

No. 14629

Supreme Court of Illinois

Miller

vs.

Craig

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

No. 194

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

Miller
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Tracy
Perry
14629

STATE OF ILLINOIS,
Supreme Court, Third Grand Division.

—♦—
OTTAWA, APRIL TERM, 1864.
—♦—

WILLIAM G. MILLER, Appellant, }
—VS.— } APPEAL FROM THE Mc-
JAMES S. CRAIG, Appellee. } LEAN CIRCUIT COURT.

ABSTRACT OF THE RECORD.

PAGE OF RECORD.

This was a bill in Equity, filed by appellee who was complainant below, to set aside a Deed conveying Real Estate, on the ground of misrepresentation, and mental incompetency of the Grantor.

1 Bill commences (Record, page 1) by stating the trade between James S. Craig, the complainant, and Wm. G. Miller, the defendant; states (Record, page 2) the value of the lands owned by Craig, 20 acres, worth \$400, and 120 acres worth \$1,200, and the representations of
2 Miller as to the value of the house and its description and quality, which he, Miller, represented to be worth \$4,500; that it was a newer and better house than the house of McCart, in which Craig was then living as a tenant; that Miller knew that Craig had to give up the house of McCart in ten days; that the representations of Miller were false and fraudulent; but that Craig believed them to be fair and true, and, without going inside of the Miller house, agreed to make the exchange of his lands for the house of Miller, and to give Miller his notes for \$1,300, secured by mortgage on the property he got from Miller; that on the 16th day of May, 1862, the same day of the trade, Craig and wife conveyed the said lands to Miller, and Miller conveyed the house to Craig; Deeds prepared by Miller's Attorney, the consideration for the Miller property expressed in the deed being \$4,300 for the house, and Craig gave his three several notes for
3 \$433.33 each, payable to Miller in one, two and three years with six per cent. interest., and executed a mortgage back to Miller, to secure the same, upon the house. Craig also conveyed to Miller the 120 and 20 acres of lands aforesaid. The notes of Craig, and the conveyance of the lands being the consideration given for the house bought of Miller. Craig entered and took possession of the house, found it very much out of repair, a decrepid, worn-out old house, one of the oldest in Bloomington; that it had been bought by Miller some years before, removed from its locality, and some repairs made upon it in its new location; that the floor was sunken, and windows rotted out entirely; that the house was dirty, and the whole premises
4 did not cost Miller more than \$600; that it was neither as good or as new as the McCart house; that it was a dilapidated old frame; that it had been built for thirty years in its former location, whereas the McCart house had been built within the last eight years; that the house Miller conveyed to Craig was not worth, and could not be sold for over \$600.

Craig states that he is old and of weak mind; that Miller is an active, shrewd trading man, and a brisk trader in everything; that

PAGE OF RECORD. Miller overreached him in the said trade; that his lands worth \$1,600 and his notes for \$1,300, in all \$2,960 had been given to said Miller for the house worth only \$600; that Miller by misrepresentation and fraud had got for his house from said Craig five times the value of said property. Craig repeatedly, and in a friendly way, offered to deliver back to Miller his house and to rescind the contract, which Miller refused; and that he tendered a deed to said Miller for the premises Miller conveyed to him, and demanded a re-conveyance and surrender of his notes, which Miller refused.

Deed makes part of the Bill marked A.

5 Craig claims that the trade should be set aside. Repeats that he is of weak mind—unable to cope with Miller in a trade. Charges Miller with misrepresentations and fraud. Prayer to set aside and cancel the conveyances, rescind the trade, and restore him all he has lost by the trade, for injunction and general relief.

5 6 Affidavit of Craig.

6 7 Exhibit A., Deed tendered by Craig to Miller to rescind the trade.

7 Notary's certificate to the same.

8 Order for Injunction.

8 9 Injunction Bond.

9 10 Writ of Injunction.

10 11 Sheriff's return on Writ.

11 Summons.

12 Service of Summons.

Rule to Plead.

13 Demurrer.

13 14 Motion to dissolve Injunction. Overruled.

Demurrer Overruled, and Rule to Plead.

Order filing the Answer of Miller.

15 Answer of Miller states that he was the owner in fee of the house he conveyed to Craig; that Craig came to him and informed him that he wished to trade for a residence for his family; that negotiations were had between them for an exchange of the two properties named in the Bill. Denies the value of the land as charged by Craig in the Bill. Denies that he represented the house as new or as good, or better than the house of McCart, in which Craig then lived; or that he told Craig what the house cost him. Says he told Craig to see and examine the house for himself, and that Craig did see and examine it, both inside and out, and moved into it, and was living in it when and before the trade was completed, and had moved into it and was living in it before he conveyed the said lands or executed his said notes or mortgages; that Craig made the trade with full knowledge of the property, and after he had moved into it, and had been and was living in it and enjoying it up to the present time. Utterly denies any misrepresentations to induce said Craig to make said trade. Denies that Craig ever made to him tender of possession of said house.

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Admits the making of the deed for the land by Craig and wife, and the notes and mortgage by Craig, as the price and in payment for the said house. Denies that Craig is a weak minded man, and says said Craig transacted his own business. Denies all overreaching, all fraud. Denies the tender to him of the possession of the house and lot. Admits to tender of a quit claim deed upon condi-

PAGE OF RECORD. tions that he would deliver up the land and give up the notes. Denies that Craig has any right to have said deeds set aside and the contract cancelled. Denies that Craig at the time of said trade, or at any other time, was, by reason of any mental infirmity, incapacitated for transacting his business and buying and selling property, and submits that he cannot stultify himself. Denies all the charges of fraud and misrepresentation made by the bill. Denies that the consideration was five times the value of the house and lot. Denies all the charges of the bill not above admitted, and prays to be dismissed with his costs, &c.

17 Replication to the Answer.

18 Order of Continuance.

19 Hearing and decree perpetuating the injunction, directing a re-conveyance of the property and rescission of the contract.

20 21 Defendant's exceptions to the decree.

21 22 Bill of exceptions, deeds, and mortgage, and notes, admitted to be correctly described in the bill.

22 Plaintiff's evidence. Testimony of Mrs. Smith.

Says she was boardnig with Craig and wife at the McCart house at the time of the trade, in May, 1862. Heard the conversation between Craig and Miller about the trade. Miller told Mrs. Craig that it was a newer and better house than McCart's. Mrs. Craig was going to sweep it out. Miller told her it did not need it, that it was all clean.

Moved with Craig and wife to the house in controversy. The house was in very bad repair. The windows were all decayed; the floor was settling in the middle of the house; we were afraid to sleep up stairs, plastering was falling off. The house was locked up when we first went down to move in. It was the first time Mrs. Craig was ever there. Don't know whether Mr. Craig had ever been in the house. It was on the 16th of May, 1862. No person was present at the trade between Miller and Craig, except Craig and wife and Miller.

22 L. E. Rucker stated that he made a tender of the deed to Miller, and was authorized to deliver to him the possession of the house he sold to Craig. Miller refused to accept it. Know the Craig building. First knew it 28 years ago. It did not look very old or new then. It was standing on the corner of Front and Main streets. It was moved from there by Miller to its present locality. It was repaired. Not worth anything to him. Knows the McCart house. It is 8 or 9 years old; a new building when it was put up. Miller has been farming and dealing in stock. Know Craig. He is a tailor by trade. When first knew Craig he lived in Bloomington; then moved to Old Town. Have known him 20 years; is not calculated to make a trade. He is an active old man for a cripple. Never knew him to trade or speculate in lands; has made a living. The house was of oak timber; moved by Miller three or four years ago; was weather-boarded over the old frame; is about 30 feet long. Miller is a man of property; lives in Bloomington. It is a good large house; the frame, if kept dry, would be good; is about three squares from the Court House.

23 Here complainant offered deed in evidence, re-conveying the Craig house.

Evidence of T. P. Broad: Knows the Craig house; frame was rotten; saw it to make a bid to fix it up for Miller; could be made good with proper expense. The house was nearly all made new by Miller; new floor, new roof, new sills in front, all front new, new studding on the south side, new joists, new stairs, new partitions, new doors. Inside of the house below was good, except it had sunk-en down; an offset upstairs. New sash were not put in in the back part of the house. House is 26 feet by 36. There was a brick foundation. Weather-boarding is old on the back part of the house. Oak timbers, if straight, are better than pine. An inch, or an inch and a half, of the back part of the back sill was decaying. Inside of the sill was sound. New chimneys. The house was well painted; seven rooms in the house. It was new excepting the frame and the weather-boarding; its soundness, all defects of floors and windows could be seen as soon as in the house. A man could not move in without seeing these defects.

24

Z. Lawrence, Sworn: Says that he knew the house in 1841; not fitted for a house; large oak timbers made it bad for a house; began to fall in before it was moved. The lot of ground on which the house now stands, was worth \$200 or \$250 in May 1862; don't know the price of lots there. The frame was oak; upper part sound; under part rotten. The objection was not to its soundness; if decayed parts were removed, it would last as long as if entirely new. Knows Craig has jogged around on his own hook.

25

McCart sworn: Am son of Robert McCart, who owns the McCart house; was built 8 or 9 years ago; his father gave \$3,000 for it; built on two lots; house is well built; worth more than the Craig house. I put the foundation all round and the chimneys to the Craig house; work was worth from \$150 to \$175. If new timbers were put in place of decayed ones, would last as long as the McCart house; most of the decayed sills were taken away from the Craig house. The McCart house is a balloon frame; an old fashioned frame, well put up, is better than a balloon frame; oak lasts longer than pine; each of the houses about the same distance from the center of town.

26

M. Frank sworn: A carpenter by trade; saw the house of Craig last fall; describes it as very bad; the McCart house much the best and most valuable; the defects in the Craig house are great; a man moving in could not fail to see the defects.

Mr. Daniels sworn: Glazier and painter, put in new sash in the Craig house in three windows last fall; the old sash taken out were rotten. A man could not move in without seeing the defects in the house.

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Mr. Hatch sworn: Lived in Bloomington eight years; never had charge of property so as to know its value. Knows the Craig house; estimates its value from the evidence at from \$600 to \$800. Am not a real estate agent. Have not been in the Craig house since it was fixed up. Know the McCart house; was all over it after Craig moved out; they were plastering on the corner room. Describes the appearance of the Craig house.

Norval Dixon sworn: Is Sheriff. Craig house is worth from \$600 to \$800; McCart house much the best. Knows Craig; he is not much of a trader; is an innocent, weak-minded old man; Miller is about

PAGE OF RECORD, 50 years old ; a good business man, and has been trading in stock, horses, cattle, and real estate ; knows how to take care of himself. Differences between the McCart house and Craig house could all be seen by a man of ordinary sight ; Craig house would rent for from \$8 to \$10 per month.

28 Dr. Craig sworn : Am a son of complainant, and a physician ; reside in Old Town ; know the lands father traded to Miller ; are near Old Town timber. Describes the land, its condition and quality ; ought to be worth from \$3 to \$10 per acre ; the timber land worth \$20 per acre. Father is 63 years old ; have not thought that father was qualified to do business ; witness is 42 years of age. The land traded to Miller was swamp land ; cost his father 25 cents per acre
29 seven or eight years since ; his father's judgment is not as sound as it has been ; he has been attending to his affairs, and is in good health ; always a man of good habits. He married a young wife.

T. H. Sparrow sworn : Craig lives on the premises bought of Miller, and has lived there ever since the trade with Miller.

