No. 14759

Supreme Court of Illinois

Blue et al

---

vs.

Blue

71641  7

STATE OF ILLINOIS

SUPREME COURT,

THIRD GRAND DIVISION.

No. 186

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

Page 1

Proceedings in the Circuit Courts of Peoria and Woodford Counties in a certain cause wherein Giney Blue is Complainant and Cyrus H Blue, Washington Wakefield and William R Phelps, Defendants.

(Copy of Precipe for Summons)

Giney Blue
vs.
Cyrus H Blue, Washington Wakefield, William R Phelps

In Peoria Circuit Court
In Chancery for Relief
To Oct Term 1862.

The Clerk of said Court will please issue Summons in Chancery in the above entitled cause returnable to Oct Term 1862 & oblige

To E P Sloan Clk (Signed) McCulloch & Taggart
Peoria Sept 11. 1862. Solrs for Complt

(Copy of Summons)

The People of the State of Illinois,
To the Sheriff of Peoria County, Greeting.

We command you to Summon, Cyrus H Blue, Washington Wakefield & William R Phelps, if they may be found in your County, to appear before our Circuit Court on the first day of the term thereof, to be held at Court within and for the said County of Peoria on the first Monday of October next, then and there in our said Court to answer the matters and things contained in a certain bill of Complaint

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lately filed in our Circuit Court on the Chancery side thereof by Liney Blue, against them for Relief &c, and make return of this writ, with an endorsement of the time and manner of serving the same, on or before the first day of the term of said Court, to be held as aforesaid.

Witness. Enoch P Sloan, Clerk of our said Court, and the seal thereof, at Peoria this 11th day of September in the year of our Lord One thousand eight hundred and sixty two.

Seal

(Signed) Enoch P Sloan Clerk
pr I Newlon Dpty

(Endorsement on the back of Summons)

"I have duly served this writ on the within named Cyrus H Blue, Washington Wakefield and William R Phelps by delivering to each of them a true copy of the same. Sept 26th 1862."

(Signed) James Stewart
Sheriff

Fees $ 5.30

(Filed April 3rd 1863
James D Perry Clerk)

(Copy of Bill)

To the Hon Amos G Merriman Judge of the eighteenth Judicial Circuit in the State of Illinois in Chancery sitting;

Humbly complaining showeth unto your Honor

(3)

your Oratrix Lizzy Blue of the County of Peoria and State of Illinois that on the twenty fourth day of January eighteen hundred and fifty four, one William R Phelps of the said County entered into a contract with one Cyrus H Blue of the same County, who was then the husband of your oratrix wherein and whereby the said William R Phelps agreed to sell to the said Cyrus H Blue a certain tract or parcel of land situate in the County of Peoria and State of Illinois known and described as the South half of the North West quarter of section number thirty five (35) in Township number eleven (11) North of Range number eight (8) East of the fourth Principal Meridian containing eighty acres more or less, with the privileges and appurtenances thereto belonging. And the said Cyrus H Blue in consideration of the sale of said premises by the said Phelps agreed to pay to the said Phelps his executors or assigns the sum of seven hundred dollars in manner following to wit; One hundred and seventy five dollars on the twentieth day of March in each of the years A D 1854, 1855, 1856 and 1857 with interest at the rate of six per centum per annum from the date of said Contract to be paid annually on the twentieth day of March in each year on the whole sum from time to time remaining unpaid, And also that he would well and faithfully in due season pay or cause to be paid all taxes and assessments ordinary and extra-ordinary for any purpose whatever levied or assessed upon the said premises or appurtenances or any part thereof pursuant to the year 1852, But in case said Blue should fail to pay any or all such taxes or assessments upon the

said premises or appurtenances or any part thereof whenever and as soon as the same should become due and payable, and the said Phelps should pay from time to time or at any time any or all such taxes or assessments or cause the same to be paid the amount of any and all such payments so made should immediately become an additional consideration and payment should be made by said Blue for the said premises; And the said Phelps in and by the said contract further covenanted and agreed with said Blue that upon the faithful performance by said Blue of his said undertakings in that behalf and of the payment of Principal and interest of the sum above mentioned in the manner specified he the said Phelps should and would without delay well and faithfully execute acknowledge and deliver in person or by Attorney duly authorized to said Blue his heirs or assigns a deed of Conveyance of all the right title and interest of said Phelps of in and to the said premises with their appurtenances with Covenants of Warranty against any and all persons claiming title from to Patentee thereof; Provided always and the said Contract was upon the express condition that in case of the failure of said Blue his heirs executors administrators and assigns in the performance of all or either of the Covenants and promises on his part to be performed the said Phelps or his legal representatives should have the right to declare the said Contract void, and thereupon to recover by distress upon the premises or otherwise all the interest which should have accrued upon said Contract as rent for use and occupation

(5) of said premises and to take immediate possession thereof to regard the person or persons in possession on such termination of the Contract as tenant or tenants holding over without permission (if that should be necessary to regain the prompt possession of the premises) and to recover all damages sustained by such holding over without permission or by means of any waste committed or suffered on the premises by destruction of timber or otherwise, which said Contract was in writing under the hands and seals of the said Phelps & said Blue, a copy whereof is for greater certainty hereto attached marked "A" and the original referred to and prayed to be taken and considered as part of this your Oratrix's Bill.

And your Oratrix further represents, that soon after the making of said Contract said Blue entered and took possession of the said premises and from time to time made sundry payments on said Contract; That on the twenty second day of March A.D 1854 he made payment of the sum of One hundred dollars; that on the tenth day of April 1854 he made payment of fifty dollars; that on the ninth day of December A.D 1854, he made payment of One hundred dollars; that on the thirty first day of March A.D 1855 he made payment of seventy five dollars, that on the twenty sixth day of May A.D 1856. he made payment of One hundred and eighty five dollars, and that on twenty first day of March A.D 1857 he made payment of One hundred and thirty dollars all of which were received by the said Phelps in part payment of the purchase money of said land according to the time and conditions of the said Contract.

(6)

And your Oratrix further represents unto your Honor, that afterwards on the twenty fifth day of July A.D. 1857, James S Riggs and Amos L Merriman recovered a judgment against said Cyrus H Blue before Bernard Bailey a Justice of the Peace within and for the County of Peoria and State of Illinois for the sum of twenty five dollars & costs of suit, which judgment was duly certified and filed in the office of the Clerk of the Circuit Court for said Peoria County on the tenth day of December A.D. 1857; and which thereby became a lien upon all the right title and interest both at law and equity pi and to the lands of said Blue, And your Oratrix further represents that afterwards on the seventeenth day of December A.D. 1857 an execution was issued upon the said judgment directed to Francis N Smith then Sheriff of Peoria County to execute, and that by virtue of said execution and whilst the said Blue was in possession of said land the said Sheriff levied upon the said lands hereinbefore described together with the North East quarter of the North West quarter of section thirty four (34) in the same Township, which said lands were duly advertised and sold by virtue of said execution to said Amos Lee Merriman who was the highest and best bidder therefor, all of which will more fully and at large appear by reference to the said judgment and execution remaining of record in the office of the Clerk of said Circuit Court.

And your Oratrix further represents unto your Honor, that afterwards to wit, on the second day of July A.D. 1859 upon the petition of your Oratrix it was adjudged and decreed that the contract of Matrimony theretofore existing

(7) between your Oratrix and the said Cyrus H Blue should be cancelled, set aside and for nought esteemed in all respects as if the same had never been made, and it was further adjudged and decreed that the said Blue should be restrained and enjoined from alienating disposing of or in any way incumbering any of his real estate, and particularly the tract first aforesaid, until the further order of said Court, all of which will more fully and at large appear by the record of said cause remaining in the Office of the Clerk of said Court and a copy of said decree is attached to this Bill marked "B" for greater certainty.

And your Oratrix further represents unto your Honor, that afterwards, to wit, on the 13th day of December A D 1859, the said cause between your Oratrix and the said Cyrus H Blue, was brought to a further hearing, and it appearing to the Court that your Oratrix was entitled to the care and custody of the Children of your Oratrix begotten by said Blue during coverture, and that your Oratrix was entitled to Alimony from said Blue, & also that the said premises were incumbered and not susceptible of division and that the title to said premises was not perfect and that in case a specific sum of money should be decreed there was no way of enforcing payment thereof by law, it was therefore ordered adjudged and decreed by the Court, that your Oratrix have the care and custody of said Children and amongst other things that your Oratrix should have title and hold the said premises therein described to wit, the South half of the North West quarter of section thirty five, in Township Eleven North of Range eight East and also the South East

quarter of the North West quarter of section thirty four in said Township All in the County of Peoria State of Illinois, until the further order of said Court, and that she have take and hold the sole and exclusive possession occupancy and control thereof, and the house and appurtenances thereon situate and thereto belonging, and the said Blue was thereby restrained and enjoined from entering upon using and enjoying or in any wise meddling with or incumbering said premises in any manner whatever until the further order of said Court, All of which will more fully and at large appear by reference to the records of said Cause now remaining in the Office of the Clerk of said Court reference being had thereto as part of this bill and for greater certainty a copy of the said last mentioned decree is hereto attached marked "C".

And your Orator further showeth unto your Honor, that afterwards to wit, on the fifteenth day of December A D 1860 the said cause was brought to a further hearing and it was then ordered adjudged and decreed that your Orator should have and hold during her natural life as and for her Alimony twenty five acres of land being part of the South half of the North West quarter of said section number thirty six, beginning two rods South of the North West corner of the said South half of said quarter section, thence South to the South West corner of said quarter section, thence East along the South line of said quarter section, fifty three and one fourth rods, thence North until within two rods of the North line of the South half of said quarter

(9) section, thence West fifty three and one fourth rods to the place of beginning to contain twenty five acres exclusive of the highway on the West line of said premises, and also ten acres in a square form out of the South West corner of the South East quarter of the North West quarter of section number thirty four in the same Township and that your Oratrix should have full right and power to lease mortgage and convey the same for and during the term of her natural life as she might see proper, and upon her death should vest in and become the property and estate of the children of your Oratrix and said Cyrus H Blue, in fee simple, and it was further ordered and decreed, that the remainder of said South half of said North West quarter of said section thirty five, and the remainder of the South East quarter of the North West quarter of said section thirty four should vest in the said Cyrus H Blue for and during his natural life, and at his death the same should vest in and become the property and estate in fee simple of the said children of your Oratrix and said Cyrus H Blue, and that said Blue should have the right and power to sell, mortgage and convey his life estate in the said land and that as between your Oratrix and said Blue the incumbrances on said real estate should be thrown on that part thereof assigned and set off to said Blue so that your Oratrix should have and hold her said thirty five acres free of incumbrances; all of which will more and at large appear by reference to the record of said cause heretofore referred to, and the said last mentioned decree, which for greater certainty is here specially referred

(10) to, and a copy thereof attached to this your Oratrix's bill marked "D".

And your Oratrix further represents unto your Honor, that soon after the rendition of the said last mentioned decree, she entered upon and took possession of the said two tracts so set off to her by the said decree and from thenceforth has been in the possession and enjoyment of the same as by the terms of the said decree she was entitled to do.

And your Oratrix further represents unto your Honor, that during the pendency of the said suit between your Oratrix and the said Blue, after the decree of divorce had been rendered and before the final allotment of Alimony to your Oratrix as specified in the decree last aforesaid the the said Amos L Merriman procured a deed to be executed by by John Bryner then Sheriff of Peoria County and successor of said Francis W Smith upon the sale of the said land as hereinbefore set forth to satisfy the said judgment in favor of the said Riggs and Merriman against the said Blue which said deed as your Oratrix is advised and believes conveyed all the right title and interest both legal and equitable of said Blue in and to the said South half of the North West quarter of section thirty five in Township Eleven North of Range eight East as aforesaid and entitled the said Merriman to the possession thereof as against the said Blue or those claiming under him, which said deed is hereby referred to as part of this bill and for greater certainty a copy thereof is hereto attached marked "E".

(11)

And your Oratrix further represents that by virtue of the terms of said last mentioned decree the said Blue was bound to remove the said title so acquired by virtue of the said sale under the aforesaid judgment so as insure to your Oratrix the quiet and undisturbed possession and enjoyment of the said land so sett off to her by said last mentioned decree, yet your Oratrix shows unto your honor that for a long space of time said Blue wholly failed and refused to disencumber said land of the title so acquired by said Merriman, whereby your Oratrix was left in danger of being dispossessed by the said Merriman and deprived of all her Alimony under and by virtue of the said decree, and therefore your Oratrix for the purpose of protecting her interest in said land during her life, and of her said Children after her death purchased of and from the said Merriman all his right title and interest in and to the said two tracts of land mentioned in said deed from said Sheriff to said Merriman for the sum of one hundred dollars, and the said Merriman made executed and delivered to your Oratrix a deed of conveyance of the same, a copy whereof is hereto attached marked "I" and the original referred to as part of this bill, whereby your Oratrix became seized of all the right title and interest both at law and equity which the said Blue had in and to the said premises and had full right to the possession of the whole of said land as against the said Blue and those claiming under and through him.

And your Oratrix further represents unto

your Honor, that after the rendition of the said judgment in favor of the said Riggs & Merriman and after the sale of the said land to the said Merriman the said Blue paid to the said Phelps on his said Contract the sum of One hundred and thirty dollars on the sixteenth day of March A.D. 1860, leaving a balance remaining unpaid on the said Contract at the date of the said last mentioned decree of the sum of — — — — — dollars, all of which will more fully appear by reference to the said Contract and the receipts for said payments which are hereby referred to and will be produced on the hearing of this cause.

And your Orator further represents unto your Honor, that after the making and entering of said last mentioned decree, your Orator for the purpose of further protecting her interests in the said premises and to prevent a forfeiture of the said Contract between said Phelps and said Blue, paid to the said Phelps the sum of thirty seven dollars in consideration whereof the said Phelps agreed to extend the time for the payment of the balance remaining unpaid upon said Contract until some future period. And your Orator showeth that but for the payment of the said sum of thirty seven dollars, or thereabouts the said Contract would have been declared forfeited by the said Phelps, and your Orator together with the said Blue, would have been wholly dispossessed from every part thereof, and your Orator's Alimony would have been wholly lost. And your Orator showeth that she took this course on account of the threats made by the said

(13) Blue, that he would permit the said Contract to be forfeited for the purpose of preventing your Oratrix from receiving any benefit from the said land for or on account of her Alimony as aforesaid.

And your Oratrix further represents unto your Honor, that the said Phelps had full notice and knowledge of all the rights and equities of your Oratrix in and to the said land at the time of the making of said payment as aforesaid by your Oratrix to said Phelps and before the making of the deed by said Phelps to one Washington Wakefield hereinafter mentioned.

And your Oratrix further represents unto your Honor, that said Blue was bound by the said decree to protect your Oratrix in the enjoyment of all her equitable rights in and to the lands so set off by the said decree to your Oratrix, yet your Oratrix shows that from the time of the rendition of the said decree it has been the constant endeavor of said Blue to harass and annoy your Oratrix in her enjoyment of said premises and to divest the title and the right of possession thereof from your Oratrix, and particularly your Oratrix shows that on or about the fourth day of April A.D. 1862 the said Blue for the purpose of cheating and defrauding your Oratrix, made a false and fraudulent assignment of his said Contract with said Phelps to one Washington Wakefield who your Oratrix shows is a brother in law of the said Blue, but your Oratrix upon information and belief charges that no consideration whatever passed between the said Wakefield and said Blue for said assignment

that said Contract was never delivered to said Wakefield and that the said assignment is merely colorable and made for the purpose of cheating and defrauding your Oratrix in the premises.

And your Oratrix further charges upon information and belief that the said Blue for the purpose of inducing the said Phelps to make a deed of said land mentioned in said Contract to said Wakefield, paid to said Phelps the balance then remaining unpaid upon the said Contract, and then and there exhibited to said Phelps the said false & fraudulent assignment of said Contract as aforesaid, and then and there made certain false and fraudulent representations to said Phelps, that your Oratrix had relinquished all her right title & interest both at law & equity in and to said land to said Wakefield, and your Oratrix charges upon information and belief that for the purpose of deceiving the said Phelps into the belief that your Oratrix had so relinquished her rights in said land, said Blue exhibited to said Phelps a certain false, fraudulent and forged letter purporting to have been written by your Oratrix to said Phelps requesting him to make a deed of said land to said Wakefield, which letter your Oratrix shows unto your honor was and is a base forgery gotten up for the purpose of deceiving said Phelps and of cheating and defrauding your Oratrix out of her title to said land.

And your Oratrix further represents and charges upon information and belief that the said Phelps or those acting as his lawfully constituted agents were —

(15) deceived by the said letter into the belief that your Oratrix had parted with her interest in and to said land to said Wakefield, and being so deceived the said Phelps did on the said fifth day of April A.D. 1862, at the request of said Blue make and execute a deed of said premises to said Wakefield a copy whereof is hereto attached marked "G" and the original referred to as part of this bill, and delivered the same to said Blue, And your Oratrix charges that the said deed has never been in fact delivered to said Wakefield but yet remains in the hands of the said Blue, and your Oratrix asks your honor for a rule upon the said Blue and said Wakefield to produce the same on the hearing of this cause and failing to do so that your Oratrix may be permitted to read in evidence a certified copy thereof.

And your Oratrix charges that whatever title the said Wakefield holds (if any) to the said land is held by him for the use and benefit of the said Blue and ought to be decreed to belong to your Oratrix, for the benefit of your Oratrix and the Children of your Oratrix and said Blue, and unless the same is so decreed there is danger of the same being entirely lost to them by the fraudulent actions of the said Blue and his confederates. Your Oratrix charges that she is legally and equitably entitled to all the right title and interest which said Blue had in all of said land at the time of the said levy of said executions in favor of said Riggs and Merriman and against the said Blue, and that said Blue or those claiming by or through him —

ought not to be permitted to set up any other claim or title to said land whatever.

