectual in the law to be replied unto confessed or avoided traversed or denied is true, all which matters and things these replikants are ready to aver maintain and prove as this Court shall direct - And humbly pray as in their bill they have already prayed -

Sparks & Phelps

Attys for Compls

Testimony for Complainants -

Nancy Sharpe being sworn answers as follows -

Question 1st

What is your age, Residence and occupation?

Answer

My age forty four. Residence Bond County Illinois,

farmer -

Ques. 2nd Are you acquainted with the parties in this suit.
Ans. I think I have seen them all, but not particularly acquainted with them all

Ques 3^d Are you acquainted with the late Alexander Heyatt in his lifetime -

Ans. Yes.

Ques 4 Are you acquainted with the heirs of Alexander Heyatt by his first wife, and also by his second wife who is now living, if so state their names -

(Objected to by Defts Atty)

Ans. His heirs by his first wife are E. W. Heyatt Jacob Kershners wife, widow Cole, Thomas her name is Emily - wife of Alex^r Orob and Elisha Duncans wife, there was a Wiley Heyatt but I do not know whether he is alive or dead. His heirs by his second wife are, Alex^r Heyatt, Calvin Heyatt, Josiah Heyatt, Bancrofts wife and Walters wife

Ques. 5 What interest would the plaintiffs have in the undivided estate of Alex^r Heyatt deceased -

(Objected to by Defts Atty)

Ans They are heirs I suppose being children of his first wife

Ques. 6 Were you in the Company of Alex^r Heyatt deceased in the spring, winter or Summer of the year 1861, if so state how often & when -

Ans I was with him when he was returning from County Court in March, about the first, and spent part of a night with him in April about two weeks before the Circuit Court -

Ques. 7 State the condition of said Myatt as to the soundness of his mind and his capacity to transact business at the times referred to?

(Objected to)

Ans. In March his mind was sound and his capacity was good as far as I discovered, in April he was not calculated to transact business.

Ques. 8 State any facts that occurred in April to show his unsoundness of mind?

Ans. He told me that his mind was gone, that he could not attend to business and that he should not attempt it and he told me what the cause of it was he had an unusual look about his face which made me believe his mind unsound, and he told me his wife prevented him from doing his business, and that he was ruined and from the whole run of his talk I was fully satisfied, that he was unfit to do business.

Ques. 9 Did you or did you not examine Mr. Myatt to see whether he was afflicted with fever or any other bodily disease?

Ans. I examined him and he had no fever his pulse was a little slow, he had no other disease, but was discouraged and low spirited.

Ques. 10 What opportunities have you had to make such examinations as the above?

Ans. By practicing in my own family and in others.

Entirely correct being sworn answers as follows:

Ques 1st Are you acquainted with the parties to this suit?

Ans I am

Ques 2nd Were you acquainted with Alexander Heyatt in his life time

Ans I was

Ques 3rd Were you in his company between the first of March 1861 and the time of his death, if so how often in the months of March and April?

Ans I was in his company some two or three times during that time, but I do not know that I was in his company in the month of March at all.

Ques 4th Did you during the above time see any evidence of unconscience of mind in Alex^r Heyatt to unfit him for the transaction of business? (Objected to)

Ans I did not.

Ques 5th During that time did you hear any of these parties the defendants say that he was out of his mind or words to that effect?

Ans I did not.

Ques 6th Did you see any signs of unconscience of mind in Alex^r Heyatt after April 1861.

Ans I think I did about the first of May

A. G. Henry being sworn answers as follows-

Ques. 1st What is your age occupation and residence?

Ans My age is thirty eight years residence Bond County Illinois, occupation an Attorney

Ques 2 Are you acquainted with the parties to this suit?

Ans I know them all by sight

Ques 3rd were acquainted with the late Alex^r Mayatt deceased in his lifetime, if so what relation do the complainant in this suit bear to him? (Objected to)

Ans I was acquainted with him and the complainants are his heirs at law

Ques 4th State any facts that came to your knowledge after February 1861, showing that Alex. Mayatt was of unsound mind and incapable of transacting business? (Objected to)

Ans About the first of April 1861 I was in company with Alex. Mayatt at his house by his request brought to me by Watkins, and I was talking with him about some business and he was very anxious to cancel some business transactions that had taken place between him and me some time in December before and he talked as a man of unsound mind and I spoke to others about it soon after, he talk as though he would come to want, at the time I thought it was brought on by sickness-

Ques 5th Do you think he was capable of transacting business at that time?

Ans I had but the one conversation with him and from the way he talked at that time I do not think he was fit for the transaction of business.

Ques 6 State from your knowledge of his circumstances whether there were any reasons for his thinking he would come to court at that time?

Ans I dont think there were -

Cross Examined by defendant

Ques 1st State whether you were acquainted with the mother of Complainants

Ans I was not

Ques 2nd State how you know they are legal heirs of Wm. Heyatt

Ans I know it only by reputation and by hearing him say they were his children -

Ques 3rd State if you know whether Wm. Heyatt had any other children than the parties mention in the Bill in this case?

Ans. I dont recollect of any but Wiley Heyatt who went to California about the year 1850. I have understood that he was dead but I do not know -

Ques. 4th State how you fix the time you visited Wm. Heyatt spoken of in your examination in chief -

Ans I fix it by referring to some papers executed a few days after more particularly, and by recollection that it was in the spring of 1861 -

Ques 5th State whether you mean to say that it was on the first day of April or thereabout -

Ans I fix the time between the 1st & 13th and I think it not later than the 8th or 9th -

Ques 6th How long after Watkins requested you to go to Wm. Heyatt, before S. P. Bently requested you to do the

same

Ans I think Matins request was a day or two first, Bentley called on me on Sunday and I think I went on the next next day following.

Ques 7th Was Alexander Heyatt if unaccounted for at the time you speak of or only hippered

Ans I thought at the time that he was unfit for business. but I thought it was produced by sickness.

Ques 8th State at what time the business you speak of was consummated between Solomon Bley Heyatt and yourself.

Ans From the dates on the papers it was on the 13th of April 1861

Ques 9th State what the transaction was?

Ans In December 1860 I sold Bley Heyatt a tract of land for about \$900 - and he paid me \$200. - and I took his note for the remainder and about March 1861. he wanted me to take the land back, I did not take it back but Mr Holcomb advanced the money for Heyatt note, and Heyatt then deeded the land to E. Dimcane wife and I gave him up his note.

Samuel P. Bentley being sworn testifies as follows.

Ques. 1st What is your age and occupation?

Ans My age is fifty years occupation farmer.

Ques 2nd Are you acquainted with the parties to this suit?

Ans I am -

Ques 3rd Were you acquainted with Bley Heyatt in his lifetime

Ans

I was

Ques

Did you have any conversations or business transactions with him between the first of March 1861 and the time of his death, if so what was it, and how often.

Ans

I was in his Company and conversed with him three or four times between the first and fifteenth of April 1861. I think the first time I talked with him was about the fourth or fifth, and the last time about the fifteenth of April.

Ques

4th From the conversation and intercourse you had with him, what was your opinion as to his soundness of mind and capacity to transact business at that time - (Objected to)

Ans

I did not consider him fit to transact business at that time, he appeared about the same at each time I saw him

Ques

5th Did you ever hear either of the parties defendants in this suit make any statements as to how long Alexr. Mayatt had been in the condition you saw him, if so state who, and what the declarations were (Objected to)

Ans

I heard Murphy Mayatt (his wife) and Josiah Mayatt say that he Alexr. Mayatt had been in that condition of mind for some two three or four weeks before the first time I saw him. Josiah Mayatt stated that about the first of March he appeared to be frightened and said that he would have to go to prison unless he could raise a large sum of money.

Ques 6th What was there in the conduct, appearance & conversation of Alexander Meyatt that lead you to think that he was of unsound mind.

Ans He look wild and staring at me, and he said the land that he had bid off for Polly Duncan had ruined his body and mind and that he never should get over it.

Ques 7th From your knowledge of the transaction about the Duncan land referred to do you think there was anything in it to disturb his mind or injure him in his property?

Ans I am satisfied there was not as the land was worth much more than he was to give for it.

Ques 8th Did you hear any one of the parties defendants in his suit say anything to Alexander Meyatt calculated to increase his despondency of mind, if so who and what was said - (Objected to)

Ans I think I heard Humphry Meyatt (his wife), she said to him in my presence if he had taken her advice he would not be in the fix he now was, and that she had told him that the land transaction would ruin him, and that it had.

Ques 9th What was his condition as to bodily health at the time referred to above.

Ans He stated that he had no pain, but that it was the trouble of his mind.

Cross Examination

Ques State what your business with Alexander Meyatt was at the time you visited him referred to above.

Ans It was to take off of his hands the Duncan land referred to above, for which I visited him the time referred to above.

Ques State whether you accomplished that business how and when

Ans I did accomplish it, by taking up said Alexr. Megalt's debt obligations due A. G. Henry and by having said Megalt make a deed to the land to Polly Duncan it was about the fifteenth day of April 1861. the last time I visited him, it was a quit claim deed the obligations referred to above to A. G. Henry was for the same land that was deeded to Polly Duncan.

Reexamination

Ques 1 Did you not understand from the parties that this land was bought originally for Polly Duncan by Alexr. Megalt Henry, Megalt and Polly Duncan all told me so.

Ques 2nd Before making this arrangement did not all the parties interested sanction it?

Ans They did, and Memphis Megalt expressed herself satisfied with the way the business had been arranged.

Jasper Prob being sworn answers as follows

Ques 1st What is your name age and occupation?

Ans Jasper Prob age twenty two, occupation Farmer.

Ques 2 Are you acquainted with the parties to this suit

& with Heph. Mayatt deceased

Yes -

Ques 3 Had you any conversations or business transactions with Heph. Mayatt deceased between the first of April 1861 and his death, if so what was it and how often.

Ans I was at his house about the middle of March 1861 and saw him, but did not converse with him.

Ques 4 did you see anything in his looks peculiar if so state what it was.

Ans He had a wild look that was unusual, I saw him walking around about the farm apparently without any object with his head down.

Ques 5 From his appearance and actions at that time did or did you not think him of sound mind and capable of transacting his business.

Objected

Ans I did not think he was capable of doing his business at that time.

Ques 6 did you at that time or any other time have any conversation with either of the defendants in this suit in regard to the soundness of mind of Heph. Mayatt deceased, if so state who it was and what the conversation was (Objected to)

Ans I went to Heph. Mayatt's house to get some harness and should have went to Mayatt himself but William Walker told not to do it for he would be mad that he was not in his right mind, the harness belonged to Heph. Mayatt deceased. Walker gave me the harness and told me not to let the old man see it.

I think Hester Meyatt deceased

Yes -

Ques 3 Had you any conversations or business transactions with Hester Meyatt deceased between the first of April 1861 and his death, if so what was it and how often.

Ans I was at his house about the middle of March 1861 and saw him, but did not converse with him.

Ques 4 did you see anything in his looks peculiar if so state what it was.

Ans He had a wild look that was unusual, I saw him walking around about the farm apparently without any object with his head down.

Ques 5 From his appearance and actions at that time did or did you not think him of sound mind and capable of transacting his business.

Objected

Ans I did not think he was capable of doing his business at that time.

Ques 6 did you at that time or any other time have any conversation with either of the defendants in this suit in regard to the soundness of mind of Hester Meyatt deceased, if so state who it was and what the conversation was (Objected to)

Ans I went to Hester Meyatt's house to get some harness and should have went to Meyatt himself but William Walker told not to do it for he would be mad that he was not in his right mind, the harness belonged to Hester Meyatt deceased. Walker gave me the harness and told me not to let the old man see it.

Ques 7 How you acquainted with Wiley Mayatt, if so, is he still alive -

Ans I was acquainted with him I understand he is dead.

Cross Examination

Ques 1 State whether the old man complained of being sick or not at the time you speak of -

Ans I never heard him complain

Ques 2 Do you know whether he was sick or not at that time?

Ans I do not

Ques 3 State at what time you went to get the Reamers, and how you fix the time -

Ans It was about the middle of March 1861. I was fixing for plowing for corn.

Ques 4 Have you not seen other sick person look wild out of their eyes

Ans As not much

Ques 5 Are you not on very friendly terms with E. W. Mayatt one of the complainants in this suit.

Ans I am very friendly with him, have nothing particular against him.

Ques 6 State whether you and E. W. Mayatt have not talked over this matter lately a good deal.

Ans We have talked of it some not a great deal

Ques 7 State if you are of kin to any of the complainants in this suit

Ans I am brother to Alexander Toob

Re-examination

Ques 1st Are you any more friendly with E. W. Mayatt

than you are with Elias Barcroft and William Walker.

Ans No.

Ques 2 Had you any intimations that you were to give evidence in this suit before the Summons was served on you or has the conversation with E. W. Megatt changed your testimony

Ans I did not know that I was to be a witness until the Summons was served on me, the conversation with Megatt has not changed my testimony

Ques 3 Do you know whether your brother has any interest in the lands in controversy or not, and if so how you know it

Ans My brother told me that he had sold his part out
Cross Examination

Ques Do you know that your brother has sold out, if so to who

Ans I do not know for certain

Mrs Sarah Sugg being Examined answers as follows

Ques 1 Are you acquainted with the parties to this suit and with Messrs. Megatt deceased in his life time

Ans Yes

Ques 2 Were you in company with Messrs. Megatt deceased before his death, if so state when and what was the conversation at the time

Ans I stayed all night with him about the 13th of April 1861, he talked very rational that night and next

morning called me to his bed and told me to come to Greenville and how to fix my business, he appeared to know us all, and sit down at the table and eat with us, he did not talk much unless he was spoken to.

Ques 3 State whether his conversation and general appearance was not different from what it had been and if so what was his appearance and how did it differ

Ans He appeared like something was the matter from his actions and conversation he did not talk as he always had.

Ques 4 Did you see any evidence of bodily sickness

Ans No I did not see any

Ques 5 Was you in his company in August 1861 if so was his general appearance the same as in April:

Ans He did not appear the same in August that he did in April. his mind appeared to be worse in August

Verbal Examination

Ques 1 Do you mean to state in your answer to the 3^d above question that he did not talk as much as usual or that he did not talk rationally -

Ans I mean to say that he did not talk so much.

Ques 2 State whether at the time you saw him in April 1861 he talked rationally or irrationally

Ans He talked very rationally -

Ques 3 How was his general appearance different in April 1861 from what it had been

Ans He appeared to want to be off to himself and to be in bed

Re-examination

Ques 1 Do you mean to state in your answer to the 3rd above question that he did not talk as much as usual or that he did not talk rationally

Ans I mean to say that he did not talk so much -

Ques 2 State whether at the time you saw him in April 1861 he talked rational or irrational

Ans He talked very rational

Ques 3 How was his general appearance different in April 1861 from what it had been

He appeared

Ques 1 Did you not leave the house of Mrs Megatt on your visit in April 1861 with the belief that there was something the matter with his mind. (Objected to)

Ans I do not know whether his mind was diseased or not. he did not appear right, some how, but when I spoke to him he appeared to answer rationally

William Walton's being sworn answers as follows

Ques 1 What is your age and occupation

Ans my age is forty three years. occupation Black-Smithing

Ques 2 Are you acquainted with the parties to this suit and with Alfr. Megatt deceased in his life time

Ans As to the parties I do not know that I am particularly acquainted with them all I was acquainted with Alfr Megatt deceased in his life time.

The first two lines on this page copied by mistake

Ques 3 Did you have any conversation or business transactions with Messrs Meyatt deceased between the 1st of April 1861 and his death if so how often and what was it and where.

Ans I was at the house of said Meyatt I think on or about the 3rd day of April 1861 for the purpose of serving a Summons on said Meyatt. I sat down by him and asked him how he was he said he had been wronged so long that he could not get right, I commenced to tell him my business and Mrs Meyatt spoke to me and called me out in the hall and told me that Mrs Meyatt had been very bad for a few days and that I would have to explain my business to her, I then wrote a copy of the Summons and left it with her that she might explain it to him.

Ques 4 State whether the appearance of Mrs Meyatt was not different at that time, than it was usually, if so state what that difference was.

Ans Her appearance was entirely different. He appeared to be diseased both in body and mind.

Ques 5 State whether from his appearance at that time, you think he was of sound mind & capable of transacting business (Objected to)

Ans From his appearance I think not and that was the impression I got from Mrs. Meyatt too at the time.

Ques 6 Who was at the house at the time besides those above mentioned

Ans F. McDonald Esqr. and I think Mrs Walker

Ques 7 What time in the day was it when you was at

the house of Alexr. Heyatt decd

Ans It was about ten or eleven o'clock A.M.

Ques 8 What was Esqr. McDonald doing at the time you were there

Ans He was sitting in the room when I went in.

Ques 9 What did Mrs. Heyatt say further at that time.

Ans She requested me to see H.G. Kenny and tell him to come down and fix up some business for Mrs. Heyatt as it was a paining upon his mind very much

Alexander Pool, ^{& Henry Pool} being sworn out in the following answers as follows

Ques 1st Are you heirs, and are you not interested in the estate of Alexander Heyatt deceased

Ans We are heirs of Alexander Heyatt deceased but have sold out all of our interest in his estate, both real and personal

Ques 2 What is your name age occupation, and are you acquainted with the parties to this suit

Ans My name is Alexander Pool. I am in my thirty ninth year, occupation farmer. I am acquainted with the parties to this suit

Ques 3 Were you acquainted with Alexander Heyatt in his lifetime

Ans I was

Ques 4 State whether you had any conversations or business transactions with Alexr. Heyatt between the 1st of

February 1861 and the time of his death, if so state what it was and when

Ans I saw him about the 15th of February 1861 and spoke to him about making a deed, and I saw him from that time until his death at least twice a week and conversed with him

Ques 5th State his condition as to bodily or mental disease and whether in your opinion he was capable of transacting business of any kind. (Objected to)

Ans I never heard him complain of sickness or pain of any kind. I saw him between the 1st & 15th of March 1861 and he complained of nothing but his mind. I do not think he was capable of transacting any business at that time and he continued to get worse until his death

Ques 6 State if you can recollect his condition between the 1st & 15th of April 1861 (Objected to)

Ans He was crazy

Ques 7 State what conversations you had with him during that time if any

Ans I conversed with him several times about this time, and his talk was all the time that he had broken me up, and that he was broken up himself, and that all his property was being destroyed, all of which I knew to be unfounded at the time

Ques 8 Do you know of his having any lucid intervals between the 1st of April 1861 and his death, so as to be capable of transacting business if so when?

(Objected to)

I saw him frequently between the 1st of April 1861 and his death, and I do not think he was capable of transacting any business, he seemed to grow gradually and steadily worse.

Ques 9 Do you know of anything else that would be of importance to the parties to this suit?

Ans I don't know that I do at this time

Cross Examination

Ques 1st To who did you and your wife sell your interest in Heyatt Estate

Ans To Jacob Kessner

Ques 2 State upon what terms?

Ans I sold it for eight hundred dollars in cash, the sale was absolute & unconditional

Ques 3 State what relation your wife is to the other children of Hest. Heyatt deceased

Ans She is half Sister

Ques 4 State whether you and your wife are on as friendly terms with the younger children of Heyatt as with the older children. (Objected to)

Ans I am friendly with them I have never had any trouble with them

Heather Pool being sworn answers as follows

Ques 1 What is your age and are you acquainted with the parties to this suit

Ans I am in my thirty ninth year, I am acquainted with the parties to this suit

Ques 2 Was you intimately acquainted with Alexr Megatt and his family in the year 1861 -

Ans I was

Ques 3 State how often you was at his house and in his company. during that year

Ans I was not often at his house untill after the 15th of April 1861 I was there a few times after that time

Ques 4 State his condition as to bodily or mental disease at the times you saw him in the year 1861

Ans He did not complain of being sick at any time he appeared to be out of his head -

Ques 5 Had you any conversation with any of the defendants about Alexr Megatt making deeds to Nancy E. Boncroft, J. E. Walker & M. L. Megatt in April 1861 if so with whom and when you had the conversation (Objected to)

Ans I had a conversation with Humphy Megatt about said deeds in the month of May 1861

Ques 6 State what that conversation was (Objected to)

Ans Humphy Megatt was telling me that Alexr. Megatt was complaining so much about being broken up, that she thought that she would have the lands deeded to the children and that she thought would satisfy him, she also stated that no person knew of the making of the deeds except herself and Esqr. McDonald and that the deeds were not intended to stand but she intended to keep them untill Alexr Megatt got well. she also said that when she sent a man

after Esq. McDonald Alex. Mayatt refused three times to have the Esqr. sent for, and that the Esquire was at said Mayatt house three hours before said Mayatt would agree to execute the deeds. no other person was present when I had this conversation with Murphy Mayatt

Cross Examination

Ques 1 Where do you reside at this time

Ans In the South West corner of Clay County State of Illinois

P. J. Holcomb being sworn testifies as follows

Ques 1 What is your age occupation & residence?

Ans I am Seventy four years of age, occupation farmer residence Bond County Ill.

Ques 2 Do you the parties to this suit and were you acquainted with Alex. Mayatt in his life time?

Ans Yes.

Ques 3 Did you during the Spring of 1861 see Alex Mayatt and converse with him, if so state when and where you saw him, how he appeared, talked and acted at each time?

Ans I saw him in the Spring of 1861. I think about the 1st of May at his house. He appeared very strangely, when I went to the house the door was fastened on the outside of his room and his wife opened it and he (Mayatt) was walking very fast across

the room and went to, and threw himself very heavily on the bed and covered himself up head and all. I enquired of him if he was unwell and he did not answer me. I inquired again and he answered me that he was not unwell. he was very unwilling to converse but would sometimes answer direct questions. I saw him again some four or five days after the date above mentioned and he appeared to be more communicative, when he talked on the subject of his property he appeared to be insane but when he talked on other subjects he appeared sane, he stated that it appeared to him that all was gone, and I spoke to him about his fine house and barn, he replied that they were mere shells only fit for birds nest, the door of the room was fastened as before.

I saw him again about two weeks after I saw him the second time, he appeared to be better, but moody, I commenced a conversation with him and tried to arouse him by telling him of a meeting we once had in Greenville, he recollected the meeting which was some twenty years ago and laughed heartily at it. I then spoke to him of his crops, which were looking fine, he replied that they were good for nothing. He spoke frequently of all his property or means being gone. I observed to him that ought not to mourn for these things, that his children were all doing well, he replied that his children had worked hard for the property but now it was all gone. I thought him insane on the subject of his property.

at each time I saw him

Ques 4 Did Mrs Myatt (his wife) enter or stay in the room with you? State where she was during your conversation with him?

Ans The first time I was there she went into the room with me and then left the room, the second time she was in another room behind the door, the door was open she was not in the room with me the third time

Ques 5 How long had you been intimately acquainted with Hely. Myatt? and did you know his condition as to solvency?

Ans I had been acquainted with him for about twenty five years, I did not know particularly as to his solvency, but I think he was never pressed much.

Ques 6 What was your opinion of his business capacity before 1861?

Ans I always regard him as a business man

Ques 7 During your acquaintance with him had you ever known him affected previous, as in the Spring of 1861?

Ans I never did.

Ques 8 Know you at any time dead the case or supervision of persons of insane mind, if so, state what your opportunities of noticing their habits a peculiarities have been?

Ans I have seen a great many insane persons in the insane hospital in Cincinnati and was appointed by the City Council to visit them and see how they were cared for by the Superintendent of the Hospital

I acted in this capacity for two or three years -

Ques 9 State then your opinion of the condition & soundness of
Obj. his mind at the times referred to?

Ans I am satisfied myself, that he was crazy.

Ques 10 Was his insanity equally evident on all subjects, if not,
State on what subjects it seemed most apparent?

Ans His insanity was not equal on all subject, He ap-
peared to be most insane on the subject of his property

Ques 11 State your opinion of his capacity while so affected
Obj. for the transaction of business or disposing of property?

Ans I do not suppose he was capable of transacting
business or of disposing of his property.

Cross Examination

Ques 1st Was he insane at all on other subjects than on his
property?

Ans He appeared not to be.

Ques 2 Was not persons in Hyatts condition some times
worse than at other times?

Ans Not as far as I know

Dr. D. E. Brooks being sworn testifies as follows.

Ques 1 What is your age, occupation and residence?

Ans I am forty five years old my occupation is a Physician,
residence Greenville Illinois

Ques 2 How long have you been a practicing Physician?

Ans About twenty years.

Ques 3 Are you acquainted with the parties to this suit,

and were you acquainted with Hely Mayatt?

Ans I know some of them and some of them I do not know. I was acquainted with Hely Mayatt.

Ques 4 State if at any time during the spring of 1861, you were called professionally to visit Hely Mayatt, if so, state when you were there the circumstances attending your visit and how Hely Mayatt appeared acted and talked during the same?

Ans I was there on the 28th day of April 1861 according to my books, he appeared to be deranged, after I had examined him he appeared not to have any bodily disease, he seemed some what debilitated, he acted and talked like he was deranged and did not know what he was about rightly -

Ques 5 Did he seem equally deranged upon all subjects?

Ans I think he did so far as I talked with him.

Ques 6 State who were present at Hely Mayatt on that day?

Ans I do not recollect who were there, I saw Mrs Mayatt and some other but I do not now recollect who they were.

Ques 7 Who came for you?

Ans I believe it was his son Alexander.

Ques 8 State any conversation you had with Mrs Mayatt with regard to the commencement of the disease and its progress, and how long she said he had been so affected?

Ans I think she said he had been deranged for some two or three months, that it gradually increased on him.

Ques 9 State your opinion of the capacity of Hely Mayatt at that time, or while so affected, for the transaction of

business or disposing of his property?

Ans I do not suppose that he was capable of doing business.
Cross Examined

Ques 1st Give the exact language of Mrs Myatt in your answer to question No. 8. don't state what you think she said?

Ans I can not recollect her exact language, the idea she conveyed to me that his mind had been deranged for some month or two or six weeks, and that the derangement gradually increased on him.

Ques 2 Did she say that his mind had been deranged for that length of time or was not that only your inference from what she told you?

Ans I can not say as to that, I cannot recollect the precise language.

Ques 3 Did she not say he had been sick for sometime, two or three months and that he had been in the condition he was now for some weeks?

Ans I do not recollect that she did.

Ques 4 What do you mean, by his having no bodily disease, do you know he had no Rheumatism or internal disease?

Ans So far as I was capable of telling I think he had no bodily disease, I examined his pulse, they did not indicate disease.

Ques 5 Had he no old hurts or broken limbs or dislocated limbs?

Ans I think not.

Additional Testimony

April 14th 1863. Alexander Cook being sworn testifies as follows:-

Ques 1st State how many times you were in company with Alex. Mayatt between the middle of March and the last of April 1861, also state how he acted and appears at the different times?

Ans I think I was with him twenty times during that time. He acted dull and queer, sometimes talked but little, some times talked a good deal, he would be up and down and looked strange and about the latter part of April he was much worse, when I asked him what was the matter, he would reply that every thing he had was about to be destroyed by them (meaning his wife & family) and that he had destroyed a good deal of his property himself and that he would be broke up any how.

Ques 2 In what respect did his actions appearance and conversation differ from his actions appearance and conversation previous to March 1861?

Ans His actions were quite different than they were previous to March 1861. He acted stupid and dull, His appearance was a wild look out of his eyes, he was suspicious of every person that came about him, His conversation was different in this that he talked all the time about being broken up and of losing his property which he never did when he was at himself.

Ques 3 At what time did you first notice the change in him

above mentioned?