W. C. Watkins sworn : McCart house is much the best ; Craig house and lot in May last was worth \$500. Am in the lumber business and prejudiced against old houses. McCart house is longest in front, more modern style is to put the end to the street ; Craig house has the end to the street.

30 James O'Donald sworn ; McCart house decidedly the best of the two houses ; some several hundred dollars difference between them in May 1862 ; have not been in the Craig house since it was finished ; could buy for \$800 property that he would prefer to it.

John D. Gibson sworn : Has been a carpenter for 20 years ; put sills under the Craig house ; put a drain for the cellar ; carpenter's work and material worth \$240 ; the house and lot in May last worth \$600 ; was in it about a year ago ; first floor had sunk down ; had settled a little when finished ; the house up stairs, the back part, was not much out of the way ; old windows ; there was a cellar, cistern, well, and privy on the lot. A man of ordinary eye-sight could see the defects of the house.

Defendant's witnesses.

31 G. D. McElhiny sworn : Am a justice of the peace ; took acknowledgment of deed from Craig to Miller ; went to the Craig house to get his wife's acknowledgment ; Craig went with me ; Craig's family was in the house. Craig said he expected to get money from his son in California. Craig and his wife took me up stairs to look at the house ; Mrs. Craig pointed out defects in the house ; she rather objected to signing the deed ; I explained the trade ; went into all the rooms, after the examination, she acknowledged ; they had just got in. Have known Craig for 20 years ; has always transacted his own business ; is a vigorous man of his age ; can't see any difference in his mind. Know Mrs. Smith ; don't know her reputation for truth and veracity. Miller and Col. Boyd came with Craig when he came to acknowledge the deed ; same Boyd who appears as Attorney in defence of the suit ; Craig executed deed and mortgage, and Miller the deed. I went to the Craig house after they were signed ; Mrs. Craig and Maggie Smith were there ; Mrs. Craig was making a fuss about the house ; Craig thought it would do ; Mrs. Craig did not decline signing the deed, but talked of it ; Craig argued in favor of her signing it.

Thomas Duckett sworn: Reside in Old Town, live near the land conveyed by Craig to Miller; describes it as low swamp land; a little shanty and very poor fences on it; could not be cashed for \$5 per acre; sold some timber land like the timber land Craig conveyed to Miller for \$12½ per acre; have known Craig a long time; he is a man of good habits; fair, reasonable understanding; don't know that he is a weak-minded man. Compares his own land with that Craig conveyed to Miller; neither of them fit for farming.

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Wm. Coler sworn: Describes the prairie land as mostly unfit for cultivation; values it at \$3 per acre; he cultivated the land under Craig, Miller was to have the crop. Had known Craig for eight years; always did his own business; was Treasurer of the Bible Society and School Director; talked a little queer in his jokes and yarns; the land would bring \$8 or \$10 per acre for some eight acres, the balance \$3 per acre.

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Esq. Jones sworn: Know the land well; not fit for much but frogs and crawfish; it is the worst tract in the neighborhood; not worth more than \$4 or \$5 per acre; would not give \$5 for it. Knew Craig for 20 years; always attended to his own business; never noticed any change in his mind; seemed to have reasonable mind.

Henry Everley sworn. Is real estate agent; is acquainted with the Craig house; was in it when it was being put up; says it was worth \$1,500 in May, 1862. Describes the house; assuming that the frame was old and the windows old and floor sunken, would not sell for more than \$1000; goes into an estimate of the cost of the building; values the lot at \$500; estimates cost of house at \$1000; knows the McCart house, and compares it with the Craig house; not much difference in their value.

34

S. S. Adolph sworn: Owns property adjoining Craig house; estimates Craig house last May at \$1,100; lot worth \$450; would give \$1,100 for the Craig house if he wanted it; it is more unsaleable to one who knows all about it; the estimate he put upon it is from what he knows of its whole history.

I. W. Wilmeth sworn: Live on the same block of the Craig house; would rent for about \$12 per month; worth about \$1,000, judging from what it would rent for; well situated for a boarding house, and for that worth \$1,000.

M. Radbuan sworn: Know Craig; he told me he had fourteen boarders, and wanted to buy a house for a boarding house; went with him to see two or three houses; said he was about trading land with Hatch; saw him at several houses; said his wife objected to the McCart house; said it was badly out of repair; afterwards Craig told me that he had traded for Miller's house, at \$4,060; I told him he had given too much for it; said he got a policy of \$1,400 or \$1,500; that he could keep thirty boarders; the land was not bringing him anything.

M. Butler sworn: Is a policeman; knows Maggie Smith; don't know her reputation for truth and veracity. "Do you know her general character for chastity?" (Objected to and excluded by the Court.) "Is she or not a common prostitute by general reputation?" (Objected to and excluded.) "What is her general reputation in the community in which she lives as to chastity or otherwise?" (Objected to and excluded.) Same questions asked other witnesses, and excluded.

PAGE OF RECORD. C. Miller sworn: Asked if he had had any conversation with Maggie Smith about what she would testify: and to state what it was? (Objected to and excluded.) Witness says he is son of the defendant, and a clerk in his store. "Did Mrs. M. Smith come to that store?—if so, when? Who did she inquire for?—if anybody, and what did she say she wanted? (Objected to what she said she wanted, and her conversation excluded.) Several other questions of the same tenor objected to and excluded.

35 This was all the evidence. Exceptions to same and to decree.

36 Close of Bill of Exceptions by seal and signature of the Court.
Appeal Bond filed: and bond and Clerk's certificate and seal.

194. 116

William G. Miller
as 3/3 Abstract of Record
James I. Craig

Gilead April 27, 1864
L. L. Linnell MR

STATE OF ILLINOIS,
Supreme Court, Third grand Division.

OTTAWA, APRIL TERM, 1864.

WILLIAM G. MILLER, Appellant, }
—VS.— } APPEAL FROM THE MC-
JAMES S. CRAIG, Appellee. } LEAN CIRCUIT COURT.

BRIEF FOR APPELLANT.

The decree of the Circuit Court should be reversed upon the points of law arising upon the case, as follows :

POINT I.

To justify any relief upon a contract, there must be such fraudulent misrepresentation by the vender, and such undue influence exercised by him over the vendee, as is calculated to, and does actually mislead the vendee, and such influence must arise out of some such relation between the parties as to give this influence, such as Trustees, Attorney, &c., &c.

In this case no such relation exists—no such misrepresentations took place. They are denied by the answer. The only witness who is relied upon to sustain them is Mrs. Smith. While she testifies to what was said about the time of making the contract, and speaks of the misrepresentations of Miller as to the quality and condition of the house she does not speak of any such relation between the parties as to give one any influence over the other. From her testimony it appears they met and dealt with each other as strangers at arm's length. The house that Miller sold to Craig was in the Town. Craig had full opportunity to see it for himself, and did see it, moved into it, and the defects were pointed out to him by his wife, before the Deed from Craig for the lands was delivered to Miller; and these defects were such, that they were not only pointed out to him by his wife, but were plainly visible upon entering the house, as is fully testified by Mr. Broad, Mr. Frank, Mr. McDonald, Mr. Dixon, Mr. Gibson, and all who testified upon the subject. Craig then made the trade with full knowledge of all the condition and quality of the house. Admitting all the misrepresentations Miller is stated by the witness to have made, Craig could, and did, examine for himself. In the case of *Wendall vs. Van Rensselaer*, (1st John. C. Rs., 350-1) referring to cases of fraud and misrepresentation, Chancellor Kent says :

“All the proof shows he was in the constant habit of dealing in regard to his property with the public at large, with ordinary discretion and sagacity. The bargain seems to have been an incautious and injudicious one on the part of the Testator, (vendee,) if we consider it merely as a pecuniary transaction between strangers dealing at arm's length, but it is not to be helped for that cause.”

And again, Willard in his book on Equity, (page 155,) says :

“The rule of CAVEAT EEMPTOR, applies to real as well as personal estate, the purchaser generally takes the risk as to quality and condition unless he protects himself.”

And again, Judge Story, in his work on Equity, (Vol. 1st, Sec. 197,) says:

"Ordinarily, matters of opinion between parties dealing upon equal terms, though falsely stated, are not relieved against, because they are not presumed to mislead or influence the other party when each has equal means of information."

And to the same effect, Chancellor Kent, in his Commentaries, uses this language: (Vol. 2, page 484-5.)

"The Common Law does not go to the romantic length of giving indemnity to indolence and folly, or careless indifference to the ordinary and accessible means of information. If the purchaser is wanting in attendance, the maxim CAVEAT EMPTOR applies."

Whether, then, Miller made such representations or not, or whether they were true or not, does not, in view of the authorities, seem to be at all material. And were it even material, it should have been confided in and believed by Craig, under influence exerted over him by Miller by means of some relation of confidence that Miller used to influence him, for Craig now to avail himself of it to the prejudice of Miller; but there is no proof any influence, no proof of power upon the part of Miller, used to induce Craig to take his representations, no proof that Craig did act upon them or believe them; and if he did, still it was his own folly not to use the means of information open to him. He cannot now be heard to say that he was deceived by Miller's misrepresentations. In the language of Judge Story: (Eq. Vol. 1, Sec. 200.)

"He may impute any loss or injury in such case to his own negligence and indiscretion. Courts of Equity do not set for the purpose of relieving parties who refuse to exercise a reasonable diligence and discretion."

POINT 2.

This contract being executed, and not executory, Courts of Equity will not administer relief, where, if it was executory, they might refuse to enforce it for the vender.

The distinction referred to in 2d Story, Sec. 693, is familiar to the Court, between the two classes of contracts. An executory contract leaves something to be done, the party may yet deliberate and inform himself before he consummates his contract. But in a Deed the Law presumes that the party making it has made it on due deliberation, such as the law provides for him. He must first sign it, then he must put his seal to it, or it is not his deed; and when he goes to the office to have his acknowledgment, and it is certified in due form by the officer, it is still not his deed—it is no deed, though signed, sealed and acknowledged, there is one other thing, it must be delivered; SIGNED, SEALED, AND DELIVERED, is the language of the law. Before these solemnities were complete, Craig had gone all over the house and examined it all over, the Deed still in his possession and under his control. His wife points out to him all the defects in the house, he sees them, expresses himself satisfied. Though Mrs. Craig said that it was not as good she expected, Craig said it would do, and by arguing with her, Craig got his wife to sign it and acknowledge it, and it was after that delivered to Miller, having had all the deliberation and care necessary to inform Craig of all that was necessary to be learned about the house for which he had conveyed his land in the Deed de-

scribed. He has now, being fully informed, made the conveyance of his land to Miller, all of his own unbiased choice.

If Miller made fraudulent misrepresentations of the condition of the house, Craig has brought himself within the principle laid down by Story, in these words: "The defrauded party may, by his subsequent acts, with full knowledge of the fraud, deprive himself of all right to relief, as well in equity as in law." (1st Story's Eq., Sec. 203—a.)

POINT 3.

There is no such inadequacy of price in the trade as entitles Craig to any relief. The lands are variously estimated by the witnesses at from \$3. to \$10 per acre for 120 acres, and at from \$10. to \$20 per acre for 20 acres. Putting the 120 acres at from \$6. to \$7. per acre and the 20 acres at \$15.—\$300.—in all, \$1,020., and notes \$1,300, making \$2,320. The Craig house is variously estimated at from \$500. to \$1,500.; and when it is considered that Craig wanted a house; that the land produced him nothing; or the the house might be put at a still less price, there is no such inadequacy of price as will rescind the contract on that ground. In *McCartee vs. Enright* 13th Ills Reps., p. 242, land worth \$900, was sold for \$270, part in trade. The Court said: "The inadequacy of price is not sufficient. A man may dispose of his property at such price as he pleases, it will not rescind an executed contract, upon account of inadequacy of price." And in 2d John. C. R., pages 25--26, it is said: "That in no executed contract can mere inadequacy of price be sufficient to set it aside."