And your Oratrix further charges upon information and belief, that the said Blue now claims to be entitled to the possession of all of said land as the tenant of said Wakefield, and that said Blue and said Wakefield conspiring and confederating with each other and with divers other persons to your Oratrix now unknown (but who when discovered your Oratrix prays may be made parties defendant to this bill with apt words to charge them) to get possession of the said land have caused a notice to be served upon your Oratrix to quit and deliver up possession of the said land to the said Wakefield and threaten that unless your Oratrix deliver up possession to said Wakefield to proceed to expel your Oratrix therefrom by an action at law. Your Oratrix further shows that said Blue, for the purpose of intimidating your Oratrix into compliance with the terms of said notice has committed sundry & divers trespasses upon the said land now occupied by your Oratrix, that he has stacked the grain grown upon his own part of said premises upon the land occupied by your Oratrix & threatens to proceed to take possession of the same in a summary way & to expel your Oratrix out of the same. And your Oratrix further shows that the said deed from said Phelps to said Wakefield is not only a fraud upon your Oratrix in respect to her rights under the said decree but is a cloud upon the title to said land acquired by your Oratrix by the said deed from said Merriman to your Orat-

Inasmuch therefore as your Oratrix cannot have full complete and adequate remedy according to the strict rules of the law but can have redress only in this Honorable Court where such matters are heard and determined, and to the end that your Oratrix may have the said deed from said Phelps to said Wakefield set aside and the said Blue and Wakefield their agents and Attorneys restrained and enjoined from further molesting or interfering with the rights of your Oratrix, And that said Phelps may be decreed to make to your Oratrix a deed in fee simple for the whole of said land mentioned in said Contract, Your Oratrix prays that the said Cyrus H Blue, Washington Wakefield and William R Phelps may be made parties defendant to this your Oratrix's bill of Complaint, that Summons in Chancery may issue to the Sheriff of Peoria County Illinois requiring said defendants and each of them to full true and perfect answers make to the several allegations and charges herein contained as fully and perpectly as if here again interrogated in respect thereto, but not under oath (their oaths in that behalf being hereby expressly waived) and that in the mean time the said Blue and Wakefield be restrained and enjoined from interfering in any way with the possession of your Oratrix of said land & from commencing or prosecuting any suit or suits against your Oratrix for the recovery thereof, and that upon the final hearing of this cause the said deed from the said Phelps to said Wakefield be set aside, cancelled, annulled and wholly for naught esteemed, and that said

Phelps be by decree of this Court directed and compelled to make to your Oratrix a deed in fee simple in as full and complete a manner as he was bound under said contract to make to the said Blue or his assigns — And for such other and further relief as to your Honor may seem right & proper, and as in duty bound your Oratrix will ever pray &c —

(Signed) Lucy Blue

By Mc Culloch & Saggart
her Solrs

(Signed)
Mc Culloch & Saggart of Counsel —

"A"

Articles of agreement made and concluded the twenty fourth day of January eighteen hundred & fifty four; Between William R Phelps of Peoria Illinois party of the first part, and Cyrus H Blue of Peoria County Illinois, party of the second part; Witnesseth that the party of the first part at the request of the party of the second part and in consideration of the money to be paid, and the covenants to be performed as herein expressed, by the party of the second part (the performance of which payments and covenants being a condition precedent and time being the essence of said condition) hereby agrees to sell to the said party of the second part, all that certain tract of land situate in the County of Peoria in the State of Illinois known and described as the South half of the North West quarter of section thirty five (35) Eleven (11) North Range eight (8) East

of the fourth Principal Meridian, containing eighty acres more or less, with the privileges and appurtenances thereto belonging. And the said party of the second part in consideration of the premises hereby agrees to pay the said party of the first part his executors or assigns at the office of Phelps & Bourland in Peoria $700— Seven hundred dollars as follows; one hundred and seventy five dollars (March 20th in each of the years 1854, 1855, 1856, and 1857 with interest at the rate of six per cent per annum from the date hereof to be paid annually on the 20th day of March in each year, on on the whole sum from time to time remaining unpaid, And also that he will well and faithfully, in due season, pay or cause to be paid all taxes and assessments, ordinary and extraordinary for any purpose whatever levied or assessed upon the said premises or appurtenances or any part thereof subsequent to the year 1852, But in case the said party of the second part, fail to pay any or all such taxes or assessments upon the said premises or appurtenances or any part thereof whenever and as soon as the same shall become due or payable, And the party of the first part shall pay from time to time or at any time any or all such taxes or assessments or cause the same to be paid the amount of any and all such payments so made by the party of the first part shall immediately thereupon become an additional consideration and payment to be made by the party of the second part, hereto for the premises herein agreed upon to be conveyed.

And the said party of the first part further covenants and agrees with the said part of the second part, that upon the faithful performance by the said party of the second part of his undertaking in this behalf and of the payment of principal and interest of the sum above mentioned, in the manner specified, he the said party of the first, shall and will, without delay well and truly execute, acknowledge and deliver in person, or by Attorney duly authorized to the said party of the second part his heirs or assigns a deed of conveyance of all the right title and interest of the party of the first part, of, in and to the above described premises with their appurtenances with covenants of warranty against any and all persons claiming title from Palantee.

Provided always and these presents are upon the express condition that in case of the failure of the said party of the second part, his heirs, executors, administrators and assigns in performance of all or either of the covenants and promises on his part to be performed, the said party of the first part or his legal representatives shall have the right to declare this contract void, and thereupon to recover by distress upon the premises or otherwise all the interest which shall have accrued upon this contract as rent for use and occupation of said premises, and to take immediate possession thereof, to regard the person or persons in possession on such termination of the contract, or tenant or tenants holding over without permission (if that should be necessary to regain the prompt possession of the prem

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ises) And to recover all damages sustained by such holding over without permission, or by means of any waste committed or suffered on the premises by destruction of timber or otherwise.

In witness whereof the party of the first part, and the party of the second part, in their own proper persons have hereunto respectively set their hands and seals on the day and year first above written.

Sealed and delivered in presence of (Signed) William B Phelps Seal
" Cyrus H Blue Seal

"B"

Lina Blue
vs
Cyrus Blue

For Divorce

This day this cause again came on to be heard, and a jury of twelve good and lawful men of Peoria County having been called, empannelled charged, and sworn to try the issues joined between the parties in this cause, and the jury having heard the evidence and instruction of the Court, on their oaths say that they find the Defendant guilty of Adultery as charged in the petition, on consideration whereof and the Court having heard the evidence in the cause finds that the Defendant has & did commit adultery as charged in the petition and amended petition, and that the equity of the case is with the Petitioner, It is therefore ordered adjudged decreed and directed by the Court that the

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Petitioner Lina Blue be and she is hereby absolutely di=
vorced from the defendant Cyrus A Blue, and the Court
doth here now order adjudge and decree that the marriage
contract existing between the Petitioner & the defendant
be and the same is hereby rescinded annulled set
aside cancelled and wholly for naught esteemed the
same as though said marriage had never taken place.
And it is further ordered that all questions of Alli=
mony & as to the custody of the children be reserved
for further direction of the Court; And in the mean
time the Court doth here further order, adjudge, direct
and decree, that the Defendant be restrained & enjoined
from conveying, encumbering, selling or disposing of any of
his real estate & particularly the South half of the North
East quarter of section number thirty five, in Township
number eleven North range eight East of the fourth
Principal Meridian in the County of Peoria and State
of Illinois until otherwise ordered by the Court. And
it is further ordered that the Petitioner shall have full
permission to visit and take care of the Children, and
that in the mean time the Defendant be enjoined
and restrained from secreting the said children and
from removing them from Peoria County and said
Petitioner is prohibited from removing the children
from Peoria County or secreting the same. And by
agreement of the parties it is ordered that if any
necessity arises before the next term of this Court,
the question of Alimony and the Custody of the
Children is to be heard and determined by the Judge

(23) at his Chambers in vacation upon notice given to the opposite party deserving such hearing.

"C"

Dec 13th 1859. Liney Blue
vs
Cyrus Blue } For Divorce

This day the cause came on to be heard, and the Court having heard the evidence finds that the Defendant is not a suitable person to have the care and custody of the children, and that the Petitioner is a suitable person to have the care custody & control of her said children. And the Court further finds from the evidence that the premises referred to in the Petition filed in the cause Viz, the South half of the North West quarter of section thirty five in Township number eleven North of Range eight East of the 4th Principal Meridian, and the South quarter of the North West quarter of section thirty four in Township Eleven North of Range eight East all in the County of Peoria & State of Illinois are of the value of Twenty five hundred dollars and the same are subject to incumbrances exceeding thirteen hundred dollars and the title not perfect & the Court further finds from the evidence that the same cannot be apportioned or divided and that in case the Court should decree a sum of money as Alimony for the Petitioner no means

could be resorted to to enforce the Collection thereof. On consideration whereof it is ordered adjudged and decreed by the Court, that the Petitioner Liney Blue have the care custody and control of her said children the said Matilda Blue, Margaret O Blue, Mary E Blue and Nancy C Blue until the further order of the Court. It is further ordered that said Children shall not be removed from the jurisdiction of the Court and said Defendant shall be permitted to visit his said Children at all reasonable times when accompanied by some other suitable person. And it is further ordered adjudged and decreed by the Court here that the said Liney Blue shall have take and hold said premises (until further orders of the Court) herein before described, and that she have take and hold the sole and exclusive possession occupancy and control thereof and of the house and appurtenances thereto situate and thereto belonging and of the household and kitchen furniture and all the other personal property now in said house situate on said premises as her reasonable Alimony, and for the support of her said children. And it is further ordered adjudged and decreed by the Court that the Sheriff of Peoria County proceed without delay to put Petitioner in the quiet and peaceable possession of said premises and personal property. And it is further ordered directed adjudged and decreed by the Court that the Defendant Cyrus H Blue be and he is hereby restrained enjoined and prohibited from entering upon using and enjoying

or in anywise meddling with or encumbering said premises or personal property in any manner whatever until the further orders of the Court and that said Defendant pay the costs of this proceeding to be taxed. It is further ordered adjudged and decreed by the Court, that the said Liney Blue be required to give a bond with security in the penal sum of five hundred dollars to the People of the State of Illinois and conditioned that she will not remove the said Children out of the jurisdiction of the Court until the further orders of this Court therein, and that she execute said bond before she take possession of said premises, and file the same with the Clerk of this Court.

"D"

Dec 15th 1860

Liney Blue
vs
Cyrus Blue
} For Divorce & Alimony.

This day this cause again came on to be heard upon the question of Alimony and by the consent and agreement of the parties in open Court, It is by the Court here ordered directed adjudged and decreed that the said Petitioner Liney Blue have and hold during her natural life as and for her Alimony twenty five acres of land being part of the South half of the North West quarter of section number thirty five in Township number eleven North of Range number eight East of the fourth

principal Meridian in Peoria County Illinois, beginning two rods South of the North West quarter of section number thirty five above described thence South to the South West corner of said North West quarter of said section number thirty five, thence East along the South line of said quarter section fifty three and 1/4 rods, thence North until within two rods of the North line of the said South half of said North West quarter of said section number thirty five thence West fifty three and one fourth rods to the place of beginning to contain twenty five acres exclusive of the highway on the West line and side of said premises, And also ten acres in a square form out of the South West corner of the South East quarter of the North West quarter of section number thirty four in Township eleven North of Range eight East of the fourth principal Meridian in the County of Peoria and State of Illinois, and by the consent and agreement of the parties, it is further ordered adjudged and decreed by the Court here that said Liney Blue shall have and hold for and during her natural life, the said two Pieces or parcels of land the one of twenty five acres, and the other of ten acres with the appurtenances thereon, and she shall full right and power to lease Mortgage or convey the same for and during the term of her natural life as she may see proper and upon the death of her the said Liney Blue said premises so set off and allowed to her as her alimony shall vest in and become the property and estate of the children of the said Liney Blue and Cyrus H Blue in fee

(27) simple to be divided among the said Children, Matilda Blue, Margaret O Blue, Ellen and Nancy J Blue their heirs and assigns forever, And by the consent and agree= ment of the parties, it is by the Court here further ordered adjudged and decreed that the remainder of the said South half of the North West quarter of said section number thirty five in Township eight North and the and the remainder of said South East quarter of the North West quarter of section number thirty four, shall vest in the said Cyrus H Blue for and during his natural life and that upon the death of him the said Cyrus H Blue said part of said South half of said North West quarter of section number thirty five, and said part of the South East quarter of the North West quarter of section number thirty four hereinbefore sett off to said Cyrus H Blue shall vest in and become the property and estate in fee simple of the children of him the said Cyrus H Blue and Liney Blue named as above. It is further ordered adjudged and decreed by the Court here that the said H Blue shall have the right and power to sell Mortgage and convey his life estate in the land sett off to him by this de= cree, and that as between the said Liney Blue and Cyrus H Blue the incumbrances on said real estate shall be thrown on that thereof assigned and sett off to him the said Cyrus H Blue so that said Liney Blue shall have and hold her thirty five (35) acres free of incumbrance, It is further ordered that the decree for the divorce rendered at a former term of this Court

in this cause remain in full force and effect, And it is further ordered adjudged and decreed by the Court here that all former orders and decrees in this cause in consistance with this decree, be and the same are so far modified as to conform to this order and decree.

"E"

Whereas, on the 25th day of July A D 1857 James L Riggs and Amos Lee Merriman recorded a judgment before Bernard Bailey a Justice of the Peace in and for the County of Peoria and State of Illinois, and said judgment duly certified and filed in the office of the Clerk of the Circuit Court for said County on the 10th day of December A D 1857 against Cyrus A Blue for the sum of twenty five dollars and costs of suit, upon which judgment an execution was issued dated on the 17th day of December A D 1857 directed to Francis W Smith late Sheriff of Peoria County to execute, and by virtue of said execution the said Sheriff levied upon the lands hereinafter described, and the same were struck off and sold to Amos Lee Merriman he being the highest bidder therefor, and the time and place of the sale thereof having been advertised according to law, Now therefore know all men by this deed that I, John Bryner Sheriff of said County of Peoria and successor in office to Francis W Smith in consideration of the premises have granted bargained and

sold, and do hereby convey to the said Amos Lee Merriman his heirs and assigns, the following described tract of land to wit; The South half of the North East quarter of section thirty five (35) Township eleven (11) North of Range eight (8) East of the fourth principal meridian. Also the South East quarter of the North West quarter of section thirty four (34) Township eleven (11) North of Range eight (8) East of the fourth principal meridian in the County of Peoria and State of Illinois. To have & to hold the said described premises with all the appurtenances thereto belonging to the said Amos Lee Merriman his heirs and assigns forever.

Witness my hand and seal this twenty eighth day of November in the year of our Lord one thousand eight hundred and fifty nine.

(Signed) John Bryner (Seal)
Sheriff of Peoria County

State of Illinois }
Peoria County } ss

This day personally appeared before me Enoch P Sloan Clerk of the Circuit Court within and for said County John Bryner personally Known to me to be the real person whose name appears subscribed to the above deed of conveyance as having executed the same as Sheriff of the said County, and acknowledged the execution thereof to be his own free act and deed for the uses

& purposes and in the capacity therein set forth.
In testimony whereof I have hereunto set my hand and the Seal of said Court at Peoria this 16th day of December A.D. 1859.

(Signed) Enoch P Sloan Clerk

"F"

This Indenture made this twentieth day of December in the year of our Lord one thousand eight hundred and sixty, Witnesseth, that Amos L Merriman and Kate E Merriman his wife of the County of Peoria and State of Illinois part of the first part, for and in consideration of the sum of One hundred dollars paid by Laney Blue of the County of Peoria and State of Illinois part of the second part, the receipt of which is hereby acknowledged do hereby alien, release remise and quit claim unto the said part of the second part and unto his heirs and assigns forever, all those certain tracts of land lying and being in the County of Peoria and known and described as the South half of the North West quarter of section thirty five, and the South East quarter of the North West quarter of section thirty four, both in Township eleven North of Range eight East of the fourth principal Meridian in said County of Peoria and State of Illinois, To have and to hold the said premises together with all the appurtenances thereunto belonging or in anywise appertaining to the only proper use

benefit and behoof of the said part of the second part his heirs and assigns forever.

In witness whereof the said grantors have hereunto set their hands and seals the day and year first above written.

Signed Sealed & delivered in presence of } (Signed) A L Merriman (Seal)
" Kate Merriman (Seal)

State of Illinois
Peoria City & County } ss I, George L Bestor a Notary Public in and for said County do hereby certify that Amos L Merriman and Kate E Merriman his wife who are personally known to me as the persons whose names are subscribed to the within deed, appeared before me this day in person and acknowledged that they had signed sealed and delivered said instrument of writing as their free act and deed for the uses and purposes therein set forth.

And the said Kate E Merriman wife of the said Amos L Merriman having been examined separate and apart and out of hearing of her said husband and the contents and meaning of said instrument of writing having been by me fully made known and explained to her acknowledged that she had freely and voluntarily executed the same and relinquished her dower and title to the lands and tenements therein mentioned without compulsion of her said husband and that she does not to retract the same.

Given under my hand and official

seal this 21st day of December AD 1860

George L Beston (seal)

N. P.

"G"

Filed 14th May 1862.

This Indenture made this fifth day of April in the year of our Lord one thousand eight hundred and sixty two, Between William R Phelps of Peoria County in the State of Illinois and Margaret his wife, parties of the first part and Washington Wakefield of said county of the second part; Witnesseth that the said parties of the first part for and in consideration of the sum of seven hundred dollars lawful money of the United States of America to him in hand paid by the said party of the second part, at or before the execution and delivery of these presents the receipt of which is hereby acknowledged has remised released and quit claimed & by these presents do remise release and quit claim unto the said party of the second part & to his heirs and assigns forever, All that certain tract or parcel of land situate lying & being in the County of Peoria and State of Illinois known and described as the South half of the North West quarter of section thirty five in Township eleven North of Range eight East of the fourth Principal meridian containing eighty acres more or less: meaning and intending hereby to Warrant & defend the title to said premises against all persons lawfully claiming the same through or under the Grantee. Together with

(33)

all and singular the tenements and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders rents issues and profits thereof, And all the estate right title interest dower right of dower, property possession claim and demand whatever, as well in law as in equity, of the said parties of the first part of in or to the above described premises and every part and parcel thereof with the appurtenances. To have and to hold all and singular the above mentioned and described premises together with the appurtenances unto the said party of the second part his heirs and assigns forever. In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Sealed & delivered in presence of } (Signed) Wm R Phelps (Seal)
" Margaret I Phelps (Seal)

State of Illinois
County of Peoria, City of Peoria } ss. On this fifth day of April A D 1862, before me the undersigned a Notary Public in and for said City of Peoria, personally appeared William R Phelps and Margaret I Phelps who are personally known to me to be the same persons described in, and who executed the within deed and severally acknowledged that they executed the same for the uses and purposes therein expressed. And Margaret wife of the said William R Phelps in a private examination seperate and apart from her said husband after the

contents of said deed had been made known to her declared that she had executed the said deed and relinquished her dower to the lands and tenements therein mentioned freely and voluntarily without fear or compulsion of her said husband.

Witness my hand and notarial seal the day and year first aforesaid.

(Signed) Eugene McCune (seal)
Notary Public

(Filed September 11th 1862. Enoch P Sloan Clk
Pr J Newton Dpty)

(Filed in the Circuit Court of Woodford County, April 3rd 1863 — James D Perry Clerk)

(Copy of Answer)

State of Illinois } ss In the Circuit Court of Peoria
County of Peoria } County. To February Term AD 1863

Liney Blue
vs
Cyrus A Blue, Washington
Wakefield, Wm R Phelps

The joint and several answer of Cyrus A Blue Washington Wakefield and William R Phelps defendants, to the bill of Complaint of Liney Blue Complainant. These respondents now and at

(35) all times hereafter saving and reserving to themselves all right and benefit of exception which may be had or taken to the many errors and uncertainties in Complainants bill contained for answer thereto or to so much thereof as they are advised it is necessary for them to make answer unto, Answering say, That they suppose it is true as in Complainants Bill alleged, that on or about the 24th of January 1854 this respondent William R Phelps entered into a contract with Cyrus A Blue who was then the husband of the said Lucy Blue whereby said Phelps agreed to sell and convey to said Cyrus A Blue the real estate described in Complainants Bill upon the terms and conditions therein stated, respondents further answering say, that it is true that soon after the making of said Contract with said Phelps said Cyrus A Blue entered into the possession of said premises, and that he has remained in possession of the same from the time of taking such possession until the — — —
— — — — — — — — Respondents further answering state that said Cyrus A Blue made payments upon his contract with said Phelps from time to time as he was bound to do under his said contract, Respondents further answering say that they know nothing about the statements in said Complainants Bill as to the recovery of a judgment against said Cyrus A Blue by Rigg & Merriman before Bernard Bailey Justice of the Peace, nor do they know whether said judgment was certified and filed in the Office of the Clerk of the Circuit

Court of said County as alleged in said Bill nor do they know whether or not an execution was issued on said judgment, nor whether the said execution was levied upon the lands described in said Complainants Bill, nor whether the same was sold to said Amos L Merriman as therein alleged, they therefore neither admit nor deny said allegations but call for strict proof thereof.

These respondents further answering say that they suppose it to be true, that on or about the 2nd day of July 1859 the marriage contract theretofore existing between said Cyrus H Blue and said Lucy Blue was cancelled and set aside by the order of said Court, and the said Cyrus H Blue strictly restrained & enjoined from alienating disposing of or in any way incumbering said real estate, until the further order of said Court. Respondents further answering state that they suppose it to be true, that subsequent to the rendition of said decree of divorce the said Court ordered and decreed that the said Lucy Blue should have the care & custody of the children by her begotten and should also receive from said Cyrus H Blue a certain sum as Alimony, but these Respondents not being fully advised as to the allegations of said Bill in regard thereto, neither admit nor deny the same but call for proof of each and all the allegations of said Bill in regard to the decree of said Court in regard to said allowance of Alimony.