Ans I cannot tell exactly; but I think about the 1st of March 1861.

Ques 4th Did he after the middle of March attend to his business as usual about the farm, also state the change in this respect if any, and when you first noticed it?

Ans He did not attend to his business about the farm as usual after the middle of March, it was attended to by the family and by a young man by the name of Elisha Towell. I think the time I first noticed this change was about the middle of March 1861.

Ques 5th Were you present between the middle of March and the middle of April 1861 during the transaction of any business by Alex. Meyatt with yourself or any other one; if so state what the business was, when it was, and how Alex. Meyatt acted?

Ans I had no business with him myself and I was not present at any time when any other persons had business transactions with him that I have any recollections of.

Ques 6th Did you have any conversation with Eli McCracken in which McCracken repeated a conversation that took place at Alex. Meyatt house when he (McCracken) and Wesley Meyatt were there about the 17th of April 1861, if so did he McCracken tell you that Wesley Meyatt told Alex. Meyatt that he had deeded his land away and that was the matter - if so state the reply McCracken said Alex. Meyatt made to the

Statement:

Ans McCracken and myself had a conversation about what took place at Alex. Mayatt when he McCracken and Wesley Mayatt asked about the deeds and said that the old man had deeded away his home and that was what the matter with him and that she the old lady Mayatt had better destroy the deeds, the old lady replied that she had the deeds and would keep them until the old man got well, then he could do as he please with them. I do not think that McCracken told me that the old man made any reply to Wesley Mayatt at that time.

Ques 7 Did he McCracken tell you in the same conversation that Mrs. Mayatt (A. Mayatt's wife) then said the deeds were made to pacify Alex Mayatt's mind and were not to be used, or words to that effect?

Ans I do not think he did.

Ques 8 Did Alex B. Mayatt tell you on the day that McCracken & Wesley Mayatt went to Alex Mayatt when he came for the old lady Mayatt, that Alex Mayatt was trying to kill himself, or did he not tell the old lady words to that effect in your presence?

Ans He told the old lady Mayatt and myself that Alex Mayatt was out on the porch trying to kill himself with a razor, and that they could not get their razor away from him and that he wanted the old lady to go home.

Ques 9 State any statement made to you by Mrs. Murphy Mayatt or any other of the defendants with regard

Object

to keeping a razor from Alex Mayatt and at what time if any they said the razor was kept from him?

Ans

Mrs Murphy Mayatt stated to me that they had to keep the razor from Alex Mayatt for she thought he would kill himself. she stated that the razor was kept from Alex Mayatt from the time that Alex, B. Mayatt said he attempted to kill himself with it, on the porch.

Cross Examination

Ques

1 Do there not some unfriendly feeling existing between the younger members of the family and yourself and family?

Ans

There is not, nor never was that I know of.

Ques

2 When did you hear him (Alex Mayatt) say they had destroyed so much and he had destroyed so much?

Ans

It was along through April 1861. I cannot tell the day. I heard him say so, so often.

Ques

3 Were you there often, after the middle of April 1861?

Ans

I was there often after that, untill he hung himself.

Ques

4 How do you know he meant his wife and family when he said they had destroyed so much?

Ans

He said so.

Ques

5 During the time of his sickness was he not some times better and at other time worse in March and April 1861.

Ans

He was gradually getting worse. I never saw him when I thought he was any better.

Ques 6 How do you know that it was about the first of March /61 that you first discovered anything the matter with Heyatt as you state in your answer to question No. 3.

Ans I know it from the date of a deed spoken of in my first examination and from my attempting to have the deed acknowledged at that time.

Ques 7 What time do you refer to in your answer to question No. 8?

Ans I think it was about the 18th or 19th day of April 1861.

Ques 8 Were you present at Alex Heyatt on or about the 2nd day of April /61 spaying hogs, if so who was there with you?

Ans I was there some time the first of April /61. and Young Powell Mrs Walk and Joel Wilmirsh were there with me.

Ques 9 State if there was any difference in opinion about the manner of spaying, if so to whom do you refer the matter and what was said about it by Alex Heyatt?

Ans There was a difference about spaying some of us stayed in the belly and some in the side. If there was anything said about spaying to the old man, I do not recollect it.

Ques 10 What did Alexander Heyatt say about the thread in the spaying needle and what reason did he give that he always used a different sized thread?

Ans I think some of us asked him if our thread was the sized he used, and he replied it was. he gave no reason for using such size thread.

Ques 11 A few days after the deeds were made did you not tell Joel Wilimink that you thought Alex Megatt foolish for deeding his land away his younger children as he was sick and in trouble with Elisha Drucans business and the manner in which Wesley was conducting himself.

Ans I never told him any such thing.

Ques 12 Did you not tell your wife in the presence of Joel Wilimink a few days after the deeds were made not to fuss about the property deeded to the younger children for upon thought that her father (Alex Megatt) had done well for you in the way of property or words to that amount?

Ans Joel Wilimink came to my house and told about the deeds being made, and my wife said something on the subject and I requested her to make no fuss about the matter and that there was no use in her fretting about the matter, the other things I did not say.

Ques 13 Did you not more than once in the month of March and April 161 tell Joel Wilimink or Alex B. Megatt that the (old man) Alex Megatt was not crazy. he was only sick or hypochond or words to that effect?

Ans I never told them or either of them any such thing that I know of.

Ques 14 Do you know of Alex Megatt doing any business

after the first day of April/61?

Ans I do not.

Ques 15 Did Alex Meyatt acquire the most of his property after his marriage with Mary Ann Meyatt his present wife?

Ans I cannot say.

Ques 16 How long have you known Alex Meyatt (Object)

Ans I have known him for about twenty five years.

Ques 17 Has he made a considerable amount of property since his last marriage?

Ans He has made considerable.

Ques 18 Do you know how much property he had before his last marriage?

Ans I do not know anything about his property before his last marriage.

Ques 19 Was said Meyatt an active stirring business man when he was well?

Ans He was.

Ques 20 State if you know how long since his first set of children were all married off and left him. (Alex Meyatt)?

Ans I think it is about 20 years since the first were married and about 13 years since the last were married.

Ques 21 Do you know whether he Meyatt made any other provisions in the way of real property for his younger girls, than the deeds in this case mentioned?

Ans I do not, except what he gave Barcroft's wife.

Ques 22 Did you not tell William Kershock some time in the month of April or May/61, that you did

not believe that Alex Myatt was crazy until towards the last of April or first of May /61. that he was only sick or troubled about his business matters and if he had been well all would have been right with him or words to that effect?

Ans Hoopes was at my house sometime the first of April /61. and told me that he was going to the old man Myatts after some money, and I told him that it was not worth his while to go for they say the old man is crazy, but that I could not hardly believe it, for I could not see how a man of his mind could go crazy, any thing further I do not recollect of saying.

Respectfully

Ques 1 State what any of the defendants told you with regard to the progress of Alex Myatts disease during the month of March or April /61?

Ans The old lady Myatt and Alex B. Myatt told me that he Alex Myatt was getting worse all the time.

Ques 2 What did Walker one of the defendants or any other of the defendants tell you on the first day of spaying hogs about the conversation or action of Alex Myatt or the soundness of his mind?

Ans Walker told me that the old man was all the time growling about his eating too much & Walker told me that he told the old man that he was a going a little too far with his grumbling.

Ques 3 What was the relative value of Alex Myatts

Ques 3 When did the old lady and Alex. B. Heyatt tell you that Alex Heyatt was getting worse all the time?

Ans They told me so at different times from March until he died.

Ques 1st Francis M. Gordon being sworn testifies as follows
What is your age occupation & Residence

Ans I am in my fortietth years, occupation Farmer, Residence Bond County Illinois

Ques 3 Did you know Alex Heyatt in his life time

Ans I did

Ques 3 Did not you have a conversation with F. R. McDonald on or about the 4th day of April 1861 while riding with him if so state whether in said conversation he used the following language viz: that he (McDonald) had the day before made some deeds for Alex Heyatt that he thought would not stand in law, or words to that effect?

Ans I had a conversation with Alex McDonald while riding with him on the day of (Long) John Burnside's sale, I think it was about the 4th day of April 1861, he told me that he had made some deeds for Mrs Heyatt the day before, or the other day and that he did not think Mrs Heyatt was competent to make the deeds or in a situation to make the deeds, as he Heyatt asked him what he wanted him to sign the deeds for

and he also asked if they wanted to break him up
 Ques 4 Questions No. 28, 29, & 30 asked McDonald on Cross Examination
 over then read to witness Gordon and he was asked to state
 object whether in the same conversation McDonald did not use
 the language in said questions mentioned or in either of
 them or any part of either of them or words to that effect if so
 which and what part thereof was used by McDonalds?

Ans. He used the words mentioned in question 28 substan-
 tially and that he did not think Mr. Mayalt capable of
 doing business, as to the language used in question
 29, McDonald said that they impressed it upon
 Mayalt to sign the deeds to save the property from
 the creditors of Elisha Duncan as they would break
 him up if he did not sign the deeds or words to that
 effect as to the language used in question 30, there
 was nothing said about defrauding the older children,
 but that they wanted him Alex Mayalt to execute these
 deeds to make the younger children equal with
 the older ones -

Ques 5 Questions 46, 47, 48, & 49 asked of F. R. McDonald on
 Cross Examination then read to witness Gordon and
 he was asked to state whether in the same conversa-
 tion McDonald did not use the language in said
 questions mentioned or in either of them or any
 part of either of them or words to that effect if so
 which and what part thereof was used by McDonalds?
 Ans. As to the language used in question 46 he McDonald
 told me that the old man thought the deeds were
 made to defraud Elisha Duncans creditors but

that the old lady thought the deeds were made to secure the property to the younger children to make them equal with the older children and that she wanted it done then as she found the old man's mind was failing him as to question 47. Did McDonald use the language mentioned in said question or that Megatt went to bed and covered himself up as to question 48. He used the very words mentioned in said question as near as I can recollect as to question 49. Did McDonald use the language mentioned in said question except that relating to old Mrs Megatt taking her Megatt out and taking to him. I think he said that she sat by the bed and talked to him, and that they told him that Megatt that Dr. Gunn had sued him and Elisha Surcan together and that if he did not sign the deeds that the Dr would sue him and break him up as Elisha Surcan had no property.

Ques 6 How long have you been acquainted with F. R. McDonald?

Ans I have known him about twenty five years and intimacy about seven years.

Cross Examination

Ques 1 Where was McDonald going on the day, you had the conversation with him, spoken of in your answer to question first?

Ans He was going into the prairie to show me some cattle that I wished to buy of him.

Ques 2 How long were you with McDonald and who

was with you and him at the time - and what time in the day was it and what was your business with him?

Ans I was with him between one & three hours. It was about 4 o'clock in the evening when we started. My business with him was to hunt up his cattle and to buy them. We were alone while hunting the cattle. Mr Beach was at McDonalds house.

Ques 3 Did you buy the cattle then?

Ans I did.

Ques 4 Do you say that your understanding from McDonald in the conversation you had with him about the deeds that the object was to secure an equal share of the property to the younger children as the older ones had been provided for by giving them farms

Ans That was my understanding, that was the idea that McDonald conveyed to me, but he told me that the old man understood that the deeds were made to keep Elisha Duncans creditors from taking it from him

Ques 5 What conversation did you have with E. W. Megatt about your testimony before this day in this case

Ans E. W. Megatt sent to me by Mr Whitley some five or six questions on a list of paper and afterwards called on me for the questions and asked me if I could answer the questions and I told him that there was a part of them that I could answer in the affirmative and a part of them I could

not, and I think that this was all the conversation that we had about my testimony in this case.

Ques 6 In whose hand were those questions written and where is the paper now.

Ans I do not know whose hand writing it was. I handed the paper to E. W. Myatt.

Ques 7 How did E. W. Myatt know what you knew about McDonald conversation with you?

Ans In a conversation with Jacob Kessner I told him that McDonald was the only witness he wanted that he had told me so and so, and I expect that Kessner told E. W. Myatt as Myatt told me that Kessner had told him.

Ques 8 Can you state the exact language used by McDonald in questions 28, 29, & 30, and in questions 46, 47, 48, & 49?

Ans I can not any more exactly than I have answered.

Joshua Whitley being sworn answers as follows

Ques 1 What is your age, occupation and residence

Ans I am in my fiftieth year, occupation Farmer residence Bond County Illinois

Ques 2 Are you acquainted with F. R. McDonald if so, how long have been acquainted with him?

Ans I am. I have been acquainted with him some twelve or fourteen years.

Ques

3 Did you not have a conversation with F. R. McDonald on or about the commencement of this suit while riding with him into Greenville, if so state whether in said conversation he used the following language viz: that he McDonald thought the deeds made for ~~that~~ Heyatt would not stand in law or words to that effect?

Ans

I had a conversation with him about the deeds while riding to Greenville Circuit Court week in the spring after Heyatt died, but I do not recollect of his telling me that the deeds would not stand.

Ques

4 Questions 32, 33, 34, 35, 36, 37 & 38, asked of F. R. McDonald on Cross Examination were then read to witness and he was asked to state whether in the same conversation

Ques

McDonald did not use the language in said questions mentioned or in either of them or any part of either of them or words to that effect if so which and what part thereof was used by McDonald;

Ans

He used the language mentioned question 32 or something like it, I think he used all the language mentioned in question 33, except Heyatts covering up his head, I do not recollect that he used the language mentioned in question 34, I do not recollect that he used the language mentioned in question 35. I think he used language to the amount of that mentioned in question 36. I do not recollect that he used any of the language mentioned in question 37, I do not recollect that he used the language mentioned in question 38 either.

Cross Examination

Ques 1 What did McDonald say about being called as a witness in this case in that conversation you refer to

Obj

Ans

McDonald said that he expected that there would be a lawsuit about the deeds and that he would be called as a witness and he would have to swear that he thought Heyatt was in his right mind -

Nathaniel J. Floyd being sworn testifies as follows.

Ques 1 What is your age, occupation residence?

Ans I am twenty six years old, occupation farmer residence in Clinton County Mo.

Ques 2 State if you know, at what time the sale of John Burnside's (called Long John Burnside's) property took place?

Ans The fourth day of April 1861, I believe

Cross Examination

Ques 1 How do you fix the date?

Ans I saw the advertisements and think the day was the 4th or 5th and I was there at the sale and bought some hogs and gave my note. (I fix the date from my recollection)

56
Edward R. Sayd being sworn answers as follows
Ques 1 Are you acquainted with the parties to this suit?
Ans I am somewhat acquainted with the parties and
with Alexander Heyatt in his life time.

Ques 2 What is your age occupation and where is
your residence?

Ans I am fifty three years of age Farmer reside in the
County of Bond Illinois

Ques 3 Did you or did you not have any conversation
with one Fountain R. McDonald in the spring or
summer of 1861 concerning the execution of certain
deeds by Alexander Heyatt to Nancy E. Burrage
S. Walker and W. L. Heyatt if so state such conver-
sation as near as you can recollect the same?

Ans Shortly after the execution of said deeds as I was
informed by McDonald, I had a conversation with
objected to McDonald. I asked McDonald if he thought
Heyatt was crazy, he stated that Heyatt sometimes
acted curious and sometimes as though he was
at himself McDonald told me that Heyatt threw
himself on the bed and said he was a ruined man in
consequence of a threatened law suit with Dr. Gunn, whom
he saw the Sheriff coming as he thought. McDonald
said something about the deeds standing, but I
do not recollect whether he said they would stand
or not — (Objected to)

John B King being sworn testifies as follows.

Ques 1 What is your age, occupation and where your residence

Ans My age is forty four past. Farmer residence Bond County Illinois

Ques 2 Are you acquainted with the parties to this suit

Ans I am

Ques 3 Did you or did you not have any conversation with one Fountain R. McDonald in the spring or summer of 1861. concerning the execution of certain deeds by Alexander Heyatt to Nancy E. Bancroft S. Walker and M. L. Heyatt if so state such conversation as near as you can recollect the same?

Ans I saw McDonald the next day after the deeds were made and he told that Alexander Heyatt sometimes acted like he was crazy and sometimes like he was right at himself. He also told me that Heyatt threw himself upon the bed when he saw Sheriff Watkins coming and said he was a ruined man this was on the day that Heyatt executed the deeds as I was informed by McDonald.

Ques 4 Did you have any conversation with Joel Wilminth during the winter or spring of 1861. with regard to the condition of Alexander Heyatt as to the soundness of mind. If so state when this conversation took place and what it was and at what time Wilminth said Heyatt became unsound in mind?

Ans About the last of February or the first of March 1861 I had a conversation with Joel Wilminth and he

58
told that the old man Myatt was or was about going
crazy in consequence of a difficulty with the business
of Elisha Duncan. I told Wilminick that I thought I
would go and see Mr Myatt and he informed me
that it made Myatt worse for people to call on him,
this he told me about the last of March 1861. I reside
near Wilminick and he frequented told me before the
1st of April 1861 that he thought Alexander Myatt was
crazy

Mary Faircl being sworn testifies as follows

Ques. 1 What is your age and where is your residence?

Ans Aged fifty years reside in Bond County Illinois
and have for the last twenty years.

Ques 2 How you acquainted with Alexander Myatt in his
lifetime, if so state whether you were intimate with
obj. by Dept his family and whether you were intimate with them
in the spring of 1861?

Ans I was acquainted with Alexander Myatt in his
lifetime and went to see him in the spring of 1861
obj. by Dept I think. I think I went in a few days after I heard
he had decided or willed his property, this I heard
from Mrs. McDonald.

Ques 3 State as near as you can what time you went
to see him and what occurred while there, how
obj. by Dept Mr Myatt appeared and acted at the time?

I think I went to see him between the first & middle of April 1861. he seemed to be in great agony of mind he would keep getting up and down. he appeared to be greatly distressed about his money or property. I looked at some of his papers and tried to pacify him at the request of his wife. she stated that she had tried to pacify but could not. she told me that he had been going on in this way for two or three weeks I think.

Ques 4 Was his manner and conversation different from usual if so state how?

Ans His manner and conversation were entirely different from his usual manner. he acted & talked like a crazy person I think he complained of nothing but his agony of mind.

Ques 5 State any conversation you had with him?

Ans I tried to pacify him I told him of the big meeting that was coming off and told him to put his trust in God. he replied not to talk to him about meeting that it was not time for him to pray or to put his trust in God. this is as near as I can recollect.

Ques 6 Did you see him afterwards. if so. how did he then appear?

Ans I think I saw him once or twice afterwards and he appeared to be more crazy.

Ques 7 From his appearance, conversation and actions do you think he was on the day you first speak of visiting him. capable of transacting business of any kind?

Ans I do not think he was -
 Ques 8 State what his wife said as to the time he had
 been in the condition you then formed him?
 Ans I think she said he had been in that condition
 for several weeks or two or three weeks I think.

Mrs. McAnarra McNeil being sworn testifies as follows

Ques 1 What is your age and where your residence -
 Ans My age is about fifty four, reside in Bond County
 Illinois.
 Ques 2 Are you acquainted with the parties to this suit
 and with Alexander Mayatt in his lifetime?
 Ans I am acquainted with some of the parties and
 was acquainted with old Mr Mayatt in his life-
 time, I was well acquainted with him for ten or
 fifteen years -
 Ques 3 Were you at any time in the spring of 1861 in
 the company of Alexander Mayatt if so state when
 where and how he appeared acted and conversed
 at that time?
 Ans I saw him I think on Saturday of the first week of
 the Circuit Court in April 1861 at Wesley Mayatt house
 he did not talk much he did not seem to be in his
 right mind his talk was about the officer being
 after him to put him in jail this seemed to be about
 all the talk he had with any person -
 Ques 4 State what change if any you observed in his

Obj. by Deft. appearance and manner?

Ans He did not appear anything like himself when he

Obj. by Deft. was well, he looked bad.

Quis 5 What did he say concerning his bodily health, and

Obj. by Deft. did you see any marks of bodily disease, if so what?

Ans I asked him how he felt and he said he felt poorly.

Obj. by Deft. I saw no marks of disease only he looked bad & lean of flesh he did not look to me as he used to.

Quis 6 From his appearance conversation and actions

Obj. by Deft. what is your opinion as to his soundness of mind and capacity to transact business of any kind on that day?

Ans He did not appear capable of doing any business of any kind. all he talked about was the officer bring after him to take him to Jail. I do not think he could compose his mind to do anything.

Quis 7 Who else was present at the time?

Ans Wesley Myatts wife and the old lady Myatt were present at the time.

Quis 8 What did Mrs. Murphy Myatt say with regard to the state of her husbands (Wesley Myatts) mind

Obj. by Deft. and the length of time he had been in that condition

Ans Wesley Myatts wife asked old Mrs. Myatt in

Obj. by Deft. my presence how long he had been crazy and she replied that it had been about ten weeks but that he was not so crazy all the time as he was then. she stated that she had noticed it sometime before

she told it to the children

Ques 9 How long were you in company with Mr. Mayatt
obj. by Dft on that day

Ans From morning untill in the evening. (obj. by Dft's)
Cross Examination

Ques 1st State what relationship you sustain to Wesley Mayatt
& his wife

Ans Wesley Mayatt married a daughter of mine and she
is now living.

Robert J. Stevenson being sworn testifies as follows

Ques 1st What is your age, where is your residence?

Ans My age is twenty eight years, reside in Bond County
Illinois

Ques 2 Are you acquainted with the parties to this suit?

Ans Yes

Ques 3 Were you acquainted with Alexander Mayatt in his
life time

Ans Yes,

Ques 4 How long had you been acquainted with Alexander
Mayatt and association and business relations
obj. by Dft had you with him?

Ans I had been acquainted with him for about twelve
or thirteen years. I worked for him for about four
obj. by Dft years, about three years before his death and was
intimate with him untill his death.

Ans

obj. by Dfto

I had been acquainted with him for about twelve or thirteen years. I worked for him for about four years. about three years before his death and was intimate with him untill his death.

Ques

5 State when and how after you saw him in the winter & Spring before he died, and how he acted, spoke and conversed when you saw him in the winter & Spring before he died?

Ans

I saw him several times. I saw him some time in April between the 20th and last of the month. I called at his house to see him with my wife and she went into the house and came running out and said the old man cursed & swore so she could not stay in the house and I went in and it was the same thing I could get nothing out of him. I saw him afterwards and he appeared about the same. I was satisfied at both times that he was not at himself.

Ques

obj. by Dfto

6 How did his conversation & actions differ from his usual habits?

Ans

obj. by Dfto

Ques

7

Quite different. I never heard him swear before. Did you have any conversation with William Walker or any other of the Defendants on that day with regard to the old mans condition. if so state what they said?

Ans

On or about that day I saw William Walker & I told him I wanted a flow from Alex Myatt and Walker was not to go to Myatt for the flow

it would put him all out of sorts and he believed he would let me have the flow himself

Ques 8 Were you accustomed before this to ask and
obj by depts receive such favors from Mr Myatt?

Ans I was

Ques 9 How long did William Walker or any other of
obj by depts the defendants say he had been in this condition?

Ans The old Lady Myatt told me that Mr Myatt
obj by depts had two or three spells of swearing before the
day I saw him

Ques 10 From the appearance actions and conversation of
obj by depts Alexander Myatt at the time you speak of do you
think that he was of sound mind and capable of
transacting business of any kind?

Ans I do not think he was in his right mind and I do not
obj by depts think he was capable of doing business at the time

Jessie Maltby being sworn testifies as follows:

Ques 1st What is your age, occupation and residence?

Ans My age is fifty two years, occupation Physician
residence Bond County Illinois

Ques 2nd Are you acquainted with the parties in this suit and
were you acquainted with Alexander Myatt?

Ans I am acquainted with some of the parties on both sides
I was acquainted with Alexander Myatt in his life
time and visited him professionally

Ques 3rd State if you saw him professionally or otherwise during the spring or summer of 1861, if so state when and his condition particularly both as to his bodily or mental health and soundness.

Ans I saw him as a friend, I think between the 16th & 25th of May 1861. the old man appeared at that time to be very feeble and his mind appeared to be very much out of ballance he gave me his hand and asked what I had come for for he appeared, to know me. I told him I had come to see him and he turned over in bed with his back to me and I could get no more conversation out of him.

Ques 4 Did you examine the state of his health if so state how you found him and what disease if any afflicted him?

Ans I did not examine the state of his health.

Ques 5th From his appearance & conversation at that time, Obj. by Dept what is your opinion of his soundness of mind or capacity for doing business?

Ans I think his mind was out of ballance and that he was not in a condition to transact any business.

Ques 6th At whose request or suggestion did you call on him?

Ans In a conversation with Alex B. Mayatt I observed that I would like to see the old man as a friend, he replied that he would like to have me call on the old man.

Ques 7 What representations with regard to his Father's condition were made you by Alex B. Mayatt in

that conversation?

Ans I do not recollect the precise words but the impression was made upon my mind that his mind was out of
 byt - by deft. ballance, that he was crazy; this conversation took place some three or four days before I called on his Father

William Tucker being sworn answers as follows:

Ques 1st What is your age occupation and where is your residence?

Ans My age is fifty, occupation Farmer residence Bond County State of Illinois

Ques 2 Are you acquainted with the parties to this suit?

Ans I am

Ques 3^d Were you acquainted with Alex Heyatt in his life time, if so how long were you acquainted with him?

Ans I was acquainted with him for about thirty years since the fall of the year 1831.

Ques 4th Did you live near him, or see him during the winter Spring and Summer of 1861, if so state where you lived and how often and when you saw him?

Ans I lived within a mile & a half of him and saw him but once that Spring and perhaps in the winter, I think I saw him in the first week of April

Ques 5th State what was his appearance and condition at
 obj. by def^t that time and what change if any had taken place
 since you last saw him?

Ans He appeared to be very feeble and looked bad to me,
 there was considerable change in him since I last
 obj. by def^t saw him he spoke to me at the Bann, asked me to
 get down and come in, we went to the house and
 he lay down and said but little. I saw him in
 the barn yard wandering around like he was not
 in his right mind.

Ques 6 Did you call to see him on business, if so state
 obj. to by def^t the result of your visit?

Ans I was passing by and had a settlement to make
 obj. to by def^t with him but when I saw what condition he was
 in, I did not mention it to him.

Ques 7 From his appearance and conversation did you
 obj. to by def^t think him capable of transacting business

Ans From his appearance I do not think he was capable
 obj. to by def^t of doing any business as for conversation I had
 but very little with him

Ques 8 What opinion was entertained in the neighborhood
 and expressed by the neighbors as to his soundness
 of mind in the spring of 1861.

Ans The talk was that he was crazy. I heard this
 obj. to by def^t talked of some months before I called to see him
 as above mentioned

Elizabeth Loyd being sworn answers as follows:

Ques 1st What is your age and where your residence?

Ans My age is forty four years I reside in the County of Bond State of Illinois

Ques 2nd Are you acquainted with the parties to this suit and were you acquainted with Alexander Myatt in his life time?

Ans I am acquainted with the parties to this suit, and was acquainted with Alexander Myatt in his life time

Ques 3rd State whether or not in the spring of 1861 you heard any statements of a conversation with Fountain R. McDonald with regard to the making of deeds by Alex^r Myatt if so state when the conversation took place who was present and what McDonald said?