POINT 4.

recission
Upon rescission of the contract the parties must be put in STATU QUO. This rule is so well settled that it requires no authorities to be referred to further than those on the margin. 21st Ill., 619—26th Ill., 438-460. A party coming into Equity, must do equity.--- To entitle himself to ~~recission~~ *recission*, he must further show that he has made a tender of what he received. The witness Rucker says he tendered to Miller a quit claim deed and the possession of the Craig house, that is, he offered to tender possession, for Craig had not vacated the house, but was still in it, and continued in it, and was in it at the time of trial. (See evidence of Sparrow, page 29.) Rucker could not, as the agent, tender possession, when Craig was, with his family, in the house. Nor did he offer to tender to Miller, or in any way offer to settle for the rent or use of the house. Rucker should have made a tender of the key, with the Deed and amount of rent.

Nor did the Circuit Court require in its decree that Craig should pay Miller any rent, although Dixon proved it was worth from \$8. to \$10, and Wilmeth, \$12 per month; and the decree does not place the parties in STATU QUO. It requires Miller to surrender up all that he got for the house, but does not require Craig to surrender up all he got from Miller. What did Craig get from Miller? Answer: He got the house, and the use of the house, worth \$12. per month., during the the time from May 16th, 1862, to March, 1863. Miller then did not get what he let Craig have by about \$120., and was not placed in STATU QUO by the decree, and for that it should be reversed.

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POINT 5.

The Court should set aside this decree upon the ground that the Circuit Court refused to permit the Appellant to prove that the witness Mrs. Smith was, by general reputation, a common prostitute, and upon that account unworthy of credit. The evidence going to impeach her credibility upon account of her character as a common prostitute, should have been allowed, and this point has been so decided. See case, Commonwealth vs. Murphy 14, Massachusetts Reports, page 388. The Court says:

"A common prostitute must have greatly corrupted, if not totally lost, the moral principle, and of course her respect for truth and her regard for the sacredness of an oath. The credibility of a witness may, therefore, be properly impeached by proving her to be of such character."

And if this decree can, by any possibility, be approved, it must be upon her testimony, for without it there is no case. No other witness testified to what Miller said.

POINT 6.

The evidence does not show such weakness of mind or incapacity in Craig as to be any ground for relief in a Court of Equity. In a late case referred to in the American Law Magazine, New Series, Vol. II, page 503, the case of Amer vs. Stout, Wright's Pa. Reports, it is said:

"Mere mental weakness will not authorize a Court of Equity to set aside a contract, if it does not amount to an inability to comprehend the contract, and is unaccompanied by evidence of an imposition or undue influence."

And the same principle is laid down in Parsons on Contracts, as follows: (Vol. 1st, page 314.)

"Equity gives no relief against the consequences of imprudence folly, or that deficiency of mind which makes mistakes easy, but does not amount to unsoundness or disordered intellect."

I prefer quoting the authorities fully in their own words, and in Chitty on Contracts, it is said: (Page 30.)

"With regard to persons of weak intellect but not insane, even equity will not relieve, unless some deception were practiced by the party attempting to avail himself of the contract."

Now in view of these authorities and the evidence on the Record, it will appear by the testimony of all the witnesses, that Craig was a man of sober, steady habits, 63 years of age, and in good, robust health. Some of the witnesses have known him for 20 years; could see no difference in his mind; had always attended to his own business, his own trading. The evidence to this point is uniform, except that of his son, Dr. Craig, who says: "Father's judgment is not as good as it has been. It has been breaking for some years. He has been attending to his own affairs; has always been a man of good habits; his physical health is good for a man of his age; he has had no misfortune or disease to impair his faculties. He married a young wife." Page 29 of the Record.

The last fact—"HE MARRIED A YOUNG WIFE"—gives the key to the opinion of Dr. Craig that his father's mind was not as sound as it had been. A very common conclusion, as the Court must have noticed, with children when the father brings in a young woman to take

the place of their deceased mother, especially when the children, like Dr. Craig, are 42 years of age, and they see a woman younger than themselves for their mother. The minds of the children are stunned, curious reflections pass over them, and they conclude that "FATHER'S JUDGMENT IS NOT AS SOUND AS IT HAS BEEN." Other witnesses did not discover this. Lawrence can see no difference; says he has jogged along on his own hook, as usual. McElhiny has known him for 20 years; (Rec., p. 30,) can't see any difference in his mind; he is a vigorous old man. To the same effect Rucker. And this uniform testimony against that of Dr. Craig is entitled to preference, and is conclusive; and especially is this so in view of the influence on the mind of Dr. Craig produced by the marriage of his father to a young woman.

It may safely be admitted that Miller is a man of more intellect than Craig, but where will the Court draw a line to show the amount of incapacity which will relieve a man from his contract? Will it relieve "against the consequences of imprudence and folly which makes mistakes easy, but does not amount to unsoundness of mind?" Will the Court relieve persons of weak intellect, but not insane? The authorities above say no.

Yet it is admitted that there are cases where weakness of mind is so great that, a party knowing it, and by contrivance and fraud, takes advantage of it, and obtains an unconscientious and fraudulent advantage, Equity has given relief in such cases. Such is the case of *McCartee vs. Enright*, 13th Illinois Reports, page 242. In that case the party was in prison under indictment, was given to habits of intoxication. The other party well knew all this, went to the prison and offered to make the trade for McCartee's land; offered to go his bail if he would make the trade. McCartee refused. Enright threatened to have other indictments against him. McCartee still refused. Enright then made him drunk, and while drunk he conveyed his land, worth \$900., for \$270., part of it in trade, and the Court very properly relieved McCartee by cancelling the Deed. Here the Court held that the inadequacy of price was no ground for relief, but it was granted upon the ground of the fraudulent contrivances by which it was brought about.

Upon examination it will be found that, where Equity has given relief from an executed contract, it has been under circumstances similar to those in the case of *McCartee vs. Enright*. In this case there is no resemblance to any such facts. Taking the representations of Miller as stated by Mrs. Smith, and still there is no such discrepancy between what was said and the comparison between the McCart house and the house Miller sold to Craig; for although the Craig house was an old frame, the rotten timbers had been removed, and except a few sash, new timbers were put in the place. It had all been rebuilt within a few years. The frame was oak, which, as the witnesses all say, was better than pine. It was a regular frame, better than a balloon frame. The McCart house was an older house, a balloon frame, built of pine timber. It had been built several years before the Craig house had been rebuilt. It was as large, was as near to the centre of the town. Watkins says it was built in more modern style. Everly thought it was as good as the McCart house. And although most of the wit-

nesses prefer the McCart house, it seems to have been more a matter of taste than of judgment. The memory of the old frame standing upon the corner for a quarter of a century was ever on the mind of the witnesses, and they could not realize the fact that it had all been made new. The McCart house was not in good repair. Mrs. Craig objected to it on that account. (See the evidence of Radburn, Record, page 24—27.) Hatch was all over the McCart house soon after Craig moved out, and they were plastering one of the rooms. See also what Everly says describing both houses, giving details as to the cost and work about each, stating the facts upon which his opinion is based. (Record, page 33.) Everly was a Real Estate agent, accustomed to deal in and notice property. The witnesses who speak in disparaging the Craig house, give only their opinions. The facts which they give as to the size and locality of the house, the new material that was put into it while building; the cellar, brick foundation, brick chimneys; house 26 by 36, two stories high; these facts do not go to sustain the opinions of the witnesses in the low estimate of value they put upon the Craig house. At any rate, it shows that it was a matter about which there was room for men to differ in opinion. What Miller said, therefore, was substantially true; it was a newer and a better house than the McCart house. Everly, the Real Estate agent believed so. Miller had a right to believe the same.

There is not the slightest ground here to charge Miller with any false and fraudulent misrepresentation. If what he said is not strictly true as a fact, it was his honest opinion that it was, and the evidence shows that it is a matter of opinion in which men may honestly differ.

Again, the transaction does not show such weakness of mind in Craig. Craig wanted to keep a boarding house; told Radburn after the trade of the large number of boarders he had. The house was suitable and well calculated for a boarding house. (Record, page 34.) Says Wilmeth, in his evidence on the Record: "That was the kind of house Craig wanted." Then, as to the price; the land that he had put in cost him but a few dollars, at twenty-five cents per acre; (See Dr. Craig's evidence, page 29 of Record,) it brought him in nothing. As he told Radburn, (Record, pages 32-33-34,) "it was swamp land, scarcely fit for cultivation." And in any event, taking in view what the land cost him, he could not lose much, if anything, in making the trade. All this might very naturally pass through his mind; no doubt it did on making the trade. To conclude, then, on this point, I have shown that Craig was not a man of such weak mind; that Miller made no such false representations as to deceive him; that his representation was true; and that Craig had his reasons, as he told Radburn for making the trade, and acted rationally.

The decree should be reversed upon the entire merits. If not upon the entire case, then upon the ground that it does not place the parties in STATU QUO. It gives Craig the use of the house, while Miller never had the land, and was restrained by injunction from using it, and thus gets nothing for his house, and upon any or all of the errors assigned,

The Appellant has entire confidence of a reversal upon the merits.

W. P. BOYD,
R. E. WILLIAMS, } Atty's for Miller.

194 116

William G. Abille
vs $\frac{1}{2}$ appellants Brief
James J. Craig

Filed Oct 27. 1864
J. LeCombe

Printed at the Office of the Chicago Evening Journal, 50 Dearborn St.

STATE OF ILLINOIS,
SUPREME COURT.

THIRD GRAND DIVISION.

WILLIAM G. MILLER,

vs.

JAMES S. CRAIG.

Appeal from McLean.

BRIEF OF APPELLEE.

On this record there can be no dispute as to the law. The only difficulty is the application of the law to the facts presented. On all the points made by the appellant the law has been settled by this Court.

The case of *McArtee vs. Engart*, 13 Ills., P. 248, decides that if a party "meet a purchaser on equal ground and parts with his estate for less than it is worth he has no claim to relief in equity: he must abide the consequences of an injudicious bargain, if voluntarily and fairly made."

The Court "will not interfere with the sale unless there has been some *fraud*, mistake or undue influence."

I am not inclined to ask any modification of the law settled in that case; but it is respectfully urged that a strict application of the rules laid down there will sustain the decree in the record now before the Court.

In the case at bar it appears from the evidence, (and the closest scrutiny by the Court of the evidence in this record is requested,) that Craig, an old man of 63 years of age, crippled in body and weak in mind, was the owner of 20 acres, worth \$400, and 120 acres, worth from \$600 to \$1,000, in all about the value of \$1200 or \$1500. In May, 1862, Craig was living in Bloomington, in a house known as "McCart" house.

Miller, the appellee, was a shrewd, active, trading man—"stock, horses, cattle and real estate" being the articles in which he traded.

Miller visits Craig, in the house where he was then living, and, in the presence of the witness Smith, began and concluded the trade complained of—expressly and knowingly misrepresenting the condition and character of the property he owned; stating that *his house was a newer and better house than the McCart house*, and was so clean that it needed no sweeping or cleaning. Now this was a deliberate falsehood, uttered by Miller with but one motive, and that to cheat the appellee by getting his lands, putting the old hulk of a house in his possession in lieu thereof, and then kindly taking notes and mortgage on the house from appellee for \$1300—nearly double the actual value of the house and lot.