(37)

These respondents further answering state that they have no knowledge of the proceedings of said Circuit Court had on the 15th day of December 1860 in the case of said Lizzy Blue vs Cyrus H Blue & therefore neither admit or deny the allegations of said Complainants Bill in regard to the orders of said Court, touching the further disposition of the real estate of said Cyrus H Blue alleged in said Complainants Bill. Respondents further answering say that they supposed it to be true, that after the rendition of the last mentioned decree against said Cyrus H Blue the said Complainant entered into the possession of the real estate to which she was entitled by virtue of said decree, and that she is still in possession of the same.

These respondents further answering state that they have no knowledge of the execution of a deed by John Bryner Sheriff of said County to said Merriman as alleged in said Bill, they therefore neither admit nor deny said allegations but call for the proof of said allegation. Respondents further answering state that they have no knowledge the allegations in said Complainants Bill as to the purchase from said Merriman of any interest he may have had in said real estate by said Complainant; this respondent Cyrus H Blue further answering denies that the said Complainant paid to said Phelps the sum of thirty seven dollars for the purpose of preventing the forfeiture of the contract

which this respondent had made with said Phelps as alleged in said Complainants Bill, and he also denies that the said Phelps ever threatened to forfeit said Contract, or that he ever threatened to permit said contract to be forfeited for the purpose of affecting the Alimony of said Complainant.

These respondents further answering deny that the said Phelps or said Washington Wakefield had any Knowledge whatever of the rights or equities of the said Complainant in said real estate. This respondent further answering denies that he has ever endeavored to harrass or annoy said Complainant in her enjoyment of said real estate or to divest the title or right of possession from said Complainant.

Respondent C H Blue further answering denies that he made a false & fraudulent assignment of his contract with Phelps to said Washington Wakefield, but he avers that said contract was assigned to said Wakefield at the time alleged in said Complainants Bill for a good sufficient and valuable consideration and that the same was delivered to said Wakefield at the time the same was sold and assigned to him. This respondent Blue further answering states that it is true as in said Complainants Bill alleged that on or about the 5th day of April 1862 he paid the balance due upon said Contract to said Phelps, and that then upon the said Phelps made executed and delivered to said Wakefield a good and sufficient deed of

(39) conveyance of the real estate described in said Cow=
tract but respondent avers that he paid said
money to said Phelps as the agent of said Wakefield
and that he received said deed from Phelps as such
agent and delivered said deed to said Wakefield.

Respondent further answering denies
that he represented to said Phelps that said Com=
plainant had relinquished all of her right title
and interest in said real estate to said Wakefield
or that he exhibited to said Phelps any false
fraudulent or forged letter purporting to have been
written by said Complainant to said Phelps
requesting him to make a deed of said land to
said Wakefield. Respondent Blue further answer=
ing denies that he ever made any representations
or used any means to induce the said Phelps or
his agents to believe that said Complainant had
parted with her interest in and to the said real
estate to said Wakefield, but that the said Phelps
made executed delivered said deed from said —
Phelps to said Wakefield as the assignee of this res=
pondent as he was legally bound to do under and
by virtue of his said contract with this respondent.

This respondent Wakefield further
answering denies that he holds the title to said land
for the use & benefit of or in trust for said Cyrus H
Blue, but that he claims said land as his own by
virtue of his deed from said Phelps.

These respondents Blue and Wakefield

deny that they are conspiring or confederating with each other or with any other persons to get possession of Complainants land or in any manner to disturb or interfere with her peaceable possession of any part of the real estate of said Complainant. They deny that they or either of them have threatened to expel said Complainant from any part of her said real estate, or that they or either of them have ever committed any trespasses upon said land or threatened to take possession of the same and expel said Complainant from the possession thereof,

And now these respondents further answering deny each and all the allegations in said Complainants Bill not herein specifically answered or denied, And now having fully answered they pray to be hence dismissed with their just costs in this behalf most wrongfully sustained &c

By Ingersolls & Weed
their Solicitors.

(Signed) Cyrus A Blue
" Washington Wakefield
" William R Phelps

(Filed Feb 11. 1863 E P Sloane Clk)

(Filed in the Circuit Court of Rockford County April 3rd 1863 — James D Perry Clerk)

(411)

(Copy of Replication)

Siney Blue
vs
Cyrus H Blue, Washington Wakefield, William R Phelps

In Peoria Circuit Court.
Feby Term AD 1863

The Replication of Siney Blue to the answer of Cyrus H Blue, Washington Wakefield and William R Phelps to the Bill of Complaint heretofore filed by this Complainant,

This Complainant saving and reserving to herself all benefit of exception to the said answer on account of the manifold errors uncertainties & insufficiencies therein contained, for replication thereunto says, that she will maintain & prove her said bill to be true, certain & sufficient to be answered unto & that the said answer is untrue, uncertain & insufficient to be answered unto, Wherefore she prays as in her said bill she has prayed,

(Signed) Siney Blue
by Mc Cullough & Saggart
her Solrs

(Filed Feb 12, 1863. E P Sloan Clk)
(Filed in the Circuit Court of Woodford County April 3rd 1863 — James D Perry Clerk)

(Filed in the Circuit Court of Woodford County April 3rd 1863— James D Perry Clerk)

A record of the orders, decrees, and proceedings of the Honorable Circuit Court of Woodford County in the State of Illinois, sitting as a Court of Chancery. The Honorable Samuel L Richmond Judge of the twenty third Judicial Circuit of said State presiding at a Court begun and held at the Court house in Metamora in said County of Woodford, on the second Monday of April A D 1863 being the thirteenth day of said month.

Present the Honorable, Samuel L Richmond, Judge.
James D Perry Clerk
Louis H Bullock Sheriff

Attest. James D Perry. Clerk.

(Copy of amended answer filed in this Court)

Tiney Blue
vs
Cyrus H Blue
and others —

In Chancery. April term Woodford County Circuit Court 1863—

Amended answer of the defendants and each of them in the above entitled cause,

And the said defendants and each of them for amended answer say that at the time of the rendition of the judgment and sale against the said Cyrus H Blue as in the

(45) said bill alleged, and for a long time previous thereto, the said Cyrus H Blue was the head of a family residing therewith consisting of a wife and several children and resided and occupied the said premises in said bill mentioned, and the house and buildings thereon situate as a homestead, and that he took possion thereof as a homestead in the year 1853, and continued to occupy and reside thereon continually as such homestead at all times thereafter and still does together with all buildings thereon with his said wife and family at all times as aforesaid and did so occupy the said premises as such homestead at the time of the rendition of said judgment, and the issuing of such execution and sale thereof to the said Merriman, and at all times since he took possession thereof to wit, the South half N W 35 - 11 N 8 E and the N E 34 - 11 N - 8 E and that the buildings & residence were upon the said S ½ N W 35 - 11 N - 8 E And they further say the same was levied upon & sold without the knowledge of the said Blue and without the same released under said execution in any manner, and upon a debt that arose and was contracted after July 4 1851 to wit in the year 1854 and not before and that the said judgment and execution were not a lein thereon, and that the said Blue was at liberty to sell the same at any time free from said judgment execution & sale, and they pray hence to be discharged with their proper costs.

(Signed) Ingersoll & Reed
& M Williamson

(Filed April 22c 1863 - James D Perry Clk
pr W Sumner dpc)

(Copy of Replication filed in this Court)

Liney Blue
vs
Cyrus A Blue } In Woodford Circuit Court
In Chancery —

The replication of Complainant to the Amended answer of defendants.

Said Complainant saving all rights of exception &c for replication to the amended answer of defendants, says she will maintain her said bill to be in all things true, certain, and sufficient, and will prove the said amended answer to be untrue when & where this Court shall direct, Wherefore she prays as in her said bill she has prayed.

(signed) McCulloch & Taggart
Solrs for Complt.

(Filed December 16th 1863 James D Perry Clk
By N Summer Dpy)

Tuesday April 14th 1863

Liney Blue
vs
Cyrus A Blue,
Washington Wakefield
William R Phelps } Bill for relief
Change of Venue
from Peoria County. No 188.

This day this cause is continued by agreement.

Thursday April 23d 1863

Loney Blue
vs
Cyrus H Blue
Washington Wakefield
& William R Phelps

Bill for relief
Change of Venue
from Peoria County.

No 188.

Now on this day come the said Defendants by their Solicitors and file their motion for security for costs.

A record of the orders decrees and proceedings of the Honorable Circuit Court of Woodford County in the State of Illinois, sitting as a Court of Chancery, the Honorable Samuel L Richmond Judge of the twenty third Judicial Circuit of said State presiding at a Court began and held at the Court house in Metamora in said County of Woodford on the second Monday of August A D 1863 being the tenth day of said month.

Present the Honorable Samuel L Richmond Judge
James D Perry Clerk
Louis H Bullock Sheriff

Attest James D Perry Clerk.

Wednesday August 12th 1863

Liney Blue
vs
Cyrus A Blue
Washington Wakefield
& William R Phelps

Bill for relief
Change of venue
from Peoria County.

No 188

This day this cause is continued by agreement.

A record of the orders decrees and proceedings of the — Honorable Circuit Court of Woodford County in the State of Illinois, sitting as a Court of Chancery, the Honorable Samuel L Richmond Judge of the twenty third Judicial Circuit of said State presiding at a Court began and held at the Court house in Metamora in said County of Woodford on the second Monday of December A D 1863, being the fourteenth day of said month.

Present the Honorable Samuel L Richmond Judge
James D Perry Clerk
Louis A Bullock Sheriff

Attest James D Perry. Clerk.

1491

Friday December 18th 1863

Lucy Blue
vs
Cyrus A Blue
Washington Wakefield
& William R Phelps

Bill for relief
Change of venue
from Peoria County.

No 188.

Now on this day come the parties by their respective Solicitors, and by agreement this cause is continued.

A record of the orders, decrees and proceedings of the Honorable Circuit Court of Woodford County in the State of Illinois, sitting as a Court of Chancery, the Honorable Samuel L Richmond Judge of the twenty third Judicial Circuit of said State presiding at a Court began and held at the Court house in Metamora in said County of Woodford on the second Monday of April A D 1864 being the seventh day of said Month.

Present the Honorable Samuel L Richmond Judge.
James D Perry Clerk
Louis A Bullock Sheriff

Attest James D Perry Clerk.

(501)

Monday April 18th 1864.

Lucy Blue
vs
Cyrus H Blue
Washington Wakefield
and William R Phelps

Bill for relief
Change of venue
from Peoria County.

No 188

Now on this day comes the said Complainant by McCulloch & Taggart her Solicitors, and the said Defendants by Williamson their Solicitor, and this cause is submitted to the Court for hearing upon the Bill, Answer Replication and Proofs, and thereupon this cause is taken under advisement.

A record of the orders decrees and proceedings of the Honorable Circuit Court of Woodford County in the State of Illinois, sitting as a Court of Chancery, the Honorable Samuel L Richmond Judge of the twenty third Judicial Circuit of said State presiding, at a Court began and held at the Court house in Metamora in said County of Woodford on the second Monday of August AD 1864, being the eighth day of said month.

Present the Honorable Samuel L Richmond Judge.
James D Perry Clerk
Louis H Bullock Sheriff

Attest. James D Perry Clerk.

Wednesday August 10th 1864.

Liney Blue
vs
Cyrus H Blue
Washington Wakefield
and William R Phelps

Bill for relief
Change of venue
from Peoria County.

No 188.

Now on this day comes the Complainant by McCulloch & Taggart her Solicitors, and presents — the following decree in this cause, signed by the Court in vacation, which is ordered to be filed herein, which said decree is in the words and figures following to wit;

Liney Blue
vs
Cyrus H Blue
Washington Wakefield
William R Phelps —

In Woodford Circuit Court.
In Vacation after April Term
A D 1864. In Chancery.

And now on this 30th day of June A D 1864 this cause coming on by agreement of the parties to be heard in vacation, the same having been at the last term of this Court submitted upon the Bill answer replication, exhibits and proofs, and it appearing to the Court that the said defendants have jointly and severally answered the said Bill, and it appearing to the Court that the said William R Phelps did on the the 4th day of January A D 1854 contract with said Cyrus H

Blue for the conveyance by said Phelps to said Blue of the South half of the North West quarter of section number thirty five (35) in Township number eleven (11) North of Range number eight (8) East of the fourth Principal Meridian in the County of Peoria in the State of Illinois in the manner and according to the terms of the contract set out in said Bill; that the said Cyrus H Blue took possession of said land and made the payments thereon as alleged in said Bill; And it further appearing to the Court that on the 25 th day of July A D 1857 James L Riggs and Amos L Merriman recovered a judgment against said Cyrus H Blue before Bernard Baily a justice of the peace of said County, as alleged in said Bill which judgment was duly certified to and became of record in the Circuit Court of said County of Peoria as alleged in said Bill; that on the 17th day of A D 1857 an execution was issued upon the said judgment, that the same was levied upon the said land, that the same was advertised for sale and sold under said execution to the said Amos Lee Merriman as alleged in said Bill; And it further appearing to the Court that on the second day of July A D 1859 by the judgment of the Circuit Court of said County of Peoria the bonds of marriage theretofore existing between the said Complainant and said Defendant Cyrus H Blue were dissolved upon the petition & prayer of said Complainant, and the said Cyrus H Blue was restrained & enjoined from aliening or disposing

(531)

of or in any way incumbering the said tract of land until the further order of said Court; And it further appearing to the Court that on the 13th day of December A D 1859 by the judgment and decree of said Circuit Court it was ordered that the said Complainant should have take and hold the land aforesaid as her Alimony and the sole and exclusive possession, occupancy and control thereof until the further order of said Court and that the said Cyrus A Blue was thereby restrained and injoined from entering upon using and enjoying or in any wise meddling with or incumbering said premises in any manner whatever until the further order of said Court as alleged in said Bill; And it further appearing to the Court that on the 15th day of December A D 1860, by the judgment and decree of said Circuit Court it was ordered that the said Complainant should have as her Alimony the twenty five acres of said land bounded and described as in said bill alleged for and during her natural life, and upon her death the same should vest in and become the property and estate of the children of said Complainant and said Cyrus A Blue, and that said Cyrus A Blue should have the remainder of said land for & during his natural life and at his death the same should vest in and become the property of the children aforesaid; and that as between the Complainant and Defendant Cyrus A Blue the incumbrances on said land should be thrown on that part of said land assigned and set off to said Cyrus

H Blue so that said Complainant should have and hold her said share of said land free of all incumbrances as alleged in said Bill; And it further appearing to the Court that in pursuance of the sale of said land to said Merriman as aforesaid a deed was made to said Merriman dated on the 28th day of November A D 1859 as alleged in said Bill; that on the 20th day of December A D 1860 the said Merriman made a deed for the said land to said Complainant as alleged in said Bill; And it further appearing to the Court that on or about the 4th day of April A D 1862 the said Cyrus H Blue assigned his interest in the said Contract so made with the said Phelps as aforesaid to said Defendant Washington Wakefield and in pursuance of said assignment the said William R Phelps did on the fifth day of April A D 1862 make execute and deliver to said Washington Wakefield a deed of the whole of the tract of land hereinbefore described, as alleged in said Bill; And it further appearing to the Court that at the time of the levy of the said execution and of the sale of said land to said Merriman by virtue thereof, the said Cyrus H Blue was the head of a family and a householder residing upon the said land with his family, the said Complainant at that time being his wife and residing with him upon the said land; It is therefore ordered adjudged and decreed that as to the said twenty five acres so set off to the said Complainant by the said decree of said Circuit Court

(537) of Peoria County rendered on the 15th day of December A.D 1860 and described in said Bill, the equities are with the Complainant, that the said Washington Wakefield do within the space of thirty days after the entering of this decree make execute and deliver to said Complainant a deed conveying all his right title & interest in and to the said twenty five acres in said bill described and which is bounded and described as follows to wit, Part of the South half of the North West quarter of section number thirty five in Township number eleven North, of Range number eight East of the fourth Principal Meridian in the County of Peoria and State of Illinois, beginning two rods South of the North West corner of the South half of said North West quarter of section number thirty five above described, thence South to the South West corner of said quarter section, thence East on the South line of said quarter fifty three and one fourth rods, thence North to within two rods of the North line of the South half of said quarter section, thence West fifty three and one fourth rods to the place of beginning, to have and to hold the same to said Complainant during her natural life with remainder to the children of said Complainant and said Cyrus H Blue named in said Bill in fee simple, and in default of such conveyance that the Master in Chancery of this Court make execute and deliver a deed to said Complainant upon the terms and conditions

aforesaid, and that the said Cyrus A Blue and Washington Wakefield be perpetually restrained and enjoined from intermeddling with or in any way interfering with the possession of said Complainant in and her enjoyment of the same, and from setting up the said deed from the said Phelps to said Wakefield in any Court or place whatever to the prejudice of said Complainants rights in the said last herein described; It is further ordered adjudged and decreed that as to all other relief prayed for in said bill, the said Complainant take nothing by reason thereof and that the Complainant pay one third of the costs of this proceeding and that said Complainant have & recover of said Defendants two thirds of the costs of this pro= ceeding and that execution issue therefor.
It is further ordered that either party shall have until the end of the next term of this Court to pray an Appeal from this decree.

(Signed) S S Richmond
Judge.

(Filed August 10th 1864. James D Perry Clerk)

And now comes the said Complainant by McCulloch & Taggart her Solicitors, and prays an Appeal to the Supreme Court of this State, which is by the Court allowed, upon the Complainant entering into bond in the penal sum of five hundred dollars conditioned according to law, with Andrew Kirkpatrick as security, bond to be filed in thirty days, And by agreement of the parties

(57) bill of exceptions to be filed by the first day of the next term of this Court.

(Copy of Agreement)

State of Illinois } In Woodford Circuit Court.
Woodford County } To August Term 1864.

Leroy Blue
vs } In Chancery, for relief.
Cyprus A Blue & others }

It is hereby agreed by the Defendants to the above entitled cause, that the Complainant herein may have until the next term of this Court, to wit, to the December term 1864, to prepare the bill of exceptions for the Supreme Court, in said cause, and that said Bill of exceptions when prepared shall be submitted to said Defendants, and that the same may be signed by the Judge of this Court at or before said term & have the same effect as if signed & sealed at the present time.

(signed) M Williamson
for defts.

August 9th 1864.

(Filed August 10th 1864 James D Perry Clerk)

(Copy of Certificate of evidence)

State of Illinois } In Circuit Court.
Woodford County } ss To August Term A.D 1864.

Liney Blue
vs
Cyrus H Blue, Washington } In Chancery
Wakefield, William R Phelps } For relief.

Be it remembered that on the trial of this cause at the said August Term A.D 1864 of the said Circuit Court, the same was tried by the Court, and the said Complainant to maintain the issue on her part gave in evidence,

1. Articles of agreement between William R Phelps and Cyrus H Blue, dated January 24th 1854, which is set out as exhibit "A" to the Bill in this cause.
(See pages 18. 19. 20 & 21 of this record)

2. A certified copy of a decree dissolving the bonds of matrimony between Liney Blue and Cyrus H Blue of the Peoria Circuit Court dated July 2d 1859, which is set out as exhibit "B" to the Bill in this cause.
(See pages 21. 22 & 23 of this record)

3. A certified copy of decree for alimony and custody of the children between Liney Blue and Cyrus H Blue dated Dec 13th 1859, of the Peoria Circuit Court, which

(59) is set out as exhibit "C" to said Bill.
(See pages 23. 24 & 25 of this record)

4. A certified copy of a decree of the Peoria Circuit Court dated Dec 15 th 1860 between Sciney Blue and Cyrus A Blue for Alimony, which is set out as exhibit "D" to the said Bill.
(See pages 25. 26. 27 & 28 of this records)

4a. A certified copy of a transcript of a judgment before Bernard Baily Justice of the Peace in Peoria County, between James Riggs and Amos L Merriman Plffs, and Cyrus A Blue deft, also levy and return by the Sheriff of said County as shown in said transcript, by the Clerk of the Circuit Court of Peoria County, (to wit)

(Copy of certified copy of a transcript of Judgment)

James L Riggs
Amos L Merriman
vs
Cyrus A Blue

In Assumpsit. Demand $25.00

Cyrus A Blue

To Riggs & Merriman Dr

1853. To Services in perfecting title to land and drawing deed of same to Houston — $25.00

State of Illinois }
Peoria County — }ss.