Ans I do not recollect at what time it was the conversation took place with McDonald, but it was soon after it was talk about Mrs Myatts being crazy, Mrs McDonald was at my house, and was a talking to my husband and said that he thought that Alexander Myatt acted very strangely on the day that he was at Myatt making deeds from Myatt to his three youngest children, he also said that Myatt saw a man riding up to his house who he thought to be the Sheriff, and said there he comes I am a ruined man and threw himself on the bed and then covered his face with his hand but it was not the Sheriff and

after Mr Myatt found out who it was he appeared to be more at himself. this conversation took place about one week after the deeds were made as Mr. McDonald said. Mr Loyd asked McDonald what would be the result of the older children tried to break the deeds McDonald replied if they could procure the fact it would be like some crazy mans will he had heard of, of no account but just a crazy mans deed, and if he McDonald was called on he would have to say that he did not think Mr Myatt was not right.

Ques 4th did you reside in the immediate neighborhood of Alexander Myatt in the spring of 1861, if so state
 Obj. to by Dyft if you know what was the general opinion in the neighborhood with regard to his soundness of mind and capacity for doing business?

Ans I reside about two miles from Mr Myatt in the spring of 1861, and every person I heard speak of him said that he was crazy and the neighbors
 Obj. to by Dyft said that he had no mind to do business for himself at all. I heard this opinion expressed in the winter or early in the spring.

Cross Examination

Ques 1st When were the deeds you speak of made?

Ans I suppose they were made a few days perhaps a week before we heard that Mr Myatt was crazy.

Ques 2nd Can you state the year?

Ans I cannot state the year but it was in the spring before Mr Myatt died.

Re-examination

Ques 1st State what conversation you refer to in your answer to the first question of Deft -

Ans I heard two or three days before the conversation between McDonald & my husband took place, from the neighbors that Myatt was crazy -

Henry Sharp being sworn deposes as follows:

Ques 1st What is your name, age and occupation?

Ans Henry Sharp, my age is Forty eight years occupation Farmer.

Ques 2nd State how many times you were present at the house of Alexander Myatt during the month of April A.D. 1861.

Ans I was there but once and that was at the time mentioned in my first examination

Ques 3rd State any statement made to you previous to that time, April 1861, by Alexander Myatt with regard to the disposition of his property or any part thereof, to his heirs or any of them, State when these statements were made how often made, and under what circumstances

Ans About the 1st of March 1861, I met Alexander Myatt and had a conversation, respecting assisting Wesley and he said that he must assist him some and all of his first wife's children move

them he had as they had worked more and
and helped him more to improve his land than
his last wife's, and that he had not yet helped
them as much. His reason for having not assisted
them he said was that his last wife opposed him.
At the time I visited him about April 1st 1861, at
his house he told me the same in substance

Testimony for Defendants

F. R. McDonalds being sworn answers as follows

- Ques 1st What is your age residence and occupation?
- Ans My age is forty seven years, my residence Bond County Illinois, occupation farmer
- Ques 2nd Are you acquainted with the parties to this suit?
- Ans I know them I believe.
- Ques 3rd Were you acquainted with Alex Mayalt in his life time
- Ans I was
- Ques 4th Were you present with Alex Mayalt when certain deeds were executed by said Mayalt to Nancy E. Barcroft & others parties to this suit.
- Ans I was there at that time, it was about the third day of April 1861 when the deeds were executed. I filled up the deeds at the house of said Alex Mayalt.
- Ques 5th How long had you been intimately acquainted with Alexander Mayalt deceased.
- Ans I had been acquainted with said deceased at least twenty years
- Ques 6th How often did you see said deceased just before he executed the deeds spoken of in your answer to question 4th
- Ans I saw him frequently just before the deeds were executed but cannot say how often
- Ques 7th Were you intimate with said deceased in a business capacity, if so state what kind of business transaction you had with him.

Ans I think I was with you together for a number of years as school officers

Ques 8 How long were you at the house of said deceased on the day the deeds were executed, referred to above

Ans I was at his house for half the day -

Ques 9 Was there any other person or persons at the house at said time, if so who

Ans William Watkins the Sheriff and Joel Wilkins were at the house at the time and I think they were all the persons present except the family that resided there -

Ques 10 Do you know what Sheriff Watkins business there at that time was, if so state it -

Ans I heard him read a summons to Hester Megatt deceased in relation to the partition of lands between Robt. Duncan and others

Ques 11 State the position of Hester Megatt at the time the Sheriff read the summons to him -

Ans He was lying on the bed

Ques 12 What was the appearance of said Megatt during the time you were present on the day the deeds referred to were executed -

Ans When I went to his house he appeared to be in trouble, he stated that he understood that he had been sued by Dr. Gurno and his daughter (the daughter in law of said Megatt) but after the Sheriff served the summons on him he became reconciled and satisfied that the Doctor had not sued him -

Ques 13 What was the character of his conversation at that time

Ans This conversation was principally about being sued until Sheriff Watkins came. He talked of making the deeds above referred to: he said that he had sent for me to make said deeds.

Ques 14 How did he said Megatt talk and act on the day he executed the deeds and what did he say. (Objected to)

Ans This conversation was as rational as common and he described the lands all without referring to any deeds except one piece a portion of it being deeded to his son Heph B Megatt. I saw nothing uncommon about his actions he sat up part of the time by the fire and also set up to the table and eat dinner. he also said to me he did not expect to attend our trustee meeting that was to be held the next week that he was unwell and would not be able to attend said meeting.

Ques 15 What was the State of his health at that time

Ans He seemed to be in very feeble health he look bad and pale.

Ques 16 What was the State of his mind at that time.

Ans I considered his mind as sound at that time as at any other time that I had any conversation with him.

Ques 17 Was there any conversation between Sheriff Watkins and Mrs Megatt at the time the deeds were made spoken of above, if so what was it. (Objected to)

Ans There was none that I heard.

Ques 18 If there had been any were you in a position to hear it. (Objected to)

Ans I think I was, for they were not out of the room together until Watkins left then he went alone

Ques 19 Was there any conversation between Slessr. Myatt and his wife about the deeds spoken of above, if so state it all. (Objected to)

Ans I do not recollect of any conversation between them about the deeds only after the deeds were made Mr Myatt handed the deeds to his wife, and told her to take care of them for the girls

Ques 20 From your acquaintance and knowledge of Mr Myatt, give your opinion of the soundness of his mind on the day said deeds were executed

Ans I believed then and believe still that he was perfectly sane or I should not have executed the deeds

Ques 21 Do you know of anything else that would benefit or benefit to these defendants, if so state it -

Ans Slessr Myatt told me at my house some time previous to executing the deeds above spoken of, that he intended to deed the home place to the two youngest girls as he had executed deeds to his other children, the time that he told me this might have been a year or a year and a half before he executed said deeds Slessr. Myatt told me that the deeds executed to the two youngest girls included the home place

Cross Examination

Ques 1 Who came for you to go to Mr Myatt -

Ans [2995-30] William Walker one of the defendants came for me

the evening before -

Ques 2 What time in the morning did you go -

Ans I think that I started to go about seven o'clock in the morning & I think I arrived at the house of Mr. Myatts about 8 o'clock in the morning.

Ques 3 At what time of the day was the deeds signed -

Ans I think it was some time near 12 o'clock -

Ques 4 How many deeds were made that day and signed by Mr. Myatts -

Ans I cannot say positively but I think two -

Ques 5 Was not a deed executed that day for some timber land in Clinton County separate from the two deeds above spoken of -

Ans I cannot say -

Ques 6 Was there not other lands included in the deeds to the girls, than the home place, if so state what lands & how much -

Ans I think there was, but I cannot state what lands nor how much -

Ques 7 Did you use blanks in making the deed or did you write them out in full length -

Ans I used blanks, I do not recollect about writing any -

Ques 8th Were the deeds spoken of as having been made to Myatts other children, made to the children of his present wife or his former wife -

Ans I think they are the children of his last wife -

Ques 9 At what time in the day did Sheriff Watkins come to the house of Mr. Myatts and what were

you a doing while he was there -

Ans. I think Watkins came in somewhere about ten o'clock in the morning. I do not recollect of doing anything while he was there.

Ques 10 Did not Mr Myatt refuse decline or object for some time after you went there to make the deeds if how long.

Ans He did not refuse to make the deed but did not make the deeds until after Shff. Watkins left.

Ques 11 At what time in the day did he say there was (objected to) no use in his making the deeds, that he would be broken up any how

Ans The time that he told me that he thought there would no use in making the deeds was between 8 & 10 o'clock in the morning I think

Ques 12 When you got to the house of Mr. Myatt and told your business what reply did he make to you in regard in making the deeds?

Ans I do not recollect mentioning my business until he mentioned it to me. He then told me that he had sent for me to make some deeds, but that he did not know whether it would be of any use or not as he had understood that he was sued and expected to be broken up he mentioned this several times

Ques 13 State if you know what the claim was upon which Alexr. Myatt said he expected to be sued

Ans He did not say what the claim was upon which he expected to be sued but his words were that

- Ques 14 he understood that Dr. Gunn had sued him
 did Heph. Mayatt tell you who told him that the
 suit had been commenced or did you hear any
 person tell him while you were there -
- Ans I do not recollect of Mayatt telling me who told
 him that he was sued but I understood there that
 morning that it was Joel Wilminsk that had told
 him, this I understood in the presence of Mrs.
 Mayatt but I do not recollect who it was that
 told me Wilminsk had told Mayatt that he was
 sued but it was talk of by the family in Mrs. Mayatt
 presence
- Ques 15 State if you know what is the relationship of Joel
 Wilminsk to the family -
- Ques 16 State if you know from the conversation referred
 to, or otherwise what cause of actions Dr. Gunn
 or his daughter had or was supposed to have
 against Heph. Mayatt
- Ans I do not know, but it was about a deed as I
 understood but I do not know the particulars
 I think it was about a deed made to Heph. Mayatt
 by his son Josiah & his wife, who was Dr. Gunn's
 daughter
- Ques 17 Was that deed acknowledged before you -
- Ans It was
- Ques 18th From your knowledge of the transaction could
 there be anything in it, to seriously disturb
 Heph. Mayatt's mind, or cause a reasonable fear
 of bankruptcy -

Ans I could see no reasons so far as the validity of the deed was concerned or in any other respect.

Ques 19th Could Dr Gunn or his daughter set up any other claim but an uncertain and an attached dower interest in the land, depending on the life or death of Josiah Heyatt her husband.

Ans I do not know, the land was purchased by Josiah Heyatt at Administrator's sale and then deeded by him and wife to Slep Heyatt.

Ques 20 Did Mr Heyatt in the morning complain of being in danger on account of any of his official acts or in any other respect, besides the Dr Gunn affair.

Ans I do not recollect that he spoke of any other affair at all, that morning, of being in danger of being broken up.

Ques 21 Did you examine his state of health if so what was his disease?

Ans I did not examine him, I asked him how he was, and he answered that he was poorly.

Ques 21 Was he in bed or sitting up when Sheriff Watkins came in.

Ans When Watkins came in Mr Heyatt was in the bed or on the bed.

Ques 22 How long had he been in or on the bed.

Ans He was sitting up when Watkins rode up to the gate and when he saw him, he went to bed.

Ques 23 What did he say and how did he act when he saw Sheriff Watkins come to the house.

Ans I do not recollect of his saying anything but

that then comes Martins and then went to bed.

Ques 24 Did not Mr. Megatt say after Mrs. Martins left, that there was no use making deeds now for he was already cured?

Ans No he did not say that.

Ques 25 What did he say?

Ans He told me in substance to get ready and make the deeds, which I did.

Ques 26 At what time did you first see any change in Messrs. Megatt's deportment denoting aberration of mind?

Ans I do not recollect, but I think it was some two or three weeks after making the deeds.

Ques 27 Did you or did you not on or about the 4th day of April 1861, while riding with F. M. Gordon in conversation with him say, that you had the day before made some deeds for Messrs. Megatt, that you thought would not stand in law, or words to that effect.

Ans I never said anything to Gordon to my recollection about making deed for Messrs. Megatt.

Ques 28 Did you not tell F. M. Gordon that Mr. Megatt was was not sick, but that he was affected in his mind or that his mind was wrong or words to that effect?

Ans I do not recollect of having any conversation at all about Mr. Megatt at that time with Mr. Gordon.

Ques 29 Did you not tell Gordon that Messrs. Megatt made the deeds because he thought he was going to be

object to broken up, or words to that effect

Ans I did not to my recollection ever tell Gordon any thing about the deeds

Ques 30 Did you not tell Gordon in the same conversation, that you thought the deeds were made for the purpose of defrauding the older children & that you thought in particular that that was the intention of Old Mrs Heyatt or words to that effect?

Ans I do not recollect of telling him anything about it

Ques 31 Did you not in a conversation with Josiah Whitley, while riding with him to Doron about (object to) the time this suit was commenced, or at any other time, say to him that the deeds made by Alex Heyatt, would not in your opinion, stand in law, or words to that effect?

Ans I do not recollect of ever saying a word about it to Mr Whitley.

Ques 32 Did you not also tell Whitley that it was three hours after you went to Mr Heyatt before they could persuade him to make the deeds

Ans No, not that I recollect of

Ques 33rd Did you not at the same time tell Whitley that when Mr Watkins came Mr Heyatt went and got into bed and covered himself up head and
object to all, and that when Mr Watkins came in and asked for him, Mrs Heyatt pointed to the bed, and the Sheriff went to the bed, and uncovered him and read the Summons to him, or words

to that effect;

Ans I know of no such conversation at all -

Ques 34 Did you not at the same time tell Whitley that after the Sheriff went out Mr. Mayatt rose up in the bed objected to and said there was no use of his making deeds now as he was already cued or words to that effect.

Ans I never stated anything of the kind, as I recollect.

Ques 35 Did you not at the same time tell Whitley that you did not believe that Heph Mayatt would have made the deeds if Joel Wilbur had not come in after the Sheriff left and told him that Dr. Gunn had cued him or words to that effect

Ans I never said anything of the kind as I recollect of

Ques 36 Did you tell Whitley at the same time that Heph Mayatt talked to you the morning that you went there all kinds of nonsense about being broken up by Dr. Gunn & his daughters evening him and of his going to be imprisoned on account of some mis conduct in office or words to that effect.

Ans I do not recollect of stating anything of that kind to Mr. Whitley

Ques 37 Did you not at the same time tell Mr. Whitley that it was your understanding from old Mrs. Mayatt that these deeds were never to be put upon record, but that they were executed to pacify Mrs. Mayatt's mind and also that you, Witness, told Heph Mayatt

that the deeds might be left in his possession and that he could do as he was a mind to with the land if Dr Gunn did not sue him;

Ans I do not recollect of telling Mrs Whitley any thing of the kind

Ques 38 Did you not also tell Whitley that you had no
objected to idea at the time you made the deeds that they
would go on record -

Ans I do not recollect of telling him anything about it -

Ques 39 Did you not have two separate conversations with
objected Mrs Whitley about this transaction, one while coming
with him to Iowa and the other at some other time

Ans I do not recollect of having any conversation
with Mrs Whitley about the transaction. If I did
it has entirely dodged me

Ques 40 Did not Alex Poob come to your house some
times about the commencement of this suit and
objected have a conversation with you in relation to
the deeds above mentioned;

Ans He did sometimes after the death of Alex Heyatt
and we had a conversation about said deeds.
I do not recollect of his coming but once -

Ques 41 The questions 31, 32, 33, 34, 35, 36, 37, & 38, above
propounded in relation to a conversation with
objected Josiah Whitley were read to witness and he was
asked whether in the above conversation with
Alex Poob he did not use the language in these
questions or either of them or any part of them

as in them set forth, and if so state what part you used & what not.

Ans

I do not recollect of using any of the language in said questions to Rep. Pol except I might have told Mr. Pol that Mr. Myatt went to bed when the Sheriff came.

Ques

42 Do you recollect of having any conversation with John Butler about the execution of these deeds, on the day of the trial of the right of property between you and Butler.

Objected

Ans

I do not recollect of having any such conversation with Mr. Butler.

Ques

43 When you say that you considered his mind as sound at that time as at any other time that you had conversed with him, do you refer to your whole acquaintance with him or to the spring of 1861?

Ans

His conversation seemed to me to be as rational as at any time since my acquaintance with him except he appeared to be in trouble and feeble, and did not talk as lively as common.

Ques

44 Do you think that when L. Myatt was in health as you had known him years before that a threat of a lawsuit based on such a claim as that of his daughter-in-law, (Gunn's daughter) would have made him think that he was about to be broken up?

Ans

I cannot say as to that, but I think a law suit would trouble Mr. Myatt as much as any man of his property, for he was not in law often.

Ques 45 Had he not been for years a Justice of the Peace and associate Justice of the County Court, and did he not understand his rights, and the legal rights of others as well as most persons, not bred to the law?

Ans I do not know of his ever acting as Justice of the Peace only while he acted as associate Justice of the County Court. I think he understood his own rights as well as any person but I think his knowledge of law matters was very limited.

Ques 46 Did you not tell F. M. Gordon while riding with him on the 4th day of April 1861 above referred to, that you thought that the deeds were made for the purposes of defrauding the creditors of Elisha Sweeney and that that was the intention of all the parties concerned or words to that effect?

Object

Ans I recollect of no such conversation at all with Mr. Gordon.

Ques 47 Did you not also tell F. M. Gordon that when Watkins came Alex. Heyatt jumped into bed and covered his head up?

Object

Ans I do not recollect of telling him anything of the kind.

Ques 48 Did you not at the same time tell Gordon that Alex. Heyatt on the day on which the deeds were made was all the time declaring that he was broken up, that he Heyatt was a damned hypocrite and you McDonald, meaning witness was a hypocrite, too and that you (witness) thought he (Heyatt) was crazy.

Object

Ans I do not recollect of telling Mr. Gordon that?

Ques 49 Did you not also tell Gordon that you (Witness) fixed the deeds yourself as you had always done his business and knew the lands - that old Mrs Myatt (H. Myatt's wife) told you who to fix it to, and that after Watkins left Mrs Myatt his wife took him (H. Myatt) out and talked to him a long time before he could be got to sign the deeds, and that H. Myatt's wife and the other members of the family, after Watkins left, continued to urge upon H. Myatt, that Gumm had sued him and that if the deeds were not made that Gumm and Elisha Simcan's creditors would ruin him?

Ans I do not recollect of telling anything about it to Mrs Gordon

Re-examination

Ques 1 State if you know, if Mrs Myatt done any other business after he made the deeds and if so what was it?

Ans I think he did, he issued an execution as associate Justice of the peace. I think the execution was in favor of Reel Shaffer and against Ferdinand Smith.

Ques 2nd Do you know whether the execution was issued in proper form and manner or not?

Ans I think it was. I read it as it came into my hands afterwards.

Cross Examination

Ques 1 State when it (the execution) was issued and how do you know that H. Myatt issued it?

Ans I cannot state positively when the execution was issued but I think it was as much as

twenty days after the deed was made. I know that he (Megatt) issued it by his signature with

Ques 2nd How much of the Execution was in Alex Megatts hand writing?

Ans I cannot say positively how much, he frequently had his son write for him, I think the Execution was a written one.

Ques 3 Did you examine the signature particularly and do you know in whose hand writing that was?

Ans I cannot say that I examined it particularly or that I know positively whose hand writing the signature was, but I think it was the old mans writing.

Ques 4 Do you not know that there was an appeal taken in that case, before the execution was issued?

Ans I think that there had been an appeal in that case and a Proceidendo served before the issuing of the Execution

Eli McCracken being sworn testifies as follows:

Ques 1st What is your age, occupation and residence

Ans I am in my forty seventh year, occupation farmer, Reside in the County of Bond State of Illinois

Ques 2nd Were you acquainted with Alex Megatt in his lifetime?

Ans I was.

Ques 3rd State if you ever heard said Mayatt say anything about deeding any lands to his children, if so state what he said?

Ans I heard him say something about deeding his homestead to his two youngest daughters. I objected to think he told me this some time in the spring of 1860. He frequently told me the same thing afterwards. I do not know how often but more than once.

Ques 4 State at what time you saw Mr Mayatt the last time previous to the 3rd day of April 1861?

Ans I saw him some time in the last week in March previous to the 3rd day of April 1861.

Ques 5 State whether Sley Mayatt and wife were at your house at anytime after the 3rd day of April 1861, if so state what his business was.

Ans They were at my house and stayed all night I think it was about the 23rd of April 1861. They were on their way to or from Greenville to relinquish his executorship of Josiah Duggs as I understood from them. I went to town (Greenville) with them.

Ques 6 State how the old Hannteman acted and how he talked while at your house?

Ans He acted like a man afflicted he was not well, he talked like a man that had a good deal of trouble and cares upon his mind.

Ques 7 State whether you requested Mr Mayatt to hold family worship with you and to officiate at the table. if so state how he did it?

Ans

I am not positive whether I requested him to hold family worship or not, but I requested him to ask a blessing at the table and he done so as usual. my impression is that he prayed with the family in the morning

Cross Examination

Ques

1st At what time did you first discover any change in Alex Meyatt that went to show a disordered state of his mind?

Objected to

Ans

I think it was about a week or two after he stayed all night at my house in April 1861.

Ques

2nd What seemed to be the trouble, he was afflicted with at the time he was at your house.

Object

Ans

It appeared to me, that he Meyatt thought he could not attend to his ordinary business, and it troubled him

Ques

3rd Did he (Meyatt) complain that he was likely to be broken up or ruined?

Objected

Ans

I do not recollect, that he did, the night he stayed at my house

Ques

4th Did you ever see Alex Meyatt in such a desponding state of mind before the 1st of April 1861 as he was the night he stayed at your?

Ans

I never saw him so much so before.

Ques

5th From your knowledge of the affairs of Alex Meyatt was there at that time anything particularly to make him so desponding.

Ans

I think not if he had been well.

Ques

6th How often was you at the house of Alex Meyatt

Objected between the 1st of April 1861 and the night he stayed at your house?

Ans I think I was there twice -

Ques 7 do you remember of being there with Wesley Myatts, if so state what was said and done and when it was?

Objected

Ans I was there with Wesley Myatts, but I do not recollect anything the old man said except I heard Wesley say to the old man that he had deeded his home away and that was what was the matter with him, but I cannot recollect what reply the old man made to him.

Ques 8th do you remember of stating to Alex Pool a short time afterwards, the conversation referred above?

Ans I do not recollect that I did.

Ques 9 did you not then at that time tell Alex Pool that Alex B. Myatts told you that Alex Myatts was worse and had been trying to kill himself?

Ans Not that I remember of -

Ques 10 did you not also tell Pool that Mrs Myatts (Alex Myatts wife) then said the deeds were made to pacify A. Myatts and were not to be used?

Ans I do not remember any such conversation -

Ques 11 do you remember that on the Monday following the time of your being at Alex Myatts referred to above, of being at the house of Wesley Myatts, if so state what your business there was, and who requested you to go there -

Ans I recollect that I was at the house of Wesley Meyatt after I met him at Alex Meyatts. I think it was on Monday morning. Alex Meyatts family requested me to call on Wesley Meyatt and to tell him not to come to Alex Meyatts any more and say anything to him about these deeds for it excited him and made him worse.

Ques 12 Do you remember of advising Wesley Meyatt to take Alex Meyatt home with him, at the time you were at the house of Alex Meyatt?

Ans I do not recollect of advising Wesley Meyatt to take Alex Meyatt home with him, but I might have done so. I recollect of advising Alex Meyatt to go around among his children, as I thought it would be better for him.

Alexr B. Meyatt being sworn testifies as follows:

Ques 1 What is your age occupation and residence.

Ans I am in my twenty fifth year, residence Bond County Illinois, occupation farmer.

Ques 2 Are you acquainted with the parties in this suit?

Ans I am

Ques 3 State if you were at the house of Alexr. Meyatt on or about the 3rd day of April 1861. if so how often?

Ans I do not think that I was at his house on the

3rd day of April 1861 but I was there the day before and the day after. I was there frequently both in March and April 1861.

Ques 4 What was the conduct of your Father at the times you speak of?

Ans Nothing uncommon that I could see he was part of the time in bed and part up. He was unwell.

Ques 5 How did he act and talk?

Ans About as common, just as a great many sick men will do.

Ques 6 Was there anything unusual in his talk and actions?

Ans Nothing that I could see for a man as sick he was, at the time referred to above.

Ques 7 State if he did any business during the month of April 1861 and if so what was his manner of doing the same?

Ans He attended to the most of his business about house, if he had anything off, I generally attended to it for him, he gave me instructions how to attend to his business at that time as he had before when I done business for him. I think that he issued one or two executions in April 1861, I think I wrote them out for him under his instructions as I had done frequently before. I acted as Constable at the time he acted as Justice of the Peace. There was nothing unusual in his doing his business only he was sick.

Ques 8 Were you intimately acquainted with Wm. Mayato, if so how long?

Ans I was intimately acquainted with him all my life. he was my Father and I lived with or near him all my life.

Ques 9 State if you know of his making certain deeds to my one, on or about the 3rd day of April 1861?

Ans He made some deeds at that time to Nancy Barcroft and Sarah S. Walker and Murphy S. Mayato. I was not at his house on that day, but the deeds bear that date.

Ques 10 State if you know of his intention to execute said deeds for some time before he did it?

Ans He told me years before that he intended to execute said deeds. he told me so before he executed a deed to me, and he told so frequently, and he told me that he intended to deed his home place to the two youngest girls and that he intended to give Mrs. Barcroft equal with the two youngest girls. she was the oldest of the three girls. I understood that it was the understanding of all the family that these deeds were to be executed.

Ques 11 Was that your understanding also?

Ans It was.

Ques 12 Was there anything in his conduct late or actions on or about the 3rd day of April 1861

Objected that you could discover, which would tend to show that he was demented or incapable

of transacting his ordinary business?

Ans
(Object) Writing that I could see. If any one came in and asked about his health he would usually answer that he was unwell.

Ques 13 If there had been, would you not most likely have discovered it?

Ans Yes

Ques 14 State as near as you can the date of those executions you speak of?

Ans I do not know the exact date of them, I think one of them was issued some time after the deeds were made.

Ques 15 State if he then gave you instructions to issue (Object) them as he usually did.

Ans Yes he did, I think he signed his own name to them.

Ques 16 From what you know of your Father's life and manner of doing business was he or not as capable on or about the 3rd day of April 1861 to do business as at any time of his life?

Ans He was so far as I know.

Ques 17 State whether from his conduct at that time in your judgment any one could detect any (Object) unsoundness of mind in your Father.

Ans No not in my judgment, I do not think they could.

Cross Examination

Ques 1 Are you one of the defendants in this suit?

Ans I suppose that I am.

Ques 2 What relation are you to the other defendants in this suit, and to Plaintiffs?

Ans I am brother to Nancy E. Barcroft, Sarah S. Walker and M. L. Meyatt and Murphy Meyatt is my Mother's fifth, and I am half brother to Wesley Meyatt Mrs Cole, Mrs Pool, Mrs Keener and Mrs Duncan Plffs.

Ques 3 At what time in 1861 did M^r. Meyatt first become sick and how long did he continue sick,

Ans I think he took sick about the last of March, he was part of the time in bed and a part of the time up untill the 4th day of September.

Ques 4 Did the disease continue to increase from day to day or did he recover?

Ans He did not recover, he was sometimes better and some times worse.

Ques 5 Was he worse during July than in June?

Ans I do not recollect that he was, some times in June he was as bad as he was in July.

Ques 6 Was he worse in June than in May?

Ans I do not know that he was worse in June than in May.

Ques 7 Was he worse in May than April?

Ans He was I think.

Ques 8 How long did his periods when you say he was better, continue?

Ans Some times a day or two and some times longer & some time shorter.

Ques 9 What disease was he afflicted with?