Look at Miller's deed to Craig, reciting the value of the premises conveyed at \$4,300—fully 5 times the value of the house and lot! Miller has an attorney at hand, who prepares all the papers, and, in order to give that *solemnity* to the transaction which the

appellant insists surrounded its final consummation, Miller, attended by his attorney and his Justice of the Peace, proceeded to the old house into which Craig had moved and there after some delay and doubting on the part of Mrs. Craig, the papers were executed and delivered.

How then did the parties stand?

Miller received lands worth, at the lowest estimate, \$610, at a fair estimate, \$1,200, at the highest estimate, \$1,700, also the notes of Craig secured by mortgage for \$1,300, making in all, taking a fair estimate of the land as a basis, \$2,500. Craig received an old house—one of the oldest in Bloomington—worth, at the lowest estimate, \$500, at a fair estimate, \$700, at the highest estimate, \$1,500. Taking then the medium or fair estimates of the respective articles, Miller got \$2,500 in value and Craig \$700.

Does it need any further evidence to show this Court that Miller was a shrewd trading man, and Craig a weak minded man, unable to cope with his adversary in a trade? If so, let us gather it together and examine it.

The testimony of Rucker, p. 22, of Lawrence, p. 25, of Dixon, the County Sheriff, p. 27, and of Dr. Craig, p. 29, affirm the allegation that Craig was a *weak minded old man*.

Did Miller act fraudulently? or in the words of the decision first quoted, has there been "some fraud" in this case which, in connection with the gross inadequacy of price above shown, will justify equitable interference.

If wilful misrepresentation by a shrewd man, as to the character and condition of the property he was selling to the weak minded old man, thus inducing the trade, be fraud, then Miller is guilty of it. See testimony of Mrs. Smith, p. 22. That Miller's

representations then made were fraudulent and untrue, is shown by his conduct in keeping Mrs. Craig from the house, by telling her it was clean and needed no sweeping, and also by the testimony of Rucker, p. 22, Lawrence, p. 25, McCart, p. 25, Frank, p. 26, Dixon, p. 27, Watkins, p. 29, O'Donald, p. 30, showing clearly that the McCart house was only eight years old, and was by far the best house; while the Miller house was an old concern known by Rucker 28 years ago, and by Lawrence since 1841, and was moved from the business part of the town, where it was an old store house, to the place where it now stands, patched up and metamorphosed into a dwelling house.

Here then is the whole case: gross inadequacy of price, paid by a weak minded old man under false and fraudulent representations, made to him to induce such payment, by a shrewd, active trader.

The gross inadequacy of price and the fraud are clearly shown, and it is respectfully urged that, if upon this showing equity has no relief for the appellee against the frauds and treachery of the shrewd and unconscionable trader, the appellant, then indeed the beautiful theory of the chancellor, that he is the protector of the weak against the machinations of the strong, that he condemns fraud wherever found, and drives the guilty party from his sacred chamber, is without practical application.

Again: This evidence cannot appear from the record in that clear light in which it presented itself to the chancellor in the Court below. He had the parties and the witnesses before him, and his decision upon the facts—like the verdict of a jury—should not be disturbed unless manifestly erroneous. He could better determine whose evidence was most valuable; what to receive and what to reject.

So much as to the 1st, 2nd and 3rd points of appellant. As to the 4th point, that the parties were not put in *statu quo*, it is

submitted that this was the sole fault of Miller. A deed for the house, and the possession, were tendered him. See testimony of Rucker, p. 22, and the deed on file, p. 6. Miller refused to accept them, but insisted on the trade. He had the use of, and received the crop on, the land. See testimony of Coler, p. 32. He cannot complain of his own wrong. In any event however this would only be ground for a modification of, and not reversal of the decree.

As to the 5th point, the refusal of the Court to hear evidence as to the character of the witness for chastity :—

In the case of *Frye vs. State Bank*, 11 Ill., p. 378, the rule was settled by this Court as decided by the Court below. It is there said, "all evidence of such a character (general reputation *"in other respects than for truth und veracity,"*) is improper, and "should be rejected. The authorities are uniform that it is only "the general reputation of a witness that can be inquired into, "and although there is some conflict in the decisions as to whether "the inquiry should be confined to the general character of the "witness for truth and veracity, *we think the better rule is that it "should be so confined."*

The appellant relies upon 14 Mass.; but in 3 Pick., 194, Com. vs. Moore, the same Court declined to recognize the rule laid down in 14 Mass.

And on the 6th point it is submitted that under the authorities there quoted by appellant's counsel this decree must stand. In the record before us we have the *mental weakness* of Craig, and the *imposition* upon him by Miller. And let us take the law referred to in Chitty on contracts, p. 30; "with regard to persons of *weak "intellect* but not insane, even equity will not relieve *unless* (unless! "what?) some deception were practiced by the party, &c."

In the case at bar we have the *weak intellect* of Crag, not amount-

ing to insanity to be sure, and we have *the deception* practiced upon Craig by Miller, the party attempting to avail himself of the contract.

Indeed, as I stated in the outset, the law is clearly settled; the only difficulty is its application to the facts presented.

From the fact that I filed the Bill and tried the case in the Court below and from an intimate acquaintance with the parties litigant, I may be prevented from reading the record of the case calmly and impartially. Hence I submit to your Honors—if in reading, and deciding upon the record presented, you cannot see, as I do, the gross inadequacy of the price, the fraudulent practices, the imposition, the weak intellect, and all the minor badges of fraud, which call loudly for the equitable relief granted my client in the Court below, that it may be remembered I read this record under those strong feelings of sympathy for my client, naturally forced upon me by representing in this cause the weak minded old man who has been deceived and overreached, (and if he fail in this tribunal, ruined) by a shrewd, unscrupulous trader.

Finding my client's cause sustained by the able judge who heard it in the Court below, I cannot but believe that the merits and the law on this record will be settled in favor of the appellee.

WM. W. ORME,

Attorney for Appellee.

No. 194

116 86

Miller vs. Craig

Argument of
Appellee

Filed May 3, 1864

L. L. Case & Co.

State of Illinois

Supreme Court

3d Grand Session

Attorney April Term 1864

William G. Miller

vs

James S. Craig } Appeal from the
McLean co court

The Appellant assigns the following
errors upon the Record.

First the Court erred to the prejudice
of Appellant, in decreeing the relief prayed
for in the bill.

Second the Court erred to the prejudice
of Appellant, in not dismissing the
bill.

Third the Court erred to the prejudice
of Appellant, in not decreeing rents
for the house and lot in favor of
Appellant.

Fourth the Court erred to the prejudice
of Appellant, in refusing to permit Appellant
to prove that the witness Margaret Smith
was a common prostitute, for the purpose
of impeaching the credibility of said witness.
For these errors, and others that will be
apparent on the an inspection of the record
the case should be reversed and the bill dismissed.
H. P. Boyd and H. G. Williams
Attorneys for Appellant.

1
Pleas continued and held at the Court House in
Bloomington in and for the County of McLean in the
Eighth Judicial Circuit of the State of Illinois. before the
Hon. Circuit Court of said County. in a certain cause
therein pending. wherein James S. Craig was Complainant
and William G. Miller was Defendant.

State of Illinois }
McLean County } ^{ss} Be it remembered that heretofore to wit.
on the 9th day of June A.D. 1863. came James S. Craig. by
Swett & Orme his Attorneys. and filed in the office of the
Clerk of the Circuit Court of said County his Bill of
Complaint. which Bill of Complaint was in words and
figures as follows. to wit.

Bill - State of Illinois } ^{ss}
McLean County } To the Hon. David Davis Judge
of the Circuit Court of said County. - In Chancery.
Humbly complaining shews unto your Honor. your Orator
James S. Craig of said County and State. that on the 16th
day of May A.D. 1862. he was the owner of and seized in fee
of the following described lands in said County and State.
to wit. The South East quarter of the North East quarter of
Section One (1). and the East half of the South East quarter
of Section One (1) in Township Twenty Two (22) North of Range
Three (3) East of 3^d P.M. and 20 acre. Lot 1. in S E 1/4 of Section
34. in Township 23. N. R. 3 East of 3^d P.M. in McLean County
Illinois. and being so the owner of said property. your Orator wanted
to make a purchase of some suitable premises in the Town of

Bloomington. and met one William G. Miller. also of said County and State. who pretended to be the owner in fee simple of the following premises in said Town of Bloomington. to wit. The North part of said Lot 125. being 64 feet 8 inches from North to South. beginning at the North East corner of said Lot. Thence South 64 feet. 8 inches. Thence West 99 feet. Thence North Sixty four feet 8 inches. Thence East 99 feet to the beginning. in James Allens Addition to the Town of Bloomington in said County and State. Your Orator and said Miller entered upon a trade for the exchange of their respective premises. Your Orator shows that his said lands are worth at least Ten Dollars per acre for the 120 acres. and \$20 per acre for the 20 acre tract. making the fair value of all the said lands \$16000- Your Orator further shows, that during said trade or negotiations for an exchange, the said Miller falsely and wilfully represented to Orator. that said house on said premises was a good new house. in good order and repair and perfectly clean. and was as new a, and a better house than the house of one Robert Mcbart. in which Orator and his family were then living. and that said house and premises of said Miller cost him every cent of \$4500- and was worth that amount. Orator further shows that he was then living in the house of Robert Mcbart. as a tenant. and had been required by said Mcbart to move out in two days. of which said Miller had knowledge - and under those circumstances relying on the representations of said Miller. believing his statements to be fair and true. Orator. without going inside of the house. or examining it inside (the same being then locked up by said Miller) agreed to make the exchange of property with said Miller. on the following terms. - Said Miller insisted

that Orator should convey his lands to him, and should also give him (said Miller) his notes for \$1300. secured by mortgage on the town property, which he, Miller, would convey to Orator, and relying on the representations of value, and the condition of the town property, made by said Miller, your Orator agreed to make the exchange aforesaid on the terms aforesaid - and on the 16th day of May 1862, the same day of the negotiations, Orator and his wife by deed prepared by Miller's attorney conveyed his said lands as above described to said Miller in fee simple, and said Miller and his wife by deed on said day conveyed said town property to Orator. said deed to Orator being for the expressed consideration of \$4300. and Orator gave his three notes of \$433.³³ each, payable in one, two and three years respectively with interest at six per cent per annum, to said Miller, and executed a mortgage back to said Miller on said town property to secure said notes, and said papers were respectively delivered between Orator and said Miller. And Orator further shows that no other consideration of any kind whatever passed from said Miller to Orator in making said exchange, but the property aforesaid. Orator further shows that he entered upon & took possession of said town property - That he found the same out of repair - that the house is a worn out and decrepid old house on the inside - That^{it} is one of the oldest houses in the City of Bloomington - purchased by said Miller in the business part of the City and removed to its present location, where it has been partially fixed up and painted on the outside, and some absolutely necessary repairs on the inside - That the floors were sunken and some of the windows entirely rotted out. That the house was dirty and needed cleaning, and the whole premises did not

cost said Miller exceeding \$600- That the said house is not as new a house as Mcbarts said house. but on the contrary, is an old dilapidated frame that was used for many years - nearly thirty if not longer - as a sort of Store house or ware room in said town, whereas said Mcbarts house has been entirely newly built within about 8 years. Your Orator further shows that said premises so conveyed to Orator by said Miller are not worth, and could not be sold for over \$600, which would be an high price for them.