The People of the State of Illinois
to any Constable of said County, Greeting;

You are hereby commanded to summon Cyrus A Blue to appear before me at my Office in Peoria on the 21st day of May Inst at 1 O'clock P M, to answer the Complaint of James L Riggs and Amos L Merriman for a failure to pay them a certain demand not exceeding, Three hundred dollars, and hereof make due return as the law directs.

Given under my hand and seal this 14th day of May A D 1857.

(Signed) Bernard Bailey J.P. (seal)

I have served the within by reading to the within named this May 14th 1857.

Wm A Ewing. Const.
Costs $1.25.

Damages $25.00
Justices costs.

Issuing Summ	19
Docketing suit	12
One Sub	10
Four cases	50
Swearing Wit	06
Ent Judgment	25
Execution	25
Transcript &c	1.50
	3.06

Summons issued on the 14th day of May A D 1857, returnable on the 21st Inst at 1 O'clock P M, and returned by W A Ewing Const, served by reading to the defendant on the 14th. On the return day, the parties appeared and by consent the cause continued until the 1st day of June next at 1 o'clock P M. Subpoenas issued to Allen Wilkey and George Houston on the 28th.

Wm A Ewing Const. 1.25
Ser & Re Summ
J H Batchelors costs.
Serving Ret Ex 1.68
5.93

On the return day the parties again appeared and by consent the cause continued until the 22nd Inst, at 1 Oclock P M. On the return day the parties appeared and by consent the cause again was continued until the 25th day of July next at 1 Oclock P M, On said return day the parties appeared and after hearing their proofs and allegations, it is ordered and adjudged that the Plaintiff recover twenty five dollars, and the costs of suit. Execution issued on the 4th day of September A D 1857, and given to John H Batchelder Const, and returned by him on the on the 14th day of November A D 1857. No property found.

State of Illinois }
Peoria County } ss

The People of the State of Illinois, to any Constable of said County, Greeting;

We command you, that of the goods and chattels of Cyrus H Blue in your County you make the sum of twenty five dollars, and .. cents debt and two dollars and eighty one cents costs with interest from the 25th day of July 1857, when judgment was rendered which James L Riggs and Amos L Merriman lately recovered before me in a certain plea against the said Cyrus H Blue and hereof make return to me within seventy days from this date.

Given under my hand and seal this 4th day of September 1857.

(signed) Bernard Bailey J P (seal)

This execution returned no property found whereon to levy this execution this 14th day of

State of Illinois
Peoria County ss.

I Bernard Bailey one of the Acting Justices of the Peace in and for said County do hereby certify that the above is a true and correct copy of the books and papers filed in my office in the above entitled cause.

Given under my hand and seal this 10th day of December A D 1857.

(signed) Bernard Bailey J P. (seal)

And afterwards, to wit, on the seventeenth day of December A D 1857. there was issued from the office of the Clerk of the Circuit of Peoria County Illinois, an execution, which said execution, together with the Sheriff return thereon, are in the words and figures following, to wit;

The People of the State of Illinois,

To the Sheriff of Peoria County, Greeting: —

Whereas, by the consideration of Bernard Bailey Esqr a Justice of the Peace in and for the County of Peoria, on the twenty fifth day of July in the year of our Lord one thousand eight hundred and fifty seven, James L Riggs and Amos L Merriman recovered judgment against Cyrus H Shue for the sum of twenty five dollars

(63) and nine cents debt, and two dollars and 81 cents costs of suit, as appears by the transcript of the said judgment, duly certified and filed in the Office of the Clerk of the Circuit Court for said County on the tenth day of December 1857. ..... We therefore command you, that of the goods and chattels, lands and tenements, of the said Cyrus A Blue you cause to be made the aforesaid sums of money, with the interest thereon at the rate of six per centum per annum, and also the further sum of five dollars and thirty two cents, additional costs; and that you have the same ready, as soon as may be, to render unto the said James L Rigg & Amos L Merriman according to law. Hereof fail not, and make return of this writ, with your doings, ninety days after the date hereof.

Witness, Enoch P Sloan, Clerk of our said Court, and the seal thereof, at Peoria this seventeenth day of December in the year of our Lord, one thousand eight hundred and fifty seven.

L S

(Signed) Enoch P Sloan Clerk

R H

Sheriffs return on the foregoing Execution

State of Illinois }
Peoria County } ss.

By virtue of this writ of execution to me directed from the Circuit Court of Peoria County, I did this 23 day of December A D 1857, levy upon the following

described real estate to wit, the South half of the North West quarter of section thirty five, Township eleven North Range eight East, also the North East quarter of the North West quarter of section thirty four Township eleven North Range eight East all in the County of Peoria & State of Illinois.

(signed) J N Smith Shff.

And afterwards, to wit; on the 9th day of January AD 1858, I advertised the above described real estate for sale on the 30th day of January AD 1858, at two o'clock P M of said day at the front door of the Court House in the city of Peoria by advertising as the law directs, And afterwards, to wit, on the 30th day of January AD 1858, I attended at the time and place of sale and offered the above described real estate for sale at Public Vendue, I first offered the South half of the North West quarter of section thirty five Township eleven North Range eight East, Whereupon Amos L Merriman bid the sum of Fifty dollars, I then offered the North East quarter of the North West quarter of section thirty four Township eleven North Range eight East all in Peoria County, Whereupon Amos L Merriman bid the sum of thirty four dollars and eighty seven cents, making in all eighty four dollars and eighty seven cents, for the whole of the above described real estate which being the highest and best bids they were struck off and sold to him at that price and a certificate of purchase delivered to the purchaser and a duplicate copy of the same filed

(65) for record in the Recorders office of Peoria County.

(Signed) I W Smith Sheriff

State of Illinois }
Peoria County } ss.

ten cent. revenue stamp

I, Enoch P Sloan, Clerk of the Circuit Court, within and for said County, do hereby certify, that the foregoing is a true and correct copy of a Transcript, filed for record and recorded in my office on the 10th day of December A D 1857, and of an execution issued thereon, together with the Sheriffs return upon said execution wherein James L Rigg and Amos L Merriman were Plaintiffs, and Lyman H Blue was Defendant, as the same appears of record and on file in my office.

Given under my hand, and the seal of said Court, at Peoria this 10th day of April in the year of our Lord one thousand eight hundred and sixty three.

Seal

(signed) Enoch P Sloan Clerk

per I Newton Dpty

5. Deed from John Bryner Sheriff of Peoria County dated November 28th 1859 to Amos Lee Merriman for the real state in controversy in this case, which is set out as exhibit "C" to the Bill in this case.

(See pages 28, 29 + 30 for this record)

(166) 6. Deed dated December 17, 1860 from Amos L Merriman and wife to Giney Blue, Comp. herein, which is set out as exhibit "F" to the bill.

(See pages 30, 31 & 32 of this record)

7. Deed from Williams R Phelps & wife to Washington Wakefield for the land in controversy, dated April 5th 1862 which is set out as exhibit "G" to the Bill in this case.

(See pages 32, 33 & 34 of this record)

8. The depositions of Benjamin L I Bourland & Eugene Mc Cune, taken before James L Barkman, (to wit)

(Copy of Deposition)

Giney Blue
vs
Cyrus H Blue, Washington Wakefield Et al

In Woodford Circuit Court.
April Term A D 1863
In Chancery

Take notice that on the 24th day of March A D 1863 between the hours of eight o'clock A M & six o'clock P M. of said day & continuing from day to day if necessary at the office of Mc Cullock & Taggart in the City of Peoria and State of Illinois and before Leslie Robinson a Notary Public or some other person authorized by law to take depositions we shall take the depositions of Sandford Reed, Marion Reed, ~~Senior Reed~~, Samuel Sprague, Benjamin L I Bourland & Eugene D Mc Cune, to be read in evidence on the trial of the

(67) above entitled cause on the part of said Complainant, when & where you can be and appear and cross examine said witnesses if you deem proper.

Dated Peoria March 12. 1863. (Signed) Mc Culloch & Saggart
Solrs for Compt.

To Messrs Ingersoll & Read
Solrs for Defts.

To Messrs Ingersoll & Read
Solrs for Defts in the within entitled cause,

You are hereby notified to produce on the examination of said witnesses named in the foregoing notice & also on the hearing of said cause, a certain letter purporting to have been written by the said Complainant dated at London, Madison County Ohio, addressed to Wm R Phelps or to Messrs Phelps & Bourland purporting to authorize the said William R Phelps or said Phelps & Bourland to make a deed of the South half of the North West quarter of section thirty five in Township eleven North of Range eight East of the 4th Principal meridian in Peoria County Illinois to one Washington Wakefield, and which letter came to your possession through the hands of Benjamin F Bourland, and in case of your failure to produce said letter on such examination we shall proceed to prove the contents thereof.

Dated Peoria March 12th 1863 (Signed) Mc Culloch & Saggart
Solrs for Compt

(Recd copy Mch 12. 1863. Ingersoll & Read attys for Blue)

(68)

Deposition of Benjamin L I Bourland and Eugene Mc Cune taken in pursuance of and by virtue of the annexed notice before James S Barkman a Notary Public in and for the City of Peoria in the State of Illinois on the 24th day of March A D 1863 to be used on the trial of a certain cause now pending and undetermined in the Circuit Court of Woodford County in said State, wherein Liney Blue is Complainant, and Cyrus H Blue, Washington Wakefield et al are Defendants - On the part and behalf of the Complainant, -

Benjamin L I Bourland after being duly sworn in answer to oral interrogatories says,

My name is Benjamin L I Bourland, I am thirty seven years of age, I reside in the city of Peoria in the State of Illinois, my occupation is Land Agent and Commission Merchant, I am personally acquainted with all the parties to this suit except Washington Wakefield. The paper now shown to me and attached to my deposition and marked A, I recognize as a paper written in the office of Phelps, Bourland and Cockle and executed by William R Phelps & Cyrus H Blue, So far as I know the money receipted for was paid by Cyrus H Blue as shown by the receipts written on and attached to said Contract, said receipts being respectively marked (1). (2). (3). (4). (5). (6). (7). (8). There was some thirty or forty dollars paid by Mrs Blue to William R Phelps with the understanding that the same was to be credited on said Contract, provided Cyrus H Blue did not subsequently pay the same; in case he

should do so the money was to be returned to Mrs Blue. An assignment written on the back of the contract marked A, was now shown to the deponent and said deponent says, I believe the signature to be that of Cyrus A Blue. There was a deed made in pursuance of said contract from William R. Phelps & wife to Washington Wakefield, At the time of the delivery of the deed there was a balance of some sixty dollars due, to pay which Cyrus A Blue delivered me a horse which I received as payment in full of balance, I was acting as agent for said Phelps I owning an interest in the matter myself, The contract was surrendered by said Cyrus A Blue at the time of the delivery of the deed, and the deed was delivered to said Cyrus A Blue, Never saw Wakefield that I know of, The assignment was on the contract at the time of the delivery of the deed, I supposed I had the consent of Mrs Blue to the making of said deed to said Wakefield, Cyrus A Blue had been to me frequently before the deed was delivered arguing me to deliver the deed to him which I declined to do without the consent of Mrs Blue, I supposing she Mrs Blue had an equitable interest in the land and was apprehensive I might be doing her an injury, I knowing of their family difficulty, he finally however brought me a paper purporting to be signed by Lucy Blue and to have been written somewhere in the State of Ohio, the language of which I cannot remember, but in substance it contained

her consent to the delivery of the deed made to Wakefield, that paper I intended to preserve and supposed I had done so until I looked for it and then could nowhere find it, and cannot now find it. I thought it was important I should preserve the paper, I cannot account for its disappearance. I do not know whether said paper was in the hand writing of Mrs Blue. I cannot state distinctly about the ownership of the horse at the time I received him, I do not remember what Cyrus H Blue said about him at the time he delivered the horse.

Cross Examination.

I do not know what I did with that paper but intended to file it with the cancelled contract how it disappered from my office I do not know, Cyrus H Blue has been in my office since the delivery of the deed to Wakefield once or more, I have no recollection of said Cyrus H Blue being at my office between the time of the delivery of the deed and the time when I missed the paper though he may have been. I do not think he had any opportunities of taking said paper after I had filed it away in my office, Cyrus H Blue at the time of the delivery of the deed professed to be acting as the Agent of Wakefield, and was evidently acting in his own interest also. I derive my information of Mrs Blue making any payments from memorandums in the office, as I was not in the office at

(71) the time of any payments being made by her, I do not recollect the date of that paper nor whether it had any date. I never saw Mrs Blue write.

(Examination in chief resumed)

Cyrus H Blue was in my office yesterday. I said to him it was strange what had become of that paper, he said it was very strange and seemed to regret the loss of it, he said the paper was written by Mrs Blue in his presence ~~in Peoria~~ only a very short time before he brought it to me that she was not at the time in the State of Ohio, and when I asked him why it purported to be written in Ohio, he says. O! she wanted it that way, I have ~~not~~ no recollection of seeing the paper after the deed was delivered.

(Signed) B L T Boutland

Defendants by Ingersoll & Mead after Eugene D Mebane one of the witnesses on behalf of the Complainant had been sworn objected to said Mc Cune giving his deposition in this cause — And for cause of said objection says, that said Mc Cune is and was a clerk in the law office of said Ingersoll & Mead & derived whatever information he may have in relation to the matters in Controversy between said parties, while acting in the capacity of clerk in the office of said Ingersoll & Mead who were and are Attorneys for said

defendants in said suit, and said Mc Cune being sworn as to his competency as a witness in said cause wherein Leroy Blue is Complainant and Cyrus H Blue, Washington Wakefield et al are defendants says,

I am a clerk in the Office of Ingersoll & Read & have been so employed for a year past, I Knew of a law suit between the parties information of such law suit came to my knowledge while acting as clerk, I never derived any information with regard to the matters in controversy in suit between said parties other than as such clerk.

Cross Examination.

I refer to the suit touching the conveyance of certain land from W R Phelps to Washington Wakefield which I understand to be the suit in which it is desired that I now give my deposition. I do not remember whether my information was derived before or after the commencement of the suit. At that time I was a licensed Attorney. I was not doing business as an Attorney at that time on my own account. I was employed in the capacity of clerk in the office of Ingersoll & Read. Cyrus H Blue had not employed me as an Attorney in the matters in controversy in this suit.

Examination of competency of Eugene D Mc Cune as a witness resumed on the part of the defendants.

(73)

The firm of Ingersoll & Read had been consulted by Cyrus H Blue touching the conveyance of the lands in controversy, I was present at those consultations Whatever knowledge I have about this matter was derived from being present at such consultations. Whatever transpires in the office in which I am employed in my presence as between Ingersoll & Read and their clients, I regard as confidential, by their direction; It is understood I am not allowed to disclose any thing that takes place between Ingersoll & Read & their clients.

Direct Examination.

My name is Eugene McCune, I am twenty four years of age. I reside in the city of Peoria Illinois my occupation is Attorney at law, I am acquainted with all the parties to this suit except Washington Wakefield. I have known Cyrus H Blue for three years, I have known Leroy Blue for several years by sight, I am acquainted with the matters in controversy in this suit, The body of the assignment on the back of the paper attached to the deposition of Benjamin L F Bowland and marked "A" is in the hand writing of John J Read one of the Solicitors for the Defendants in this cause.

I do know of a deed being executed from William R Phelps & wife to Washington Wakefield for the land mentioned in the paper marked "A" and attached

to Benjamin L I Bourlands deposition. That deed was acknowledged before me by William R Phelps & wife as a Notary Public. I was present at the time of the execution of the ~~assignment of the~~ written on the back of the contract marked "A" and hereto attached. That assignment was executed before the delivery of the deed, to the best of my knowledge. I think the contract was delivered to Benjamin L I Bourland after the execution of the assignment thereof. I do not know of any consideration passing from any one to Cyrus A Blue in consideration of the execution of said assignment of said contract. I believe said deed was delivered to Cyrus A Blue. I think Wakefield was not present at any transaction in our office touching the conveyance of this land. I saw what purported to be the written consent of Lucy Blue to the conveyance of this land from Phelps & wife to Washington Wakefield. I saw it in our office. It was in the possession of Cyrus A Blue, it was before the execution and delivery of the deed, to the best of my recollection. I have not seen that paper since. I looked at it sufficiently to know what it was. I cannot remember the language. I think it was dated. I cannot remember the date if any. It purported to be dated at London or New London in the State of Ohio. It purported to be signed by Lucy Blue, it was not in an envelope, but was folded up like a letter. I cannot

(135) remember whether it was endorsed, it had no post mark on it that I saw, I am not certain whether Cyrus H Blue took it out of an envelope or not, it was written I think on a half sheet of blue note paper, I think it was directed to Mr Phelps. As near as I recollect it contained Liney Blue's consent and wish to have certain lands conveyed to Washington Wakefield by William R Phelps, it occupied one page of note paper, I think her name was spelt Liney or Leny Blue. It was I think written in rather a light hand though not a delicate one, Cyrus H Blue put it back in his wallet I think, Cyrus H Blue pointed out to me the horse he had delivered to Benjamin L I Bowland, ~~I think~~ Cyrus H Blue said he brought the horse there. I do not know that said Blue professed to be acting as agent of said Wakefield in the transaction concerning the land in controversy.

Cross Examination.

That letter was shown to me in order that I might prepare the necessary papers for the conveyance of the land, as I was attending to the business in the absence of Ingersoll & Read who were both absent.

(Signed) Eugene Mc Cune

State of Illinois }
County of Peoria } I, James L Barkman a Notary Public

in and for the City of Peoria in said County and State do hereby certify the the foregoing depositions of Benjamin L S Bourland and Eugene Mc Cune were taken sworn to and signed by said Bourland and Mc Cune, at the office of Mc Culloch and Saggart in said City on the 24th day of May A D 1863 in pursuance of the notice hereto attached and that said depositions were completed on said 24th day of March A D 1863

In witness whereof I have hereto set my hand and affixed my Notarial Seal at my office this 24th day of March A D 1863

Seal

10 cent revenue stamp

(signed) James S Barkman
Notary Public

Notary Publics fee for taking depositions $3.20
Paid by Mc Culloch & Saggart
Solrs for Complainant.

(Copy of agreement attached to depositions)

Articles of Agreement, made and concluded the twenty fourth day of January eighteen hundred and fifty four, Between William K Phelps of Peoria Illinois party of the first part, and Cyrus H Blue of Peoria County Illinois party of the second part, Witnesseth, that the party of the first part, at the request of the party of the second part, and in consideration of the money to be paid, and the covenants as herein expressed to be performed

by the party of the second part, (the prompt performance of which payments and covenants being a condition precedent, and time being the essence of said condition,) hereby agrees to sell to the said party of the second part, all that certain tract of land, situate in the County of Peoria in the State of Illinois, known and described as The South half of the North West quarter of section thirty five (35) Eleven (11) North Range eight (8) East of the fourth Principal Meridian containing eighty acres more or less, with the privileges and appurtenances thereto belonging. And the said party of the second part, in consideration of the premises, hereby agrees to pay the said party of the first part his executors or assigns at the office of Phelps & Bourland in Peoria, (*700 Seven hundred dollars, as follows viz; One hundred and seventy five dollars March 20th in each of the years 1854, 1855, 1856, and 1857 with interest at the rate of six per cent per annum from the date hereof, to be paid annually on the 20th day of March in each year, on the whole sum from time to time remaining unpaid. And also that he will well and faithfully in due season, pay or cause to be paid all taxes and assessments, ordinary and extraordinary for any purpose whatever, levied or assessed upon the said premises or appurtenances, or any part thereof, subsequent to the year 1852, But in case the said party of the second part fails to pay any or all such taxes or assessments upon the said premises or appurtenances or any part

thereof, whenever and as soon as the same shall become due or payable; and the party of the first part shall pay from time to time, or at any time, any or all such taxes or assessments, or cause the same to be paid, the amount of any and all such payments so made by the party of the first part shall immediately thereupon become an additional consideration, and payment to be made by the party of the second part hereto for the premises herein agreed to be conveyed. And the said party of the first part, further covenants and agrees with the said party of the second part, that upon the faithful performance by the said party of the second part of his undertaking in this behalf and of the payment of principal and interest of the sum above mentioned, in the manner specified, he the said party of the first part, shall and will without delay, well and faithfully execute acknowledged, and deliver in person or by Attorney duly authorized, to the party of the second part, his heirs or assigns a deed of conveyance of all the right title and interest of the party of the first part, of, in, and to the above described premises, with their appurtenances with covenants of warranty against any and all persons claiming title from the Patentee.