Ans I cannot say exactly, he was taken down with the rheumatism first.

Ques 10 In what part of his body was he afflicted with rheumatism?

Ans He complained of his wrists and knee joints.

Ques 11th When you speak of his being better and worse do you refer to the rheumatism?

Ans Partly that and other things.

Ques 12 What other things

Ans He got so about the last of April and the first of May, that I do not think he was in his right mind.

Ques 13 What Doctor did he have?

Ans He had Dr. Brown. I think about the first of May, once only, that I know of.

Ques 14 At what time did he first stop shaving himself?

Ans I do not recollect.

Ques 15 How often had he been in the habit of shaving himself, before he was taken sick?

Ans Some times he would shave once a week which was his usual custom, sometimes he would go longer and some times he would shave oftener.

Ques 16 When did you first notice a change in this respect?

Ans I think about the last of April or the first of May.

Ques 17 Did not Mr. Kessner shave him about the 5th of April, the day some Colts were altered?

Ans Not that I recollect of.

Ques 18 Do you not know that his razor was kept from him during the month of April 1861 by your Mother?

- (Object) or others of the family
 Ans I do not know that his razor was kept from him by any one.
- Ques 19 Do you not know, his beard was unshaven during the latter part of March and first of April, for from 3 to 4 weeks?
- Ans I do not recollect that he went that long at that time.
- Ques 20 How long had you noticed that his mind was disordered before you met E. W. Mayatt & Eli McCracken and told them, he was trying to kill himself?
- (Object)
 Ans I do not recollect that I told them any such thing.
- Ques 21 How long was it after you first noticed that his mind was diseased, that you started to Jacksonville with him to the Lunatic Asylum?
- Ans I do not recollect, but I think it was about the last of April or first of May. I think we started with him to Jacksonville about the 19th or 20th of May.
- Ques 22 How long before Dr Brooks was there did you notice his mind was diseased?
- Ans I do not recollect that, for I do not recollect what time Dr Brooks was there.
- Ques 23 Did you not tell Alex Pool when you went for the old lady, on the day E. W. Mayatt and Eli McCracken went to Alex. Mayatt house that Alex Mayatt was trying to kill himself?

Ans I do not recollect what I said to Pool or what he said to me.

Ques 24 What did you tell Hely Pool at that time concerning your Father?

Ans I do not recollect what the conversation was between Pool and myself at that time.

Ques 25 What message did you give your Mother at that time?

Ans I did not see my Mother at Pools. she had left.

Ques 26 Did you not often during the months of April May and June hear your Father say that he was not sick but in trouble?

Ans I never heard him say that he was not sick but I heard him say that his old disease the rheumatism and trouble was working on him, this I heard him say about the last of April and the first of May.

Ques 27 What did he say troubled him?

Ans He said that the greatest part of his trouble was from having Elisha Driscoll's business on his hands.

Ques 28 Do you not know that Elisha Driscoll's business was taken out of his hands in February 1861?

Ans I do not recollect when Elisha Driscoll's business was taken out of his hands.

Ques 29 When and how did he die?

Ans He died on the 4th day of September 1861, he hung himself.

Ques 30 Did you not understand from Hely Heyatt

or the members of the family that the deeds were made on the 3rd day of April to keep Simons creditors from breaking him up?

Ans No, not that I recollect of.

Ques 31 Do you not remember a conversation with J. Kesner on the 17th day of April 1861 or thereabouts after telling Kesner how the old man was troubled and his replying that you ought to pacify him that you told Kesner that you had advised him to make deeds and convey his lands, but that he refused, saying that the creditors would break him up any how, and would jump on the personal property or words to that effect?

Ans I recollect of having a conversation with Mr Kesner about that time, and of his asking how Father was, and think I told him as well as I could how he was, but I do not recollect of telling him anything about Father making deeds. I know I did not tell him that I advised Father to make deeds.

Ques 32 Do you remember Hoopes, coming to your Father for corn in the spring of 1861, if so state what time he came?

Ans I think he came about the last of May or first of June.

Ques 33 Did he get the corn, and if not state if you know what reason was given for not letting him have the corn.

Ans I think he did not get the corn, but the reason

why he did not get it I do not recollect.

Ques 34 Did you not tell Keppock while together at or in the barn that your Father told you to come out and see that he did not take the corn, and said that he Keppock would take it anyhow, or words to that effect?

Ans I do not recollect that Keppock and myself were in the barn together, and I do not recollect of telling him any such thing.

Ques 35 State in what case or cases Alex. Hegatt issued executions after the 1st of April 1861?

Ans The only one I recollect of now, was in the case of Keil & Shaffer against F. Smith.

Ques 36 At what time was that issued?

Ans Sometime in April I think.

Ques 37 Who called for this execution?

Ans I think Shaffer told me to tell Father to issue the execution.

Ques 38 At what time was the original Judgment rendered in that case?

Ans I think it was in the month of January.

Ques 39 Was there not an appeal in the case, if so at what time was it taken?

Ans I think there was an appeal, but I do not recollect when it was taken.

Ques 40 What became of that Execution?

Ans I collected the money on the execution and returned it to my Father's docket.

Ques 41 Did you not both write and sign the Execution?

102
Ques
Object

5 Did you or not understand that they were made in accordance with your Father's previous desires?

Ans I understood that they were so made.

Alexander B. Heyatt Recalled.

Ques 1 State whether you have any interest in this suit or any interest in Alex Heyatt's estate as heir or otherwise?

Ans I have none, except as one of the defendants, if the suit should go against me I might be liable for some of the cost. I have relinquished all my interest in the estate of said Heyatt, I relinquished it on or about the 19th of March 1863 to my Mother Murphy Heyatt. I relinquished my interest in said estate to my Mother because I thought my Father Alex Heyatt &c had given me enough of his estate during his life time, and I am satisfied with it.

For Wilmer being duly sworn testifies as follows:

Ques 1st What is your age residence and occupation?

Ans I am about thirty four years of age reside in Bond County Illinois, occupation a farmer.

Ques 2nd Are you acquainted with the parties to this suit?

Ans I am

Ques 3rd Were you acquainted with Alex Heyatt on or

about the 3rd day of April 1861 and how often did you see him about that time?

Ans I was acquainted with Alex Heyatt on the 3rd day of April 1861 and saw him pretty much every day.

Ques 4 State how he acted and appeared about that time and how he talked (April 3rd 1861)

Ans I was at his house on that day and transacted some business with him as usual. he was lying on the bed and said he was sick. he talked as sensible as ever he did.

Ques 5th What seemed to be the matter with him?

Ans I guess he was sick. but what ailed him I do not know.

Ques 6th Did you see him often during the month of April and May following. if so how often?

Ans I did I was there at his house I think as often as once a week.

Ques 7 State if you ever discovered anything wrong about his mind. if so when did you first notice it?

Ans It was some time in May I think that I first noticed and thought that he was not just right at times.

Ques 8th State how long you have known Alex Heyatt and whether you were intimately acquainted.

Ans I was acquainted with him about twenty five or twenty six years. I was intimately acquainted with him. he raised me.

Ques 9th State whether judging from his acts talk and

general appearance he Alex Mayatt was in your opinion of sound mind on the 3rd day of April 1861?
 Ans I think he was.

Ques 10 A few days after the deeds were made (April 3rd 1861) did Alexander Pool tell you that Alex Mayatt was foolish for deeding away his land to the youngest children as he was sick and troubled with Elisha Simeons business and the manner in which Wesley was conducting himself or words to that effect?

Ans He did (except as to Wesley)

Ques 11th Did Alexander Pool more than once in the month of March & April 1861 tell you that the old man Alex Mayatt was not crazy, he was only sick or hypochond.

Ans I do not recollect that he ever told me any such thing.

Ques 12th On the day you and Alex Pool was spaying hogs for Alex Mayatt what if anything did Alex Mayatt say about the thread of the size of the same, and what day was it?

Ans I think it was on the 2nd day of April 1861, he Alex Mayatt said that he spayed with a tiger or a letter thread I do not know which, and Pool took the thread out of the needle and made to Alex Mayatt notion.

Cross Examination

Ques 1st What relation are you to Murphy Mayatt and the other defendants in this suit?

Ans Murphy Mayatt is my Mother and the other

defendants are my half brothers & sisters, except Bancroft & Walker

Ques 2nd What time in the morning of the third day of April did you go to Mr. Heyatts and what business did you transact & how long did you stay -

Ans I think it was about eight o'clock in the morning I went to his house to tell him that Dr. Gunn was a going to sue him about some property that Josiah Heyatts had left in his hands as Dr. Gunn thought. I think I was with him about three hours that day -

Ques 3rd Was F. R. McDonald there while you were there?

Ans He came there about the time I was about leaving

Ques 4th Did you know that McDonald was coming that day?

Ans I knew it after I got there I did not know it before I got there

Ques 5th Were you there at the time Mr. Watkins was there?

Ans I was not -

Ques 6th Was you there when the deeds were executed?

Ans I was not -

Ques 7th Did you tell Alex. Heyatts that Dr. Gunn had sued him

Ans I did not. I told him that he had come up to sue him

Ques 8th You say that Alex. Heyatts was sick. how long did he continue sick?

Ans I do not recollect. I saw him some five or

six days after and he was up and some better but I do not think that he ever got well -

Ques 9th What was the disease with which he was afflicted?

Ans I do not know.

Ques 10th What changes took place in his condition?

Ans He was better sometimes and sometimes he was worse.

Ques 11 At what time did you first hear him complain of his sickness?

Ans I think it was along about the last of March as well as I recollect.

Ques 12th Did he not (with the exception of short intervals) get gradually worse until August?

Ans I think he was worse on the 3rd of April 1861 than he was between that time and August when I saw him.

Ques 13th Was there any change in the general character of the disease?

Ans I do not recollect whether there was or not.

Ques 14th Did you advise Mr. Heyatt to make these deeds on April 3rd on account of the Ginn law suit?

Ans I did not.

Ques 15th In whose possession were the deeds after the 3rd of April?

Ans I do not know.

Ques 16th Who was present when you had the conversation with Pool?

Ans My wife and Pool's wife.

Ques 17th What did Alex Heyatt say on the 3rd of April about being broken up?

Ans I did not hear him say anything about being broken up.

Ques 18th Repeat as near as possible the words used by Alex Poob in the conversation referred to?

Ans I told him that the old man had deeded away his land, and he replied that the old was very foolish, that he might get well and the children might kick him out of doors, these are his words as well as I can recollect.

Ques 19th Who told you that the deeds had been made?

Ans F. R. McDonald was the first one that told me.

Re-examination

Ques 1 In questions 8, 9, 10, 11, 12, 13, 14 & 15 asked you on cross examination do refer to Alex Heyatts sickness of body or mind?

Ans I think both.

Ques 2nd In the sickness spoken of on the 3rd of April did you mean he was sick in body or was he deranged in his mind (Objected)

Ans I meant that he was sick in body and bother in his mind too about his worldly matters. I objected to did not consider him out of his senses.

Andrew J. Hughes being sworn answers as follows

Ques 1 What is your age occupation and where do you reside?

Ans I am thirty nine years of age, occupation farmer, and I reside in Bond County Illinois

Ques 2 Were you acquainted with Alexander Heyatt in his life time?

Ans I was

Ques 3^d State if you took the acknowledgment of a deed from Alex Heyatt & wife to Mary E. Deman in the spring of 1861

Ans I took the acknowledge of Alex Heyatt & his wife to a deed in the spring of 1861, who the deed was to I do not recollect

Ques 4 On the day you took said acknowledgment how did Alex Heyatt act, talk and what was his general appearance?

Ans He acted and talked like a rational man he appeared like a sick man?

Ques 5 From what you saw of his actions, talk and looks what is your opinion as to his soundness of mind at that time

Ans At that time he was in his right mind -

Ques 6 Did you take any more than one acknowledgment of any deed from said Heyatt that spring -

Ans I do not recollect that I did and I am not positive I did not -

Cross Examination

Ques 1 Where and when did you take this acknowledgment?

Ans I took it at Alex Mayalt house, I suppose it was in the spring of 1861 -

Ques 2 How long were you in Company with Mayalt at that time?

Ans I think an hour & a half or two hours -

Ques 3 You say he was sick what was the disease of which he complained?

Ans I do not recollect.

Ques 4th On what subject did you converse?

Ans I talked some with him about taking medicine, I do not recollect any other particular discourse I had with him -

Ques 5th Were the deeds drawn up when you went there?

Ans They were except some little filling up I think of dates -

Ques 6 Did you see him at other times during the spring or summer of 1861 -

Ans I did not

Leont Beery

Edward W. Heyatt. Jacob Keener

Senecia Keener. Alexander Pool

Martha A. Pool. Emily C. Cole

Elisha Duncan & Henry W. Duncan

76

Bills to set aside deeds &c

Hancy E. Barcraft. Elias Barcraft

Sarah & Walker. William Walker

Murphy L. Heyatt. Wm C. Heyatt

Alexander B. Heyatt. Josiah B. Heyatt

Murphy Heyatt & William C. Clout.

And now on this day, to-wit: on the 22nd day of April AD 1862 come the said parties by their Solicitors and said defendants by their Solicitors demurs to said Complainants bill filed herein, which demurrer is sustained by the court on the ground that the title is not shown in said complainants.

And now rule is entered against said defendants requiring them to answer plead or demur by first day of next term, and ordered that this cause be continued.

And now on this day to-wit: on the 23rd day of September AD 1862, it is ordered that this cause be continued.

And now on this day, to-wit: on the 22nd day of April AD 1863, it is ordered that this cause be continued.

And now on this day to-wit: on the 1st day of October AD 1863, comes the said parties by their Solicitors whereupon Alexander Pool and Martha A. Pool ask to withdraw as complainants in this cause which is allowed by the court, and the other complainants move for leave to

around Bill which is allowed and ordered that this cause be continued.

And now on this day, to-wit: on the 28th day of April AD 1864 comes the said Complainants by Phelps and Westcott their Solicitors, and on motion rule is entered against said Defendants requiring them to answer plead or demur to complainants bill filed herein by first Thursday, and first Thursday upon motion, it is ordered that this cause be continued to next term in course.

And now on this day, to-wit: on the 28th day of September AD 1864 comes the said Complainants by Phelps and Westcott their Solicitors and said Defendants by Morris and Kingsbury their Solicitors and on motion it is ordered that this cause be continued until next term in course with leave to take testimony.

And now on this day, to-wit: on the 22nd day of April AD 1865, it is ordered by the Court that this cause be continued to the next term in course.

And now on this day, to-wit: on the 26th day of September AD 1865, on application of Complainants, it is ordered by the Court that this cause be continued.

And now on this day, to-wit: on the 28th day of September AD 1865 - comes the said Complainants by Phelps and Westcott their Solicitors and the said Defendants by Morris and Kingsbury and upon affidavit of Edward W. Megatt one of the Complainants, it is ordered by the Court that defendants exhibit for inspection certain papers named in said affidavit filed in this cause, and

also described in the Bill, and that said papers be deposited with the Clerk of this Court by the first day of January 1866 and this cause is continued -

And now on this day, to-wit: on the 23rd day of April 1866, it is ordered that this cause be continued to first Friday in the next term in course, and it is agreed that the Certificate may be appended to the depositions of the Complainants and that they may be opened and considered as good as far as that point is concerned -

And now on this day, to-wit: on the 28th day of September 1866 it is ordered that this cause be continued for want of Abstract -

And now on this day, to-wit: the 24th day of April 1867 come the said Complainants by their Solicitors and the said Defendants by their Solicitors and it appearing to the Court that a part of said Defendants, to-wit: Nancy E. Barcroft Elias Barcroft and Wm. C. Heyatt have failed to plead answer or demur to Complainants Bill, as ordered on a former term of this Court, it is therefore ordered that their default be entered, and the Court having heard the arguments decrees that the allegations contained in said Bill be taken for confessed -

And the remaining Defendants having filed their answer on a former term of this Court, and the Court having examined the evidence orders that the Bill be dismissed as to them, which order is excepted to by Complainants and an appeal prayed for, which is granted up Complainants filing a Bond within thirty days from the present term of this Court in the penal

sum of two hundred dollars. said Bond to be approved
by the clerk of this Court.

E. W. Mayatt Et al. }
 " } In Chancery
Nancy E. Bancroft Et al. }

Complainants by Counsel object
to Questions No. 16-17-18-19 asked of F. R. McDonald.
Also to answer to Questions 20 & 21.

They also object to Ques. No. 6-9-10-11-12-13-15-
16-17 on examination of Alexander B. Mayatt. Also to
all the questions asked A. B. Mayatt when he examined.
They also object to Ques. 14-9-10-11- asked of
Joel Milburn.

They also object to all the testimony of A. J.
Kenghis.

They also object to all questions propounded to
the Witnesses as to their opinion of the sanity of
Alexander Mayatt Decd.

And the Complainants come and move the
Court to suppress the above questions and answers
thereto and all questions as to the opinion of the Witnesses
as to the sanity of Alex. Mayatt Decd.







Phelps McNeal
Sol. for Compls.

Bond

Know all men by these presents that we Edward W. Heyatt Jacob Keener Emily L. Cole Elisha Duncan and Alexander Pool of the County of Bond and State of Illinois are held and firmly bound unto Sarah S. Walker and William Walker her husband Murphy E. Heyatt Wm L. Heyatt Alexander B. Heyatt Josiah B. Heyatt and Murphy Heyatt and Williamson Plant Administrators &c of the same County and State in the penal sum of Two hundred dollars current money of the United States, for the payment of which well and truly to be made we bind ourselves, our heirs, Executors, and Administrators, jointly severally and firmly by these presents. Witness our hands and Seals this 26th day of April A.D. 1867.

The Conditions of this obligation is such that whereas the said Edward W. Heyatt Jacob Keener & Partners Keener his wife, Elisha Duncan and Nancy E. Duncan his wife Emily L. Cole having filed their bill in Chancery in the Circuit Court of Bond County against Nancy E. Barrcroft Elias Barrcroft her husband Sarah S. Walker and William Walker her husband Murphy E. Heyatt, William L. Heyatt Alexander B. Heyatt, Josiah B. Heyatt and Murphy Heyatt and Williamson Plant Admis. &c and whereas at the hearing of the case at the April term A.D. 1867 in said Circuit Court of Bond County the said Bill as to the said Sarah S. Walker and William Walker, Murphy E. Heyatt, William L. Heyatt Alexander

B. Meyatt - Josiah B. Meyatt and Murphy Meyatt
 and Williamson Plant Administrators &c was
 dismissed and the said Sarah J. Walker and others
 last above mentioned did recover a Judgment on
 the 24th day of April 1867 aforesaid against said
 Edward W. Meyatt Jacob Kesner and Parmena
 Kesner his wife Elisha Dmcan and Mary A.
 Dmcan his wife and Emily C. Cole for costs of
 said suit from which said decree of said Circuit
 Court the said Edward W. Meyatt & others last above
 mentioned ~~did~~ prayed for and obtained an
 appeal to the Supreme Court of the State of Illinois.
 Now if said Edward W. Meyatt and others last above
 mentioned, shall duly prosecute said appeal with
 effect, and shall moreover pay the amount of the
 decree costs, interest, and damages rendered and
 to be rendered against him in case the said decree
 shall be affirmed in said Supreme Court then this
 obligation to be void and of no effect either in law
 or equity; otherwise to remain in full force and
 virtue -

E. W. Meyatt	
Jacob Kesner	
Emily C. Cole	
E. A. Dmcan	
by John D. Butler	
his att in fact	
Alexander Pool	

State of Illinois }
Bond County } &

I John B. Rice Clerk of the Circuit Court in and for said County do hereby certify that the foregoing is a true and correct transcript of the proceedings had in said Court in the case of E. W. Heyatto Et al. vs. Amey & Barcroft Et al. "Bill in Chancery to set aside deeds and for Relief &c." as appears of Record in my office and herewith transmitted on pages from One (1) to One hundred and Sixteen (16) inclusive.

Witness my hand and Seal of said Court at Greenville this 24th day of May 1877

John B. Rice Clerk



And now the said appellant by his attys O'Malley & Houck Comes and says says, that there are manifest errors in the foregoing record and proceedings, & for assignment of errors therein.

1st The Court erred in not rendering a decree for the Complainants.
2nd The Court erred in rendering a decree for the Defts, the app^{ts} wherefore they pray said decree be reversed.

O'Malley & Houck

28

E. W. Mayall & Co.
Care of J. Walker & Co.

Recd

8499

Filed May 31, 1867

Arch. J. J. J. J. J.

Hammes

Walker J. This was a bill in Chancery, filed by a portion of the heirs of Alexander Myatt, against ^{his} other heirs to set aside and vacate several deeds of conveyance, ~~then~~ executed by him in his lifetime. The bill alleges, that he was the owner of a large amount of real estate which is described in the bill. That he was deranged and of ~~sound~~ unsound mind previous to his death and whilst in that condition Murphy Myatt conspiring with others for the purpose of defeating several amounts of their interest as heirs in the estate of Alexander Myatt, induced him to execute and acknowledge a pretended false and fraudulent deed on the 3rd of April 1861, to Sarah S. Walker and Murphy Lewis Myatt, ~~his~~ daughters of Murphy Myatt, in which the consideration expressed is \$2000, a quarter section and a forty acre tract of land and by a similar deed to some of the same date, to Nancy E. Baiscraft, another daughter of Murphy Myatt, ^{for the expressed consideration of \$1000} and eighty acre tract of land.

The bill charges that no consideration was unpaid or intended to be paid, and the deeds were not intended to

absolute connivances. That the grantee in the misapprehension of his mind was made to believe, that these deeds would be taken from him to pay several pretended debts, which he was induced to believe he was owing, unless he placed them temporarily in the hands of the grantor. That he was perfectly solvent; that the deeds were not delivered in his lifetime, but were caused to be recorded by Murphy Myatt after his death. That he was of sane unsound mind at the time he made these deeds. The bill prays, that the deeds may be set aside and vacated.

The answer admits, that Alexander Myatt died as alleged in the bill; that respondents are his heirs; that he had a large amount of real estate and personal property; that he was legally married to Murphy; but deny that on the 3rd of April 1861, he was of unsound mind; deny that any advantage was taken of him to procure the deeds. They allege that he was of sound mind at the time the deeds were executed; that they were made of his free choice, and delivered by his request. That a good and valuable con-

Signature was put for the lands, that they were executed in good faith and not to place the property temporarily in their hands. They deny the use of any false representations to procure the deeds. ~~The answer was a bill was~~ ^{was not required to be} ~~maintained by the bill.~~ The bill remained the oath to the answer.

Peal

A replication was filed, and ~~was~~ ^{was} ~~in~~ ^{was} the bill, answer, replication and proofs, the court below dismissed the bill. The case is brought to this court by appeal to reverse that decree.

In cases of this character sanity is the rule and insanity the exception. Observation teaches that but a small percentage of the human family are of unsound mind. It is perhaps equally true that whilst nearly all men are sane, there are but few who do not have their peculiarities amounting to in many cases to eccentricities. In many cases they are noticed, and attract attention, but yet it does not amount to insanity. An instrument, therefore made by a person of competent age and under no legal disability, as a rule, is always taken to be binding until incomp-

tenacy is established. And the proof of that fact devolves upon the person contesting its binding force.

When unsoundness of mind is alleged as a ground ~~of~~ for setting aside a deed, the fact must be established with reasonable certainty. If there is only a balance of evidence, or a mere doubt of the sanity of the maker of the deed, the presumption in favor of sanity must turn the scale, in favor of its validity. To destroy the binding effect of the deed, the evidence must decidedly preponderate. This question is usually raised at a period more or less remote from the ~~period~~ ^{time} when the instrument was ~~executed~~; frequently many years afterwards and seldom near the time; and however honest and truthful the witnesses may be, subsequent events more or less proximate, enter largely into the formation of opinions, entertained by them at the trial. Acts of the grantor occurring months after the execution of the instrument, will ~~be~~ ^{be} necessarily connected with peculiarities which at the time attracts no attention, and ~~excites no~~ ^{or} suspicion of derangement, but when collected together, are regarded as strong, if not convincing evidence that the mind was deranged, ~~when~~ ^{at the time} the deed was made, when it may be the party was perfectly sane at the ~~time~~.

Again it not infrequently occurs, that insanity develops itself so gradually, that

no no one can with certainty fix the
period when the party ~~was~~ had become
insane. It not infrequently happens, that
there is a considerable period of time
when it is almost impossible to know
whether the mind is acting naturally or
has become disordered to such an extent
as to absolve the person from account-
-ability as a responsible being. This ques-
-tion is one of great difficulty in most cases,
where the disease advances slowly, and is
not marked and decided in its approaches.
Courts and juries should therefore be admon-
-ished by this uncertainty and doubt, to ex-
ercise care and to weigh carefully all of
the circumstances connected with the fact
in arriving at a conclusion. The question
is usually greatly embarrassed by contra-
-dictory evidence, which is always to be ex-
pected in cases depending on the opinion
of witnesses.

Harm
In this case we have carefully examined
the testimony in the ^{record} case. We find it volu-
-minous, doubtful in some respects, and large-
-ly conflicting. When, however, taken all to-
-gether, we think it fails to sustain the charge.
In the absence of all knowledge of the manner
of the witnesses in giving their testimony, we
feel some doubt as to where the true mi-
-ght of evidence really lies. In all such cases
it is eminently proper that an issue should
be joined, and tried by a jury. Such a
practice has always been fully sanctioned

and we think it more satisfactory, and let
the celebrated to promote justice, and the
practice should be adapted by the court be
low, in all cases ~~of insanity~~ involving
questions of insanity. The decree of the
court below is reversed, and the cause re-
versed, ~~with~~ ~~inst~~ with instructions
to have an issue framed, whether the gran-
tor was insane at the time the act was
executed, and to have ~~the issue~~ thus made,
submitted to a jury and tried by them,
and to proceed with the case to a final hear-
ing. Decree reversed.

stet

Edward W. Myatt

28 vs 25

David L. Walker & Co

similarity
Walker & Co

1/2

23 & 22

H. K. S. O'MELVENY.

LOUIS HOUCK.

O'MELVENY & HOUCK,

Attorneys at Law.

Cairo, Ill., May 29 1867.

Major Noah Johnson
Mt. Vernon

Dear Sir:

We send you to-day a record
from Bond. E. W. Myatt et al vs. Sarah
J. Walker et al. Appeal. which please
file and when I come up I will pay
ocket fee.

Yours tr.

H. K. S. O'Melveny

28 —

E W Mayers Esq

Esq
Sachs & Wallcutts

Filed May 31 - 1864

Book 10th 2d 1/2

State of Illinois---First Grand Division.

JUNE TERM, A. D. 1867.

EDWARD W. MYATT, *et al.* Appellants, }
vs. } *Appeal from Bond.*
 SARAH L. WALKER, *et al.* Appellees. }

APPELLEE'S BRIEF.

The law *presumes* every man to be sane, and the burthen of proving insanity rests on the party alleging it. See 1st Greenleaf, ¶ 42, and 2d Greenleaf Evidence, sec. 373, and Jackson vs Vandusen, 5 John. R. 154; Grabill vs Barr, 5 Penn. State R. 441; also Walker's American Law, page 536.

As to the manner of proving insanity, see 2d Greenl. Ev. ¶ 371.