Your Orator further shows that he is an old man of weak mind and unused to town life, having lived in the country, and knowing nothing of the value of town property. That said Miller is a shrewd, active, business man, and a brisk trader in any & every thing. That your Orator has been entirely overreached by said Miller in said trade. that for property worth at least \$1600, and Orators notes for \$1300 more, making \$2900, in all, said Miller has only given Orator said Town property worth only \$600, thus getting from Orator by misrepresentation and fraudulent practices, five times the value of said property.

Your Orator further shows that he has repeatedly and in a friendly way offered to cancel said trade with said Miller and give back possession of said premises, but said Miller refuses so to do, and insists on holding orator to said trade.

Your Orator further shows that he has tendered back to said Miller a deed for said premises conveyed by him to Orator, and demanded a reconveyance of said lands and a surrender of said notes, but said Miller refuses to do so, and your Orator brings said Deed, filed herewith, marked Exhibit "A", into Court, and keeps the tender of the same to said Miller.

Orator further shows, that as he is advised, he is entitled to have

said exchange or trade, cancelled and set aside. Your Orator therefore charges, that he is of weak mind, and wholly unable to cope with said Miller in a trade. That said Miller wilfully and maliciously fraudulently cheated Orator in said trade. That said Miller knowingly and designedly misrepresented to Orator the condition and value of said tract property, with a view of defrauding Orator of his said lands. That the consideration of said conveyance to Orator, is five times the value of the property conveyed. That said Miller by reason of Orators weakness of mind, and by fraud, misrepresentation and deceit, has overreached Orator in said trade - all of which doings are contrary to equity and good conscience. And inasmuch as Orator has no remedy at law, he prays your Honor to take cognizance of his case, that process may be issued against said Miller, that he be made Defendant hereto, and required to answer herein, but not under oath, his oath being waived. That upon a final hearing of this cause, your Honor will set aside and hold for naught the said trade and said Deeds, notes & mortgage and that your Orator be restored to all he has lost by reason of said exchange, and for such other and general relief as the circumstances of the case require. And in the mean-while Orator prays for an injunction, restraining said Miller from conveying or encumbering said lands, or negotiating or assigning said notes, and under duty bound Orator will so pray &c.

Swett & Orme, Attys.

James S. Craig.

State of Illinois ss

in Dear County I James S. Craig being first duly sworn, says and swears that the matters and things set forth in the foregoing

Bill are true, as therein set forth of his own knowledge, and those things stated on information and belief he believes to be true and further says not.

Subscribed and sworn to before me James S. Craig.

June 7th 1862.

W. W. C.

William W. Crome.

Notary Public

Accompanying said Bill of Complaint and filed therewith was the following exhibit, marked "A." to wit.

Exhibit-

This Indenture made this 4th day of June, in the year of our Lord One Thousand Eight Hundred and Sixty two. Between James S. Craig and Sarah J. Craig his wife, of the County of McLean, and State of Illinois of the first part, and William G. Miller of the County of McLean and State of Illinois of the second part. Witnesseth, that the said party of the first part, for and in consideration of the sum of One Dollar to them paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part for ever release and discharge therefrom, ha remised, released, sold conveyed and quit claimed and by these presents do remise, release, sell, convey and quit claim unto the said party of the second part his heirs and assigns forever all the right, title, interest claim and demand which the said party of the first part have in and to the following described lot, piece or parcel of land with the appurtenances, lying and being in the County of McLean and State of Illinois, described as follows, to wit.

The north part of Lot No. One Hundred and Twenty five (125), being Sixty four feet eight inches (64 ft. 8 inches) from North

to South. Beginning at the North East corner of said Lot. Thence South Sixty four feet eight inches. Thence West ninety nine (99) feet. Thence North Sixty four feet eight inches (64 ft. 8 inches) Thence East ninety nine feet to the beginning. in James Allen's Addition to the Town of Bloomington.

To have and to hold the same together with all and singular the appurtenances and privileges thereto belonging or in anywise thereto appertaining. and all the estate. right. title. interest. and claim whatever of the said party of the first part either in law or equity. to the only proper use. benefit and behoof of the said party of the second part his heirs and assigns forever.

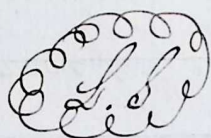
In witness whereof the said party of the first part have hereunto set their hands and seals. on the day and year first above written.

Signed. Sealed and delivered in
presence of-

James S. Craig Esq.
Sarah J. Craig. & L. L.

State of Illinois
McLean County
I, S. William W. Orme, a Notary Public for Bloomington in said County do hereby certify that the above named James S. Craig and Sarah J. Craig (who is personally known to me to be the person whose name is subscribed to the foregoing deed as having executed the same) this day in his proper person came before me and acknowledged that he signed, sealed and delivered the said Deed as his free and voluntary act for the uses and purposes therein mentioned. And the said Sarah J. Craig, wife of the said James S. Craig having been made fully acquainted with the contents of said deed, and by me examined separate and apart from her said husband, declared that she signed and acknowledged said Deed, and relinquished her claim in and to the lands thereby conveyed, freely, voluntarily and

without compulsion of her said husband, and that she does not wish to retract. In testimony whereof I have hereunto set my hand and notarial seal. This 5th day of June. 1862.



William W. Orme.

Notary Public.

Attached to said Bill of Complaint was an order for an Injunction. which order was in words and figures as follows to wit.

Order for
Injunction.

On complainant entering into Bond in the penal sum of \$400. with S. L. Craig as security. conditioned for the payment of all damages wrongfully sustained. and all costs. in case said Injunction is dissolved. the clerk will issue an Injunction as prayed for in the said Bill.

Bloomington Ill. June 9th 1862.

D. Davis, Judge.

And thereupon on said 9th day of June A.D. 1862. came said complainant and filed his Bond as ordered by said Court. which Bond was in words and figures as follows. to wit.

Injunction Bond.

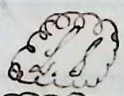
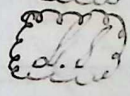
Know all men by these presents. that we James S. Craig and Stinson L. Craig of the County of McLean and State of Illinois. are holden and firmly bound unto William G. Miller in the penal sum of Four Hundred Dollars lawful money. for the payment of which well and truly to be made we do hereby bind ourselves. our heirs. executors and administrators. jointly severally and firmly by these presents - Sealed with our seals.

9

and dated this 9th day of June A. D. 1862.

The condition of the above obligation is such that, whereas the above Brandon James S. Craig, has prayed for and obtained a writ of Injunction from the Judge of the Circuit Court of said County restraining and enjoining the said Miller from conveying or incumbering certain lands in said Bill described, and from assigning or endorsing certain notes in said Bill described, until the Circuit Court of said County should make other order to the contrary. Now if the said James S. Craig shall pay or cause to be paid to the said William G. Miller, all such damages as he may sustain by reason of the issuing of said Injunction, and also such costs and damages as may be awarded against said complainant by the said Court, in case the said Injunction herein granted shall be dissolved then this obligation shall be void, otherwise to be and remain in full force and effect in law and equity.

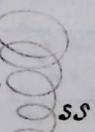
Approved by me this 9th day of
June 1862.

James S. Craig, 
J. S. Craig, 

Wm. McCullough, Clerk.
By L. Burn. Dep

And thereupon, on said 9th day of June 1862, there issued out of said Court a writ of Injunction in words and figures as follows.
to wit.

Writ of
Injunction

State of Illinois 
McLean County  The People of the State of Illinois.
To William G. Miller of said County. Greeting.

Whereas James S. Craig has this day filed in the office of the Clerk of Circuit Court of said County, his Bill of Com-

plaint against you the said William S. Miller. showing that you are the legal owner of the following described premises. to wit. The S E 1/4 of N E 1/4 of Section One. & the S 1/2 S E 1/4 of Section one. Town 22. Range 3. East. Also 20 acres. Lot. 1. in S E 1/4 of Section 34. in Town 23. Range 3. East. all in McLean County Ills. and also that you are the owner and holder of 3 promissory notes. each for the sum of \$433.33. executed by the said James S. Craig to the said Wm. S. Miller. dated May 16th. 1862. and due respectively in one. Two & three years from date. And whereas it is further alleged in said Bill of Complaint. that said real Estate and said promissory notes were obtained from said James S. Craig by fraud and misrepresentation. Now therefore. in consideration of the matters and things in said Bill of Complaint more fully set forth. we do hereby strictly command and enjoin you. the said Wm. S. Miller. that you do absolutely and entirely refrain from in any manner conveying or encumbering said premises above described and from in any manner transferring any of said above described notes. until said Bill of Complaint shall be fully answered. and said Court shall order to the contrary. = For of said not. under penalty of the Law. To the Sheriff of said County of Execute.

Witness. Wm. McCullough. Clerk of said Circuit Court
 & the seal thereof this June. 9th. A. D. 1862.

Wm. McCullough. Clerk.

By L. Burr. Depty.

Which writ of Injunction was by the Sheriff of said County returned into said Court endorsed as follows. to wit.

Executed this writ on this 9th day of June 1862. by delivering

a true copy of the same. to the within named W^m. S. Miller.

For. S & Ret. 60. copy 50. mileage 5. \$1.15

J. L. Rount. Sheriff.

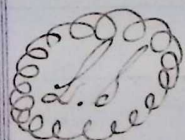
By Geo. Packe. Deputy

And also on said 9th day of June A. D. 1862. there issued out of said Court a writ of Summons in words and figures as follows. to wit.

Summons

State of Illinois
McLean County ^{ss} The People of the State of Illinois.
To the Sheriff of said County - Greeting -

We command you to summon William S. Miller if found in your County personally to be and appear before the Circuit Court of said County of McLean on the first day of the next term thereof. to be holden at the Court House in Bloomington on the first Monday in the month of September next. to answer to a certain Bill of Complaint filed in our Circuit Court on the Chancery side thereof against him by James S. Craig for an Injunction and for relief. and further to do and receive what shall then and there before said Court be adjudged against them. And this they are in no wise to omit. And have you then and there this writ. and make return thereon in what manner you execute the same.



Witness. William McCallough Clerk of the said Circuit Court. and the seal thereof hereto affixed at Bloomington this 9th day of June. in the year of our Lord one thousand eight hundred and sixty two.

W^m McCallough. Clerk.

By L. Van. Deputy.

which summons was by the Sheriff of said County returned into said Court enclosed as follows. to wit.

Executed this writ on this 9th day of June. 1862 by delivering a true copy of the same to the within named W^m L. Miller.

Fees. S & ret. 60. Copy 50 mileage 5. \$1.15

J. L. Roatt. Sheriff.

By Geo. Parke Deputy.

And thereupon afterwards. at the regular September term of said Court begun and held in and for said County of McLean on the Second day of September A.D. 1862.

Present. Hon. Daniel Davis. Presiding Judge

W^m McCallough. Clerk.

John L. Roatt. Sheriff.

certain proceedings were had in this cause as appears of record. to wit.

Friday September 5th 1862.

James S. Craig

William L. Miller

Bill for Relief-

This day. on motion of the said complainant by his attorneys. the said Defendant is by the Court ruled to answer or demur to said complainants Bill by the 22^d day of this month.

And thereupon afterwards. to wit. on the 8th day of September A.D. 1862. came said Defendant by his attorneys and filed

Order of
Court

his Demure to said Complainants Bill. in words and figures as follows. to wit-

Demure
 William G. Miller } m^{re} Lean Circuit Court.
 ad. } September Term. 1862.
 James S. Craig. }

The Defendant William G. Miller, protesting &c. that the Complainants said Bill of Complaint in case the same were true, which the Defendant does in no wise admit, contains not any matter of equity whereon this Court can ground any Decree, or give the Complainant any relief or assistance as against the Defendant. Wherefore the Defendant demurs to said Bill and prays the Judgment of this honorable Court whether he shall make any further answer to said Bill, and that he be dismissed from hence with his costs &c.