Provided always, and these presents are upon the express condition, that in case of the failure of the said party of the second part his heirs, executors, administrators and assigns, in the performance of all or either of the covenants and promises on his

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part to be performed, the said party of the first part or his legal representatives, shall have the right to declare this contract void, and thereupon to recover by distress, upon the premises or otherwise, all the interest which shall have accrued upon this contract, as rent for use and occupation of said premises, and to take immediate possession thereof; to regard the person or persons in possession, on such termination of the contract, as tenant or tenants holding over without permission, (if that should be necessary to regain the prompt possession of the premises) and to recover all damages, sustained by such holding over without permission, or by means of any waste committed or suffered on the premises by destruction of timber or otherwise.

In Witness Whereof, the party of the first part, and the party of the second part, in their own proper persons have hereunto respectively set their hands and seals, on the day and year first above written.

Sealed and delivered in presence of — (Signed) Wm R Phelps Seal
" Cyrus A Blue Seal

(Copy of receipt annexed to Agreement)

$100.— Recd Peoria March 22d 1854 of Cyrus A Blue
(1) one hundred dollars on the annexed contract.
(signed) Phelps Bowland & Bockle

(80) (2) $50 — Rec^d Apl 10 1854 Fifty dollars
(signed) Phelps Bourland & Cockle

$100 Rec^d Peoria Dec 9. 1854 of C H Blue a certificate of deposit with J P Hotchkiss & Co of this dated
(3) for one hundred dollars payable on the 1st March 1855, to apply on the Contract of said Blue for S½ NW 35. 11 N 8 E as paid 1 March 1855.
(signed) Phelps Bourland & Cockle

$75 — Received Peoria March 55 of C H Blue
(4) seventy five dollars to apply on this Contract.
(signed) Phelps Bourland & Cockle
per Chambers

Received Peoria May 26 1856 of Cyrus H Blue
(5) one hundred & eighty five dollars to apply on the within Contract.
$185 — (signed) Phelps & Cockle
Chambers

$130. Rec^d Peoria March 16 1860 of Cyrus H Blue
(6) one hundred and thirty dollars on the annexed & foregoing contract.
(signed) Phelps & Cockle

Received Peoria March 21 57 of C H Blue
(7) one hundred & thirty dollars to apply on his contract for S½ NW 35 11 N 8 E Peoria Co —

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$130—

(signed) Phelps & Cockle
Chambers

Received Peoria April 9 1861 of Cyrus A Blue
(8) twenty five dollars to apply on his contract for
S½ S½ 35. 11 N 8 E
$25— (signed) Phelps & Cockle
By Chambers

(Copy of endorsement on the back of Agreement and annexed to the deposition)

For value received I assign the within bond to—
Washington Wakefield—
Dated this 7th day of April 1862.
(signed) C A Blue (seal)

(Opened under general order of Court & filed April 13th 1863— James D Perry Clerk)

9 Admission of Attys. that Compt has not been in Ohio for two years — (marked "A" among the papers, to wit).

(Copy of Stipulation)

Blue
vs
Blue Et al

In Chy for relief. In the Woodford Circuit Court by change of venue.

It is admitted by the defts in this suit, that the Complt has not been in the State of

(82.)

Ohio within two years last past.
Peoria Mar 03. 1863 (signed) Ingersolls & Mead
Attys for defts

The Complainant here rested.

The Defendants to maintain the issue on their part, then gave in evidence the following -

The deposition of William Colvin, Thomas Colvin, Thomas V Cutright and Samuel N Clifton - taken before William M Davenport - Justice of the Peace, by agreement, (to wit)

(Copy of Deposition)

Interrogatories to be propounded to William Colvin Thomas Colvin, & Thos V Cutright.

1st What is your name, age, occupation, and are you acquainted with the parties.

2 If you state, that you are acquainted with the parties, state how long.

3 Do you know where the defendants has been living since 1851, and where did he live in 1851.

4 Do you the farm called the Blue farm?

5 Do you know the numbers or description of the Blue farm.

(83) 6 How much land has he had in cultivation upon said farm.

7 State if you know whether or not in 1851, the defendant was a married man? & had he a family?

8 State whether or not he resided on said land with his family.

9 Had he any children? if yes — how many?

10 How many acres of land were there & is there in in farm occupied by said defendant, & what was the value of said farm in 1851 — in 1855 — in 1856 — in 1857 — in 1858 — in 1859 — in 1860 — in 1861 — & what is the value now —

11 If said land is improved, state of what the improvements consist & consisted,

12 State whether or not said land was occupied by deft & family during any time as a homestead & if yea — state during what years —

13 Do you know anything else that would be of advantage to defendant state fully & particularly —

(84)

(Cross Interrogatories)

1. Is the said Cyrus H Blue now the head of a family residing with the same — if not how long is it since he ceased being the head of a family & how long is it since he has resided with his family.

2 Can you state the precise year, month, and day of the month that said Blue ceased to reside with his family.

3 Do you know of any other matter or thing of advantage to the Plaintiff in this suit — if yea, state the same fully —

The within depositions to be taken by agreement notice having been given to Plaintiffs Attys McCulloch & Taggart, and when taken to be sent to the Circuit Clerk of Woodford County Ills, to be read in evidence in a certain suit in Ejectment now pending in said Woodford Circuit Court & now undetermined, wherein Lina Blue is the Plaintiff and Cyrus H Blue is defendant.

Lucy Blew
vs
Cyrus H Blew

Interrogatories propounded to the said Samuel W Clifton a witness produced and sworn on the part of the said Cyrus H Blew and his answers

1851 thereto, as follows,

First Interrogatory. What is your name age occupation, and are you acquainted with the above parties.

First Answer. My name is Samuel H Clifton. 42 years old — Farmer — And am acquainted with the above parties Lewis Blew & Cyrus Blew.

Second Interog. If you state that you are acquainted with the parties, State how long you have been so acquainted with them.

Second Answer. I have been acquainted with them about thirteen years.

3d Question. Do you know where the Defendant has been living since 1851, and where did he live in 1851.

3d Answer. I do not know where he lived in 1851, has lived a portion of the time on the South half of the North West quarter of section thirty five, in Haloe Township Scioto County, I can not tell what part of the time since 1851, and what other place he has made his home I cannot tell.

4th Interrogatory. Do you know the farm called the Blew farm,

Answer to 4th. I do —

1861 5th Question. Do you know the numbers and description of the Blew farm.

5th Answer. I do it is the South half of the North West quarter of section Nom thirty five (35) Eleven (11) North Eight (8) East of the fourth Principal Meridian, Peoria County

6th Interg. How much land has he had in cultivation upon said farm —

6th Answ. Between 70 & 75 acres.

7 Interg. State if you know whether or not in 1851 the defendant was a married man, and has he a family —

7th Answ. I do not know that Defendant was a married man, he lived with Liney Blew as man and wife and they had a family.

8th Question. State whether or not he resided on said land with his family.

8 Answer. He has lived on said land with his family a part of the time since 1851 —

9th Question. Has he any children, if so how many —

9th Answer. He has four children that he calls his —

1871 10th Question. How many acres of land ware there and is there in the farm occupied by said defendant and what was the value of said farm in 1851 in 1855, in 1856, in 1857, in 1858 in 1859 in 1860, in 1861 & what is the value now,

10th Answer. There is about 80 acres in the farm, do not know the value in 1851 nor in 1855 nor in 1856 or 1857 or 1858 or 1859 or in 1860 or in 1861, it is worth now about twenty four hundred dollars.

11th Question. If the land is improved State of what the improvements concist & consist consisted.

11 Answer. There is a fence around it, and two small dwelling houses on it, and all but about seven acres in cultivation.

12th Question. State whether or not said land was occupied by defendant and family during any time as a homestead, and if yea, state during what years.

12 Answer. I recollect of his living there in 1854 & 1855 with his family, I cannot swear to any more time definitely.

13 Question. Do you know any thing else that would be of advantage to the defendant, if so, state fully and particularly.

13th Answer. I do not.

Cross Interrogatories.

1st Question. Is the said Cyrus H Blew now the head of a family residing with the same, if not, how long is it since he ceased being the head of a family and how long is it since he has resided with his family.

1 Answer Cyrus H Blew is not the head of a family, now residing with the same — I cannot tell definitely how long it has been since he resided with his family, but my recollection is that he has not resided with his family the last five or six years.

2 Question Can you state the precise year, month and day of the month that said Blew ceased to reside with his family.

2 Answer I cannot state the year month or day of the month that he ceased to reside with his family.

3° Question Do you know of any other matter or thing of advantage to the Plaintiff in this suit, if yea, state the same fully.

3° Answer I do not know that I do know of anything that would be of advantage to Plaintiff in this suit.

(Signed) S H Clifton

(69)

Liney Blew
vs
Cyrus A Blew

Interrogatories propounded to the said William E Calvin a witness produced and sworn on the part of the said Cyrus A Blew and answers thereto as follows,

1 Interrogatory. What is your name age occupation and are you acquainted with the above parties.

1 Answer. My name is William E Calvin my age is 41 years, occupation farmer, and acquainted with the above parties.

2d Interrog If you state that you are acquainted with the parties state how long you have been acquainted with them.

2 Answer. I have been acquainted with them since 1852, about 11 years.

3d Question Do you know where the Defendant has been living since 1851 and where did he live in 1851.

3 Answer. I do not know any thing about him in 1851.

4 Question Do you know the farm called the Blew farm.

4 Answer. I know one they say is the Blew farm.

5th Question Do you know the numbers or description of the Blew farm.

(90) 5th Answer. I do not know the numbers it is in Haloc Township Peoria County.

6th Question. How mutch land has he had in Cultivation upon said farm.

6th Answer. Between 70 & 75 acres.

7th Question State if you know whether or not in 1851, the defendant was a maried man, and has he a family.

7th Answer I did not know him in 1851. I know of his having a family since 1851.

8th Question State whether or not he resided on said land with his family.

8th Answer. I think he lived on said land in 1853.

9th Question Has he any children if yea, how many.

9 Answer. He has 4 Children

10th Ques How many acres of land ware there, and is there in the farm occupied by said defendant, and what was the value of said farm in 1851, in 1855, in 1856, in 1857, in 1858, in 1859 in 1860 in 1861 & what is the value now.

10th Answer. There is said to be 80 acres in farm I do not know

(91) what the value was in any of the years mentioned in question – I think the value now is about twenty four hundred dollars.

11 Question. If said land is improved state of what the improvements consist and consisted.

11 Answer. There was a house built in 52 or 1853, and a small portion of it broke at that time, and some fence made, there is two small houses on it now and 70 or 75 acres under cultivation, and all fenced, I do not know whether all the fence belongs to the place or not.

12 Question. State whether or not said land was occupied by defendant & family during any time as a homestead and if yes state during what years.

12 Answer. Defendant and family were living on said land in 1853 and in 1854 and 55 and 1856 and in 1857 and 1858, I am not certain about their living on the place in 1853.

X

13 Question. Do you know anything else that would be of advantage to defendant if yes, state fully and particularly.

13 Answer. I do not know that I do.

(92) Cross Interrogatories.

1st Is the said Cyrus A Blew now the head of a family residing with the same if not, how long is it since he ceased being the head of a family, and how long is it since he has resided with his family.

1 Answer. Cyrus A Blew is not now the head of a family residing with the same, it is 5 or 6 years since he ceased being the head of a family, and has not resided with his family the last six years.

2c Question. Can you state the precise year, month, and day of the month that said Blew ceased to reside with his family.

2c Answer. I cannot.

3 Question. Do you know of any other matter or thing of advantage to Plaintiff in this suit, if yea, state the same fully.

3 Answer. I do not know that I do.

(signed) Wm E Calvin.

Lucy Blew-
vs
Cyrus A Blew-

Interrogatories propounded to the said Thomas A Calvin a witness provided and sworn on the

(93) part of the said Cyrus A Blew, and his answers thereto as follows.

1 Interrogatory. What is your age, name, occupation, and are you acquainted with the above parties.

1 Answer. My name is Thomas A. Calvin age 32 years, occupation farmer, and am acquainted with the above parties.

2 Question If you state that you are acquainted with the parties state how long.—

2 Answer. I have been acquainted with Cyrus A Blue about 12 years.

3 Question. Do you know where the Defendant has been living since 1851 and where did he live in 1851.

3 Answer. I think he lived in the town of Chillicothe in 1851 and since I know of his living in Kalsc Township on a farm part of the time since.

4 Question Do you know the farm called the Blew farm.

4 Answer. I do know the farm called the Blew farm.

5 Question. Do you know the numbers or description of the Blew farm.

5 Answer. I do not know the numbers or description of said farm.

(94) 6th Question. How much land has he had in cultivation upon said farm.

6th There is about 70 or 75 acres in cultivation.

7th Question. State if you know whether or not in 1851 the defendant was a married man, and has he a family.

7th Answer. He was living with a woman in 1851, and called her his wife, and had a family – I do not know they were married.

8th Question State whether or not he resided on said land with his family.

8th Answer. He resided on said land with his family.

9th Ques. Had he any children, if yea how many.

9th Answer. He had children I do not know how many.

10th Question How many acres of land are and is there in the farm, occupied by said Defendant, and what was the value of said farm, in 1851, in 1855, in 1856, in 1857 in 1858, in 1859 in 1860 in 1861 and what is the value now.

10 Answer It is called 80 acres. I cannot tell what was the value of the land in the above mentioned years, it is worth about twenty or twenty three hundred dollars now.

11 Question. If said land is improved state what the improvements consist and consisted.

11 Answer. It is improved, there was a house built in 1852 or 1853 and some of it fenced and broke, there is another small house on it now and all under cultivation, except about about 5 or 7 acres and enclosed, but do not know whether the fence all belong to place.

12 th Question. State whether or not said land was occupied by defendant & family during any time as a homestead, and if yea, state during what years.

12 Answer. X The defendant and family lived there in the year 1853, and 1854, and 1855, and in 1856 and in 1857.

13 Question. Do you know any thing else that would be of advantage to defendant state fully and particularly.

13 Answer. I do not know that I do.

Cross Interrogatories.

1 Interrogatory. Is the said Cyrus M Blue now the head of a family residing with the same, if not how long is it since he ceased being the head of a family, and how long is it since he has resided with his family.

(96) 1 Answer. He is not the head of a family and residing with the same now and has not been for some time I do not know how long exactly I think about 4 or 5 years since he resided with his family.

2 Question. Can you state the precise year, month and day of the month that said Blew ceased to reside with his family.

2 Answer. I cannot.

3 Question. Do you know of any other matter or thing of advantage to the Plaintiff in this suit, if yea, state the same fully.

3 Answer. I do not know that I do.

(Signed) Thomas A Calvin

I, William M Davenport of the County of Peoria and State of Illinois a justice of the Peace duly chosen to take the deposition of the said William E Calvin, Samuel H Clifton and Thomas A Calvin, witnesses whose names are subscribed to the foregoing depositions do hereby certify that previous to the commencement of the examination of the said William E Calvin, Samuel Clifton and Thomas A Calvin as witnesses in the said suit between the said Leroy Blew Plaintiff, and Cyrus A Blew Defendant, which said suit is in ejectment & now pending in the Woodford Circuit Court State of Illinois, they were duly sworn by me to testify the truth in relation to the matters in controversy between the said

(97)

Isaiey Blew Plaintiff and Cyrus A Blew Defendant, so far as they should be interrogated concerning the same, that the said depositions was taken in my office in the town of Chillicothe in the County of Peoria and State of Illinois on the 26th day of March A.D 1864 and that after said depositions was taken by me as aforesaid, the interrogatories and answers thereto as written down was read over to the said witnesses and that thereupon the same was signed and sworn to by the said deponents, William E Calvin Samuel N Clifton and Thomas A Calvin before me the oath being administered by me at the place and on the day and year last aforesaid.

(Signed) William M Davenport
Justice Peace

Fees $1.00 paid as I am credibly informed by the defendant.
(signed) R Ks Ingersoll

(Opened under general order of Court and filed April 12th 1864. James D Perry Clk
By W Brunner Dpty)

Which was all the evidence offered in the case by either of the said Parties. And the Complainant asked the Court that this certificate of evidence be signed and sealed by the Court and made part of the record in said cause, and it is done accordingly.

(signed) S L Richmond Judge (seal)

(Filed December 12th 1864 James D Perry Clerk)

(Copy of Appeal Bond)

Know all men by these presents that we Lewis Blue and Andrew Kirkpatrick of the County of Peoria and State of Illinois are held & firmly bound unto Cyrus H Blue, Washington Wakefield and William R Phelps in the penal sum of Five hundred dollars for the payment of which well & truly to be made, we & each of us bind ourselves, our heirs, executors and administrators jointly & severally and firmly by these presents, Sealed with our seals, and dated at Metamora this 9th day of August AD 1864. — — —

The condition of the above obligation is such that whereas the Circuit Court of Woodford County in the State of Illinois at the August term thereof for the year AD 1864 in a certain proceeding & cause in Chancery wherein the above bounden Lewis Blue is Complainant, and the above named Cyrus H Blue, Washington Wakefield & William R Phelps are defendants, rendered a decree, from which decree the said Lewis Blue has this day prayed an appeal to the Supreme Court of said State of Illinois, and which appeal has been allowed by the said Court. — — — —

Now if the said Lewis Blue shall duly prosecute said appeal & shall moreover pay the amount of the judgment, costs, interest and damages, rendered & to be rendered against her the said Lewis Blue in case the said decree, so rendered as aforesaid shall be affirmed in the Supreme Court, then the above obligation to be null and void, otherwise to remain in force & virtue.

(Signed) Lewis Blue (seal)

" Andrew Kirkpatrick (seal)

(Filed August 10th 1864. James D Perry Clerk.)

State of Illinois }
Woodford County } ss

I James D Perry Clerk of the Circuit Court within and for the County and State aforesaid, do hereby certify that the above and foregoing on pages one to ninety eight inclusive, is a true copy of the proceedings in the Circuit Courts of Peoria and Woodford Counties in the cause therein mentioned, wherein Liney Blue is Complainant and Cyrus H Blue, Washington Wakefield and William R Phelps, defendants, as the same appears of record and on file in my Office.

In testimony whereof, I hereunto set my hand, and affix the Seal of said Court at my office in Metamora in said County of Woodford this twenty eighth day of February A D 1865.

James D Perry Clerk



Fees $34.70 Paid by Complt

State of Illinois. ss.

In the Supreme Court
Third Grand Division
April Term A.D. 1865

Liney Blue
vs
Cyrus A. Blue
Washington Wakefield
William R. Phelps
} Appeal from the Circuit Court of Woodford County.

And now comes the said Appellant by McCullough & Taggart her attorneys and shows to the Court now here that in the foregoing record and proceedings of the Circuit Court of the County of Woodford in the State of Illinois in the cause wherein Liney Blue was complainant and Cyrus A. Blue Washington Wakefield and William R. Phelps there is as appears from the foregoing record manifest and manifold error in this to wit

1. The said Court erred in not decreeing to said Appellant all the relief prayed for in said Bill

2. Said Circuit Court erred in not setting aside the sale from said Phelps to said Wakefield as to all of said land.

3. Said Circuit Court erred in not decreeing the whole of said land to appellant ~~for~~ in fee simple.

4th Said Circuit Court erred in not decreeing the whole of said land to appellant for life with remainder to the Children of appellant Cyrus H. and said Blue.