The opinion of witnesses is no evidence in cases of insanity unless they are medical men, and not even then without having made that branch of the science their special study. See Van Horn vs Keenan, 28 Ill., page 445, in which case the Court, (Chief Justice Breeze) says: "Persons other than medical men, no matter how intelligent they may be, are incapable of pronouncing on the true condition of the mind of any one. They are ignorant of the diagnosis of insanity or mental weakness, and so are physicians in general practice for the most part. No one who had made this branch of medical jurisprudence his special study was examined in this case, (so with this case at bar also,) and no judge ought to be satisfied with the crude opinions given by most of the witnesses."

We think that more truth or sounder doctrine upon this subject is not found (in so few words) in all the books written on this perplexing and difficult question than in those just quoted. See also Lilly vs Waggoner, Com. &c., 27 Ill., page 395, where this subject is ably and beautifully discussed and elucidated. Monomania alone is not sufficient to set aside at all times a solemn contract. See Walker's American Law, page 239.

As to the manner of proving heirship, see 2d Greenl. Ev. ¶ 363 and 354; also vol. 1 Ibid, ¶ 103. Best evidence must be produced first, and legal reason given before secondary evidence will be allowed.

The mode of impeaching the testimony of a witness is different in chancery from the mode at law as we understand it. See 3d Greenl. ¶ 348; see also 1st Greenl. ¶ 471 and 472 and notes. In this case there was no proper foundation either in law or equity first laid for the attempt to impeach McDonald and McCrackin's testimony by any of the witnesses introduced for that purpose except it may be Gordon and Whitley and in those instances the questions and answers were objected to by defendant, and were highly improper. The very answers desired were put into the witnesses' mouths by the attorney asking the questions.

A co. defendant may be a witness for another, especially if his interest be adverse to the party calling him, or if he have no interest in the case, or his interest be balanced in this case, A. B. Myatt being a mere nominal party, as by his testimony it will be seen, or in fact as he had no deed to set aside, his interest was to have this set aside so that he might share his proportion. See 3d Greenl. Evidence, ¶ 318.

We apprehend there are but few questions arising in the whole scope of our jurisprudence where it is so difficult to lay down general rules governing all similar cases than upon this very subject of insanity. Every such case therefore must, to a considerable degree, rest upon the facts and surrounding circumstances of the same for its proper solution and understanding.

The counsel for appellant seems to argue this case upon the hypothesis that if the evidence show Myatt to have been demented on the day, or soon after, or just before these deeds were executed by him, they must be set aside necessarily. We do not so understand the rule. Suppose Myatt had given a bond for a deed when there was no pretense that he was demented months or years before it was to be made, would any lawyer say that because he was somewhat deranged in mind on the day he merely mechanically executed the deed, that therefore it was void. We think not. A deed is not a contract, it is only evidence of a previous contract. Every one must know that aside from statutory provisions, a verbal contract is as good as a written one with all the stamps and seals in the universe upon it. So in this case, it abundantly and clearly appears from the evidence of McCrackin, A. B. Myatt and McDonald, and perhaps others, that Alex. Myatt long before, nay, years before the 3d of April, 1861, had said and declared often, when there was no sort of doubt of his sanity, he intended to deed the home place to his three youngest girls, the very thing which he did do, as appears from this record.

This record further shows that Myatt had provided for the older children, both of his first and second wife, by deeding them lands, thus making similar provisions for all his children. 'Tis true those lands were not so valuable then but they are valuable as any now.

Then instead of this act of Myatt's showing fraud in him or Mrs. Myatt or any one, on the contrary we think it a very laudible and righteous act, and shows that he was only putting in execution what he had long contemplated and determined to do.

This is not uncommon with parents, especially among the pioneers of this country to thus distribute their property among their children while living.

But then we contend that there is not sufficient *legal testimony* in this record to support the bill. The evidence is nearly all the simple *opinions* of unlettered men and women upon one of the most subtle questions known to the law. The same kind of testimony has (opinions) convicted some of the wisest men that ever lived, in all ages of the world, (inst., Galileo, and many others that might be named.)

There is something novel in the course pursued by complainants in this bill from its beginning if the allegations are true, as shown by the record. It will be observed the oaths of defendant's are waived, thus disposing of their testimony, yet proving their statements. Afterwards it became necessary to amend the bill and release Pool and his wife and make them witnesses. The continuing for so long a time from term to term of Court. The attack on the testimony of McDonald and McCrackin, instead of attacking the witnesses so that we could show their good character for truth and veracity.

Then again by this record (taken in connection with the record of case No. 11, now pending in this Court,) it will be seen that this same *Edward Wesley Myatt*, "Ere the shoes grew cold in which they bore his poor father to the grave," commenced an unwarranted, uncalled for and unnecessary attack upon the character of his own father and brothers and sisters, charging his father was never legally married to his second wife with whom he had lived for some thirty years, and hence he was an adulterer and his brothers and sisters bastards, and thus blackening the memory of one of the best men that ever lived in this or any other country, and sacrificing the peace, comfort, good name and standing of the family forever. Like Esau, sell his birthright for a mess of pottage, a few acres of land.

The chancellor will decide cases like this only upon legal testimony. See *Swift, et al, vs. Castle*, 23. Ill. 209.

S. P. MOORE,
For Appellee.

No 28

Myatt et al

vs

Boalther et al

Appellans Brief

Filed June 14 1864
Arch & Charles Co

B. T. MOORE
Att. Appellans

Filed at St. Louis, Mo. 14th June 1864

Supreme Court of the State of Illinois.

FIRST GRAND DIVISION.

June Term, A. D. 1867.

ABSTRACT.

Edward W. Myatt, Jacob Kessner, Pamela Kessner, Emily C. Cole,
Mary W. Duncan and Elisha Duncan, her husband, *Appellants*,

vs.

Nancy E. Barcroft, Elias Barcroft, her husband, Sarah L.
Walker and William Walker, her husband, Murphy L. Myatt,
Wm. C. Myatt, Alexander B. Myatt, Josiah B. Myatt,
Murphy Myatt and Williamson Plant, *Appellees*.

Appeal from Bond.

Page 1

Summons.

Bill sets out that Alexander Myatt, on the 4th day of September, A. D., 1861, departed this life; that complainants E. W. Myatt, Pamela Kessner, Emily C. Cole, and Mary W. Duncan, are his heirs at law; that E. W. Myatt and Jacob Kessner also bought the interest of Martha A. Pool another heir in said estate; that certain other persons, to wit, Nancy E. Barcroft, intermarried with one Elias Barcroft, Sarah S. Walker, intermarried with William Walker, Murphy L. Myatt, William C. Myatt and Alexander B. Myatt, being also stated as children of said Alexander Myatt; and Murphy Myatt claiming to be the widow of said Alexander Myatt, and Williamson Plant are administrators of the estate of said Alexander Myatt, claim to be heirs at law; that said Alexander Myatt never was married to Murphy Myatt; that said Alexander Myatt died seized of a large amount of real estate, described in bill.

The Bill further charges, that the said Alexander Myatt being in possession and having a large amount of Real Estate, to wit, on the 3d day of April, A. D., 1861, and being demented and of unsound mind, the said Murphy Myatt, conspiring with others, for the purpose of defrauding complainants of their interest as heirs in the estate of said Alexander Myatt, induced the said Alexander Myatt to execute and acknowledge, certain pretended, false and fraudulent deeds, dated April 3d, 1861, as follows, viz: to Sarah S. Walker and Murphy Louisa Myatt (daughters of said Murphy Myatt), conveying for and in consideration of \$2000, the east half of the east half of the south-east quarter of section No. 36, and the south-west quarter of section 33 (with the exception of $1\frac{1}{2}$ acres deeded for church and graveyard, and $2\frac{1}{4}$ acres deeded to A. B. Myatt), all in township 4, north of range 2 west, in Bond county, containing 195 acres; and, also, on the same day, to Nancy E. Barcroft (another daughter of Murphy Myatt), in consideration of \$1000, the south half of the north-west quarter of section 24, and the east half of the south-west quarter of section 28, in township and range aforesaid, 160 acres.

The bill further charges, that no consideration was ever paid or intended to be paid, and that the deeds were not intended to be absolute conveyances, but that the said Myatt, in the unsoundness of his mind, was made to believe that these lands would be forced from him to pay certain pretended debts, which he was falsely made to believe he was owing, unless he placed them temporarily in the hands of said N. E. Barcroft and others. It further charges that said Myatt was at the time perfectly solvent; that said deeds were never delivered by him during his life time but were in his possession with his other papers, and were caused to be recorded and delivered by said Murphy Myatt after his death.

The bill expressly charges:

1st That at the time of making and acknowledging said deeds, said Alexander Myatt was of unsound mind.

2d That being so demented, said Alexander Myatt was influenced and persuaded there to, by false representations as to his liabilities, and losing his property, and being turned out of home, &c., whereupon, he was induced to sign and acknowledge said deeds, not as an absolute conveyance, but to save it from these pretended debts, and that said debts did not exist in fact, and said execution and acknowledgment of deeds was obtained by fraud.

3d That there was no consideration money paid or agreed to be paid.

10 4th That said deeds were without consideration as aforesaid, and were never delivered nor intended to be delivered by Alexander Myatt.

And petitioners therefore pray that said deeds may set aside, and declared null and void, &c., &c., &c.

100 Demurrer to Bill.

Rule to answer plead or demur by next term.

September term, A. D., 1862. Cause continued.

April term, A. D., 1863. Cause continued.

111 October term, A. D., 1863. Alexander Pool and Martha Pool allowed to withdraw as complainants and leave given to amend. Cause continued.

April term, A. D., 1864. Rule taken on defendants to answer and cause continued.

September term, A. D., 1864; cause continued.

April term, A. D., 1865; cause continued.

September term, A. D., 1865; cause continued; and on affidavit of Edward W. Myatt, defendants are ruled to exhibit for inspection certain papers.

112 April term, A. D., 1866; cause continued

September term, A. D., 1866; cause continued.

April term, A. D., 1867. Default as to Nancy E. Barcroft, Elias Barcroft and William C. Myatt, and bill as to them taken *pro confesso*.

11 Answer of Sarah S. Walker, William Walker, Murphy L. Myatt, Josiah B. Myatt, Alexander B. Myatt, Murphy Myatt and Williamson Plant,—states:

12 That said Myatt died as stated in bill; that defendants are his heirs and legal representatives; that he had a large amount of real and personal property; that said Alexander was married to Murphy legally; but deny that on said 3d day of April, 1861, he was of unsound mind; deny that any advantage was taken of said Alexander Myatt to procure the execution of said deeds; they aver that he was of sound mind at the time the deeds were executed of his free choice, and delivered by his request; that there was a good and valuable consideration for said deed; that they were executed in good faith and not to put the land temporarily into defendants hands.

13 They deny the use of any false representations by Murphy Myatt to procure the execution of said deeds, by combination, &c., &c. Signed by all the defendants, except Barcroft and wife.

To this answer a general replication.

112 April term, A. D., 1867. Bill dismissed, which order is excepted to and appeal granted.

EVIDENCE FOR COMPLAINANTS.

Page

14 & 15

Henry Sharp testified: that he is acquainted with the parties to the suit and was with Alex. Myatt in his life time. The complainants E. W. Myatt, Mrs. Kessner, Mrs. Cole, Mrs. Pool are heirs of Alex. Myatt by his first wife, and there was a Wiley Myatt, but don't know whether he is now alive. The defendants, Nancy E. Barcroft, Sarah P. Walker, Calvin Myatt and Alex. Myatt are heirs by his second wife.

16 Was in company with Alex. Myatt when he was returning from County Court about the first of March, 1861, and spent part of a night with him in April 1861, about two weeks before the Circuit Court. The Circuit Court commenced April 15th, 1861. In March his mind was sound and his capacity to do business good, as far as I discovered, but in April he was not calculated to transact business.

Ques. 8. State anything that occurred in April to show his unsoundness of mind?

Ans. He told me, that his mind was gone; that he could not attend to business and should not attempt it. He had an unusual look about the face, which made me believe his mind unsound; and he told me his wife prevented him from doing his business, and that he was ruined; and from the whole run of his talk, I was fully satisfied that he was unfit to do business.

Ques. 9. Did you or not examine Mr. Myatt to see whether he was affected with fever or any other bodily disease?

Ans. I examined him; he had no fever; his pulse was a little slow; he had no other disease, but was discouraged and low-spirited. I have practiced medicine in my own family and other families.

17 *Emily Barcroft* then testified, that she knew Alex. Myatt; was with Alex. Myatt in March and April two or three times, but do not know what his condition was in March. I saw nothing in him that would make him unfit for business; saw evidences of unsoundness of mind in May, 1861.

18 *A. G. Henry* then testified, that he is 38 years of age, and an attorney; is acquainted with the parties; that complainants are heirs at law of Alex. Myatt; that about the 1st of April, 1861, he was in company with Alex. Myatt at his house and had conversation on business. He was anxious to cancel some business transaction, that had taken place between us in December previous; he talked like a man of unsound mind, and I mentioned it to others soon after. He talked as though he expected to come to want. I had but one conversation with him and from the way he talked then, I do not think he was fit to transact business; I don't think he then had any reason to suppose he would come to want.

And on cross-examination, said that he fixed the time of his visit to Alex. Myatt by reference to some papers and recollect it was between the 1st and 13th, and I think not later than the 8th and 9th. I thought at the time that Alex. Myatt was unfit to do business, but I thought it produced by sickness.

S. P. Bentley then testified that he is acquainted with parties, and knew Alex. Myatt in his lifetime; was in company and conversed with Myatt three or four times between the 1st and 15th of April, 1861; the first time about the 4th or 5th, and the last time about the 15th of April 1861. He appeared to be about the same each time, and I did not consider him fit to transact business at that time. I heard Murphy Myatt his wife, and Josiah Myatt (two of defendants), say that Alex. Myatt had been in that condition of mind for some two, three or four weeks before the first time I saw him. Josiah Myatt stated that about the 1st of March he appeared frightened and said he would have to go to prison unless he could raise a large sum of money. Alexander Myatt looked wild and staring at me. He said the land he had bid off for Polly Duncan had ruined him body and mind, and he should never get over it. From my knowledge of the transaction of the Duncan land referred to, I am satisfied there was nothing in it to disturb his mind as it was worth much more than he was to give for it. Murphy Myatt, his wife said to him in my presence, if he had taken her advice he would not have been in the fix he was in; she had told it, the land transaction, would ruin him, and it had. Alex. Myatt said he had no pain but trouble on his mind; and on

Cross examination said: My business there was to take the Duncan lands off his hands, referred to above. I accomplished it by taking up the obligation to A. G. Henry, and A. Myatt made a deed to Polly Duncan about April 15th, 1861; and on

Re-examination said, that this land was bought originally by Myatt for Polly Duncan. Mr. Myatt, A. G. Henry and Polly Duncan all told me so, all the parties interested; and also Murphy Myatt, expressed themselves satisfied.

Jasper Pool then testified that he is acquainted with the parties, and was with Myatt; was at the house of Alexander Myatt about the middle of March A. D. 1861; saw him but did not converse with him; he had a wild look that was unusual; saw him walking around the house apparently without any object, with his head down. I did not think he was able to transact his business at that time. I went to Alexander Myatt's house to get some harness, and should have asked Mr. Myatt, but William Walker (one of defendants), told me not to do it, for he would be *mad*, that he was not in his *right mind*. Walker gave me the harness and told me not to let the old man see it. The harness belonged to Alexander Myatt. And on

Cross examination, said that he did not hear him complain, and don't know that he was sick; have talked with E. W. Myatt on this matter; I am a brother of Alexander Pool.

W. Watkins then testified, that he was acquainted with Alexander Myatt, deceased; was at the house of Alexander Myatt, deceased, on or about the 3d of April, A. D. 1861, for the purpose of serving a summons on him. I sat down by him and asked him how he was; he said "he had been wronged so long, that he could not get right." I commenced to tell him my business, when Mrs. Myatt (his wife, one of defendants), spoke to me and called me out in the hall, and told me that Mr. Myatt had been very bad for a few days, that I would have to explain my business to *her*; I then wrote a copy of the summons and left it with her. The appearance of Alexander Myatt was entirely different from what it usually was. He appeared to be disturbed both in body and mind. From his appearance I think he was not at that time of sound mind and capable of transacting business; and that was the impression I got from Mrs. Myatt too, at that time. F. R. McDonald, Esq., and I think Mrs. Walker (one of the defendants), were in the house then; it was about 10 or 11 o'clock A. M.; F. R. McDonald was sitting the room when I went in. Mrs. Myatt also requested me to see A. G. Henry and ask him to come down to fix some business, that was preying on his mind.

Alexander Pool testified that he is a son-in-law of Alexander Myatt but not interested in suit; has sold his entire interest in the estate. About the 15th of February 1861, I saw Alexander Myatt and spoke to him about making a deed, and saw him after that and conversed with him at least twice a week until his death. I never heard him complain of sickness or pain of any kind. Between the 1st and 15th of March 1861, I saw him; he complained of nothing *but his mind*. I do not think he was capable of transacting any business at that time, and he continued to get worse until his death. Between the 1st and 15th of April, 1861, he was crazy. I conversed with him several times about this time. He kept continually repeating that he had broken me up, and was broken up himself, and that all his property was being destroyed—all of which I knew to be unfounded at the time. I saw him frequently between the 1st of April, 1861, and to the time of his death, and do not think he was capable of transacting any business; he seemed to grow gradually and steadily worse. And on

Cross-examination said, that he sold his interest to in the estate of Alexander Myatt to Jacob Kessner, for \$800, the sale was absolute and unconditional. My wife is a half sister to the other children (defendants) of Alexander Myatt; I am on friendly terms and never had any trouble with the younger children (defendants) of Alexander Myatt.

...that she is intimately acquainted with the parties and well knew Alexander Myatt, deceased. Was not often in A. Myatt's house in the year 1861, until after the 15th of April; was there a few times after that. He did not complain of being sick at any time, he appeared out of his head. I had a conversation with Murphy Myatt, (defendant,) about the deeds to N. E. Barcroft, L. S. Walker and M. L. Myatt, in May, 1861. Murphy Myatt told me that Alexander Myatt was complaining so much about being broken up, that she thought she would have the lands deeded to the children and that she thought that would satisfy him. She also stated that no person knew of the making of the deeds except herself and Esq. McDonald, and that the deeds were not intended to stand, but she intended to keep them until Alexander Myatt got well. She also said that when she sent a runner after Esq. McDonald, A. Myatt refused three times to have the Esquire sent for, and he was at the house three hours before said Myatt would agree to execute the deeds. No other person was present at this conversation except Murphy Myatt. And on

Cross examination said, that she now resides in the south-west corner of Clay county, in this State.

Sarah Sugg then testified, that she was in company with Alexander Myatt, deceased, and stayed all night about April 13, 1861. He appeared like something was the matter from his actions and conversations. He did not talk as he always had. Saw him again in August and his mind appeared worse. On

Cross-examination said, that he talked rational but did not talk as much as formerly, and appeared to want to be off to himself and to be in bed.

P. J. Holcomb then testified as follows: I am 74 years of age; a farmer, and reside in Bond county. I saw Alexander Myatt in the spring of 1861, think about the 1st of May, at his house; he appeared very strangely. When I went, the door of his room was fastened on the outside; his wife opened it; he was walking very fast across the room and went to and threw himself upon the bed very heavily, and covered himself up, head and all. I asked him if he was unwell, and he did not answer. I asked again and he then said he was not unwell. He was very unwilling to converse, but would sometimes answer direct questions. I saw him again four or five days afterwards, and he appeared more communicative. When he talked on the subject of his property he appeared to be insane, but when he talked on other subjects he appeared sane. He stated that it appeared to him that all was gone. I spoke to him about his fine house and barn; he replied they were mere shells, only fit for birds' nests. I saw him again about two weeks afterwards and he appeared better but moody. I tried to arouse him by telling him of a meeting we once had in Greenville. He recollected the meeting (which was some twenty years ago) and laughed heartily at it. I then spoke to him of his crops, which were looking fine, and he replied they were good for nothing. He spoke frequently of all his property or means being gone. I said he ought not to mourn for it, that his children were all doing well, and he replied that his children had worked hard for the property, but now it was all gone. I thought him insane on the subject of his property each time I saw him. The first time Mrs. Myatt went into the room with me and then left the room; the second time she was in the other room behind the door and the door open, and the third time she was not in the room. I had been acquainted with Alexander Myatt twenty five years. As to solvency, think he was never pressed much; before 1861 I regarded him as a business man; never knew him so affected before. I was appointed by the City Council to visit the Insane Hospital of Cincinnati and see how they were cared for, and acted in that capacity two or three years; have seen a great many insane persons there; am satisfied Alexander Myatt was crazy; this insanity was not equal on all subjects; he appeared most insane on the subject of his property, and I do not think he was capable of transacting business or of disposing of his property. And on

Cross examination, said that he appeared not to be insane on other subjects. Persons in his condition are not, as far as I know, sometimes worse and at others better.

Dr. T. S. Brooks then testified, that he is forty-five years old, a physician, that he had practised medicine about twenty years, and was acquainted with Alexander Myatt while living; was called professionally to visit Alexander Myatt at his house on the 28th day of April, A. D. 1861, according to my books; he appeared to be deranged after I had examined him; he appeared to have no bodily disease; seemed somewhat debilitated; he acted and talked as if he was deranged, and did not know what he was about; I saw Mrs. Myatt and some others, but do not recollect who; Alexander B. Myatt came for me to go there; Mrs. Myatt said he had been deranged some two or three months, and that it gradually increased on him; I don't suppose that at that time, or while so affected, he was capable of doing business. And on

Cross-examination said, that he cannot give the exact language of Mrs. Myatt; she conveyed the idea to me that his mind had been deranged for a month or two, and that it had gradually increased on him; with regard to bodily disease, I mean, that so far as I was capable of judging, I think he had no bodily disease; I examined his pulse, it did not indicate disease.

EVIDENCE FOR DEFENDANTS.

F. R. McDonald was then called, and, being sworn, testified that he was acquainted with the parties, and was with Alexander Myatt; was present when certain deeds were

about the 3d day of April, A. D. 1861. Had been acquainted with deceased for twenty years; had seen him frequently just before the deeds were executed; could not say how often; had acted with him a number of years as school officers; was at the house half the day the day the deeds were executed; Sheriff Watkins and Joel Wilmoth were there and the family; Watkins read a summons to Myatt in relation to the partition of some lands; Myatt was then in bed

When witness went there he (Myatt) appeared troubled; said he understood Dr. Gunn and his daughter had sued him, but after the Sheriff served the summons he became satisfied that the Doctor had not sued him. He conversed principally about being sued until Sheriff Watkins came, and he talked of making the deeds. His conversation was as rational as usual; he described the lands without referring to any deeds, except one piece. I saw nothing uncommon about his actions; he sat up part of the time by the fire; he seemed to be in very feeble health; looked bad and pale; considered his mind as sound at that time as at any other time I conversed with him. Witness heard no conversation between Sheriff Watkins and old Mrs. Myatt (widow). Thinks he could have heard it if there had been; they were not out of the room together till Watkins left, and he went out alone; does not recollect any conversation between Alexander Myatt and his wife about the deeds, except that after the deeds were made, Myatt handed the deeds to his wife and told her to take care of them for the girls. I believed then, and believe still, that he was then sane, or I should not have executed the deeds.

And in reply to the question, whether he knew anything more that would benefit defendants, witness said that a year or eighteen months before he (Myatt) had told witness that he intended to deed the home place to the two youngest girls.

On cross-examination, said that William Walker, one of the defendants, came for witness to go and make the deeds; witness started at about seven o'clock next morning, and arrived at Myatt's about eight o'clock; the deeds were made about twelve o'clock; thinks two deeds were made that day; cannot say whether a third deed for some timber land in Clinton county was made; there were other lands included besides the home place. Watkins came about ten o'clock.

Ques. 10. "Did not Mr. Myatt refuse, object or decline, for some time after you went there to make the deeds? if so, how long?"

Ans. He did not refuse to make the deeds, but did not make them till after Watkins left.

Ques. 11. At what time in the day did he say "there was no use in his making the deeds, that he would be broken up anyhow?"

Ans. The time he told me that was between eight and ten o'clock; he told me after I got to the house that he had sent for me to make some deeds, but that he did not know whether it would be of any use or not, as he understood that he was sued, and expected to be broken up. He mentioned this several times; he said he understood that Dr. Gunn had sued him. I understood that morning that Joel Wilmoth had told him he was sued. It was *talked of by the family in Mr. Myatt's presence.*

Joel Wilmoth is a son of Mrs. Myatt (widow), and a half brother of defendant's. From the conversation, the supposed cause of Dr. Gunn's suit was concerning a deed made by Josiah Myatt and wife (Dr. Gunn's daughter) to Alexander Myatt; that deed was acknowledged before witness; and from his knowledge of the transaction, he could see no reason why it should seriously disturb Mr. Myatt's mind or cause a reasonable fear of bankruptcy, either from want of validity in the deed or in any other respect.

Ques. 19. Could Dr. Gunn or his daughter set up any other claim than an uncertain and unattached dower interest in the land depending on the life or death of Josiah Myatt, her husband?

Ans. 19. "I do not know; the land was foreclosed at administrator's sale by Josiah Myatt, and then deeded by him to Alexander Myatt."

Witness does not recollect that he heard Myatt mention, that morning any other reason why he was in danger of being broken up; did not examine the state of Myatt's health.

When Sheriff Watkins rode up to the gate, Mr. Myatt was sitting up; he said, there comes Watkins, and went to bed.

I do not recollect when I first saw the change in Mr. Myatt showing aberration of mind; think it was two or three weeks after making the deeds.

Witness was then asked whether on or about April 4th, 1861, while riding with F. Marion Gordon, in a conversation with him, he did not say that he had on the day before made some deeds for Alexander Myatt which would not stand in law? That Myatt was not sick, but affected in his mind? That the deeds were made because he thought he would be broken up? That he (witness) thought the deeds were made for the purpose of defrauding the older children, and Mrs. Myatt intended that? That he (witness) thought the deeds were made for the purpose of defrauding Elisha Duncan's creditors, and that was the intention of the parties? That when Watkins came Myatt jumped into bed and covered his head up? That Myatt, on the day the deeds were made, was all the time declaring that he was broken up; that he (Myatt) was a damned

hypocrite too, and that you (Witness) thought he was crazy ; that you (Witness) fixed the deeds as you have always done his business and knew the land ; that old Mrs. Myatt (A. Myatt's wife) told you who to fix it to, and that after Watkins left Mrs. Myatt took him (A. Myatt) out and talked to him a long time before he could be got to sign the deeds, and that she and the other members of the family continued to urge upon A. Myatt, that Dr. Gunn had sued him—and if the deeds were not made that Dr. Gunn and Elisha Duncan's creditors would ruin him, or words to that effect. To all which Witness replied that he did not recollect having any such conversation with Gordon or telling him anything about the deeds, or using any such language.

Ques. 32. Witness was also asked whether in conversation &c., he did not tell Josiah Whittey, that it was three hours after he went there before he could get him to make the deeds.

Ques. 33. That when Watkins came in, Myatt got into the bed and covered himself up head and all, and that when Watkins came in and asked for him Mrs. Myatt pointed to the bed, when the sheriff uncovered him and read the summons to him.

Ques. 36. That Myatt talked that morning all kinds of nonsense about being broken up by Dr. Gunn and his daughter sueing him, and that he (Myatt) would be imprisoned on account of some misconduct in office. To which witness replied that he did not recollect saying anything of the kind—or any conversation with Josiah Whittey.