Prayed for Lift.

And thereupon afterwards, at said September Term of said Court further order was made in this cause as appears of record. to wit.
 Monday September 22^d. 1862.

Order of
 Court } James S. Craig. }
 vs } Bill for Relief
 William G. Miller. }

And now at this day come the parties hereto by their attorneys, and said Defendant by his attorneys, now move the Court to dissolve the injunction heretofore granted, and said motion being heard by the

Court. is overruled.

And afterwards at said September term of said Circuit Court. to wit. on the 4th day of October A. D. 1863. further proceedings were had in this cause. as appears of record. to wit.

James C. Craig

vs

William G. Miller

Bill for Relief.

And now at this day again come the parties hereto by their attorneys. and said Defendant having filed herein his Demurrer to said Complainants Bill. and the same now coming on to be heard. is argued by counsel. and the Court being fully advised in the premises doth overrule said demurrer. And now on motion of Complainant by his attorney. the said Defendant is by the Court ruled to plead to. or answer said Bill of Complaint by the first day of the next term of this Court. and this cause is continued

And thereupon afterwards. to wit. on the 25th day of November A. D. 1862. came said Defendant by his attorneys. and filed his answer to said Complainants Bill. which answer was in words and figures as follows. to wit.

State of Illinois

McLean Circuit Court

December Term. 1862.

James C. Craig

vs

William G. Miller

In Equity

And now the said Respondent William S. Miller answering all right and benefit to be, or that might be taken by way of exception or demurrer to the manifold errors and insufficiencies in the statements in the Bill, for answer to the same, or to so much thereof as this Respondent is advised is material for him to answer, answering says. That it is true as stated in the Bill, that at the time stated in the Bill, to wit. on the 16th day of May 1862, Complainant was the owner and seized in fee of the lands described in the Bill. That it is also true, that at said time, Complainant wanted to purchase some suitable property in the town of Bloomington for a residence, and that Complainant met Respondent, and that Respondent then claimed to be, and was the owner in fee of the above and lot in Bloomington, described in the Bill, and it is true that Complainant and Respondent entered upon negotiations for a trade or exchange of said two properties. But Respondent denies that said Prairie lands are worth Ten Dollars per acre, and timber land worth Twenty Dollars per acre. Respondent admits that the Bloomington property had a house upon, and it also a Pigg, and also a good Cistern, and had a well of water in partnership with that lot and one adjoining it. Respondent utterly denies that he told Complainant the house was new, or as good or better house than the house of McComb in which Complainant lived, or that he told Complainant what said house cost him, Respondent. But Respondent says he told said Complainant to examine said house for himself, and that Complainant did examine it, both inside and out, and in fact moved into it with his family, and was in fact residing in the house at the time, and before he, Complainant, and Respondent completed said trade, and that Complainant had

moved into. and was living in said house with his family, when he. said Complainant. deeded to Respondent said lands, and made said notes and mortgage. in exchange for said house & lot. Respondent utterly denies any misrepresentations to induce Complainant to make said trade. but says Complainant made the trade with full knowledge of the property - and in fact after he. Complainant, had moved into it. and that Complainant has ever since resided. and still does reside in said house. using, occupying & enjoying the same as his own, and that Complainant never did tender to Respondent possession of said house.

Respondent admits that Complainant and his wife did make and deliver to this Respondent. the deed conveying to this Respondent the land as stated in the Bill. and also made and delivered to this Respondent the notes and mortgage as stated in the Bill. as the price and in payment for said house & lot.

Respondent denies that Complainant is a weak minded man but says that Complainant transacts his own business. and Respondent utterly denies that he overreached Complainant in any way. or in any way defrauded Complainant in making said trade. Respondent denies that Complainant ever tendered to Respondent possession of said house & lot. but Respondent admits that about the time the Bill was filed. Complainant did offer to Respondent a quit claim deed to said house and lot. if Respondent would convey to Complainant said land and would further deliver to Complainant and satisfy said notes and mortgage. Respondent denies that Complainant is entitled to have said trade cancelled and set aside.

Respondent denies that Complainant. either now. or at the time of said trade. or at any other time. was by reason of any

mental infirmity, incapacitated for transacting his business, and buying and selling property, either real or personal, and submits that even if he was, he cannot be permitted to stultify himself. Respondent denies that he maliciously and fraudulently or in any other way cheated complainant. Respondent denies that he knowingly and designedly (or in any other way) misrepresented to complainant the condition and value of said property. Respondent denies that the consideration from complainant is five times the value of said house and lot. Respondent denies that, that by fraud, misrepresentation and deceit, (or in any other way) he overreached complainant in said trade. And respondent here denies each and every allegation in said bill not above herein admitted, and now having, as he is advised, fully answered said bill, he prays that he may be there dismissed with his costs &c.

William F. Byrd

for Respondent.

And thereupon, on the 23^d day of December A. D. 1862, came said complainant by his attorneys and filed his Replication to the answer of said Defendant, which replication was in words and figures as follows, to wit:

Replication

The replication of James S. Craig, Complainant to the answer of William F. Miller, Defendant.

This repliant saving and reserving unto himself all, and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication therunto, saith, that he will and prove his said bill to be true, certain

and sufficient in law to be answered unto. & that the said answer of the said Defendant is uncertain, untrue and insufficient to be replied unto by this repliant. without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avowed, traversed or denied, is true, all which matters & things, this repliant is, and will be ready to avow & prove, as this Honorable Court shall direct & pray as in his said Bill he hath already prayed.

Swett & Prince - Solicitors -

and afterwards, at the December term of said Court, to wit, on the 31st day of December, A.D. 1862, the following order was made in this cause as appears of record, to wit.

James C. Craig

vs

William G. Miller

Bill for Relief

This day by consent of the parties hereto by their attorneys, it is ordered by the Court that this cause be continued.

And thereupon afterwards, at the regular march term of said Court, to wit, on the 23^d day of March A.D. 1863, this cause came on for hearing.

Present. Hon. John M. Scott, Presiding Judge

Sumner Burr, Clerk.

Norval Dixon, Sheriff.

and final Decree was rendered herein as appears of record in

words and figures as follows. to wit

James S. Craig

vs

William S. Miller

Bill for Relief-

And now at this day this cause came on to be heard on the Bill, answer, replication thereto, the Documentary proofs, consisting of the deed and mortgage from Complainant to Defendant, and the note secured by said mortgage, and the Deed of said Defendant to said Complainant, as fully described in Complainant's Bill, and the parol evidence of witnesses- Mrs. Smith, and Rucker, Lawrence, Dixon, O'Donald, Watkins, Spencer, Broad, Franks, Daniels, Early, Wilmett, Adolph, Dockett, Jones, &c. and others, and the Court having fully advised in the premises, finds that on the 16th day of May 1862, Complainant and Defendant made the trade or exchange of property as described in the Bill, and in addition thereto, Complainant executed and delivered to Defendant three notes of \$433.²³/₁₀₀ each, secured by mortgage on said premises conveyed by said Miller to Complainant. That Complainant relied upon the representations of Defendant, made to him by Defendant, that the house of Defendant was a new and better house than that of one Robert McEart, in which Complainant resided at the time of said trade, which representation was untrue in fact, and so known to be by said Defendant when making it. That the land conveyed by Complainant to Defendant was at least equal in value to the house and lot conveyed by Defendant to Complainant, and that said Defendant received a much greater and larger consideration for his said premises than they were worth, he receiving the land of Complainant and his note for \$1300.

besides, for the house and lot, when said house and lot was not worth more than said lands, and that Defendant gave no other consideration to Complainant. The Court further finds that Complainant is a weak minded old man, wholly unable to cope with Defendant in a trade, and that said Defendant is a good active business man. The Court is therefore of opinion that Defendant has overreached Complainant in said exchange of property by misrepresenting the value of the property he (Defendant) was exchanging, and by taking advantage of the weakness of mind of Complainant - and that said Defendant wholly refused to vacate said trade, and deliver up said notes and mortgage and re-convey said lands upon a tender of a conveyance for and the possession of said house and lot made by Complainant before the bringing of this Bill - It is therefore ordered by the Court that said trade or exchange of property be wholly set aside and wholly held for naught. That Defendant within thirty days re-convey to Complainant the lands described in the Bill, and the Deed of Complainant, as conveyed by Complainant to Defendant, and deliver up and surrender to Complainant the said notes and mortgage described in the Bill, and possession of said lands, and upon the execution of such conveyance, and the surrender of said notes and mortgage, he be allowed to take from the files of this cause the deed of re-conveyance from Complainant to Defendant for said house and lot, and to take possession of said house and lot. - Ordered further that in default of the execution of said conveyance by said Miller as required within the time aforesaid, that Major W. Packard as a Special Commissioner, execute and deliver such conveyance, and place Complainant in possession of said lands. Ordered further that Complainant surrender possession of said house and lot immediately.

on the execution and delivery of said conveyance of said lands. Ordered further that the injunction granted in this cause. be, and the same is hereby made perpetual, except as to the conveyance of the lands and surrender of the notes required by this Decree in cancelling said trade. Ordered further that Defendant pay the costs of this proceeding including all the witness of Complainant sworn on the hearing, which witness the Court certifies were necessarily present, and also a fee of Five Dollars to the Special Commissioner if he execute said conveyance. And now said Defendant prays an appeal to the Supreme Court, which is granted on his filing Bond in the penal sum of \$200, with Alexander Miller as security in thirty days.

And thereupon afterwards, at said March term of said Circuit Court, to wit, on the 26th day of March A. D. 1863, came said Defendant and filed in this cause a Certificate of the evidence introduced on the trial of this cause, which Certificate was in words and figures as follows, to wit.

State of Illinois. March Term, 1863.
McLean Circuit Court

James S. Craig In Chancery
vs
William S. Miller

Be it remembered that the Defendant excepted to the Decree when it was rendered, - This cause was tried upon the following evidence - It was admitted that the Deeds, notes and mortgage were correctly described in the bill & were given as alleged in the bill - and the following part evidence

was introduced,

Mrs. Smith - sworn.

I know Mr. Craig - heard conversation in May 1862. between Craig & Miller, about Craig house. Miller told Mrs. Craig it was a new & better house than McCarthys - That it did not need even sweeping out, Mrs. Craig was going to sweep it out, & he said it did not need it. This was in McCarthys house on North St. where they, Craig & wife, were then living. I was boarding with them. I moved to the house in controversy. The house was in any thing but good repair. The plastering was falling off. It was settling so bad in the middle of the house, we were afraid to sleep up stairs. The window sash up stairs were so old, we were afraid to take them out to wash them. Were afraid they would fall to pieces. When we first went down to the house to move in, it was locked up. It was the first time Mrs. Craig was ever there - dont know whether Mrs. Craig had ever been there - I had been boarding there two months. No one but Miller, Craig & Mrs. Craig was present at conversation. it conversation before I went to house. - It was in May. about 16th. My husband died in April.