5. The said Circuit Court erred in finding that the said land at the time of the levy made thereon of the execution issued upon the Riggs v Merriman judgment and of the sale thereof was exempt from levy and sale by virtue of the law exempting homesteads from forced sale.

6. The said Circuit Court erred in making a decree that said appellant should pay one third the costs of said cause

And this she is ready to verify by the said record wherefore she prays that said decree be reversed and a decree entered in this

Court according to equity and the prays of said bill.

McCulloch & Taggart

Attys for Appellant.

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Lurley Blue

vs

Cyprus A. Blue

& others

Filed Apl. 5th 1865

L. Leland

Clk.

SUPREME COURT, STATE OF ILLINOIS.

APRIL TERM, A. D. 1865.

CYRUS H. BLUE,
WASHINGTON WAKEFIELD,
WILLIAM R. PHELPS,
APPELLEES,
ads.
LINEY BLUE, APPELLANT.

APPELLEES' BRIEF

& ARGUMENT.

The history of this case is briefly this.

The 2d day of July, 1859, Liney Blue, the Appellant, obtained a decree of divorce against her husband Cyrus H. Blue, one of Appellees, which decree reserved the question of alimony and custody of the children for future determination.

At the time of this decree, C. H. Blue had a contract of purchase with Wm. R. Phelps for the S. ½ N. W. ¼ Section 35: 11 N. 8 E. for $700, with interest and taxes, upon which he had paid $640:—he also had title of some kind to S. E. ¼, N. W. ¼, Sec. 34, 11 N. 8 E. and had possession of both tracts.

The first named tract had been previously sold to A. L. Merriman, Jan. 30th, 1858, upon an execution issued Dec. 17th, 1857, upon a certificate of a judgment, of a justice of the Peace filed in the Circuit Court for Peoria County, Dec. 10th, 1857, and levied Dec. 23th, 1857—deeded by Sheriff to Merriman, Nov. 28th, 1860, after the decree passed in the divorce case.

By a further decree in the divorce case made Dec. 13th 1859 custody of the children is given to Appellant, and the Court finds that C. H. Blue has nothing out of which any alimony can be paid except the said tracts of land, and that they cannot be divided prudently so as to give her an equitable share for alimony; and gives her the temporary use of the whole property untill the further order of Court.

And by further decree in said cause, the pending question of alimony was definitely settled by consent of parties, giving Liney Blue a life estate in 25 acres of first named tract, and ten acres of the second named tract, and C. H. Blue life estate in residence with fee of the whole to the heirs of C. H. and Liney Blue; and placing all incumbrances upon the portion of C. H. Blue; requiring him to clear up the title of Appellant's portion.

Appellant procured a deed from A. L. Merriman to herself for the whole of the first named of said tracts, Dec. 20th, 1860.

C. H. Blue assigned the said contract between himself and Phelps to Washington Wakefield, April 7th, 1862, and Phelps made deed of the same land to said Wakefield.

The Bill of Complaint sets out these facts at length, and intersperses them liberally, with charges of fraud and misconduct on the part of Appellees, some of which are immaterial in their character, while few, if any, are made out by the proof; and prays for a decree vesting the title of the entire eighty acres in the Appellant. But the Court decree that Wakefield convey to her the 25 acres, in which she is interested, under the aforesaid decree, for alimony and denied other relief, and ordered that Appellant pay one-third, and Appellees, two-thirds of the costs.

Is this decree equitable?

I. It is argued against it that the entire title of the eighty acres passed to Merriman by the Sheriff's deed to him for the paltry sum of $84, and to Appellant by Merriman's deed to her.

We answer first,—suppose it did, it is admitted that the outstanding Merriman deed was one of the defects in the title, which the decree of Dec. 15th, 1860, contemplated and required C. H. Blue to remove for the mutual benefit of himself, appellant and their heirs; and it seems very clear that whether he purchased the outsanding title, or she purchased it herself, that such purchase is equitably for the benefit of all parties interested in the estate as established by the said decree. Equity will not allow either party, with full knowledge of the rights of the other, to purchase in the incumbrances, for the purpose of defecting the other's interest under the decree. If she chose to remove the defect from her own title without waiting for him to do so, she had a right to, and if in so doing, she also removed the same from his, he is properly enough her debtor for his ratable share of the necessary expenses; but she has no more right to purchase outstanding claims to undermine his interest than he has to undermine hers.

But secondly it appears conclusively from the evidence that at the time of the filing, of the transcript of Justice's judgment in the Circuit Court, issuing and levy of execution and sale, C. H. Blue was living on the land and occupying it as his homestead with his family, a wife and four children, and there is no attempt on the part of Appellant to show that the premises were worth over $1000.

William E. Clovin testifies that C. H. Blue resided on the premises with his family during the years 1854, 1855, 1856, 1857 and 1858. Thomas A. Colvin testifies that C. H. Blue so resided with his family on said premises during the years 1853, 1854, 1855, 1856, and 1857. By the law as laid down by this Court in Green *vs.* Marks, et. al. 25th Ill. 221, no lien of any nature upon a homestead is created by a judgment, and no subsequent act of the debtor in regard to the homestead can ever place it within the lien of such judgment. Neither sale, abandonment, nor forfeiture of the homestead will extend the lien of any former judgment to it.

But it is claimed that adultery, of which Blue was convicted, is in law an abandonment of the family, consequently of the homestead. Without admitting this doctrine, its sufficient answer is that the adultery did not occur until long after the judgment and sale on the Merriman execution. It will not be pretended that the adultery gave rise to judgment liens and adverse titles which never before existed.

It is further said that the homestead is in the wife and family and not in Blue—therefore if the deed to Merriman conveyed nothing, neither did the assigment of the title bond to Wakefield. Perhaps the assigment by a householder of a bond or contract to convey property occupied by the householders as a homestead, but to which he had never perfected any title, and a deed from the obligee in the bond to the assignee, would pass the title, notwithstanding the homestead exemption law. But the decree of divorce dividing the family, and dividing what was the homestead, giving the wife and children thirty-five acres with the dwelling and improvements, and the balance to the husband, and the occupation thenceforward of their respective portions by each party, the homestead, as it was, is abandoned and terminated, and a new homestead is created in favor of the wife and children in the thirty-five acre tract: This, the true homestead, is protected by the decree as it stands.

II. Appellant further claims that C. H. Blue fraudulently undertook to defeat her title to the 25 acres given her as alimony.

If so, he certainly ought not to succeed in that attempt; and the decree of the Court below entirely defeats him, if such was his purpose.

In support of such wrongful design, it is said that C. H. Blue assigned the Phelps contract to Wakefield without consideration.

Upon this point, the proof only shows that when the contract was presented at the Attorney's office for having the assignment drawn and deed made, no money was paid there. This throws little or no light upon the question, whether there was, or was not a consideration for the assignment, and the burden of proof is upon appellant.

It is urged secondly that Blue took the deed in Wakefield's name for his own benefit. This is denied both by the answers of Blue and Wakefield, and the proof shows only the fact that Blue asked and received the deed from Phelps to Wakefield, at the same time claiming to act for and represent Wakefield, the assignee:—this must be regarded as true unless disproved,—which it is not.

It is urged, thirdly, that the letter presented by Blue to Phelps expressing the consent of Mrs. Blue to the conveyance to Wakefield, was a forgery. On this point, there is absolutely no proof, Wakefield's and Blue's answers allege it to be genuine, and it is only shown that Blue stated that she chose to date the letter at some place in Ohio, where it is conceded she never was, instead of at home, where all parties knew her to be. If this circumstance evidences anything but a woman's whim, it rather makes for the genuineness of the letter than against it, for a very ready way to insure detection in forging a

letter, would be to date it, at some place where the pretended writer was known to have never been.

It is claimed, fourthly, that Appellant was obliged to buy the Merriman title and pay Phelps $37 on the contract, to prevent her title from being defeated. But there is no proof that she was ever disturbed in her possession, or threatened, or that there was any like-lihood of her being, either by Merriman or Phelps, while the evidence shows that she paid the $37, only with the agreement that if C. H. Blue paid the amount due on the contract, the money should be returned to her. The payments made by Blue are $100, Nov. 22d, '54, $50, April 10th, 1854, $100, Dec. 9th, 1854, $75, Mar. 1st, 1855, $185, May 25, 1856, $130, Mar. 21st, 1857, $130, Mar. 16th 1860, $25, Apr. 9th, 1861, and $60 paid for Wakefield, when the deed was made April 5th, 1862, in all $855, which exceeds the amount of the contract price and six per cent. interest by forty-one dollars, which excess is probably the amount of taxes paid, during the continuance of the contracts. So it appears that Appellant has $37, in hands of Phelps.—And it does not appear from the case what, if any thing, she paid for the Merriman deed.

We look in vain for evidence of facts of a fradulent character. It is doubtless, unnecessary to cite authorties to show that fraud must be proven, not presumed. But suppose there was all the fraud which is pretended, still it all fails to injure appellant so long as the present decree stands.

A charitable view of the transactions of both parties might be that neither intended any injury to the other's interest by what they did; if so, the decree confirms their intentions exactly. A less liberal view is that both parties have attempted to so buy in, and manage the outstanding titles to the premises as to defeat the other's interest. If this be the case, the decree does both parties full justice by cutting through their designs and placing them in the condition fixed by the final decree for alimony in the divorce case.

It looks to us as if the Appellant is asking the aid of the Court to enable her to do precisely what she complains of Blue for doing and asks the Court to prevent by injunction. She complains that Blue is so treating the outstanding titles as to defeat her interest in the land. She buys in the Merriman title which, she insists is paramount both to that of Blue and the childrens, and claims the whole tract to herself:—and asks the Court to adopt and effectuate her scheme and enjoin his. The Court, by its decree, very justly lends itself to neither enterprise.

III. It is also further claimed that by the acts of Blue, the provision of the decree of Dec. 15th, 1860, in his favor, are forfeited, and the title of the whole vested in Appellant by the preliminary decree of Dec. 13th, 1859.

Suppose it to be true that either party has attempted to defeat the other's interest under the decree of Dec. 15, 1860: does equity require that as a penalty for such misconduct, his own title in the premises should be forfeited to the other party? It seems to us that total failure in an unconscionable attempt to overreach another is the most suitable chastisement for engaging in it. We need no better indemnity against that evil than the universal application of this corrective.

It is however abundantly evident that the decree of Dec. 13, 1859 is not, and was not intended to be a disposition of the title of the property. This appears first from the limitation in the language of the decree itself. It only purports to be temporary "until the further order of Court." And secondly from he oppressive injustice of the decree, if differently understood. The decree finds that Blue has no means of paying any sum of money as alimony, and that the only estate he has is indivisible without unjustifiable injury to it, and therefore gives her the temporary use of the whole until the further order of the Court. The evident policy of the Court was to give the use of the premises to the parties respectively, during such alternate periods as might be equitable, instead of dividing it in an injurious manner. And when she had occupied it a year, and Blue's time for occupying was likely to come on, they agreed upon the division fixed by the decree of Dec. 15th, 1860. The decree would look very absurd if it intended to give the wife for her alimony every thing the husband had, and require him to clear up the title to it, and pay off all incumbrances, finding at the same time that he had not a dollar in the world to do it with. Even if the decree of 1860 were vacated no title would vest in Appellant by the decree of 1859.

IV. And it is said also that the decree is erroneous as to the heirs of C. H. and Liney Blue.

We answer that those heirs are not parties to this suit, nor are they at all affected by this decree, neither is the decree in this case evidence of anything for or against them. They may have equities against both Appellants and Appellees for the protection of their interests against the Merriman title, and the title required to be conveyed to Appellant by Wakefield by this decree, also the balance of the premises held by Wakefield,--yet they are not before the Court, either as parties complainant or defendant, and the Court could not give them any relief, nor affect their rights by its decree.

V. It is also said that the decree is erroneous as to the matter of costs.

Appellant brought her bill to make title to eighty acres of land, she succeeds as to twenty-five acres, within a fraction of one-third of her claim, Why should she not have been adjudged to pay two-thirds of the costs instead of being heard to complain of paying one-third?

The deed from Merriman to Appellant was never recorded, and there is no evidence tending to show that Wakefield had any knowledge of it, and he might very properly refuse to convey her the entire eighty acres:—but if she had required a conveyance of only her twenty-five acres, there is no reason for inferring that he would not have made it. The fact that he is found upholding the decree, which gives her the twenty-five acres tract indicates that he has never been unwilling she should have it.

We do not justify, nor extenuate any attempt to defeat the title of Appellant under the decree of Dec. 15, 1860, but we think the rights of parties are as well adjusted by the present decree as they ever can be, and that the litigation should end here.

JOHNSON & HOPKINS.
Attys. for Appellees.

186 91

In the Supreme Court.

APRIL TERM, A. D. 1865.

CYRUS H. BLUE, and others,
APPELLEES.

ads.

LINEY BLUE, APPELLANT.

Appellees' Brief and Argument.

B. FOSTER, PRINTER, PEORIA.

Filed June 30. 1865
L Leland Clk

ABSTRACT.

IN THE SUPREME COURT OF THE STATE OF ILLINOIS,

Third Grand Division,

April Term, A. D. 1865.

LINEY BLUE, *Appellant.*
vs.
CYRUS H. BLUE,
WASHINGTON WAKEFIELD,
WILLIAM R. PHELPS, *Appellees.*
} APPEAL FROM WOODFORD.

This was a bill in Chancery brought to the October term, 1862, of the Peoria Circuit Court, and afterwards taken by change of venue to Woodford. where decree was rendered at the August Term, A. D., 1864.

3 The allegations of the bill are as follows:

On the 26th day of January, 1854, William R. Phelps entered into a contract with Cyrus H. Blue, who was then the husband of appellant, whereby said Phelps agreed to sell to Blue the S½ N W¼ of Section 35, 11 N, 8 E for $700,—$175 to be paid on the 20th day of March in each of the years 1854, 1855, 1856 and 1857, with interest at six per cent., payable annually,—also that Blue should pay all taxes assessed on the same subsequent to the year 1852, upon which payments being made, Phelps was to deed his interest in said land to Blue, with covenants against all persons claiming under the patentee. Upon failure to pay as aforesaid, Phelps should have the

right to declare the contract void and to recover by distress all interest accrued as rent, and to take possession of the premises—to treat the person or persons in possession as tenants holding over without permission and to recover all damages sustained by such holdimg over or by means of any waste committed or suffered on said premises by destruction of timber or otherwise.

18 Copy of this contract made exhibit "A."

[redacted]

6 July 25, 1857. James L. Riggs and Amos L. Merriman recovered a judgment against Blue, before B. Baily, a Justice of the Peace, for the sum of $25 and costs, which ~~payment~~ judgment was duly certified and filed in the office of the Clerk of the Circuit Court of Peoria County, on the 10th day of December, 1857, and became a lien upon the real estate of Blue.

On the 17th day of December, 1857, an execution was issued by the Clerk of said
63 Court and levied upon the said tract Dec. 23, 1857.

6.64 The said land was sold under said execution Jan. 30, 1858, to Amos L. Merriman.

6.21 July 2, 1859. Upon the petition of appellant she was divorced from Blue for adultery, and by decree of the Court Blue was restrained and enjoined from aliening, disposing of, or in any way incumbering the land aforesaid until the further order of the Court.

7.23 Dec. 13, 1859. It appearing to the Court that appellant was entitled to the care and custody of the children, and that she was entitled to alimony,—that the said premises were incumbered and not susceptible of division and the title was not perfect,—that in case a specific sum of money should be decreed there was no way of enforcing the payment of the same at law, it was decreed that appellant should have the custody of the children, and that she should take and hold the said tract of land, also the S E¼ of N W¼, 34, 11 N 8 E, until the further order of court, and by said decree Blue was enjoined from entering upon, using, enjoying, or in any wise meddling with or incumbering the same in any manner whatever.

8 25 Dec. 15, 1860, by consent and agreement of parties it was decreed that appellant should have and hold for her natural life twenty-five acres described by metes and bounds part of S½ of N W¼ Sec. 35, and also ten acres in a square form out of the S W corner of the S E ¼ of N W ¼ 34, with full right and power to lease, mortgage

and convey the same during her natural life, and upon her death to vest in the children, the issue of said marriage, in fee simple,—that the remainder of said S½ of N W¼ 35, and of the S E¼ of N W¼ of 34, should vest in Blue during his natural life, and at his death should vest in said children in fee with power in said Blue to sell, mortgage and convey his life estate in said land, and that as between said appellant and said Blue the incumbrances on said land should be thrown on that part set off to said Blue so that appellant should have and hold her thirty-five acres free of incumbrances.

10 Soon after the making of said decree appellant took possession of said land so set off to her by said decree.

10.28 Nov. 28, 1859, during the pendency of said divorce suit, after the decree of divorce and before the final allotment of alimony Merriman procured a deed for the said land from the sheriff of Peoria county through his said purchase as aforesaid, which deed conveyed all the right, title and interest both legal and equitable of said Blue in said land, and entitled said Merriman to the possession of the whole tract.

11 According to the terms of the last decree Blue was bound to remove said title so acquired by Merriman, so that appellant might have the quiet and undisturbed possession of that portion set off to her, which he for a long space of time failed and refused to do, and appellant was left in danger of being dispossessed by Merriman, and thereby deprived of her alimony: therefore for the purpose of protecting herself and her children she purchased from Merriman his interest in said land, and Merriman

30 executed a deed to appellant therefor.

12 March 16, 1860, Blue paid on said Phelps contract $130, leaving an unpaid balance at the time of the last decree.

After the making of the last decree, and to prevent a forfeiture of the contract, appellant paid to Phelps $37 on the same, in consideration of which payment Phelps agreed to extend the time of payment on the balance, and that but for this payment Phelps would have declared the contract forfeited, and appellant would have been dispossessed and her alimony lost.

13 That Phelps had notice of the equities of appellant.

From the time of the rendition of the last decree it has been the constant endeavor of Blue to harrass and annoy appellant in the enjoyment of said premises, and to divert the title thereto from her, and particularly that on or about the 4th day of April, 1862, for the purpose of cheating and defrauding appellant, Blue made a fraudulent assignment of said Phelp's contract to his brother-in-law, Washington Wakefield, with-

out any consideration whatever, which assignment was only colorable and the contract never delivered to said Wakefield.

14 At the time of the said assignment Blue paid Phelps the balance due on the contract—exhibited to Phelps the said fraudulent assignment, and for the purpose of making Phelps believe that appellant had relinquished her right in the land, exhibited a forged letter purporting to have been written by appellant to said Phelps, requesting him to make a deed for said land to Wakefield, which letter was a base forgery and gotten up for the purpose of cheating appellant out of her rights in said land.

15.82 Being deceived by this letter, Phelps on the 5th day of April, 1862, at the request of Blue, made a deed to Wakefield, and delivered the same to Blue, in whose hands it still is, it never having been delivered to Wakefield. That Wakefield holds in trust for Blue, and he ought to be compelled to convey to appellant, and unless the same is so decreed there is danger that the same will be lost to appellant and her children.

That appellant is entitled to all the right, title and interest which Blue had in the land at the time of the levy of the execution in favor of Riggs and Merriman and that Blue and those claiming title to the said land through him ought not to be permitted to set up any other title to the same.

16 Blue now claims to be entitled to the possession of the whole of said land as the tenant of Wakefield, who is confederating with Blue and divers persons unknown to get possession of said land, has served a notice upon appellant to quit and deliver up possession of said land to Wakefield, and threaten that unless she deliver up possession to Wakefield to proceed to expel her by an action at law.

That for the purpose of intimidating her Blue has committed ~~summary~~ sundry trespasses upon the land occupied by appellant, that he has stacked the grain grown upon the part occupied by him upon that part occupied by appellant, and threatens to summarily take possession thereof.