Eli McCracken then testified that he was acquainted with Alexander Myatt; heard him say something about deeding his homestead to his two youngest daughters, thinks this was in the spring of 1860—he told me so afterwards; don't know how often but more than once; saw Myatt and his wife at my house I think about the 23d day of April, 1861; Witness went to town with them; he, Myatt, acted like a man afflicted; he was not well; he talked like a man that had a good deal of trouble and care on his mind. Witness requested him to ask a blessing at the table and he did so as usual; my impression is that he prayed with the family in the morning.

And on cross examination, witness said, that when Myatt was at my house, it appeared to me that he (Myatt) thought that he could not attend to his ordinary business, and it troubled him; he was grieving over the business between him and the Duncan's; witness never saw him (Myatt) in such a desponding state of mind before as he was on the night he stayed at (witnesses) house. "I think from my knowledge of his affairs there was nothing to make him so desponding if he had been well." Witness thinks he was at Myatt's twice between April 1st, 1861, and the time Myatt stayed at his house; was there with Wesley Myatt; heard him tell the old man that he had deeded his home away that was what was the matter; does not recollect repeating the conversation to Alex. Pool shortly afterwards; do not recollect at that time telling Pool that A. B. Myatt had said that Alex Myatt was worse and had been trying to kill himself. Witness went to the house of Wesley Myatt the Monday following the time they were together at Alexander Myatt's mentioned above, at the request of the family to tell him (Wesley) not to come to Alexander Myatt's any more and say anything about the deeds to him (Alexander Myatt) for it excited him and made him worse. Witness may have advised Wesley to take the old man home with him; do remember advising the old man to go around among his children.

Alexander B. Myatt then testified that he thinks he was not at his father's house on the 3d of April, 1861, but was there the day before and the day after, and frequently both in March and April 1861. There was nothing uncommon in his appearance; he was part of the time in bed, and was unwell; did not see anything unusual in his talk and actions for a man as sick as he was. In the month of April he attended to most of his business around home; he gave me (witness) instructions as usual.

Witness thinks he issued one or two executions in April 1861; witness wrote them as he had done before. Alexander Myatt was his father and witness had always lived near him. Alexander Myatt made some deeds to Kary Barcroft, Sarah Walker and Murphy L. Myatt; did not see them executed but they are dated April 3d, 1861. He (Alexander Myatt) told me years before and frequently afterwards that he intended to deed the homestead to the two youngest girls—and Mrs. Barcroft was to be made equal. There was nothing unusual about his health.

Thinks one of the executions was issued by his father after the deeds were made. Thinks that his father was capable of attending to his business. Does not think that any one could detect mental unsoundness from his conduct. And on *cross-examination* witness said that he is one of the defendants in this suit, is the brother of Nancy E. Barcroft, Sarah Walker and Murphy Myatt, and the son of Murphy Myatt, one of the Defendants—and half-brother to Wesley Myatt, Mrs. Cole, Mrs. Kessner and Mrs. Duncan.

Alexander Myatt became *sick* about the last of March, was part of the time in bed and part up until the 4th of September, he did not recover, he was sometimes better and sometimes worse. Does *not* recollect that he was worse in July than June; in June he was as bad as in July; does not know that he was worse in June than in May; thinks he was worse in May than in April; he sometimes was better for a whole day or two. Cannot say what disease he was afflicted with, he was taken down with rheumatism first, complained of his wrists and knee-joints.

Ques. 11. When you speak of his being better and worse, do you refer to the rheumatism?

Ans. Partly, and partly other things.

Ques. 12. What other things?

Ans. He got so about the last of April, or the first of May, that I do not think he was in his right mind. Dr. Brooks was called in once only; does not know when he stopped shaving him. Witness cannot tell how long after April 3d he noticed that his mind was diseased, says that he started with him to Jacksonville Lunatic Asylum—thinks he started to the asylum about the 19th of May. Does not recollect telling Alex Pool, on the day Eli McCracken and Wesley Myatt were at A. Myatt's house, that he was trying to kill himself.

Heard father say that trouble and rheumatism were working on him, he complained that the greatest part of the trouble was from Elisha Duncan's business; doesn't know when Elisha Duncan's business was taken out of his hands. Alexander Myatt hung himself about September 4th, 1861. Does not recollect anything about the conversation about the deed.

On *re-examination* says, that he first discovered that something was wrong with his father about the last of April or the first of May. I understood deeds were made with my father's previous desire to the girls.

102 *Joel Wilmirth* then testified, that he was acquainted with Alexander Myatt while liv-
ing, and about the 3d of April saw him almost every day; was at his (Myatt's) house
103 on April 3d and transacted some business with him; he was lying on the bed; said he
was sick, but talked as sensible as ever he did. "I guess he was sick, but what ailed
him I do not know." Was at his (Myatt's) house afterwards, during April and May, as
often as once a week. "I think it was some time in May I first noticed and thought he
was not just right." Alexander Myatt raised me; I was acquainted with him inti-
104 mately; thinks Alexander Myatt was of sound mind on the 3d of April. On cross-ex-
amination, said that

105 Murphy Myatt is his mother; the other defendants (except Barcroft and Walker)
are half brothers and sisters.

Witness went to Alexander Myatt's April 3d, 1861, about eight o'clock in the morn-
ing; went to tell him that Dr. Gunn was going to sue him about some property that
Josiah Myatt (his daughter's husband) had left in his hands, as Dr. Gunn thought;
thinks he stayed with him about three hours that day; F. R. McDonald came just as
witness left. Witness told Alexander Myatt Dr. Gunn had come up (to Greenville) to
sue him; saw Alexander Myatt five or six days after he was up and some better; don't
think he ever got well; don't know what the disease was; he was sometimes worse and
106 sometimes better; heard him first complain of this disease about the last of March.

Ques. 12. "Did he not, with the exception of short intervals, get gradually worse
until August?"

Ans. "I think he was worse on the 3d day of April, 1861, than he was between that
time and August when I saw him." Witness does not recollect whether there was any
change in the character of the disease. And on *re examination*:

107 *Ques. 1.* In questions 8, 9, 10, 11, 12, 13, 14, asked you on cross-examination,
do you refer to Alexander Myatt's sickness of body or mind?

Ans. "I think both."

On the 3d of April I meant he was sick in body and bothered in his *mind too* about
his worldly matters.

108 *A. J. Hughes* then testified, that he took the acknowledgment of a deed from Alexander
Myatt and wife; cannot tell the time nor who it was to; thought him in his right mind
then; think it was in the spring of 1861.

On *cross-examination*, said he was with him but a half hour.

REBUTTING TESTIMONY FOR PLAINTIFF.

40 *Alexander Pool*, re-called, testified that he thinks he was in company with Alexander
Myatt twenty times between the middle of March and last of April, A. D. 1861; Myatt
acted dull and grum, sometimes talked but little, sometimes talked a good deal; he
would be up and down, and looked strange; about the latter part of April he was much
worse. When I asked him what was the matter, he would reply, that everything he
had was about to be destroyed by his wife and family; that he had destroyed much of
his property himself and would be broken up anyhow.

His actions were quite different from what they were before March 1861; he acted
stupid and dull; his eyes had a wild look; he was suspicious of every person that came
about him; his conversation was different in this, that he talked all the time about be-
ing broken up and losing his property, which he never did when he was at himself. I
41 cannot tell the exact time I first noticed this change, but think it was about the 1st of
March, 1861; he did not attend to his business as usual about the farm; it was done
by the family and a young man named Elisha Powell. From the middle of March 1861,
to the middle of April 1861, he did no business with me nor with any one else in my
presence.

Eli McCracken and myself had a conversation about what took place when he and
Wesley Myatt were at Alexander Myatt's. McCracken said that Wesley asked about
42 the deeds, and said the old man had deeded away his home, and that was what was the
matter with him; and that the old lady (Mrs. Myatt) had better destroy the deeds; the
old lady replied that she had the deeds and would keep them till the old man got well,
then the old man could do what he pleased with them.

Alexander B. Myatt, when he came for the old lady on the day that McCracken and
Wesley Myatt were at Alexander Myatt's house, told Mrs. Myatt and myself that Alex-
ander Myatt was on the porch trying to kill himself with a razor, and that they could
not get the razor away from him, and wanted her to go home.

43 Mrs. Murphy Myatt told me that they had to keep the razor from Alexander Myatt,
for she thought he would kill himself; she said this had been done from the time when
Alexander B. Myatt said he attempted to kill himself on the porch. On

Cross-examination said, that there is no unfriendly feeling between the younger mem-
bers of Myatt's family and myself and family, and there has never been that I know
of. It was along through April, 1861, that I heard Myatt so often speak of so much
property being destroyed. I was often with him until he hung himself.

During March and April he was gradually getting worse; I never saw him when I
44 thought him any better; I know that it was about the 1st of March, A. D. 1861, that I

first discovered that there was anything wrong with Alexander Myatt, from the date of a deed mentioned in my first examination, and my attempting to have that acknowledged at that time.

The time referred to (when speaking of A. B. Myatt's saying that the old man was about to kill himself with a razor) was about the 18th or 19th of April, 1861.

Some time about the 1st of April, 1861, I was at Myatt's spaying hogs; young Powell, Walker (defendant), and Joel Wilmarth were there; we talked about the manner of spaying; don't know as anything was said to the old man about it; I think some one asked him if the thread was the right size, and he replied it was.

45 Did not tell Joel Wilmarth that I thought Alexander Myatt foolish for deeding his land away to his younger children. Joel Wilmarth came to my house and told about the deeds being made; my wife said something; I requested her to make no fuss, there was no use in fretting; did not say that her father (A. Myatt) had done well for us in
46 the way of property; did not tell Joel Wilmarth or A. B. Myatt that Alex. Myatt was not crazy—only sick or hyppoid; do not know of A. Myatt doing any business after April 1st, 1861; have known Alexander Myatt about twenty-nine years; don't know of his property before his last marriage; has made considerable since; was an active, stirring business man when well.

47 On *re-examination*, said that two of the defendants, Murphy Myatt and A. B. Myatt, told me, during March or April, that A. Myatt was getting worse all the time. Walker
48 (on the first day of spaying hogs) told me the old man was all the time growling about eating too much, and Walker said he told him that was going too far. Alex. Myatt had double the amount of land and personal property at the time the older children left home than he had when he executed the deeds in 1861. I think he gave 40 acres to E. C. Cole, and 80 acres to my wife—each tract worth about \$100. The shares deeded to the two youngest girls in April 3d, 1861, were worth \$2,000 each, and to the other girl \$1,100.

Wilmarth concurred with Walker in what he said on the day of spaying hogs. Murphy Myatt and A. B. Myatt told me at different times, from March until he died, that A. Myatt was continually getting worse.

Francis M. Gordon testified that he was forty years of age, and was a farmer, knew Alexander Myatt when living.

Ques. 3. Did not you have a conversation with F. R. McDonnald on or about the 4th day of April, 1861, while riding with him? If so state whether in said conversation he used the following language, viz: "That he (McDonnald) had the day before made some deeds for Alexander Myatt that he thought would not stand in law, or words to that effect?"

Ans. I had a conversation with Mr. McDonnald while riding on the day of Long John Burnside's sale. I think it was about the 4th day of April, 1861. He told me that he had made some deeds for Mr. Myatt the day before, or the other day, and that he did not think Mr. Myatt was competent to make the deeds as he (Myatt) asked him what he
50 & 51 wanted him to sign the deeds for, and he also asked if they wanted to break him up.

Ques. 4. Questions No. 28, 29, 30, 46, 47, 48 and 49, set out on record page 80, 81, 82, 83, 84, 85 and 86 were then read to witness Gordon, and he was asked to state whether in the same conversation McDonnald did not use the language in such questions mentioned, or in either of them, or any part of either of them, or words to that effect, if so, which and what part thereof was used by McDonnald?

Ans. He used the words mentioned in Question No. 28, substantially, and that he did not think Mr. Myatt capable of doing business. As to the language used in Question No. 29, McDonnald said, that they impressed it upon Myatt to sign the deeds to save the property from the creditors of Elisha Duncan, as they would break him up if he did not sign the deeds, or words to that effect. As to the language used in Question No. 30, there was nothing said about defrauding the older children, but that they wanted him (Alexander Myatt) to execute the deeds to make the younger children equal with the older ones. As to the language used in Question No. 46, he (McDonnald) told me that the old man thought that the deeds were made to defraud Elisha Duncan's creditors, but that the old lady thought the deeds were made to secure the property to the younger children, and that she wanted it done then as she found the old man's mind was failing him. As to Question No. 47, he (McDonnald) used the language mentioned in said question as near as I can recollect. As to Question No. 49, he [McDonnald] used the language mentioned excepting that relating to old Mrs. Myatt taking Alexander Myatt out and talking to him, I think he said she sat by the bed and talked to him, and that they told him [Alexander Myatt] that Dr. Gunn had sued him and Elisha Duncan together, and that if he did sign the deeds the Doctor would come on to him and break him up as Elisha Duncan had no property.

And on *Cross examination* said, that McDonnald was going to the prairie to show me cattle I wished to buy. I was with him from one to three hours, were alone while hunting cattle. McDonnald conveyed the idea to me that the deeds were made to secure the younger children, but that the old man thought it was to keep Elisha Duncan's creditors

from taking it from him. In a conversation with Jacob Kessner I told him McDonald was the only witness he wanted, that he had told me so and so as above.

Josiah Whittey then testified, that he had a conversation with F. R. McDonald while coming to Greenville Circuit Court the Spring after Myatt died. McDonald used the language used Question 32, or something like it. He used all the language mentioned in Questisd 33, except Myatt's covering up his head I think he used language in substance as Questson 36.

QUESTIONS REFERED TO BY GORDON AND WHITTEY.

Ques. 28. Did you not tell F. M. Gordon that Mr. Myatt was not sick, but that he was affected in his mind, or that his mind was wrong, or words to that effect?

Ques. 29. Did you not tell Gordon that Alexander Myatt made the deeds because he thought he was going to be broken up, or words to that effect?

Ques. 30. Did you not tell Gordon in the same conversaton, that you thought the deeds were made for the purpose of defrauding the older children, and that you thought in particular that was the intention of Mrs. Myatt, or words to that effect?

Ques. 47. Did you not also tell F. M. Gordon that when Watkins came, Alexander Myatt jumped into bed and covered up his head?

Ques. 48. Did you not at the same time tell Gordon, that Alexander Myatt on the day on which the deeds were made, was all the time declaring that he was broken up, that he (Myatt) was a damned hypocrite too, and that you (witness) thought he (Myatt) was crazy?

Ques. 49. Did you not also tell Gordon, that you (witness) fixed his deed yourself as you always done his business and knew the lands. That old Mrs. Myatt (A. Myatt's wife) told you who to fix it to, and that after Watkins left Mrs. Myatt, his wife took him (A. Myatt) out and talked to him a long time before he could be got to sign the deeds, and that A. Myatt's wife and the other members of the family, after Watkins left, continued to urge upon A. Myatt that Gunn had sued him and that if the deeds were not made that Gunn's and Elisha Duncan's creditors would sue him?

Ques. 32. Did you not tell Whittey that it was three hours after you went to Mr. Myatt's before they could persuade him to make the deeds?

Ques. 33. Did you not at the same time tell Whittey, that when Mr. Watkins came Mr. Myatt went and got into bed and covered himself up head and all, and that when Mr. Watkins came in and asked for him, Mrs. Myatt pointed to the bed, and the sheriff went to the bed and uncovered him and read the summons to him, or words to that effect?

Ques. 36. Did you tell Whittey at the same time, that Alexander Myatt talked to you the morning you went there, all kinds of nonsense about being broken up by Gunn and his daughters sueing him, and his going to be imprisoned on account of some misconduct in office, or words to that effect?

Nathaniel J. Floyd then testified that the sale of John Burnside's (called Long John Burnside) refered to by F. M. Gordon, was on the 4th of April 1861.

E. R. Lloyd then testified, that he had a conversation with McDonald in the Spring or Summer of 1861 concerning the execution of deeds to Barcroft and Walker, soon after they were made, as McDonald said. McDonald said Myatt sometimes acted curious, and sometiomes as though he was at himself; said he threw himself on the bed and said he was ruined, in consequence of a threatened lawsuit with Dr. Gunn; when he saw the sheriff coming.

John B. King then testified, that McDonald told him the next day after deeds were made that Myatt sometimes acted crazy—and sometimes not, and told me that when he saw sheriff Watkins come he threw himself on the bed exclaiming that he was a ruined man. About the last of February 1861, Joel Willmirth told me that old man Myatt was, or was about going crazy. I proposed to go and see him, when he told me it made him worse for people to call on him, this he told me about the last of March. Lives near Willmirth, and heard him frequently say before April 1st, 1861, that he thought A. Myatt crazy.

Nancy Ferrell then testified, that she called to see Mr. Myatt between the first and middle of April; he seemed in great agony of mind, kept getting up and down—apparently greatly distressed about his money or property, looked at some of his papers and tried to pacify him, at the request of Mrs. Myatt, his wife; who said she had tried to but could not; she said he had been going on so for two or three weeks. His (A. Myatt's) manner and conversation was entirely different from his usual manner—he acted and talked like a crazy man—thinks he complained of nothing but agony of mind; witness to pacify him told him of a meeting to be held and to put his trust in God. He replied not to talk to him about meeting, it was no time for him to pray or put his trust in God. Saw him once or twice afterwards, he appeared more crazy; I do not think he was capable of transacting any business on the day I first went there.

Mrs. Minerva McNeil then testified, that she saw Mr. Alexander Myatt on Saturday of the first week of the Circuit Court in April 1861, did not seem to be in his right mind; about all he had to say was about an officer being after him to put him in jail. Do not think he was fit to transact business, he did not appear like himself; he looked bad.

Mrs Myatt [his wife] in reply to a question as to how long he had been crazy, said it was about ten weeks, but that he was not crazy all the time as then ; was with Mr. Myatt from morning till evening, Wesley Myatt's wife and old Mrs. Myatt were present.

Robert J. Stevenson then testified, that he had been intimately acquainted with Alexander Myatt for twelve years. Sometime between the 20th and last of April, 1861, went to his house with my wife to see him, my wife went in and came running back saying he [Myatt] cursed and swore so she could not stay, I went in and found it so, could get nothing out of him. Saw him afterwards, he appeared about the same, was satisfied both times he was not at himself. Never heard him swear before. William Walker, when speaking about a plow, said witness must not go to Myatt it would put him all out of sorts, and Mrs. Myatt [wife] said he had two or three such spells of swearing before the day witness first saw him. Does not think Myatt was in his right mind, or fit to do business.

Dr. Jenkins Mattinly then testified, that he is a physician ; saw Myatt about the middle of May, 1861 ; he appeared very feeble, and his mind much out of balance ; he gave me his hand and asked me what I came for ; appeared to know me. Witness replied, that he had come to see him, when he turned his back to me and I could get no more out of him. I did not examine the state of his health ; was satisfied he was not capable of transacting business. A few days before I called, in conversation with A. B. Myatt, he requested witness to call as a friend ; can give his exact words, but understood him to say the old man was crazy.

William Tucker then testified, that he had been acquainted with Alexander Myatt thirty years ; think I saw him at his house the first week in April ; called on him ; he appeared feeble and much changed ; saw him at the barn, wandering around like a man out of his mind ; I stoped to settle with him, but seeing his condition, did not mention it ; did not think him capable of doing business ; heard in the neighborhood that he was crazy a month before

Elizabeth Lloyd then testified, that she heard conversation between McDonald and her husband about a week after McDonald said the deeds were made ; heard McDonald say that Myatt acted strangely, &c.

Her husband asked McDonald what would be the result if the older children tried to break the deeds ; McDonald replied that if they could prove the fact, it would be like a crazy man's will he had heard of, and if they called on him (McDonald) he would have to say that Myatt was not right.

Resides near, and often heard the opinion expressed by the neighbors, in the winter and spring of 1861, that he was crazy and unfit for business.

Henry Sharp, re-called, then testified, that about the 1st of April, A. D. 1861, he was in company with Alex. Myatt at his house ; that Alexander Myatt then told him that he intended to assist Wesley Myatt and his older children more than he had done, that he had not done as much for them as for the younger ones, and that the reason was that his wife would not let him ; this was at the time spoken of in his previous examination.

ERRORS :

- I. The Court erred in dismissing the complainants Bill.
- II. The Court erred in not decreeing the cancellation of deed as prayed in said Bill.
- III. The Court erred in not decreeing relief to complainants.

O'MELVENY & HOUCK,

Attys for Appellants.

Brief of Counsel for Appellants.

1. This bill in Chancery prays, that two deeds be cancelled, one to Sarah C. Walker and Louisa Myatt, and one to Nancy E. Barcroft, represented to have been made by Alexander Myatt, April 3d, 1861, for the lands described in the bill.

[It appears that Nancy Barcroft and her husband declined to claim under the deed to them, and the bill was as to them, taken for confessed, and that deed cancelled.]

The grounds for declaring the deed bad, are :

1st. That Murphy Myatt, the second wife of the *vendor*, procured it to be executed by fraud.

2d. That at the date of executing that deed, the vendor was *non compos mentis*.

3d. That if this is not true, there was no sufficient delivery.

1. It is the *too* common example of step-mothers to seek to secure the property of the common father to their own off spring, and that Mrs. Murphy Myatt sought this is impressed upon this whole case, whether that result shall stand, depends upon the decision of this case on the facts proved.

1. The questions in the record are not disputed points of *law*, so much as what the proof really establishes as the *facts* of the case. If Alexander Myatt, whose mind, as we think the proof shows, from March to the third of April 1861, was vibrating on the verge of insanity ; or, if on that day though sane, he was falsely imposed upon by threatened groundless litigation, was induced under such circumstances to make the deed, complainants ought to have the relief prayed, or, if we regard it, the proof most conclusively established that he was before, and at the time the deeds were executed *non compos mentis*, then the relief should be granted.

2. The witnesses for the defence, wilfully, it is believed, seek to disguise the fact of *insanity* under the name of *sickness*.

1. There was no ground of litigation whatever, as we can discover from the proof, between Gunn or Duncan and old Mr. Myatt. Certainly all the proof of the defendants shows no grounds existed calculated to disturb a *sane* mind. There is no evidence whatever, that any such litigation was ever commenced or threatened. These facts true two conclusions are irresistible: 1st. That old Mr. Myatt had conceived the insane delusion that he was ruined ; about to be broken up ; likely to be involved in litigation. 2d. That the family knew this insanity to have riveted itself on his mind and influenced it by falsely representing it to be true. The old lady tells him in presence of Bently, that the purchase of the Duncan land ruined him, and Wilmarth reports on the morning of the day the deed was made, what he must have known to have been a falsehood, that he was sued, &c., by Gunn.

2. The declarations of the different members of the family concur in this, that whatever his affliction was, it commenced in March, 1861. Mrs. Myatt and Joseph Myatt tell Bently in the beginning of April, probably on the 4th or 5th, that for two, three or four weeks previous the old man had been in that condition of mind ; that about the first of March he had become *frightened* and said he would have to go to prison. About the middle of March Walker, a member of the family said to Jasper Pool when he went to borrow the harness, that the old man was not in his right mind. Alexander Pool saw him on the 15th of March, and he then made no complaint of body but complained of his *mind*. He saw him once or twice a week after that till his death, and he was incapable afterwards as in March to do business, and continued to grow worse and worse till his death. To Dr. Brooks, who was called on the 28th day of April, old Mrs. Myatt said, that the old man had been deranged for about two or three months previous. The concurrent reputation in the family and neighborhood is, that insanity had set in on Alexander Myatt's mind in March.

3. If the Court is satisfied, from the Evidence, that in March the mind of Myatt was affected by either a confirmed or partial insanity only, it puts the burthen of proof on defendants, and they must show that old Myatt was of "disposing mind" on the 3d day of April, when the deeds were executed. 3 Phillips on Evidence, 272 and 293 (Cowen & Hill.) 1 Greenleaf on Evidence, §. 42. 2 Greenleaf on Evidence, §§. 371.) But what was the condition of Myatt's mind before that time and on that day? Wilmarth, the defendants' own witness, swears, that Myatt on that day was worse than he was between that day and August. Watkins, the then Sheriff and afterwards member of the Legislature, saw him on the 3d day of April, at about 10 or 11 o'clock, and swears that the old man said "that he had been wronged so long that he could not get right ;" that he looked different, and was "not at that time of sound mind." Henry Sharp swears, that he saw old Myatt two weeks before the 15th of April (which would be on the 1st or 2d of April), and that then he was not "calculated to transact business ;" that he told him "his mind was gone ;" that he had an "unusual look," and that then he had no bodily disease. A. G. Henry swears, that he saw Myatt between the 1st and 13th of April, and that when he saw him "he thinks he was not fit to transact business." Jasper Pool testifies, that he was at the old man's house in the middle of March, and that then "he had a wild look that was unusual." Alexander Pool then swears, that he saw old Myatt between the 1st and 15th of March, and that then he "complained of his mind," and that between the 1st and 15th of April "he was crazy." But even McDonald, the defendants' main witness, though he is conclusively demonstrated as unworthy of belief, testifies, that on the day the deeds were signed old Myatt frequently talked of "being broken up," for which complaint McDonald even could see no reason. And again, Alexander B. Myatt, one of defendants's witnesses, swears that the old man became *sick* about the last of March. And Wilmarth swears positively that on the 3d day of April the old man was sick both in *body and mind*. Especially, however, is the testimony of Alexander Pool, on being recalled, worthy of note, for his picture of the old man in March, as he walked about, "stupid and dull,"

with his eyes looking wild ; his suspicions of every person coming about him, and talking "all the time about being broken up and losing his property," conclusively demonstrates that the old man had lost his mental balance.

Then, too, the admissions of old Mrs. Myatt to *Martha Pool*, that no one but Esquire McDonald and herself knew of the deed, and that she had sent for the 'Squire, and that for three hours old Myatt refused to execute the deeds, and that the deeds were not intended to stand ; and the fact that she told Dr. Brooks, on the 28th of April, that he had been in this deranged state for two or three months show, that the overthrow of his reason was familiar to her.

Arguments on *this* Evidence, to *this* Court, as to what it proves is perhaps superfluous. Close analysis and reflection upon it, will convince the judgment of

1st. That Myatt was not sick physically, but deranged *mentally*, from the first of March to his death.

2d. That this is a clear case of *delusion*, *hallucination* on the subject of approaching poverty.

3d. That his wife and family knew this, and falsely exaggerated the cause of his imaginary fears, and by that fraud obtained the deed—

or 4th. That instead of the proof showing, that the deeds were executed at a lucid interval, the proof is, that he was worse mentally on that day than usual. *3 Cowen Rep, 537. Whalen vs Whalen*

5th. The deeds were not really delivered, for the old woman said they were not to stand; and they were not recorded until after the old man's death which is a *significant fact*. On the whole evidence to affirm the deed to have been made free from fraud, and that when executed Myatt was *compos mentis*, is as we view the facts impossible.

O'MELVENY & HOUCK,

For Appellants.

28

Myall to shal

no

Walke shal

Al. & Brf

June Term 1867

Exh June 28 1867
Prothonotary

IN THE SUPREME COURT.

State of Illinois---First Grand Division

JUNE TERM, A. D. 1867.

EDWARD W. MYATT, *et al.* Appellants, }
vs. } *Appeal from Boud.*
 SARAH L. WALKER, *et al.* Appellees. }

APPELLEE'S BRIEF.

The law *presumes* every man to be sane, and the burthen of proving insanity rests on the party alleging it. See 1st Greenleaf, ¶ 42, and 2d Greenleaf Evidence, sec. 373; and Jackson vs Vandusen, 5 John. R. 154; Grabill vs Barr, 5 Penn. State R. 441; also Walker's American Law, page 536.