L. E. Rucker. sworn.

I went to Miller with Deed. - told him I had deed to deliver to him, & was authorized to give him possession of premises. Miller said he would not receive the deed. That he would try it at law. Know the Craig building - when I first knew it, it was standing on Front & main Street. 28 years ago - it did not look very old or new then - It remained until moved by Miller to present place. Saw it moving - It was a pretty hard case. - It was spaniel - the frame would not be worth anything to me - I should not know what to do with it - I know the McCarthys building - It is about 8 or 9 years

old - It was a new building when put there - Miller has been farming and selling goods, dealing in stock - has lived in Bloomington - Know Craig. He has been a tailor - lived in Bloomington about the first I knew him & then in Old town - He is not calculated to make a trade - have known him 20 years.

Craig has made a living. He is active for an old crippled man - never knew him to trade or speculate in lands - House was of Oak timber - It was moved about 3 or 4 years ago - It was rather boarded over the old frame. It is a good large house - Should think it 20 feet long - Miller is a man of property - The frame if kept dry would be good - It is not quite far enough out from or in town to be valuable. It is about 3 squares from Court house - Should think it not as valuable for residence as would be if a little farther off.

Have complainant offered deed - Craig to Miller. re-conveying Craig house -

P. J. Broad. Sworn.

I know Craig house. When I first knew it. it was on the corner of Main & Front Sts. - Saw house to make bid on. to fix it for Miller - Frame was rotten. also some of the studding - could be made good with proper expense - The frame cost \$25. or \$75. - Boarded it from Miller or McArthur - not worth more than \$50. - I am a carpenter - A new sill was put in. in front - all new in front - narrower in front than in length - some new studding on South side - new brists - door stairs, new floor. - new stairs, and new shingles on roof - new partitions, most doors new inside. - I agreed to furnish lumber and nails & do carpenter work for \$135. to \$175. not including cost of shingles - The work done was worth that. - The building was not straightened up - The inside of the house below was good. except it has sunk down. up stairs there is quite an offset. one part of the floor appears to be

sunk down. The back windows before the house was finished, were too old to be put in. The cross bars were too bad to be put in - New sash were not put in. My estimation included putting in sash. The house is 26×36 feet - I think there is no back building - same size as old frame. I would have been willing to put up a new house of size of this a year ago for \$800 or \$900 - There was a little new weather boarding on the sides. all the front part was new. It was not all new where decayed - South side was decayed - There was a brick foundation. not included in my bid, can't state positively whether new sash were put in up stairs on west side - up stairs the floor opens. It arises from sinking from frame - The building has settled in center - Doors are chiefly new - Back door is old. Back part of house weather boarding is all old - I think I saw it before it was painted - Oak timbers would have been better than Pine if straight - an inch or inch and a half of back part of back sill was crozy - There was new chimney & row - The inside of sill seemed sound - Did not see the inside of the house until it was lathed and plastered - House seemed to be well painted. It was new excepting the frame & weather boarding. There are 7 rooms in the house. a person might see these defects except condition of frame - its soundness, all defects of floors & windows - couldn't move in without seeing these defects - defects of floor & windows could be seen as soon as in house -

L. Lawrence. sworn.

In spring of 1841 I knew building - It was moved in - Passed it while they were at work on it - The frame was a kind of a Barrack of a thing. It was not intended as a house. It was first a store in front - then part tailors shop. If I was able to build a house I would not take it for a gift - It was not fitted for a house - were large oak timbers in it that made it bad for that purpose - Before