That the deed to Wakefield is not only a fraud upon appellant but also a cloud upon her title acquired through said deed from Merriman.

17 Prayer for an injunction against Blue and Wakefield from interfering in any way with the possession of appellant, and from commencing or prosecuting any suit or suits against appellant for the recovery of said land—that the deed from Phelps to Wakefield be set aside and that Phelps be decreed to make a deed in fee simple for the whole of the land to appellant, and for general relief.

35 The defendants in their answer admit the making of the contract with Phelps—

that Blue entered into the possession of the land after the making of said contract, and that he made payments on said contract; say they know nothing about the Riggs and Merriman judgment, nor whether execution issued from the Circuit Court on the same, nor whether the same was levied, nor whether the same was sold to Merriman, and call for the proof. They also suppose it to be true that the decree of divorce was rendered; that appellant was decreed the custody of the children, but not being fully advised, call for the proof.

37 That they have no knowledge of the decree of Dec. 15, 1860, apportioning the premises, and call for proof. That they suppose it to be true that appellant entered into the possession of her portion and is still in possession of the same.

That they have no knowledge of the sheriff's deed to Merriman, nor of appellant's purchase from Merriman and call for the proof.

38 Defendant Blue denies that appellant paid Phelps $37 to prevent a forfeiture of the contract, and that Phelps ever threatened to declare the contract forfeited, or that he (Blue) ever threatened to permit the same to be forfeited for the purpose of affecting appellant's alimony.

Defendants deny that either Phelps or Wakefield had any knowledge of the rights or equities of appellant, and that Blue has ever endeavored to harrass or annoy appellant in her enjoyment of said real estate, or to divert the title or right of possession from her.

Defendant Blue denies making any fraudulent assignment of the contract to Wakefield, but avers that the same was made for a good, sufficient and valuable consideration, and that the same was delivered to Wakefield at the time the assignment was made.

39 Blue admits that on the 5th day of April, 1862, he paid Phelps the balance due upon said contract, and that thereupon Phelps executed a deed to Wakefield, but avers that he paid said money as the agent of Wakefield, and as such agent received the deed for Wakefield.

Blue denies that he represented to Phelps that appellant had relinquished her right, title and interest in said land to said Wakefield, or that he exhibited any fraudulent or forged letter purporting to have been written by appellant to said Phelps requesting him to make a deed of the land to Wakefield. Blue further denies that he ever made any representations or used any means to induce Phelps or his agents to believe that appellant had parted with her interest in said land to

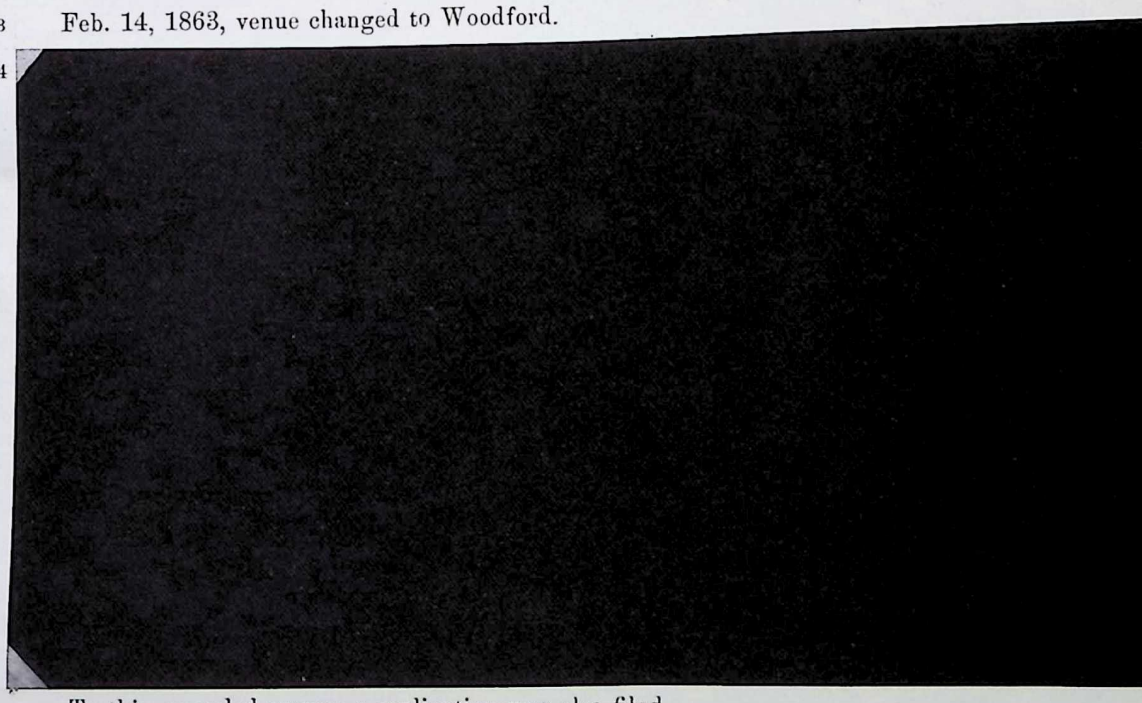
Wakefield, but avers that Phelps made said deed as he was bound to do under his said contract.

Wakefield denies that he holds in trust for Blue, but claims the same as his own by virtue of the deed from Phelps.

Blue and Wakefield deny all confederacy or conspiracy, and all threats and trespasses alleged in the bill and all allegations not specifically denied.

To this answer a replication was filed.

Feb. 14, 1863, venue changed to Woodford.



To this amended answer a replication was also filed.

The cause was submitted to the court upon the pleadings and proofs, at the April term, 1864.

The following evidence was read on the hearing.

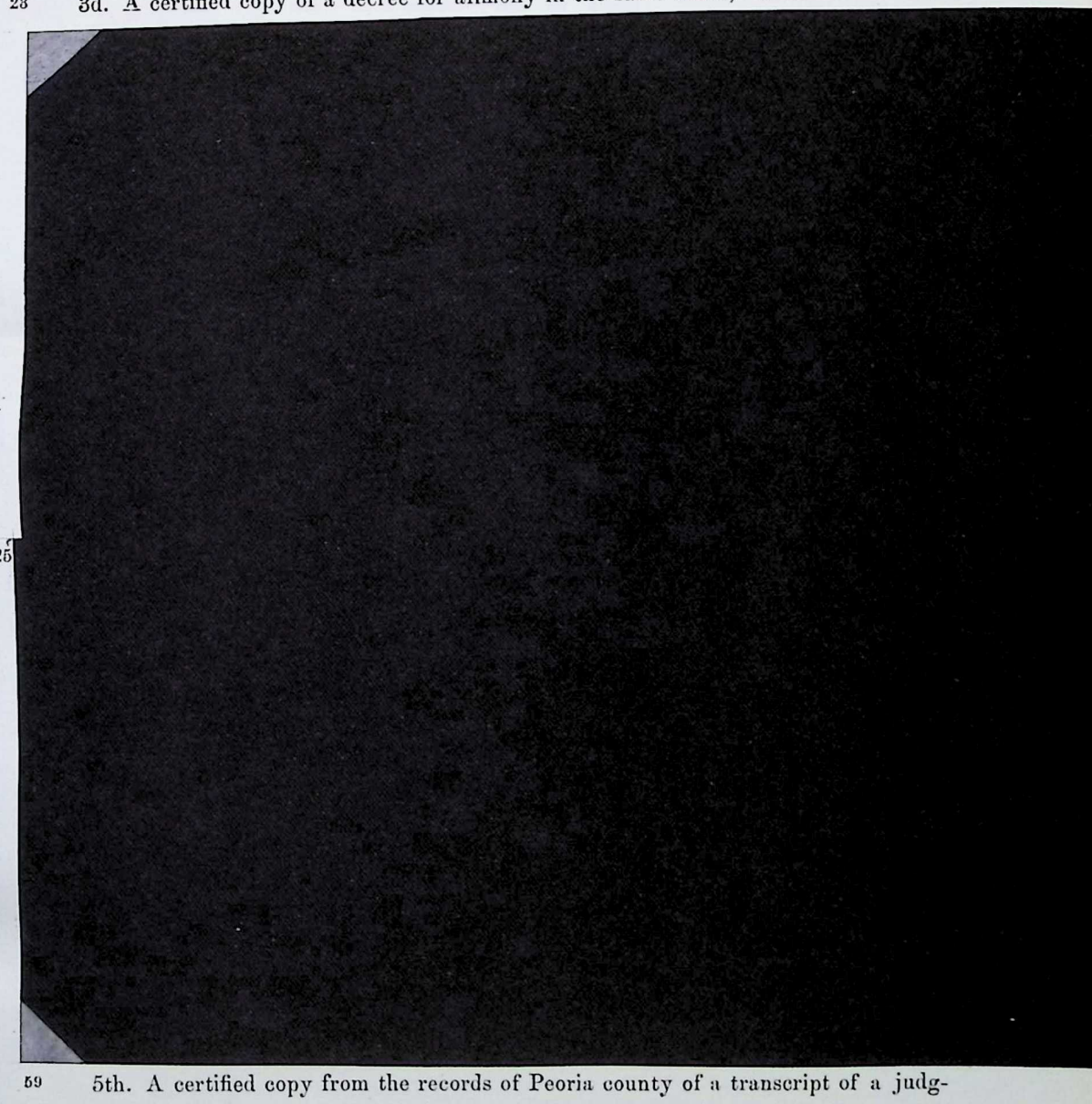
1st. The agreement for the sale of the land by Phelps to Blue, dated Jan. 24, 1854.

2d. Certified copy of a decree of divorce between appellant as complainant and Cyrus H. Blue as defendant, of Peoria Circuit Court, dated July 2, 1859.

This decree, after reciting the verdict of the jury that defendant was guilty of adultery, decrees that appellant be divorced from said Blue; that all questions of alimony and as to the custody of the children be reserved for further direction of the court, and that Blue be restrained and enjoined from conveying, encumbering, selling

or disposing of any of his real estate, and particularly the S½ of N W¼ 35, 11 N 8 E until the further order of the Court.

23 3d. A certified copy of a decree for alimony in the same cause, rendered Dec. 19,



25

59 5th. A certified copy from the records of Peoria county of a transcript of a judgment in favor of Riggs and Merriman against Blue, with execution and return of the Sheriff, in which suit summons issued May 14, 1857, on an account for $25, returnable May 21st, 1857. On the return day the parties appeared, and the cause was

61 from time to time continued until July 25, 1857, when judgment was rendered for $25 and costs.

Execution issued Sept. 4, 1857, which was returned by Const. Batchelder Nov. 14, 1857, " no property found."

62 This judgment was certified into the office of the Clerk of the Circuit Court Dec. 10, 1857, and execution issued thereon to the Sheriff of said county, on the 17th day of December, 1857.

63 Levy made by the sheriff on S½ of N W. 35, and N. E. ¼ of N. W. 34, Dec. 23, 1857.

64 Land advertised Jan. 9th, 1858, for sale on the 30th day of January, 1858, on which day it was sold to Merriman.

29.65 6th. A deed from John Bryner, sheriff, to said Merriman, dated Nov. 28, 1859, made under the above sale. See Exhibit " E."

7th. Deed dated Dec. 17, 1860, from Merriman to appellant. Exhibit " F."

30.66 8th. Deed dated April 5, 1862, from Wm. R. Phelps to Washington Wakefield.—

32.66 Exhibit " G."

67 9th. The depositions of Benjamin L. T. Bourland and Eugene McCune, attached to which is a notice to the defendant's solicitors to produce on the examination of said witnesses, and on the hearing of said cause, a certain letter purporting to have been written by appellant, dated at London, Madison county, Ohio, addressed to Wm. R. Phelps, or to Messrs. Phelps and Bourland, purporting to authorize the said Wm. R. Phelps or said Phelps and Bourland to make a deed of the S½ of N. W. ¼, Sec. 35, 11 N., 8 E. to Washington Wakefield, and which letter came into their possession through the hands of Benjamin L. T. Bourland, and in case of failure to produce said letter on such examination, the solicitors of appellant would proceed to prove the contents thereof.

68 Said Bourland being duly sworn testified as follows:

My name is Benjamin L. T. Bourland. I am thirty-seven years of age. I reside in the City of Peoria in the State of Illinois. My occupation is land agent and commission merchant. I am personally acquainted with all the parties to this suit except Washington Wakefield. The paper now shown to me and attached to my deposition, and marked " A." I recognize as a paper written in the office of Phelps, Bourland and Cockle, and executed by William R. Phelps and Cyrus H. Blue. So far as I know, the money receipted for was paid by Cyrus H. Blue, as shown by the receipts written on and attached to said contracts, said receipts being respectively marked (1), (2), (3), (4), (5), (6), (7), (8). There was some thirty or forty dollars

paid by Mrs. Blue to William R. Phelps with the understanding that the same was to be credited on said contract, provided Cyrus H. Blue did not subsequently pay the same; in case he should do so, the money was to be returned to Mrs. Blue. An
64 assignment written on the back of the contract was shown to the deponent, and said deponent says, I believe the signature to be that of Cyrus H. Blue. There was a deed made in pursuance of said contract from William R. Phelps and wife to Washington Wakefield. At the time of the delivery of the deed there was a balance of some sixty dollars due, to pay which Cyrus H. Blue delivered me a horse, which I received as payment in full of balance. I was acting as agent for said Phelps—I owning an interest in the matter myself. The contract was surrendered by said Cyrus H. Blue at the time of the delivery of the deed, and the deed was delivered to said Cyrus H. Blue. Never saw Wakefield that I know of. The assignment was on the contract at the time of the delivery of the deed. I supposed I had the consent of Mrs. Blue to the making of said deed to said Wakefield. Cyrus H. Blue had been to me frequently before the deed was delivered, urging me to deliver the deed to him, which I declined to do without the consent of Mrs. Blue. I supposing she (Mrs. Blue) had an equitable interest in the land, and was apprehensive I might be doing her an injury, I knowing of their family difficulty. He finally, however, brought me a paper purporting to be signed by Liney Blue, and to have been written some-
70 where in the State of Ohio, the language of which I cannot remember, but in substance it contained her consent to the delivery of the deed made to Wakefield. That paper I intended to preserve and supposed I had done so until I looked for it, and then could nowhere find it. I thought it was important I should preserve the paper. I
61 cannot account for its disappearance. I do not know whether said paper was in the handwriting of Mrs. Blue. I cannot state distinctly as to the ownership of the horse at the time I received him. I do not remember what Cyrus H. Blue said about him at the time he delivered the horse.

CROSS EXAMINATION.

I do not know what I did with that paper, but intended to file it with the cancelled contract. How it disappeared from my office I do not know. Cyrus H. Blue has been in my office since the delivery of the deed to Wakefield once or more. I have no recollection of said Cyrus H. Blue being at my office between the time of the delivery of the deed and the time when I missed the paper, though he may have been. I do not think he had any opportunities of taking said paper after I had filed it away

in my office. Cyrus H. Blue, at the time of the delivery of the deed, professed to be acting as the agent of Wakefield, and was evidently acting in his own interest also.— I derive my information of Mrs. Blue making any payments from memorandums in the office, as I was not in the office at the time of any payments being made by her. I do not recollect the date of that paper nor whether it had any date. I never saw Mrs. Blue write.

EXAMINATION IN CHIEF RESUMED.

Cyrus H. Blue was in my office yesterday. I said to him it was strange what had become of that paper. He said it was very strange, and seemed to regret the loss of it. He said the paper was written by Mrs. Blue in his presence only a very short time before he brought it to me; that she was not at the time in the State of Ohio. When I asked why it purported to be written in Ohio, he said, Oh! she wanted it that way. I have no recollection of seeing the paper after the deed was delivered.—

Defendants by Ingersoll and Weed, after Eugene D. McCune, one of the witnesses on behalf of the complainant, had been sworn, objected to said McCune giving his deposition in this cause, and for cause of said objection says, that said McCune is and was a clerk in the law office of said Ingersoll & Weed, and derived whatever information he may have in relation to the matters in controversy between said par-
72 ties while acting in the capacity of clerk in the office of said Ingersoll & Weed, who were and are attorneys for said defendants in said suit, and said McCune being sworn as to his competency as a witness in said cause, says:

I am a clerk in the office of Ingersoll & Weed, and have been so employed for a year past. I knew of a law suit between the parties. Information of such law suit came to my knowledge while acting as clerk. I never derived any information with regard to the matter in controversy in suit between said parties other than as such clerk.

CROSS EXAMINATION.

I refer to the suit touching the conveyance of certain land from W. R. Phelps to Washington Wakefield, which I understand to be the suit in which it is desired that I now give my deposition. I do not remember whether my information was derived before or after the commencement of the suit. At that time I was a licensed attorney. I was not doing business as an attorney at that time on my own account. I was employed in the capacity of clerk in the office of Ingersoll & Weed. Cyrus H.

Blue had not employed me as an attorney in the matters in controversy in this suit.

DIRECT EXAMINATION RESUMED.

73 The firm of Ingersoll & Weed had been consulted by Cyrus H. Blue touching the conveyance of the lands in controversy. I was present at those consultations. Whatever knowledge I have about this matter was derived from being present at such consultations.

Whatever transpires in the office in which I am employed, in my presence, as between Ingersoll & Weed and their clients, I regard as confidential, by their direction. It is understood I am not allowed to disclose anything that takes place between Ingersoll & Weed and their clients.

DIRECT EXAMINATION.

My name is Eugene McCune. I am twenty-four years of age. I reside in the city of Peoria, Illinois. My occupation is attorney at law. I am acquainted with all the parties to this suit except Washington Wakefield. I have known Cyrus H. Blue for three years. I have known Liney Blue for several years by sight. I am acquainted with the matters in controversy in this suit. The body of the assignment
74 on the back of the paper attached to the deposition of Benjamin L. T. Bourland, and marked "A" is in the handwriting of John J. Weed, one of the solicitors for the defendants in the cause. I do know of a deed being executed from William R. Phelps and wife to Washington Wakefield for the land mentioned in the paper marked "A," and attached to Benjamin L. T. Bourland's deposition. That deed was acknowledged before me by William R. Phelps and wife, as a Notary Public. I was present at the time of the execution of the assignment written on the back of the contract marked "A," and hereto attached. That assignment was executed before the delivery of the deed, to the best of my knowledge. I think the contract was delivered to Benjamin L. T. Bourland after the execution of the assignment thereof. *I do not know of any* consideration passing from any one to Cyrus H. Blue in consideration of the execution of said assignment of said contract. I believe said deed was delivered to Cyrus H. Blue. I think Wakefield was not present at any transaction in our office touching the conveyance of this land. I saw what purported to be the written consent of Liney Blue to the conveyance of this land from Phelps and wife to Washington Wakefield. I saw it in our office. It was in the possession of Cyrus H. Blue. It was before the execution and delivery of the deed, to the best of my recollection. I

have not seen that paper since. I looked at it sufficiently to know what it was. I cannot remember the language. I think it was dated. I cannot remember the date, if any. It purported to be dated at London or New London, in the State of Ohio. It purported to be signed by Liney Blue. It was not in an envelope, but was folded up like a letter. I cannot remember whether it was endorsed. It had no post mark on it that I saw. I am not certain whether Cyrus H. Blue took it out of an envelope or not. It was written, I think, on a half sheet of blue note paper. I think it was directed to Mr. Phelps. As near as I recollect, it contained Liney Blue's consent and wish to have certain lands conveyed to Washington Wakefield by William R. Phelps. It occupied one page of note paper. I think her name was spelled Liney or Liny Blue. It was, I think, written in rather a light hand, though not a delicate one. Cyrus H. Blue put it back in his wallet, I think. Cyrus H. Blue pointed out to me the horse he had delivered to Benjamin L. T. Bourland. Cyrus H. Blue said he brought the horse there. I do not know that said Blue professed to be acting as agent of said Wakefield in the transaction concerning the land in controversy.

CROSS EXAMINATION.