As to the manner of proving insanity, see 2d Greenl. Ev. ¶ 371.

The opinion of witnesses is no evidence in cases of insanity unless they are medical men, and not even then without having made that branch of the science their special study. See *Van Horn vs Keenan*, 28 Ill., page 445, in which case the Court, (Chief Justice Breeze) says: "Persons other than medical men, no matter how intelligent they may be, are incapable of pronouncing on the true condition of the mind of any one. They are ignorant of the diagnosis of insanity or mental weakness, and so are physicians in general practice for the most part. No one who had made this branch of medical jurisprudence his special study was examined in this case, (so with this case at bar also,) and no judge ought to be satisfied with the crude opinions given by most of the witnesses."

We think that more truth or sounder doctrine upon this subject is not found (in so few words) in all the books written on this perplexing and difficult question than in those just quoted. See also *Lilly vs Waggoner*, Com. &c., 27 Ill., page 395, where this subject is ably and beautifully discussed and elucidated. Monomania alone is not sufficient to set aside at all times a solemn contract. See *Walker's American Law*, page 239.

As to the manner of proving heirship, see 2d Greenl. Ev. ¶ 363 and 354; also vol. 1 Ibid, ¶ 103. Best evidence must be produced first, and legal reason given before secondary evidence will be allowed.

The mode of impeaching the testimony of a witness is different in chancery from the mode at law as we understand it. See 3d Greenl. ¶ 348 ; see also 1st Greenl. ¶ 471 and 472 and notes. In this case there was no proper foundation either in law or equity first laid for the attempt to impeach McDonald and McCrackin's testimony by any of the witnesses introduced for that purpose except it may be Gordon and Whitley and in those instances the questions and answers were objected to by defendant, and were highly improper. The very answers desired were put into the witnesses' mouths by the attorney asking the questions.

A co. defendant may be a witness for another, especially if his interest be adverse to the party calling him, or if he have no interest in the case, or his interest be balanced in this case, A. B. Myatt being a mere nominal party, as by his testimony it will be seen, or in fact as he had no deed to set aside, his interest was to have this set aside so that he might share his proportion. See 3d Greenl. Evidence, ¶ 318.

We apprehend there are but few questions arising in the whole scope of our jurisprudence where it is so difficult to lay down general rules governing all similar cases than upon this very subject of insanity. Every such case therefore must, to a considerable degree, rest upon the facts and surrounding circumstances of the same for its proper solution and understanding.

The counsel for appellant seems to argue this case upon the hypothesis that if the evidence show Myatt to have been demented on the day, or soon after, or just before these deeds were executed by him, they must be set aside necessarily. We do not so understand the rule. Suppose Myatt had given a bond for a deed when there was no pretense that he was demented months or years before it was to be made, would any lawyer say that because he was somewhat deranged in mind on the day he merely mechanically executed the deed, that therefore it was void. We think not. A deed is not a contract, it is only evidence of a previous contract. Every one must know that aside from statutory provisions, a verbal contract is as good as a written one with all the stamps and seals in the universe upon it. So in this case, it abundantly and clearly appears from the evidence of McCrackin, A. B. Myatt and McDonald, and perhaps others, that Alex. Myatt long before, nay, years before the 3d of April, 1861, had said and declared often, when there was no sort of doubt of his sanity, he intended to deed the home place to his three youngest girls, the very thing which he did do, as appears from this record.

This record further shows that Myatt had provided for the older children, both of his first and second wife, by deeding them lands, thus making similar provisions for all his children. 'Tis true those lands were not so valuable then but they are valuable as any now.

Then instead of this act of Myatt's showing fraud in him or Mrs. Myatt or any one, on the contrary we think it a very laudible and righteous act, and shows that he was only putting in execution what he had long contemplated and determined to do.

This is not uncommon with parents, especially among the pioneers of this country to thus distribute their property among their children while living.

But then we contend that there is not sufficient *legal testimony* in this record to support the bill. The evidence is nearly all the simple *opinions* of unlettered men and women upon one of the most subtle questions known to the law. The same kind of testimony has (opinions) convicted some of the wisest men that ever lived, in all ages of the world, (inst., Galileo, and many others that might be named.)

There is something novel in the course pursued by complainants in this bill from its beginning if the allegations are true, as shown by the record. It will be observed the oaths of defendant's are waived, thus disposing of their testimony, yet proving their statements. Afterwards it became necessary to amend the bill and release Pool and his wife and make them witnesses. The continuing for so long a time from term to term of Court. The attack on the testimony of McDonald and McCrackin, instead of attacking the witnesses so that we could show their good character for truth and veracity.

Then again by this record (taken in connection with the record of case No. 11, now pending in this Court,) it will be seen that this same *Edward Wesley Myatt*, "Ere the shoes grew cold in which they bore his poor father to the grave," commenced an unwarranted, uncalled for and unnecessary attack upon the character of his own father and brothers and sisters, charging his father was never legally married to his second wife with whom he had lived for some thirty years, and hence he was an adulterer and his brothers and sisters bastards, and thus blackening the memory of one of the best men that ever lived in this or any other country, and sacrificing the peace, comfort, good name and standing of the family forever. Like Esau, sell his birthright for a mess of pottage, a few acres of land.

The chancellor will decide cases like this only upon legal testimony. See *Swift, et al, vs. Castle*, 23. Ill. 209.

S. P. MOORE,
For Appellee.

Supreme Court of the State of Illinois.

FIRST GRAND DIVISION.

June Term, A. D. 1867.

ABSTRACT.

Edward W. Myatt, Jacob Kessner, Pamela Kessner, Emily C. Cole,
Mary W. Duncan and Elisha Duncan, her husband. *Appellants,*

vs.

~~Nancy E. Barcroft, Elias Barcroft, her husband, Sarah L.~~
Walker and William Walker, her husband, Murphy L. Myatt,
~~Wm. C. Myatt,~~ Alexander B. Myatt, Josiah B. Myatt,
Murphy Myatt and Williamson Plant, *Appellees.*

Appeal from Bond.

Chauncey

Page 1

Summons.

Bill sets out that Alexander Myatt, on the 4th day of September, A. D., 1861, departed this life; that complainants E. W. Myatt, Pamela Kessner, Emily C. Cole, and Mary W. Duncan, are his heirs at law; that E. W. Myatt and Jacob Kessner also bought the interest of Martha A. Pool another heir in said estate; that certain other persons, to wit, Nancy E. Barcroft, intermarried with one Elias Barcroft, Sarah S. Walker, intermarried with William Walker, Murphy L. Myatt, William C. Myatt and Alexander B. Myatt, being also stated as children of said Alexander Myatt; and Murphy Myatt claiming to be the widow of said Alexander Myatt, and Williamson Plant are administrators of the estate of said Alexander Myatt, claim to be heirs at law; that said Alexander Myatt never was married to Murphy Myatt; that said Alexander Myatt died seized of a large amount of real estate, described in bill.

The Bill further charges, that the said Alexander Myatt being in possession and having a large amount of Real Estate, to wit, on the 3d day of April, A. D., 1861, and being demented and of unsound mind, the said Murphy Myatt, conspiring with others, for the purpose of defrauding complainants of their interest as heirs in the estate of said Alexander Myatt, induced the said Alexander Myatt to execute and acknowledge, certain pretended, false and fraudulent deeds, dated April 3d, 1861, as follows, viz: to Sarah S. Walker and Murphy Louisa Myatt (daughters of said Murphy Myatt), conveying for and in consideration of \$2000, the east half of the east half of the south-east quarter of section No. 36, and the south-west quarter of section 33 (with the exception of $1\frac{1}{2}$ acres deeded for church and graveyard, and $2\frac{1}{4}$ acres deeded to A. B. Myatt), all in township 4, north of range 2 west, in Bond county, containing 195 acres; and, also, on the same day, to Nancy E. Barcroft (another daughter of Murphy Myatt), in consideration of \$1000, the south half of the north-west quarter of section 24, and the east half of the south-west quarter of section 28, in township and range aforesaid, 160 acres.

The bill further charges, that no consideration was ever paid or intended to be paid, and that the deeds were not intended to be absolute conveyances, but that the said Myatt, in the unsoundness of his mind, was made to believe that these lands would be forced from him to pay certain pretended debts, which he was falsely made to believe he was owing, unless he placed them temporarily in the hands of said N. E. Barcroft and others. It further charges that said Myatt was at the time perfectly solvent; that said deeds were never delivered by him during his life time but were in his possession with his other papers, and were caused to be recorded and delivered by said Murphy Myatt after his death.

The bill expressly charges:

1st That at the time of making and acknowledging said deeds, said Alexander Myatt was of unsound mind.

2d That being so demented, said Alexander Myatt was influenced and persuaded thereto, by false representations as to his liabilities, and losing his property, and being turned out of home, &c., whereupon, he was induced to sign and acknowledge said deeds, not as an absolute conveyance, but to save it from these pretended debts, and that said debts did not exist in fact, and said execution and acknowledgment of deeds was obtained by fraud.

3d That there was no consideration money paid or agreed to be paid.

10 4th That said deeds were without consideration as aforesaid, and were never delivered
nor intended to be delivered by Alexander Myatt.
And petitioners therefore pray that said deeds may set aside, and declared null and
void, &c., &c., &c.
100 Demurrer to Bill.
Rule to answer plead or demur by next term.
September term, A. D., 1862. Cause continued.
April term, A. D., 1863. Cause continued.
111 October term, A. D., 1863. Alexander Pool and Martha Pool allowed to withdraw as
complainants and leave given to amend. Cause continued.
April term, A. D., 1864. Rule taken on defendants to answer and cause continued.
September term, A. D., 1864; cause continued.
April term, A. D., 1865; cause continued.
September term, A. D., 1865; cause continued; and on affidavit of Edward W. Myatt,
defendants are ruled to exhibit for inspection certain papers.
112 April term, A. D., 1866; cause continued.
September term, A. D., 1866; cause continued.
April term, A. D., 1867. Default as to Nancy E. Barcroft, Elias Barcroft and William
C. Myatt, and bill as to them taken *pro confesso*.
11 Answer of Sarah S. Walker, William Walker, Murphy L. Myatt, Josiah B. Myatt,
Alexander B. Myatt, Murphy Myatt and Williamson Plant,—states:
12 That said Myatt died as stated in bill; that defendants are his heirs and legal represen-
tatives; that he had a large amount of real and personal property; that said Alexander
was married to Murphy legally; but deny that on said 3d day of April, 1861, he was of
unsound mind; deny that any advantage was taken of said Alexander Myatt to procure
the execution of said deeds; they aver that he was of sound mind at the time the deeds
were executed of his free choice, and delivered by his request; that there was a good and
valuable consideration for said deed; that they were executed in good faith and not to put
the land temporarily into defendants' hands.
13 They deny the use of any false representations by Murphy Myatt to procure the execu-
tion of said deeds, by combination, &c., &c. Signed by all the defendants, except Bar-
croft and wife.
To this answer a general replication.
112 April term, A. D., 1867. Bill dismissed, which order is excepted to and appeal granted.

EVIDENCE FOR COMPLAINANTS.

Page
14 & 15 *Henry Sharp* testified: that he is acquainted with the parties to the suit and was
with Alex. Myatt in his life time. The complainants E. W. Myatt, Mrs. Kessner,
Mrs. Cole, Mrs. Pool are heirs of Alex. Myatt by his first wife, and there was a Wiley
Myatt, but don't know whether he is now alive. The defendants, Nancy E. Bars-
roft, Sarah P. Walker, Calvin Myatt and Alex. Myatt are heirs by his second wife.
Was in company with Alex. Myatt when he was returning from County Court
about the first of March, 1861, and spent part of a night with him in April 1861,
about two weeks before the Circuit Court. The Circuit Court commenced April 15th,
1861. In March his mind was sound and his capacity to do business good, as far as I
discovered, but in April he was not calculated to transact business.
Ques. 8. State anything that occurred in April to show his unsoundness of mind?
Ans. He told me, that his mind was gone; that he could not attend to business and
should not attempt it. He had an unusual look about the face, which made me believe
his mind unsound; and he told me his wife prevented him from doing his business, and
that he was ruined; and from the whole run of his talk, I was fully satisfied that
he was unfit to do business.
Ques. 9. Did you or not examine Mr. Myatt to see whether he was affected with
fever or any other bodily disease?
Ans. I examined him; he had no fever; his pulse was a little slow; he had no
other disease, but was discouraged and low-spirited. I have practiced medicine in my
own family and other families.
17 *Emily Barcroft* then testified, that she knew Alex. Myatt; was with Alex. Myatt in
March and April two or three times, but do not know what his condition was in March.
I saw nothing in him that would make him unfit for business; saw evidences of un-
soundness of mind in May, 1861.
18 *A. G. Henry* then testified, that he is 38 years of age, and an attorney; is acquainted
with the parties; that complainants are heirs at law of Alex. Myatt; that about the
1st of April, 1861, he was in company with Alex. Myatt at his house and had conversa-
tion on business. He was anxious to cancel some business transaction, that had taken
place between us in December previous; he talked like a man of unsound mind, and
I mentioned it to others soon after. He talked as though he expected to come to
want. I had but one conversation with him and from the way he talked then, I do not
think he was fit to transact business; I don't think he then had any reason to suppose
he would come to want.

19

And on cross-examination, said that he fixed the time of his visit to Alex. Myatt by reference to some papers and recollect it was between the 1st and 13th, and I think not later than the 8th and 9th. I thought at the time that Alex. Myatt was unfit to do business, but I thought it produced by sickness.

20

21

S. P. Bentley then testified that he is acquainted with parties, and knew Alex. Myatt in his lifetime; was in company and conversed with Myatt three or four times between the 1st and 15th of April, 1861; the first time about the 4th or 5th, and the last time about the 15th of April 1861. He appeared to be about the same each time, and I did not consider him fit to transact business at that time. I heard Murphy Myatt his wife, and Josiah Myatt (two of defendants), say that Alex. Myatt had been in that condition of mind for some two, three or four weeks before the first time I saw him. Josiah Myatt stated that about the 1st of March he appeared frightened and said he would have to go to prison unless he could raise a large sum of money. Alexander Myatt looked wild and staring at me. He said the land he had bid off for Polly Duncan had ruined him body and mind, and he should never get over it. From my knowledge of the transaction of the Duncan land referred to, I am satisfied there was nothing in it to disturb his mind as it was worth much more than he was to give for it. Murphy Myatt, his wife said to him in my presence, if he had taken her advice he would not have been in the fix he was in; she had told it, the land transaction, would ruin him, and it had. Alex. Myatt said he had no pain but trouble on his mind; and on

22

Cross examination said: My business there was to take the Duncan lands off his hands, referred to above. I accomplished it by taking up the obligation to A. G. Henry, and A. Myatt made a deed to Polly Duncan about April 15th, 1861; and on

Re-examination said, that this land was bought originally by Myatt for Polly Duncan. Mr. Myatt, A. G. Henry and Polly Duncan all told me so, all the parties interested; and also Murphy Myatt, expressed themselves satisfied.

23

Jasper Pool then testified that he is acquainted with the parties, and was with Myatt; was at the house of Alexander Myatt about the middle of March A. D. 1861; saw him but did not converse with him; he had a wild look that was unusual; saw him walking around the house apparently without any object, with his head down. I did not think he was able to transact his business at that time. I went to Alexander Myatt's house to get some harness, and should have asked Mr. Myatt, but William Walker (one of defendants), told me not to do it, for he would be *mad*, that he was not in his *right mind*. Walker gave me the harness and told me not to let the old man see it. The harness belonged to Alexander Myatt. And on

24

Cross examination, said that he did not hear him complain, and don't know that he was sick; have talked with E. W. Myatt on this matter; I am a brother of Alexander Pool.

25

26

W. Watkins then testified, that he was acquainted with Alexander Myatt, deceased; was at the house of Alexander Myatt, deceased, on or about the 3d of April, A. D. 1861, for the purpose of serving a summons on him. I sat down by him and asked him how he was; he said "he had been wronged so long, that he could not get right." I commenced to tell him my business, when Mrs Myatt (his wife, one of defendants), spoke to me and called me out in the hall, and told me that Mr. Myatt had been very bad for a few days, that I would have to explain my business to *her*; I then wrote a copy of the summons and left it with her. The appearance of Alexander Myatt was entirely different from what it usually was. He appeared to be disturbed both in body and mind. From his appearance I think he was not at that time of sound mind and capable of transacting business; and that was the impression I got from Mrs Myatt too, at that time. F. R. McDonald, Esq., and I think Mrs Walker (one of the defendants), were in the house then; it was about 10 or 11 o'clock A. M.; F. R. McDonald was sitting the room when I went in. Mrs. Myatt also requested me to see A. G. Henry and ask him to come down to fix some business, that was preying on his mind.

27

Alexander Pool testified that he is a son-in-law of Alexander Myatt but not interested in suit; has sold his entire interest in the estate. About the 15th of February 1861, I saw Alexander Myatt and spoke to him about making a deed, and saw him after that and conversed with him at least twice a week until his death. I never heard him complain of sickness or pain of any kind. Between the 1st and 15th of March 1861, I saw him; he complained of nothing *but his mind*. I do not think he was capable of transacting any business at that time, and he continued to get worse until his death. Between the 1st and 15th of April, 1861, he was crazy. I conversed with him several times about this time. He kept continually repeating that he had broken me up, and was broken up himself, and that all his property was being destroyed—all of which I knew to be unfounded at the time. I saw him frequently between the 1st of April, 1861, and to the time of his death, and do not think he was capable of transacting any business; he seemed to grow gradually and steadily worse. And on

28

Cross-examination said, that he sold his interest to in the estate of Alexander Myatt to Jacob Kessner, for \$800, the sale was absolute and unconditional. My wife is a half sister to the other children (defendants) of Alexander Myatt; I am on friendly terms and never had any trouble with the younger children (defendants) of Alexander Myatt.

Martha Pool then testified, that she is intimately acquainted with the parties and well knew Alexander Myatt, deceased. Was not often in A. Myatt's house in the year 1861, until after the 15th of April; was there a few times after that. He did not complain of being sick at any time, he appeared out of his head. I had a conversation with Murphy Myatt, (defendant,) about the deeds to N. E. Barcroft, L. S. Walker and M. L. Myatt, in May, 1861. Murphy Myatt told me that Alexander Myatt was complaining so much about being broken up, that she thought she would have the lands deeded to the children and that she thought that would satisfy him. She also stated that no person knew of the making of the deeds except herself and Esq. McDonald, and that the deeds were not intended to stand, but she intended to keep them until Alexander Myatt got well. She also said that when she sent a runner after Esq. McDonald, A. Myatt refused three times to have the Esquire sent for, and he was at the house three hours before said Myatt would agree to execute the deeds. No other person was present at this conversation except Murphy Myatt. And on

Cross examination said, that she now resides in the south-west corner of Clay county, in this State.

Sarah Sugg then testified, that she was in company with Alexander Myatt, deceased, and stayed all night about April 13, 1861. He appeared like something was the matter from his actions and conversations. He did not talk as he always had. Saw him again in August and his mind appeared worse. On

Cross-examination said, that he talked rational but did not talk as much as formerly, and appeared to want to be off to himself and to be in bed.

P. J. Holcomb then testified as follows: I am 74 years of age; a farmer, and reside in Bond county. I saw Alexander Myatt in the spring of 1861, think about the 1st of May, at his house; he appeared very strangely. When I went, the door of his room was fastened on the outside; his wife opened it; he was walking very fast across the room and went to and threw himself upon the bed very heavily, and covered himself up, head and all. I asked him if he was unwell, and he did not answer. I asked again and he then said he was not unwell. He was very unwilling to converse, but would sometimes answer direct questions. I saw him again four or five days afterwards, and he appeared more communicative. When he talked on the subject of his property he appeared to be insane, but when he talked on other subjects he appeared sane. He stated that it appeared to him that all was gone. I spoke to him about his fine house and barn; he replied they were mere shells, only fit for birds' nests. I saw him again about two weeks afterwards and he appeared better but moody. I tried to arouse him by telling him of a meeting we once had in Greenville. He recollected the meeting (which was some twenty years ago) and laughed heartily at it. I then spoke to him of his crops, which were looking fine, and he replied they were good for nothing. He spoke frequently of all his property or means being gone. I said he ought not to mourn for it, that his children were all doing well, and he replied that his children had worked hard for the property, but now it was all gone. I thought him insane on the subject of his property each time I saw him. The first time Mrs. Myatt went into the room with me and then left the room; the second time she was in the other room behind the door and the door open, and the third time she was not in the room. I had been acquainted with Alexander Myatt twenty five years. As to solvency, think he was never pressed much; before 1861 I regarded him as a business man; never knew him so affected before. I was appointed by the City Council to visit the Insane Hospital of Cincinnati and see how they were cared for, and acted in that capacity two or three years; have seen a great many insane persons there; am satisfied Alexander Myatt was crazy; this insanity was not equal on all subjects; he appeared most insane on the subject of his property, and I do not think he was capable of transacting business or of disposing of his property. And on

Cross examination, said that he appeared not to be insane on other subjects. Persons in his condition are not, as far as I know, sometimes worse and at others better.

Dr. T. S. Brooks then testified, that he is forty-five years old, a physician, that he had practised medicine about twenty years, and was acquainted with Alexander Myatt while living; was called professionally to visit Alexander Myatt at his house on the 28th day of April, A. D. 1861, according to my books; he appeared to be deranged after I had examined him; he appeared to have no bodily disease; seemed somewhat debilitated; he acted and talked as if he was deranged, and did not know what he was about; I saw Mrs. Myatt and some others, but do not recollect who; Alexander B. Myatt came for me to go there; Mrs. Myatt said he had been deranged some two or three months, and that it gradually increased on him; I don't suppose that at that time, or while so affected, he was capable of doing business. And on

Cross-examination said, that he cannot give the exact language of Mrs. Myatt; she conveyed the idea to me that his mind had been deranged for a month or two, and that it had gradually increased on him; with regard to bodily disease, I mean, that so far as I was capable of judging, I think he had no bodily disease; I examined his pulse, it did not indicate disease.

EVIDENCE FOR DEFENDANTS.

F. R. McDonald was then called, and, being sworn, testified that he was acquainted with the parties, and was with Alexander Myatt; was present when certain deeds were

made by Alexander Myatt to Nancy E. Barcroft and other parties to this suit; they were executed about the 3d day of April, A. D. 1861. Had been acquainted with deceased for twenty years; had seen him frequently just before the deeds were executed; could not say how often; had acted with him a number of years as school officers; was at the house half the day the day the deeds were executed; Sheriff Watkins and Joel Wilmoth were there and the family; Watkins read a summons to Myatt in relation to the partition of some lands; Myatt was then in bed.

When witness went there he (Myatt) appeared troubled; said he understood Dr. Gunn and his daughter had sued him, but after the Sheriff served the summons he became satisfied that the Doctor had not sued him. He conversed principally about being sued until Sheriff Watkins came, and he talked of making the deeds. His conversation was as rational as usual; he described the lands without referring to any deeds, except one piece. I saw nothing uncommon about his actions; he sat up part of the time by the fire; he seemed to be in very feeble health; looked bad and pale; considered his mind as sound at that time as at any other time I conversed with him. Witness heard no conversation between Sheriff Watkins and old Mrs. Myatt (widow). Thinks he could have heard it if there had been; they were not out of the room together till Watkins left, and he went out alone; does not recollect any conversation between Alexander Myatt and his wife about the deeds, except that after the deeds were made, Myatt handed the deeds to his wife and told her to take care of them for the girls. He believed then, and believe still, that he was then sane, or I should not have executed the deeds.

And in reply to the question, whether he knew anything more that would benefit defendants, witness said that a year or eighteen months before he (Myatt) had told witness that he intended to deed the home place to the two youngest girls.

On cross-examination, said that William Walker, one of the defendants, came for witness to go and make the deeds; witness started at about seven o'clock next morning, and arrived at Myatt's about eight o'clock; the deeds were made about twelve o'clock; thinks two deeds were made that day; cannot say whether a third deed for some timber land in Clinton county was made; there were other lands included besides the home place. Watkins came about ten o'clock.

Ques. 10. "Did not Mr. Myatt refuse, object or decline, for some time after you went there to make the deeds? if so, how long?"

Ans. He did not refuse to make the deeds, but did not make them till after Watkins left.

Ques. 11. At what time in the day did he say "there was no use in his making the deeds, that he would be broken up anyhow?"

Ans. The time he told me that was between eight and ten o'clock; he told me after I got to the house that he had sent for me to make some deeds, but that he did not know whether it would be of any use or not, as he understood that he was sued, and expected to be broken up. He mentioned this several times; he said he understood that Dr. Gunn had sued him. I understood that morning that Joel Wilmoth had told him he was sued. It was *talked of by the family in Mr. Myatt's presence.*

Joel Wilmoth is a son of Mrs. Myatt (widow), and a half brother of defendant's. From the conversation, the supposed cause of Dr. Gunn's suit was concerning a deed made by Josiah Myatt and wife (Dr. Gunn's daughter) to Alexander Myatt; that deed was acknowledged before witness; and from his knowledge of the transaction, he could see no reason why it should seriously disturb Mr. Myatt's mind or cause a reasonable fear of bankruptcy, either from want of validity in the deed or in any other respect.

Ques. 19. Could Dr. Gunn or his daughter set up any other claim than an uncertain and unattached dower interest in the land depending on the life or death of Josiah Myatt, her husband?

Ans. 19. "I do not know; the land was foreclosed at administrator's sale by Josiah Myatt, and then deeded by him to Alexander Myatt."

Witness does not recollect that he heard Myatt mention, that morning any other reason why he was in danger of being broken up; did not examine the state of Myatt's health.

When Sheriff Watkins rode up to the gate, Mr. Myatt was sitting up; he said, there comes Watkins, and went to bed.

I do not recollect when I first saw the change in Mr. Myatt showing aberration of mind; think it was two or three weeks after making the deeds.

Witness was then asked whether on or about April 4th, 1861, while riding with F. Marion Gordon, in a conversation with him, he did not say that he had on the day before made some deeds for Alexander Myatt which would not stand in law? That Myatt was not sick, but affected in his mind? That the deeds were made because he thought he would be broken up? That he (witness) thought the deeds were made for the purpose of defrauding the older children, and Mrs. Myatt intended that? That he (witness) thought the deeds were made for the purpose of defrauding Elisha Duncan's creditors, and that was the intention of the parties? That when Watkins came Myatt jumped into bed and covered his head up? That Myatt, on the day the deeds were made, was all the time declaring that he was broken up; that he (Myatt) was a damned

hypocrite too, and that you (Witness) thought he was crazy ; that you (Witness) fixed the deeds as you have always done his business and knew the land ; that old Mrs. Myatt (A. Myatt's wife) told you who to fix it to, and that after Watkins left Mrs. Myatt took him (A. Myatt) out and talked to him a long time before he could be got to sign the deeds, and that she and the other members of the family continued to urge upon A. Myatt, that Dr. Gunn had sued him—and if the deeds were not made that Dr. Gunn and Elisha Duncan's creditors would ruin him, or words to that effect. To all which Witness replied that he did not recollect having any such conversation with Gordon or telling him anything about the deeds, or using any such language.

Ques. 32. Witness was also asked whether in conversation &c., he did not tell Josiah Whittey, that it was three hours after he went there before he could get him to make the deeds.

Ques. 33. That when Watkins came in, Myatt got into the bed and covered himself up head and all, and that when Watkins came in and asked for him Mrs. Myatt pointed to the bed, when the sheriff uncovered him and read the summons to him.