it was moved it began to fall into the cellar, & was pried up. I lathed and plastered it before it was moved. The frame was a large rough frame. I think Miller gave Ed. Barnett \$300. for what part of lot he bought of him. It commenced at corner & ran north and west. - In May 1862. the land on which the house is was worth \$200 to \$250. Is too near center of Town for residence & too far for business. Do not know price of lots selling there. Property is not worth as much there as in other parts of Town as far from center of Town. The main frame of house was oak. Don't know what age made any difference. It was all out of shape - The upper part was sound, but under part was rotten. The objection to it was not its soundness - If decayed parts were removed it would last as long as ordinary house - as long as if entirely new. I know Mr. Craig. we have always considered that he had no more sense than the law abounded. He looks just about as old as when I first knew him. As far as I know he has jogged around on his own hook. I understand he got some property & then lost some of it -

~~~~~ M<sup>c</sup>Cart. Swann.

I know the M<sup>c</sup>Cart house - am a son of M<sup>c</sup>Cart. It was built 8 or 9 years ago. Father then gave \$3000 for it. There are 8 or 9 rooms in it. There are two lots. They front South. - not quite so wide as long. The house is well built - floors smooth, all right. - I built the foundation under the Craig house - Father's house is worth more than Craig's house. I put the foundation all round & chimneys & pillars under the house. The work was worth \$150. to \$125 - If new timbers were put in place of decayed ones, it would last as long as Father's house. There is a cellar in father's house - 8 inch wall - 18 x 24 feet. a good cellar. Fire place in cellar. Chimney built up from cellar. Most of the decayed sills were taken away from Craig house. Father's is a balloon



frame. An old fashioned frame properly put up, is better than a balloon. Oak lasts longer than Pine - The Craig frame would last as long as fathow if decayed parts were replaced - Craig & fathow house are about equally distant from center of Town -  
Mr. Franks. Sworn.

I am a carpenter. Last fall I examined house of Craig. Up stairs windows, doors & floors were much dilapidated. The doors would not shut. The floors were up and down. It is an old oak floor, very rough. One back window was all rotten, just ready to fall out - It is indescribable. A man would have to be pretty sober to get up and down stairs. They are narrow, high &c. are a poor excuse for a stair way - no mechanism about them - saw the frame before it was moved - I would not give \$50 for it and move it. I would not like to give more than \$600 at a rough guess, for Craig house. - no comparison between it and Mcbart house, as to value, convenience or work - The Mcbart house is far the best, - a discerning man and a man with an eye to mechanism could see all these defects - a man could not have moved in without seeing these defects, if he had ordinary eye sight - an old frame, if decayed parts were removed would be as durable as Pine. The floor up stairs was old - was rotten somewhat between joints & under base.

Mr. Daniels. Sworn.

I put in new sash in Craig house in 3 windows. The bars in the old sash & cross style were rotten - were walnut sash & very old. I am a Glazier & Painter - It was some time last fall. I got about 10 enough glass out of old windows to fill the new windows - The sash were so old they would not hold glass - a man could not move in without seeing all these defects.

Mr. Hatch - Sworn.



I have lived in Bloomington 6 years - never had charge of property so as to have an opinion of its value. - Know the Craig property - heard the evidence in this case. The value of this property last May. would not be more than \$600. or \$800. That is a large estimate. I would not have such a house - It is a long ungainly thing - don't see how it could be made into a dwelling. I know the Mcbart house - never have been in upper part, have in lower part - have never been in Craig house since it was where it is. The lower part of Mcbart house is convenient - The stairs are very narrow. It is well finished and in fair order - never made particular examination - The house is on two lots. It is about a quarter of a block - I was all over the Mcbart house below shortly after Craig moved out - They were plastering in corner room. I have not been engaged in buying & selling houses - am not a real estate agent.

Norval Dixon - Swann.

I am Sheriff - have lived in Bloomington 9 years. Was in Craig property last fall - The property last May was worth from \$600. to \$800. to rent - would not want to buy it to live in - I know Mcbart house - There is no comparison between it & Craig house as to durability, convenience & workmanship. The Mcbart house is the best. I know Craig - don't think he has traded much - don't think he would make much of a trader. I think he is a weak minded man. an innocent old man - I know Miller - he is about 50 years old - He is able to take care of himself in a trade - He trades considerably - He is a good business man. He has been trading in stock, horses & cattle. & buying & selling some land - Don't know that I know of houses selling at the price I have named. The Craig house lot is low. The difference between Mcbart & Craig house could all be seen by a man of ordinary sight - I am only a casual observer of both - I know the



Braig house was an old frame - The Braig house is about  $24 \times 34$  feet - It is located near business part of town & would, <sup>rent</sup> for \$8 to \$10 per month.

Dr. Braig. Swoon.

I reside near Old Town. am son of Mr. Braig - am a Physician. The lands Braig gave Miller are near Old Town timber. I know it in May 1862. part was improved by breaking. dont know how many acres. think 35 or 30. part has gone back. part has been cultivated - was some fencing - it did not amount to very much at that time - I think some of the buildings have been taken off. - I think there is some little shanty on it - The Prairie lands were worth - Some lands adjoining 3 or 4 years ago were sold for \$25. per acre. It was probably a little dryer & perhaps better improved - It ought to be worth 8 or 10 Dollars per acre. and perhaps to trade for more than that - a piece near was reported to be sold for \$9 per acre. If this land was mine I would not take less than \$10 - The timber land is worth \$20 per acre. I live within a mile & half of this land. I have lived there since the Spring of 1854. Mr. Braig is 63 in May. from what his mother and he says - I have not thought that he was qualified to do business & have endeavored to exercise a supervision over him. I am in my 42<sup>d</sup> year. Father has owned this land 7 or 8 years. He got the Prairie land of Gen<sup>l</sup>. Government. It was returned as Swamp land. at. as I understood 25 cents per acre - Part of it is rather low land - It has been pretty thoroughly ditched - I cant tell whether he ever raised a good crop on it. My impression is. that it has been poorly farmed - It has been cultivated since the trade by a man named Wood - My younger brothers part of the time cultivated the land & tenants part of the time. Fathers judgment is not as sound as has been - It has been breaking for some years. He has been attending



to his affairs - has always been a man of good habits - His physical health is good for a man of his age - He has no misfortune or disease to impair his faculties - He married a young woman.  
J. H. Sparrow - Sumner.

I know Craig house. Miller paid for the frame \$50. I think I heard Miller say so. Craig lives in the premises & has lived there since he bought of Miller.

W. C. Watkins - Sumner.

I know Craig house & McEart house. There is no comparison between them as to size, finish and convenience. The McEart house is much the best - The Craig house & lot in May last was worth \$500 - Should be loth to give that, I would not buy an old house any way. It is difficult to estimate it - I am in the lumber business - I am speaking of what I think it worth in cash - Such property is not accounted high. If decayed timbers of Oak were all taken out & replaced by sound ones it would last as long as a Pine balloon frame - I am prejudiced. I admit against old houses. If pine lumber is covered up and dry, it will keep as long as Oak. The front part of McEart house is longest. The more modern style is to put end to the street - Craig house is end to street. McEart house is pleasant & no comparison between that and Craig house - Houses are generally built end to street - McEart house is very pleasant & convenient - I have been in it. above & below, McEart house is best plan.

James O'Donoghue. Sumner.

I know Craig house & McEart house. were in Craig's house when they were fitting it up - The McEart house is decidedly the best, a very great difference between them - some several hundred dollars May 1862. Knowing Craig's house as I do, I should rather have a house that I could buy for \$500 or \$600 - I could buy for \$800 property that would decidedly



prefer to it - I have not been in the house since it was finished - I have seen the house frequently - no porch in front of Craig house. There are two or three around McCarls - Craig's & McCarls house are about 4 blocks apart. Craig's is on the 5<sup>th</sup> block from McCarls - about 5 minute walk.

John D. Gibson. Sworn.

I have been a carpenter for 20 years. I know the Craig house - know it before it was moved. I put sill under house - put in drain for cellar. I estimated the carpenters work and materials for \$240. The house & lot last May was worth about \$600 - I was in it about a year ago. The first floor had sunk down. It had settled a little when it was finished - The house upstairs - back part was not much out of the way. The windows were same old ones in when it was moved. did not notice the floor - An man of ordinary eyesight could see these defects - There was a low cellar. There was a broken wall & thing.

Defendants Witnesses -

G. D. McElhinney - Sworn.

I am a J. P. - I took acknowledgment of Deed of lands of Craig to Miller. - Craig signed the deed in my office - I went to the Craig house to get his wife's acknowledgment - Craig's family were in the house. Craig went with me - He talked something about trade. He said he expected to get money from his son in California. He & his wife took me upstairs to look at house. Mrs. Craig said it was a bad trade. She rather objected to signing the deed - I explained the trade & finally she said she had concluded to sign - She pointed defects out - don't know whether any thing was said about its being an old frame - think we went into all the rooms. - after the examination she acknowledged - I think they had just got in. - goods were not put to rights - have known Craig over 20 years - he has always transacted



his business - cant say I can see any difference in his mind. Is a vigorous man of his age - I know a Maggie Smith - Dont know her reputation for truth & veracity - Miller & Col. Boyd came with Craig when he came to acknowledge Deed - Col. Boyd had the Deed - the same Col. Boyd that appears as atty. in defense of this suit. They had deeds to land. - think there was a mortgage. Craig executed Deed & mortgage - and Miller the deed. After they were signed I went to the Craig house - Some stoves were outside. nothing was in place inside - looked as if they had just moved in - Mrs. Craig & Maggie Smith were there - Mrs. Craig was making a fuss about the house - said it was not as good as she expected - Craig thought it would do - She called to me to go up stairs. She wanted us both to go - I noticed sash & floor. Mrs. Craig did not decline to sign deed. but talked of it - Craig argued in favor of her doing it.

Thomas Duckett - Sworn.

I reside south of Old Town. I know the Prairie in Craigs deed. It is low & is not worth very much - was swamp land. A little of it was cultivated last season - little improvement - little shanty 10 or 12 feet high - fences not worth much - would not want any more of such land than I have - dont think it could be cashed for \$5 per acre - Two years ago I was on timber land. It was a pretty growth. not much rail timber - sold some about as good this last winter for \$12 1/4 per acre. - The Prairie would part make good grass land - very little corn or wheat land - Have known Craig a long time - Craig is a man of good habits - fair reasonable understanding. I dont know Mr. Craig well enough to answer that question. whether he is a weak minded man - dont know that he is a weak minded man - dont know that I can give anything against him either way - dont know but that he is able to do business as he was - My land a year ago I would have sold for \$10



Don't think I would take \$8. mine has more improvements, a pole stable - a house. I have more fencing - more broke. believe 30 or 35 acres - between 10 and 15 acres was in corn. mine is handy to timber, would as soon have my 80 acres as his 120 - would not want to trade at all - mine without improvements is worth \$5. or \$6. - with improvements \$8. - my land is Swamp land - cost 25 cents per acre - Craig's land is about 12 miles from Bloomington. - timber is about two miles from prairie. my improvements costs between \$250 & \$300. - neither of them are fit for farming -

W<sup>m</sup>. Coler. Swann.

I know the land. There are about 18 acres now tilled. I tilled part last summer. I raised a wagon & a half of sacks of corn & all on five acres - Wood raised about a 1/3 of a crop. This was the best of the land - would not want to give more than \$3. an acre. I have known Craig 8 years. He was part time director of Schools & Treasurer of Bible society - always did his own business. He has always been a little queer in his jokes & tales - he always did his own trading. I have traded with him - he was in the habit of telling pretty big stories. I believe he always traded about right - never heard any complaint of him. He never did much business or trading - his queer things were his big stories of what he had done in hunting and doctoring - He said some negroes were sick with the cholera. the Doctors had given them up. but he ordered them put in hot water & before the second could be put in. the first was able to help the second in. He said he shot a Bear. it kicked the knife out of his hand - Bear weighed 900. & he hauled it up the hill 9 or 10 feet to where his knife was - He is always talking in that style. He is meddling fancy when contradicted - He left our neighborhood in fall of '61 - Eight or ten acres would bring \$8. & balance \$3. - I own land adjoining it - I cultivate it under Craig - Miller was to receive the crop.



Esq. Jones. Sworn.

I know the land - a year ago it was worth \$4. or \$5 - have known being 18 or 20 years. He has attended to his business. I never noticed any change - seemed to have reasonable mind - He never had much to do - Would not want to give more than \$4. an acre for land. - would not give \$5 - It is the worse tract in the neighborhood - I don't know of any sales of such land - There are plenty of frogs and craw-fish in the land,  
Henry Covey - Sworn.

I am a real estate agent, know Craig's house - In May 1862 was worth \$1500. - Was in building when being put up. Assuming it was an old frame - floors sunken. & back windows old. it would not sell for \$1500. cash, perhaps not more than \$1000. If a man wanted such a house, & was not particular about finish or convenience it would be worth perhaps \$1000. The front is new. Think building was nearly or entirely new - Assuming house cost \$50 & house \$300. think lot ought to be worth \$500. Think the house could not be put there for \$50. or house for twice \$300. It would cost at least \$1000. to put house there. My opinion is partly made on that basis. I put house at \$1000. I know Mcbart house, not much difference between it & Craig house - no convenience about either. The porches on Mcbart house are cheap. not of much account. Mcbart house might have cost \$100 most - rather not give any opinion - have not examined enough - Saw Craig house this morning. Only looked into front room - It all looked sound. did not look as if it wouldn't fall down for a year - I base my value principally on what I saw when it was going up. An oak frame. if decayed parts were removed would last as long as ordinary pine frame.

S. S. Adolph. Sworn.

I know the Craig property - have property adjoining - may



be interested in it - Don't think I am a proper person to testify - Last may would not like to give more than \$1100 - I sold about half of the ground for \$150 - Lots worth \$450. Estimate my lot on corner at \$500 - I live in same square. my lot is 60 x 100 - It is a high lot. trees around it - trees worth \$100 - Craig is not a corner lot - is lower than mine - have known Craig house for 25 years - saw it moved and after finished - never been in house. Assuming floors are sunken & back windows rotten, would give \$1000 if I wanted it - It is more unsalable to one that knew all about it - The value I give is from what I know of its whole history.

J. W. Wilmoth - Sworn.

I know Craig house - was not here last may - live in same block. am a very poor judge of real value of house. It would rent for about \$12. per month - If I was going to buy for a residence, would not give as much as to rent - worth about \$1000, judging from what it would rent for - Buying for a residence should not want it. Its location is bad. The frame was good but is out of shape - For residence, worth not more than \$600 or \$700 - It is well situated for a boarding house - For a boarding house, judging from what it would rent for, worth \$1000. Mr. Radbourn. Sworn.

Mr. Craig & I went to see 2 or 3 houses, for boarding house. Craig said he had 14 boarders - He was about trading land with Hatch, & then with somebody else - thought he would get house on Jefferson St. - did not trade for that - next saw him at McLeat's house - His wife said she would not like that because McLeat would not fix it up, it was badly out of repair. Afterwards Craig told me that he had traded for house of Miller. Craig said he had given \$4000 for it. I told him he had paid too much. He said he had traded for it & he got a policy for \$1400 or \$1500.



He said he had two objects in view - He wanted to trade his lands for house where he could keep 30 boarders. Land was not bringing him in any thing -

Mr. Butler. Sworn.

I am a Police man. I know Maggie Smith. don't know her reputation for truth and veracity - Do you know her general reputation for chastity? (objected to and excluded by Court) Is she or not a common Prostitute by general reputation? (objected to and excluded) What is her general reputation in the community in which she lives, as to chastity or otherwise? (objected to and excluded).

The same questions asked of Mr. Stitt - Mr. Botts. Mr. McElhinney & Mr. Dixon - objected to and excluded.

W. Miller. Sworn.

I heard Mrs. Smith testify - If you had a conversation with Margaret Smith about what her testimony would be on this trial, state what it was. (objected to and excluded, because witness attention was not called to it) I am son of Defendant - am clerking in store & have been for 8 months - in father & brother's store. -

Did this Mrs. Margaret Smith ever come to that store - if so, when? who did she inquire for? if any body - & what did she say she wanted? (objected to what she said she wanted & her conversation excluded)

She did come to the store some 6 or 7 weeks ago & inquired for Pa. What did she say she wanted? (objected to & excluded) Did she say anything about money? If so, what? (objected to and excluded) Did she say anything about going away from here? (objected to and excluded) Did she say anything about being a witness in this case? If so, what? (objected to and excluded) Did she say what she would swear to? If so, what? (objected to and excluded) ~~~~~



This was all the evidence in the case. and all of said evidence was admitted subject to all legal objections to the same - and the Respondent excepted to the Decree - and this is certified by the Court below. to the Supreme Court. as the full evidence upon which the Decree is based.

In Testimony whereof I have hereto set my hand and seal this 27<sup>th</sup> day of March 1863.

John M. Scott.   
Judge &c.

And thereupon afterwards, at said March Term of said Circuit Court. to wit. on the 4<sup>th</sup> day of April A. D. 1863. came said Defendant and filed his appeal Bond in this cause. which Bond was in words and figures as follows. to wit.

Know all men by these presents that we William L. Miller & Alexander Miller of the County of McLean and State of Illinois are held and firmly bound unto James S. Craig in the sum of Two Hundred Dollars. for the payment of which well and truly to be made, we and each of us bind ourselves, our heirs, executors and administrators, jointly and severally and firmly by these presents Sealed with our seals and dated at Bloomington this 3<sup>d</sup> day of April Anno Domini One Thousand Eight <sup>hundred</sup> and Sixty three. The condition of the above obligation is such, that whereas the above named James S. Craig died on the 23<sup>d</sup> day of March. One Thousand Eight Hundred and Sixty three. at a term of the Circuit Court then being holden within and for the County of McLean and State



of Illinois obtain a Decree against the above tounder William G. Miller, for the costs of suit, and setting aside and cancelling a certain trade between the said William G. Miller & said James S. Craig, from which Decree the said William G. Miller has prayed for, and obtained an appeal to the Supreme Court of said State. Now if the said William G. Miller shall duly prosecute said appeal, and shall moreover pay the amount of the Judgment, costs, interest and damages, rendered and to be rendered against him, the said William G. Miller in case the said Decree shall be affirmed in the said Supreme Court, then the above obligation to be null and void, otherwise to remain in full force and virtue.

Taken and entered into  
before me and approved  
this day of 185.

W<sup>m</sup> G. Miller  
Alex. Miller



State of Illinois  
McLean County L. Edward R. Roz. Clerk of the  
Circuit Court in and for said County do hereby certify  
that the foregoing is a true and complete Transcript of  
the records and files of my office pertaining to a certain  
cause wherein James S. Craig is Complainant and  
William G. Miller is Defendant.



In testimony whereof I have hereunto set  
my hand and seal of office this 4 day of  
March. A. D. 1854.

Edward R. Roz. Clerk.

by Luman Sam. Deputy



State of Illinois

Supreme Court - 3<sup>rd</sup> Grand Division

April Term 1864

William G. Miller - appellant

vs.

From McLean -

James S. Craig - appellee

And now comes the said James S. Craig appellee, by his attorney and says there are no such errors in the record & proceedings aforesaid as are complained of by appellant. Hence he prays that the decree of the Court below may be affirmed and enforced. -

Wm. W. Orme

Atty. for appellee



No. 194 -

Supreme Court of Illinois  
3<sup>rd</sup> Grand Division

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Miller, applt.

vs.

Craig, appellee

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Joinder in Error

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Filed May 5, 1864  
L. J. Miller



194

William S. Miller  
Appellant.

vs

James S. Craig.  
Appellee.

Record.

Filed Apr. 20. 1864.  
L. Leland  
clk.

For this Record \$10.00.  
Paid by appellant.  
E. R. Roe. clk  
By L. B. Burr Dep