That letter was shown to me in order that I might prepare the necessary papers for the conveyance of the land, as I was attending to the businecs in the absence of Ingersoll & Weed, who were both absent.

72 Attached to the foregoing depositions is a copy of the agreement made between William R. Phelps and Cyrus H. Blue, January 4th, A. D. 1854—first read in evidence.

Annexed to the agreement are the following receipts:

(1) $100—Received, Peoria, March 22d, 1854, of Cyrus H. Blue, one hundred dollars on the annexed contract.

(Signed) PHELPS, BOURLAND & COCKLE.

(2) $50—Received April 10, 1854, fifty dollars.

(Signed) PHELPS, BOURLAND & COCKLE.

(3) $100—Received, Peoria, Dec. 9, 1854, of Cyrus H. Blue, a certificate of deposit with J. P. Hotchkiss & Co., of this date, for one hundred dollars, payable on the 1st of March, 1855, to apply on the contract of said Blue, for S. ½ N. W. 35—11 N., 8 E., as paid March 1, 1855.

(Signed) PHELPS, BOURLAND & COCKLE.

(4) $75—Received, Peoria, March 1st, 1855, of C. H. Blue, seventy-five dollars, to apply on this contract.

(Signed) PHELPS, BOURLAND & COCKLE.
Per Chambers.

(5) $185—Received, Peoria, May 26, 1856, of Cyrus H. Blue, one hundred and eighty-five dollars to apply on the within contract.

(Signed) PHELPS & COCKLE.
Chambers.

(6) $130—Received, Peoria, March 16, 1860, of Cyrus H. Blue, one hundred and thirty dollars on the annexed and foregoing contract.

(Signed) PHELPS & COCKLE.

(7) $130—Received, Peoria, March 21, 1857, of C. H. Blue, one hundred and thirty dollars, to apply on his contract for S. ½ N. W. 35, 11 N., 8 E., Peoria Co.

(Signed) PHELPS & COCKLE.
Chambers.

81 (8) $25—Received, Peoria, April 9, 1861, of Cyrus H. Blue, twenty-five dollars to apply on his contract for S. ½ N. W. 35, 11 N. 8 E.

(Signed) PHELPS & COCKLE.
By Chambers.

Copy of the endorsement on the back of the agreement, and annexed to the deposition.

For value received, I assign the within bond to Washington Wakefield.

Dated this 7th day of April, 1862.

(Signed) C. H. BLUE.

(9) The following stipulation was next read :

82 It is admitted by the defendants in this suit that the complainant has not been in the State of Ohio within two years last past.

Peoria, March 23, 1863.

(Signed) INGERSOLLS & WEED,
Attorneys for Defendants.

Complainant here rested.

Defendants gave in evidence the depositions of William Colvin, Thomas Colvin, Thomas V. Cutright and Samuel W. Clifton.

DEPOSITION OF SAMUEL W. CLIFTON.

85 My name is Samuel W. Clifton. Am forty-two years old. Am a farmer, and

have been acquainted with Liney Blue and Cyrus Blue about thirteen years. I do not know where Cyrus H. Blue lived in 1851. He has lived a portion of the time since—don't know what portion—on S. ½ N. W. 35, in Hallock township, Peoria county, known as the Blue farm. Where else he has lived I do not know. Blue
86 had seventy or seventy-five acres of his farm in cultivation. Cyrus and Liney Blue lived together as man and wife and had a family of four children. There are about
87 eighty acres in the farm—worth now about twenty-four hundred dollars. I do not know its value from 1851 to 1861. It is fenced, and has two small dwelling houses on it. Blue and family lived on it in 1854 and 1855.

CROSS EXAMINATION.

88 Cyrus H. Blue is not the head of a family now, residing with the same. Can not state when he ceased to reside with his family, but think he has not done so the last five or six years.

DEPOSITION OF WILLIAM E. COLVIN.

89 My name is William E. Colvin. My age is forty-one years. Occupation—farmer. Have been acquainted with the parties to this suit since 1852. Do not know anything of defendant in 1851. Know a farm called the Blue farm. It is in Hallock
90 Township, Peoria County. There are between seventy and seventy-five acres in cultivation. I know of defendant's having a family since 1851; he has four children.—Think he lived on said farm in 1853. The farm is said to contain eighty acres, and
91 is worth now about twenty-four hundred dollars. Do not know the value of it from 1851 to 1861. It has two small houses on it now, and all fenced. Defendant and family lived on it in 1854, '55, '56, '57 and '58. *Am not certain about their living* on the place in 1853.

CROSS EXAMINATION.

92 Cyrus H. Blue is not now the head of a family, residing with the same. It is five or six years since he ceased so to be—can not state the precise time.

DEPOSITION OF THOMAS A. COLVIN.

My name is Thomas A. Colvin, age 32 years, occupation farmer, and am acquainted with the parties to this suit. Have known Cyrus H. Blue about 12 years. He lived in Chillicothe in 1851 and since—has lived on a farm in Hallock Township part of the time since. I know the Blue farm—do not know its description. Blue

had 70 or 75 acres of it in cultivation. He was living with a woman in 1851 and
94 called her his wife, had a family, do not know how many children. He resided on the Blue farm with his family. The farm is said to contain 80 acres. I can not say what it was worth from 1851 to 1861, it is worth now about twenty or twenty-three
95 hundred dollars. It has two small houses on it, all fenced, and all but about 5 or 7 acres under cultivation. Blue and family lived on it in 1853, '54, '55, '56 and '57.

CROSS EXAMINATION.

96 Cyrus H. Blue is not the head of a family, residing with the same now, and has not been for four or five years. I cannot state the precise time.

51 Decree rendered at the August term, 1864, upon hearing of cause upon pleadings and proofs. The decree recites the following facts as proven:

1. The making of the contract between Phelps and Blue for sale of the S.½ N. W. 35, 11 N. 8 E.; that Blue took possessionof the same and made payments as alleged in the bill.

2. The recovery of the judgment by Riggs and Merriman, that the same was certified and filed in the Circuit Court as alleged in the bill—that exeeution issued thereon Dec. 17, 1857—that the same was advertised and sold to Merriman, as alleged in the bill.

3. The decree of divorce rendered July 2, 1859.

4. The decree for alimony of Dec. 13, 1859.

5. The decree apportioning the premises, of Dec. 15, 1860.

6. The Sheriff's deed to Merriman, dated Nov. 28, 1859.

7. The deed from Merriman to appellant, dated Dec. 20, 1860.

8. The assignment of the Phelps contract by Blue to Wakefield.

9. The deed from Phelps to Wakefield.

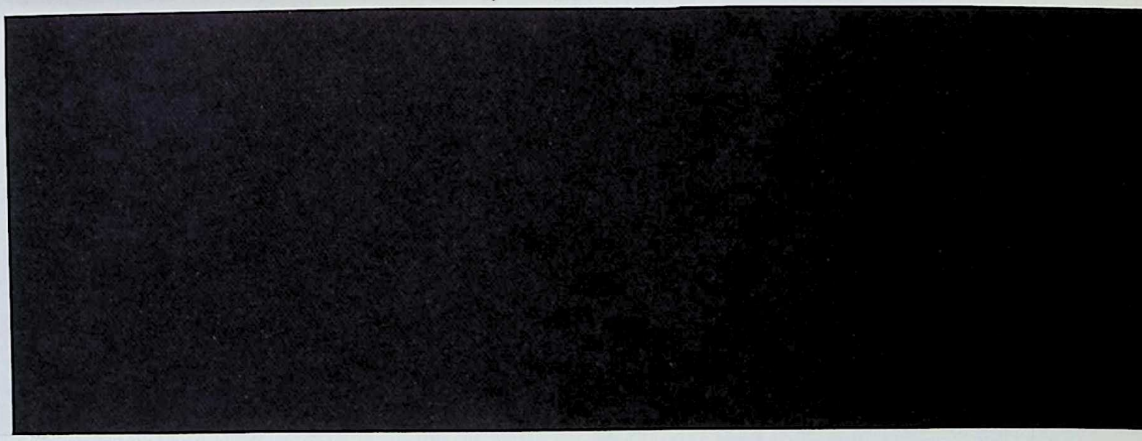
10. That at the time of the levy of said execution, and of the sale thereunder to Merriman, said Blue was the head of a family, and a householder, residing upon the said land with his family, the said complainant at that time being his wife, and residing with him upon said land.

It is therefore ordered, adjudged and decreed that as to the said twenty-five acres, set off to appellant by the said decree of Dec. 15, 1860, the equities are with appellant; that Wakefield should within thirty days make her a deed therefor, to have and to hold during her natural life, with remainder to the children of appellant and said

Blue in fee simple, and in default of his making such deed the master in chancery
56 shall make the same, and that Blue and Wakefield be perpetually restrained and enjoined from intermeddling with or in any way interfering with the possession of appellant in her enjoyment of the same, and from setting up said deed from Phelps to Wakefield in any court or place whatever to the prejudice of appellant.

It is further ordered that as to all other relief prayed for in said bill, appellant take nothing by reason thereof, and that she pay one-third of the costs of this proceeding.

ERRORS ASSIGNED.



McCULLOCH & TAGGART,
Att'ys for Appellant.

186 91

In Supreme Court,

STATE OF ILLLINOIS.

TO APRIL TERM, A. D. 1865.

LINEY BLUE, *Appellant.*
vs.
CYRUS H. BLUE,
WASHINGTON WAKEFIELD,
WILLIAM R. PHELPS, *Appellees.*

APPEAL FROM WOODFORD.

ABSTRACT.

Filed Apl 5. 1865
L Leland clk

McCULLOCH & TAGGART,
Attorneys for Appellant.

Emery & Andrews, Printers & Blank Book Manufacturers, Peoria, Ill.

BRIEF.

IN THE SUPREME COURT,

APRIL TERM, 1865.

LINEY BLUE, *vs.* CYRUS H. BLUE AND OTHERS.	ERROR TO WOODFORD.

The material facts in this case may be briefly stated as follows:

On the 26th of January, 1864, Cyrus H. Blue bought the land in controversy from Phelps, and went into possession under a contract to pay $175 annually and remain in possession until the 10th of December, 1857, having made sundry payments under his contract. On that day a judgment, rendered before a Justice of the Peace, was duly filed, in the Circuit Court, and became a lien upon Blue's interest in the land. On the 17th of December, an execution was issued on this judgment and the land sold on the 30th of January, 1858, to Merriman for $84.

Blue having been guilty of adultery, appellant, on the 2d day of July, 1859, obtained a divorce from him on that ground. On the 28th day of November, 1859, while the question of alimony was still pending in the divorce suit, Merriman obtained a Sheriff's deed for the land under his purchase. On the 13th of December, 1859, the land was set off to appellant as her alimony, and Blue enjoined from intermeddling with or incumbering the same. The land, however, *being heavily incumbered,* it was afterwards agreed that Blue should take and hold a life estate in fifty-five acres of the land in consideration of his paying off the said incumbrances; that appellant should take a life estate in twenty-five acres with remainder in the whole to their children in fee; and, accordingly, on the 15th day of December, 1860, by *the consent and agreement* of the parties in open Court, the said decree for alimony was

modified to that effect—the incumbrances being thrown wholly upon the part set off to Blue. At the time of the making of this decree there was a balance yet unpaid on the Phelps contract, a portion of which appellant afterwards paid to prevent a forfeiture and thus to protect her estate. Blue having failed to remove the Merriman title, appellant also bought his interest. Thus the matter rested until the beginning of April, 1862, (Blue having, in the mean time, made several ineffectual attempts to get a deed from Phelps. See Abstract page 9,) when he made an assignment of the Phelps contract to Wakefield, without any consideration, and presenting a forged letter to Bourland, the agent of Phelps, representing that appellant was willing that the deed should be made to Wakefield, obtained a deed for the land in the name of Wakefield, who now claims the land in fee. (Abstract page 6.)

If this deed is allowed to stand as to any portion of the land, all the equities of complainant, as settled by the decree of December 15th, 1860, will be defeated.

Under that decree appellant was entitled, *first*, to have her life estate secured free and clear of all incumbrance. *Second*, she, being decreed the custody of the children, was entitled to have their title in remainder protected to secure her for advances made for their support.

Vanzant *vs.* Vanzant, 23 Ill. 542.

The following points are submitted for the consideration of the Court:

I. The Court having, December 13th, 1859, made a decree giving appellant the whole of the land in controversy as her alimony, the only rights which Blue had in the land were acquired under the agreement upon which was founded the decree of December 15th, 1860. Under this decree complainant was to have twenty-five acres for life free from incumbrances. Blue was to have fifty-five acres for life, on the condition of his paying off all the incumbrances on the land, with power to sell or mortgage his *life estate*, with remainder in both cases to their children in fee. In violation of the terms of this agreement and decree, Blue not only failed to pay off or remove the incumbrances, particularly the Merriman title, but also by fraudulent means endeavored to divert the *title in fee* of the land from complainant and her children to Wakefield. Holding the Phelps contract in trust for the purposes specified in the decree of December 15th, 1860, any violation of that trust on his part would work a forfeiture of all equities he had acquired thereunder, and appellant would be entitled to be reinstated in the position she occupied under the decree of December 13th, 1859.

Fortier *vs.* Darst, 31 Ill. 218.
Hill on Trustees, 522.

II. In order to protect the title to the land, appellant bought the title acquired by Merriman through the judgment and sale to him. So long as the terms of the decree of December 15th, 1860, are not complied with, this title is a complete bar

against the claims of Blue and those claiming under him. It completely divested him of all title, and the benefit of it should now enure to appellant.

But Defendants say that Blue was protected from the effect of this sale by the *homestead act.* This involves several considerations. 1. The judgment took effect as a lien December 10th, 1857. The proof is not sufficient to show that Blue was living with his family on the land at that time, or that he continued to live there until the time of sale. William E. Calvin, whose deposition was taken March 26th, 1864, is the only witness who testifies that Blue lived on the land with his family as late as 1858, and he cannot state within a year of the time he left the land.

Rheinback *vs.* Walters, 28 Ill. 393.

2. If proven, it can avail Blue nothing, for the reason that he has since forfeited all claim thereto by his adultery; adultery being equivalent to abandonment of his family.

Vanzant *vs.* Vanzant, 23 Ill. 542.
Moore *vs.* Dunning, 29 Ill. 130.

3. If it was a homestead at the time of judgment, levy and sale, the right is still in the wife and family, and Blue cannot sell it. Wakefield, therefore, takes nothing by the assignment and deed. If the sale to Merriman conveyed no title, neither does the sale by Blue to Wakefield.

Vanzant *vs.* Vanzant, 23 Ill. 542.
Patterson *vs.* King, 29 Ill. 519.

Neither will a Court of equity by its decree divest her of a title which could not be sold at law.

4. If Blue had any kind of reversionary interest subject to sale to Wakefield, that interest was defeated by the sale to Merriman.

5. *What is the homestead exempt from sale under the statute?* It is "the lot of ground and the buildings thereon occupied as a residence, and owned by the debtor, being a householder, and having a family to the value of one thousand dollars"—*no more, no less.*

Scates Stat. 576.

How long is it exempt? First. During the life of the householder. *Secondly.* During the life of the wife. *Thirdly.* Until the youngest son becomes of age. *It* is an *estate* similar to dower or curtesy, or a wife's separate property. Ibid.

Pardee *vs.* Lindley, 31 Ill. 187.
Hoskins *vs.* Litchfield, 31 Ill. 143.
Boyd *vs.* Cudderback, 31 Ill. 113.

It must be construed and treated upon principles applicable to analogous estates long known to the law. It is a limited estate, or rather a succession of limited estates carved out of the fee, to-wit: *First*, life estate in the wife; *second*, life estate in the husband; wife or children surviving him; *third*, estate in the husband for the lives of his wives and children, he surviving them; *fourth*, estate for years in the children, terminating when the youngest becomes of age; *remainder to the hus-*

band, his heirs and assigns in fee. It is a fair inference from the case of *Vanzant vs Vanzant*, that the estate created by the homestead act is forfeited for such a fault on the part of either husband or wife as would entitle the other to a divorce, as is the case of the husband here. If the husband has no estate in remainder to come into possession upon the termination of the limited estates of the wife and children, *where is the fee vested?* If an estate in remainder is vested in the husband, it was so vested at the time of levy and sale, and was subject to the lien of the judgment.

1 Purple Stat. 642, Sec. 1. Scates 602.

This Court decided in *Green vs. Marks*, 25 Ill. 221, that a judgment creates no lien upon the *homestead*, but this decision must be construed as applicable to the limited estates created by the homestead act, and not to the *fee* in the law This is still subject to sale, although possession could not be acquired under it so long as the preceding estates existed. In *Young vs. Graff*, 28 Ill. 29, the Court say that in foreclosure of mortgage the homestead "would prevent a *delivery of possession* if a sale was made while she (the wife) lives, should she become a widow, or until her youngest child shall become of age." This, where a mortgage was executed without a valid release of the homestead by the wife. If the husband can create a lien by mortgage to take effect after the termination of the homestead estate, why cannot such a lien be created by judgment and sale? This construction would seem to accord with the wording of the statute—"such exemption shall continue after the death of such householder, for the benefit of the widow and family, some or one of them continuing to occupy such homestead until the youngest child shall become twenty-one years of age, and until the death of such widow." If the property is no more in value than $1000, possibly a sale by husband and wife, with proper release of homestead, would defeat the title thus acquired, as in the case of the sale of the husband's freehold in the rents and profit of his wife's land after the same has been sold on execution. Such an estate is subject to levy and sale, 2 Kent's com. 131, although possibly the purchaser's title may be defeated by a subsequent alienation by the husband and wife joining in a deed.

III. In any view of the case, therefore, Blue had no interest in the land that he could convey to Wakefield. If the homestead act protected the land from sale under the execution, it also protected it from sale by Blue. He had just such an interest as the Court gave him by the decree of December 15th, 1860, which rights he has wholly forfeited by reason of his non-compliance with the terms of that decree. Much has been said about the injustice of allowing the land to be sold for $84, the amount of the Merriman purchase. It ought not, however, to lie in the mouths of either Blue or Wakefield to allege injustice on this score, when they themselves have fixed the value of Blue's interest at the price of an old horse.

IV. The evidence discloses a case blotched all over with fraud, such as only an *adulterer* can be guilty of towards his family.

By fair promises, (after the Court had set apart this whole tract for the support

of his family,) that he would pay off the incumbrances, he obtained a notification of the decree so as to give him a life estate in fifty-five acres of the land, and the possession thereof. Instead, then, of honestly paying off the incumbrances in order that those whom he had so deeply wronged might have the peaceable enjoyment of a little home, he goes deliberately to work by the vilest trickery to cheat them out of it. Having failed to obtain a conveyance directly to himself, he concocts a plan to have the title vested in Wakefield. The Phelps contract is assigned without consideration ; he then constitutes himself the agent of Wakefield to deliver to Phelps *his own horse* in payment of the balance due on the contract; he exhibits the assigned contract which had never been delivered to Wakefield to Phelps' agent, and to crown all produced a *forged* letter from appellant authorizing Phelps to make the deed to Wakefield. That this letter was a forgery is manifest from the evidence. If it was written in Ohio it was a forgery, for it is stipulated on the record (abstr p. 13) that appellant was not in Ohio at that time. If written in Peoria County, it betrays a confidential relationship existing between these *divorced* parties wholly incompatible with their position. If the letter was obtained through the intervention of a friend, why is he not present to prove its genuineness ?

Upon a review of the whole case it is manifest that the title in fee to the whole tract should be vested in appellant, which this Court is now respectfully asked to do.

McCULLOCH & TAGGART,
Atty's for Plaintiff.

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In the Supreme Court,

STATE OF ILLINOIS.

To April Term, A. D. 1865.

LINEY BLUE,

vs.

CYRUS H. BLUE AND OTHERS.

BRIEF.

McCULLOCH & TAGGART,
Attorneys for Appellant.

Emery & Andrews, Printers and Blank Book Manufacturers, Peoria.

Filed Apl 20. 1865
L Leland Clk