Ques. 36. That Myatt talked that morning all kinds of nonsense about being broken up by Dr. Gunn and his daughter sueing him, and that he (Myatt) would be imprisoned on account of some misconduct in office. To which witness replied that he did not recollect saying anything of the kind—or any conversation with Josiah Whittey.

Eli McCracken then testified that he was acquainted with Alexander Myatt; heard him say something about deeding his homestead to his two youngest daughters, thinks this was in the spring of 1860—he told me so afterwards; don't know how often but more than once; saw Myatt and his wife at my house I think about the 23d day of April, 1861; Witness went to town with them; he, Myatt, acted like a man afflicted; he was not well; he talked like a man that had a good deal of trouble and care on his mind. Witness requested him to ask a blessing at the table and he did so as usual; my impression is that he prayed with the family in the morning.

And on cross examination, witness said, that when Myatt was at my house, it appeared to me that he (Myatt) thought that he could not attend to his ordinary business, and it troubled him; he was grieving over the business between him and the Duncan's; witness never saw him (Myatt) in such a desponding state of mind before as he was on the night he stayed at (witnesses) house. "I think from my knowledge of his affairs there was nothing to make him so desponding if he had been well." Witness thinks he was at Myatt's twice between April 1st, 1861, and the time Myatt stayed at his house; was there with Wesley Myatt; heard him tell the old man that he had deeded his home away that was what was the matter; does not recollect repeating the conversation to Alex. Pool shortly afterwards; do not recollect at that time telling Pool that A. B. Myatt had said that Alex Myatt was worse and had been trying to kill himself. Witness went to the house of Wesley Myatt the Monday following the time they were together at Alexander Myatt's mentioned above, at the request of the family to tell him (Wesley) not to come to Alexander Myatt's any more and say anything about the deeds to him (Alexander Myatt) for it excited him and made him worse. Witness may have advised Wesley to take the old man home with him; do remember advising the old man to go around among his children.

Alexander B. Myatt then testified that he thinks he was not at his father's house on the 3d of April, 1861, but was there the day before and the day after, and frequently both in March and April 1861. There was nothing uncommon in his appearance; he was part of the time in bed, and was unwell; did not see anything unusual in his talk and actions for a man as sick as he was. In the month of April he attended to most of his business around home; he gave me (witness) instructions as usual.

Witness thinks he issued one or two executions in April 1861; witness wrote them as he had done before. Alexander Myatt was his father and witness had always lived near him. Alexander Myatt made some deeds to Kary Barcroft, Sarah Walker and Murphy L. Myatt; did not see them executed but they are dated April 3d, 1861. He (Alexander Myatt) told me years before and frequently afterwards that he intended to deed the home-place to the two youngest girls—and Mrs. Barcroft was to be made equal. There was nothing unusual about his health.

Thinks one of the executions was issued by his father after the deeds were made. Thinks that his father was capable of attending to his business. Does not think that any one could detect mental unsoundness from his conduct. And on *cross-examination* witness said that he is one of the defendants in this suit, is the brother of Nancy E. Barcroft, Sarah Walker and Murphy Myatt, and the son of Murphy Myatt, one of the Defendants—and half-brother to Wesley Myatt, Mrs. Cole, Mrs. Kessner and Mrs. Duncan.

Alexander Myatt became *sick* about the last of March, was part of the time in bed and part up until the 4th of September, he did not recover, he was sometimes better and sometimes worse. Does *not* recollect that he was worse in July than June; in June he was as bad as in July; does not know that he was worse in June than in May; thinks he was worse in May than in April; he sometimes was better for a whole day or two. Cannot say what disease he was afflicted with, he was taken down with rheumatism first, complained of his wrists and knee-joints.

Ques. 11. When you speak of his being better and worse, do you refer to the rheumatism?

Ans. Partly, and partly other things.

Ques. 12. What other things?

Ans. He got so about the last of April, or the first of May, that I do not think he was in his right mind. Dr. Brooks was called in once only; does not know when he stopped shaving him. Witness cannot tell how long after April 3d he noticed that his mind was diseased, says that he started with him to Jacksonville Lunatic Asylum—thinks he started to the asylum about the 19th of May. Does not recollect telling Alex Pool, on the day Eli McCracken and Wesley Myatt were at A. Myatt's house, that he was trying to kill himself.

Heard father say that trouble and rheumatism were working on him, he complained that the greatest part of the trouble was from Elisha Duncan's business; doesn't know when Elisha Duncan's business was taken out of his hands. Alexander Myatt hung himself about September 4th, 1861. Does not recollect anything about the conversation about the deed.

On *re-examination* says, that he first discovered that something was wrong with his father about the last of April or the first of May. I understood deeds were made with my fathers previous desire to the girls.

102 *Joel Wilmirth* then testified, that he was acquainted with Alexander Myatt while liv-
 103 ing, and about the 3d of April saw him almost every day; was at his (Myatt's) house
 on April 3d and transacted some business with him; he was lying on the bed; said he
 was sick, but talked as sensible as ever he did. "I guess he was sick, but what ailed
 him I do not know." Was at his (Myatt's) house afterwards, during April and May, as
 often as once a week. "I think it was some time in May I first noticed and thought he
 104 was not just right." Alexander Myatt raised me; I was acquainted with him inti-
 mately; thinks Alexander Myatt was of sound mind on the 3d of April. On cross-ex-
 amination, said that

105 Murphy Myatt is his mother; the other defendants (except Barcroft and Walker)
 are half brothers and sisters.

Witness went to Alexander Myatt's April 3d, 1861, about eight o'clock in the morn-
 ing; went to tell him that Dr. Gunn was going to sue him about some property that
 Josiah Myatt (his daughter's husband) had left in his hands, as Dr. Gunn thought;
 thinks he stayed with him about three hours that day; F. R. McDonald came just as
 witness left. Witness told Alexander Myatt Dr. Gunn had come up (to Greenville) to
 sue him; saw Alexander Myatt five or six days after he was up and some better; don't
 think he ever got well; don't know what the disease was; he was sometimes worse and
 106 sometimes better; heard him first complain of this disease about the last of March.

Ques. 12. "Did he not, with the exception of short intervals, get gradually worse
 until August?"

Ans. "I think he was worse on the 3d day of April, 1861, than he was between that
 time and August when I saw him." Witness does not recollect whether there was any
 change in the character of the disease. And on *re examination*:

107 *Ques. 1.* In questions 8, 9, 10, 11, 12, 13, 14, asked you on cross-examination,
 do you refer to Alexander Myatt's sickness of body or mind?

Ans. "I think both."

On the 3d of April I meant he was sick in body and bothered in his *mind too* about
 his worldly matters.

108 *A. J. Hughes* then testified, that he took the acknowledgment of a deed from Alexander
 Myatt and wife; cannot tell the time nor who it was to; thought him in his right mind
 then; think it was in the spring of 1861.

On *cross-examination*, said he was with him but a half hour.

REBUTTING TESTIMONY FOR PLAINTIFF.

40 *Alexander Pool*, re-called, testified that he thinks he was in company with Alexander
 Myatt twenty times between the middle of March and last of April, A. D. 1861; Myatt
 acted dull and grum, sometimes talked but little, sometimes talked a good deal; he
 would be up and down, and looked strange; about the latter part of April he was much
 worse. When I asked him what was the matter, he would reply, that everything he
 had was about to be destroyed by his wife and family; that he had destroyed much of
 his property himself and would be broken up anyhow.

His actions were quite different from what they were before March 1861; he acted
 stupid and dull; his eyes had a wild look; he was suspicious of every person that came
 about him; his conversation was different in this, that he talked all the time about be-
 ing broken up and losing his property, which he never did when he was at himself. I
 41 cannot tell the exact time I first noticed this change, but think it was about the 1st of
 March, 1861; he did not attend to his business as usual about the farm; it was done
 by the family and a young man named Elisha Powell. From the middle of March 1861,
 to the middle of April 1861, he did no business with me nor with any one else in my
 presence.

Eli McCracken and myself had a conversation about what took place when he and
 Wesley Myatt were at Alexander Myatt's. McCracken said that Wesley asked about
 42 the deeds, and said the old man had deeded away his home, and that was what was the
 matter with him; and that the old lady (Mrs. Myatt) had better destroy the deeds; the
 old lady replied that she had the deeds and would keep them till the old man got well,
 then the old man could do what he pleased with them.

Alexander B. Myatt, when he came for the old lady on the day that McCracken and
 Wesley Myatt were at Alexander Myatt's house, told Mrs. Myatt and myself that Alex-
 ander Myatt was on the porch trying to kill himself with a razor, and that they could
 not get the razor away from him, and wanted her to go home.

43 Mrs. Murphy Myatt told me that they had to keep the razor from Alexander Myatt,
 for she thought he would kill himself; she said this had been done from the time when
 Alexander B. Myatt said he attempted to kill himself on the porch. On

Cross-examination said, that there is no unfriendly feeling between the younger mem-
 bers of Myatt's family and myself and family, and there has never been that I know
 of. It was along through April, 1861, that I heard Myatt so often speak of so much
 property being destroyed. I was often with him until he hung himself.

44 During March and April he was gradually getting worse; I never saw him when I
 thought him any better; I know that it was about the 1st of March, A. D. 1861, that I

first discovered that there was anything wrong with Alexander Myatt, from the date of a deed mentioned in my first examination, and my attempting to have that acknowledged at that time.

The time referred to (when speaking of A. B. Myatt's saying that the old man was about to kill himself with a razor) was about the 18th or 19th of April, 1861.

Some time about the 1st of April, 1861, I was at Myatt's spaying hogs; young Powell, Walker (defendant), and Joel Wilmirth were there; we talked about the manner of spaying; don't know as anything was said to the old man about it; I think some one asked him if the thread was the right size, and he replied it was.

45 Did not tell Joel Wilmirth that I thought Alexander Myatt foolish for deeding his land away to his younger children. Joel Wilmirth came to my house and told about the deeds being made; my wife said something; I requested her to make no fuss, there was no use in fretting; did not say that her father (A. Myatt) had done well for us in 46 the way of property; did not tell Joel Wilmirth or A. B. Myatt that Alex. Myatt was not crazy—only sick or hyppoid; do not know of A. Myatt doing any business after April 1st, 1861; have known Alexander Myatt about twenty-nine years; don't know of his property before his last marriage; has made considerable since; was an active, stirring business man when well.

47 On *re-examination*, said that two of the defendants, Murphy Myatt and A. B. Myatt, told me, during March or April, that A. Myatt was getting worse all the time. Walker 48 (on the first day of spaying hogs) told me the old man was all the time growling about eating too much, and Walker said he told him that was going too far. Alex. Myatt had double the amount of land and personal property at the time the older children left home than he had when he executed the deeds in 1861. I think he gave 40 acres to E. C. Cole, and 80 acres to my wife—each tract worth about \$100. The shares deeded to the two youngest girls in April 3d, 1861, were worth \$2,000 each, and to the other girl \$1,100.

Wilmirth concurred with Walker in what he said on the day of spaying hogs. Murphy Myatt and A. B. Myatt told me at different times, from March until he died, that A. Myatt was continually getting worse.

Francis M. Gordon testified that he was forty years of age, and was a farmer, knew Alexander Myatt when living.

Ques. 3. Did not you have a conversation with F. R. McDonnald on or about the 4th day of April, 1861, while riding with him? If so state whether in said conversation he used the following language, viz: "That he (McDonnald) had the day before made some deeds for Alexander Myatt that he thought would not stand in law, or words to that effect?"

Ans. I had a conversation with Mr. McDonnald while riding on the day of Long John Burnside's sale. I think it was about the 4th day of April, 1861. He told me that he had made some deeds for Mr. Myatt the day before, or the other day, and that he did not think Mr. Myatt was competent to make the deeds as he (Myatt) asked him what he 50 & 51 wanted him to sign the deeds for, and he also asked if they wanted to break him up.

Ques. 4. Questions No. 28, 29, 30, 46, 47, 48 and 49, set out on record page 80, 81, 82, 83, 84, 85 and 86 were then read to witness Gordon, and he was asked to state whether in the same conversation McDonnald did not use the language in such questions mentioned, or in either of them, or any part of either of them, or words to that effect, if so, which and what part thereof was used by McDonnald?

Ans. He used the words mentioned in Question No. 28, substantially, and that he did not think Mr. Myatt capable of doing business. As to the language used in Question No. 29, McDonnald said, that they impressed it upon Myatt to sign the deeds to save the property from the creditors of Elisha Duncan, as they would break him up if he did not sign the deeds, or words to that effect. As to the language used in Question No. 30, there was nothing said about defrauding the older children, but that they wanted him (Alexander Myatt) to execute the deeds to make the younger children equal with the older ones. As to the language used in Question No. 46, he (McDonnald) told me that the old man thought that the deeds were made to defraud Elisha Duncan's creditors, but that the old lady thought the deeds were made to secure the property to the younger children, and that she wanted it done then as she found the old man's mind was failing him. As to Question No. 47, he (McDonnald) used the language mentioned in said question as near as I can recollect. As to Question No. 49, he [McDonnald] used the language mentioned excepting that relating to old Mrs. Myatt taking Alexander Myatt out and talking to him, I think he said she sat by the bed and talked to him, and that they told him [Alexander Myatt] that Dr. Gunn had sued him and Elisha Duncan together, and that if he did sign the deeds the Doctor would come on to him and break him up as Elisha Duncan had no property.

And on *Cross examination* said, that McDonnald was going to the prairie to show me cattle I wished to buy. I was with him from one to three hours, were alone while hunting cattle. McDonnald conveyed the idea to me that the deeds were made to secure the younger children, but that the old man thought it was to keep Elisha Duncan's creditors

from taking it from him. In a conversation with Jacob Kessner I told him McDonald was the only witness he wanted, that he had told me so and so as above.

Josiah Whittey then testified, that he had a conversation with F. R. McDonnald while coming to Greenville Circuit Court the Spring after Myatt died. McDonald used the language used Question 32, or something like it. He used all the language mentioned in Questisd 33, except Myatt's covering up his head I think he used language in substance as Questson 36.

QUESTIONS REFERED TO BY GORDON AND WHITTEY.

Ques. 28. Did you not tell F. M. Gordon that Mr. Myatt was not sick, but that he was affected in his mind, or that his mind was wrong, or words to that effect?

Ques. 29. Did you not tell Gordon that Alexander Myatt made the deeds because he thought he was going to be broken up, or words to that effect?

Ques. 30. Did you not tell Gordon in the same conversaton, that you thought the deeds were made for the purpose of defrauding the older children, and that you thought in particular that was the intention of Mrs. Myatt, or words to that effect?

Ques. 47. Did you not also tell F. M. Gordon that when Watkins came, Alexander Myatt jumped into bed and covered up his head?

Ques. 48. Did you not at the same time tell Gordon, that Alexander Myatt on the day on which the deeds were made, was all the time declaring that he was broken up, that he (Myatt) was a damned hypocrite too, and that you (witness) thought he (Myatt) was crazy?

Ques. 49. Did you not also tell Gordon, that you (witness) fixed his deeds yourself as you always done his business and knew the lands. That old Mrs. Myatt (A. Myatt's wife) told you who to fix it to, and that after Watkins left Mrs. Myatt, his wife took him (A. Myatt) out and talked to him a long time before he could be got to sign the deeds, and that A. Myatt's wife and the other members of the family, after Watkins left, continued to urge upon A. Myatt that Gunn had sued him and that if the deeds were not made that Gunn's and Elisha Duncan's creditors would sue him?

Ques. 32. Did you not tell Whittey that it was three hours after you went to Mr. Myatt's before they could persuade him to make the deeds?

Ques. 33. Did you not at the same time tell Whittey, that when Mr. Watkins came Mr. Myatt went and got into bed and covered himself up head and all, and that when Mr. Watkins came in and asked for him, Mrs. Myatt pointed to the bed, and the sheriff went to the bed and uncovered him and read the summons to him, or words to that effect?

Ques. 36. Did you tell Whittey at the same time, that Alexander Myatt talked to you the morning you went there, all kinds of nonsense about being broken up by Gunn and his daughters sueing him, and his going to be imprisoned on account of some misconduct in office, or words to that effect?

Nathaniel J. Floyd then testified that the sale of John Burnside's (called Long John Burnside) refered to by F. M. Gordon, was on the 4th of April 1861.

E. R. Lloyd then testified, that he had a conversation with McDonald in the Spring or Summer of 1861 concerning the execution of deeds to Barcroft and Walker, soon after they were made, as McDonald said. McDonald said Myatt sometimes acted curious, and sometiomes as though he was at himself; said he threw himself on the bed and said he was ruined, in consequence of a threatened lawsuit with Dr. Gunn; when he saw the sheriff coming.

John B. King then testified, that McDonald told him the next day after deeds were made that Myatt sometimes acted crazy—and sometimes not, and told me that when he saw sheriff Watkins come he threw himself on the bed exclaiming that he was a ruined man. About the last of February 1861, Joel Willmirth told me that old man Myatt was, or was about going crazy. I proposed to go and see him, when he told me it made him worse for people to call on him, this he told me about the last of March. Lives near Willmirth, and heard him frequently say before April 1st, 1861, that he thought A. Myatt crazy.

Nancy Ferrell then testified, that she called to see Mr. Myatt between the first and middle of April; he seemed in great agony of mind, kept getting up and down—apparently greatly distressed about his money or property, looked at some of his papers and tried to pacify him, at the request of Mrs. Myatt, his wife; who said she had tried to but could not; she said he had been going on so for two or three weeks. His (A. Myatt's) manner and conversation was entirely different from his usual manner—he acted and talked like a crazy man—thinks he complained of nothing but agony of mind; witness to pacify him told him of a meeting to be held and to put his trust in God. He replied not to talk to him about meeting, it was no time for him to pray or put his trust in God. Saw him once or twice afterwards, he appeared more crazy; I do not think he was capable of transacting any business on the day I first went there.

Mrs. Minerva McNeil then testified, that she saw Mr. Alexander Myatt on Saturday of the first week of the Circuit Court in April 1861, did not seem to be in his right mind; about all he had to say was about an officer being after him to put him in jail. Do not think he was fit to transact business, he did not appear like himself; he looked bad.

Mrs Myatt [his wife] in reply to a question as to how long he had been crazy, said it was about ten weeks, but that he was not crazy all the time as then ; was with Mr. Myatt from morning till evening, Wesley Myatt's wife and old Mrs. Myatt were present.

Robert J. Stevenson then testified, that he had been intimately acquainted with Alexander Myatt for twelve years. Sometime between the 20th and last of April, 1861, went to his house with my wife to see him, my wife went in and came running back saying he [Myatt] cursed and swore so she could not stay, I went in and found it so, could get nothing out of him. Saw him afterwards, he appeared about the same, was satisfied both times he was not at himself. Never heard him swear before. William Walker, when speaking about a plow, said witness must not go to Myatt it would put him all out of sorts, and Mrs. Myatt [wife] said he had two or three such spells of swearing before the day witness first saw him. Does not think Myatt was in his right mind, or fit to do business.

Dr. Jenkins Mattinly then testified, that he is a physician ; saw Myatt about the middle of May, 1861 ; he appeared very feeble, and his mind much out of balance ; he gave me his hand and asked me what I came for ; appeared to know me. Witness replied, that he had come to see him, when he turned his back to me and I could get no more out of him. I did not examine the state of his health ; was satisfied he was not capable of transacting business. A few days before I called, in conversation with A. B. Myatt, he requested witness to call as a friend ; can give his exact words, but understood him to say the old man was crazy.

William Tucker then testified, that he had been acquainted with Alexander Myatt thirty years ; think I saw him at his house the first week in April ; called on him ; he appeared feeble and much changed ; saw him at the barn, wandering around like a man out of his mind ; I stoped to settle with him, but seeing his condition, did not mention it ; did not think him capable of doing business ; heard in the neighborhood that he was crazy a month before.

Elizabeth Lloyd then testified, that she heard conversation between McDonald and her husband about a week after McDonald said the deeds were made ; heard McDonald say that Myatt acted strangely, &c.

Her husband asked McDonald what would be the result if the older children tried to break the deeds ; McDonald replied that if they could prove the fact, it would be like a crazy man's will he had heard of, and if they called on him (McDonald) he would have to say that Myatt was not right.

Resides near, and often heard the opinion expressed by the neighbors, in the winter and spring of 1861, that he was crazy and unfit for business.

Henry Sharp, re-called, then testified, that about the 1st of April, A. D. 1861, he was in company with Alex. Myatt at his house ; that Alexander Myatt then told him that he intended to assist Wesley Myatt and his older children more than he had done, that he had not done as much for them as for the younger ones, and that the reason was that his wife would not let him ; this was at the time spoken of in his previous examination.

ERRORS :

- I. The Court erred in dismissing the complainants Bill.
- II. The Court erred in not decreeing the cancellation of deed as prayed in said Bill.
- III. The Court erred in not decreeing relief to complainants.

O'MELVENY & HOUCK,

Attys for Appellants.

Brief of Counsel for Appellants.

1. This bill in Chancery prays, that two deeds be cancelled, one to Sarah C. Walker and Louisa Myatt, and one to Nancy E. Barcroft, represented to have been made by Alexander Myatt, April 3d, 1861, for the lands described in the bill.

[It appears that Nancy Barcroft and her husband declined to claim under the deed to them, and the bill was as to them, taken for confessed, and that deed cancelled.]

The grounds for declaring the deed bad, are :

1st. That Murphy Myatt, the second wife of the *vendor*, procured it to be executed by fraud.

2d. That at the date of executing that deed, the vendor was *non compos mentis*.

3d. That if this is not true, there was no sufficient delivery.

II It is the *too* common example of step-mothers to seek to secure the property of the common father to their own off spring, and that Mrs. Murphy Myatt sought this is impressed upon this whole case, whether that result shall stand, depends upon the decision of this case on the facts proved.

1. The questions in the record are not disputed points of *law*, so much as what the proof really establishes as the *facts* of the case. If Alexander Myatt, whose mind, as we think the proof shows, from March to the third of April 1861, was vibrating on the verge of insanity ; or, if on that day though sane, he was falsely imposed upon by threatened groundless litigation, was induced under such circumstances to make the deed, complainants ought to have the relief prayed, or, if we regard it, the proof most conclusively established that he was before, and at the time the deeds were executed *non compos mentis*, then the relief should be granted.

III. The witnesses for the defence, wilfully, it is believed, seek to disguise the fact of *insanity* under the name of *sickness*.

1. There was no ground of litigation whatever, as we can discover from the proof, between Gunn or Duncan and old Mr. Myatt. Certainly all the proof of the defendants shows no grounds existed calculated to disturb a *sane* mind. There is no evidence whatever, that any such litigation was ever commenced or threatened. These facts true two conclusions are irresistible: 1st. That old Mr. Myatt had conceived the insane delusion that he was ruined ; about to be broken up ; likely to be involved in litigation. 2d. That the family knew this insanity to have riveted itself on his mind and influenced it by falsely representing it to be true. The old lady tells him in presence of Bently, that the purchase of the Duncan land ruined him, and Wilmarth reports on the morning of the day the deed was made, what he must have known to have been a falsehood, that he was sued, &c., by Gunn.

2. The declarations of the different members of the family concur in this, that whatever his affliction was, it commenced in March, 1861. Mrs. Myatt and Joseph Myatt tell Bently in the beginning of April, probably on the 4th or 5th, that for two, three or four weeks previous the old man had been in that condition of mind ; that about the first of March he had become *frightened* and said he would have to go to prison. About the middle of March Walker, a member of the family said to Jasper Pool when he went to borrow the harness, that the old man was not in his right mind. Alexander Pool saw him on the 15th of March, and he then made no complaint of body but complained of his *mind*. He saw him once or twice a week after that till his death, and he was incapable afterwards as in March to do business, and continued to grow worse and worse till his death. To Dr. Brooks, who was called on the 28th day of April, old Mrs. Myatt said, that the old man had been deranged for about two or three months previous. The concurrent reputation in the family and neighborhood is, that insanity had set in on Alexander Myatt's mind in March.

3. If the Court is satisfied, from the Evidence, that in March the mind of Myatt was affected by either a confirmed or partial insanity only, it puts the burthen of proof on defendants, and they must show that old Myatt was of "disposing mind" on the 3d day of April, when the deeds were executed. 3 Phillips on Evidence, 272 and 293 (Cowen & Hill.) 1 Greenleaf on Evidence, §. 42. 2 Greenleaf on Evidence, §§. 371.) But what was the condition of Myatt's mind before that time and on that day? Wilmarth, the defendants' own witness, swears, that Myatt on that day was worse than he was between that day and August. Watkins, the then Sheriff and afterwards member of the Legislature, saw him on the 3d day of April, at about 10 or 11 o'clock, and swears that the old man said "that he had been wronged so long that he could not get right;" that he looked different, and was "not at that time of sound mind." Henry Sharp swears, that he saw old Myatt two weeks before the 15th of April (which would be on the 1st or 2d of April), and that then he was not "calculated to transact business;" that he told him "his mind was gone;" that he had an "unusual look," and that then he had no bodily disease. A. G. Henry swears, that he saw Myatt between the 1st and 13th of April, and that when he saw him "he thinks he was not fit to transact business." Jasper Pool testifies, that he was at the old man's house in the middle of March, and that then "he had a wild look that was unusual." Alexander Pool then swears, that he saw old Myatt between the 1st and 15th of March, and that then he "complained of his mind," and that between the 1st and 15th of April "he was crazy." But even McDonald, the defendants' main witness, though he is conclusively demonstrated as unworthy of belief, testifies, that on the day the deeds were signed old Myatt frequently talked of "being broken up," for which complaint McDonald even could see no reason. And again, Alexander B. Myatt, one of defendants' witnesses, swears that the old man became *sick* about the last of March. And Wilmarth swears positively that on the 3d day of April the old man was sick both in *body and mind*. Especially, however, is the testimony of Alexander Pool, on being recalled, worthy of note, for his picture of the old man in March, as he walked about, "stupid and dull,"

with his eyes looking wild ; his suspicions of every person coming about him, and talking "all the time about being broken up and losing his property," conclusively demonstrates that the old man had lost his mental balance.

Then, too, the admissions of old Mrs. Myatt to *Martha Pool*, that no one but Esquire McDonald and herself knew of the deed, and that she had sent for the 'Squire, and that for three hours old Myatt refused to execute the deeds, and that the deeds were not intended to stand ; and the fact that she told Dr. Brooks, on the 28th of April, that he had been in this deranged state for two or three months show, that the overthrow of his reason was familiar to her.

Arguments on *this* Evidence, to *this* Court, as to what it proves is perhaps superfluous. Close analysis and reflection upon it, will convince the judgment of

1st. That Myatt was not sick physically, but deranged *mentally*, from the first of March to his death.

2d. That this is a clear case of *delusion*, *hallucination* on the subject of approaching poverty.

3d. That his wife and family knew this, and falsely exaggerated the cause of his imaginary fears, and by that fraud obtained the deed—*Whalan & Whalan Case, 3 Coway Rep 537*

4th. That instead of the proof showing, that the deeds were executed at a lucid interval, the proof is, that he was worse mentally on that day than usual.

5th. The deeds were not really delivered, for the old woman said they were not to stand; and they were not recorded until after the old man's death which is a *significant fact*. On the whole evidence to affirm the deed to have been made free from fraud, and that when executed Myatt was *compos mentis*, is as we view the facts impossible.

O'MELVENY & HOUCK,

For Appellants.