No. 12241

Supreme Court of Illinois

Higgs.

vs.

French.

71641 7

Be it remembered that heretofore, to wit, on the tenth day of May in the year of our Lord one thousand eight hundred and forty five, there was filed in the office of the clerk of the Circuit Court in and for the County of Peoria in the State of Illinois, a Bill of complaint and precipe in the words & figures following, to wit,

Bill =

"In the Circuit Court of Peoria County in the State of Illinois

To the Hon: T. D. Eaton Judge of said Court in Chancery sitting

Edward French

Complainant Respectfully represents, that sometime in the fall of the Year 1838, as nearly as Complainant can recollect he made a Contract verbally with Thomas Higgs of Peoria County for the purchase of and from said Higgs of a certain tract of Land situate in the County of McDonough in the State of Illinois, and Complainant gave to said Higgs his Note for the sum of about two hundred Fifty Dollars the date of which Complainant cannot state as he has not seen the same for a long time which said note together with interest at the rate of twelve per cent Complainant has paid in installments from time to time and settled the same as hereinafter stated - And that some two years ago the precise time he cannot state

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said note was cancelled by the giving a new note, for the balance then due upon said note, after deducting the amounts of payments be-
[illegible]t time made by Complainant thereon
[illegible]id last note has since been fully
[illegible]omplainant to said Higgs with
[illegible]t at the rate of twelve per cent as
[illegible]oresaid - but what was done with said first note when it was settled as aforesaid compl-ainant does not know but thinks probably it was destroyed. Complainant alleges that by the terms of said note as he recollects the s-ame, and as he knows was the understanding between him and said Higgs, no interest was to be paid by Complainant upon said note but complainant was to be permitted to pay the same along as he could conveniently do so, with-out interest he, Complainant being an ill-iterate uneducated Man, and an Englishman by birth and placing full trust and confidence in said Higgs suffered him to keep all the papers accounts of money paid &c, himself and to make the Endorsements upon said note and not being able to read writing he signed just such a note as was presented to him by said Higgs, without any knowledge what-ever of the contents of said notes except by the

statements & representations of said Higgs.

Complainant further states that said Higgs then pretended and claimed that he was then the Owner of the 80 acre tract of Land then by him agreed to be sold to Complainant And in pursuance of said agreement said Higgs together with David E. Crane (of whom he purchased another 80 acre tract in the same quarter section said Crane then claiming to be the owner of the part by him agreed to be sold to Complainant) went before one William J. Phelps some year or two after the said Contract was made and signed and acknowledged a Deed of conveyance of the whole quarter section containing the said two Eighty acre tracts, which said Deed contained the usual covenants of Seizin and Warranty of title, but which Deed was never delivered to Complaintant, and is, or was a short time since in the possession [illegible] said Higgs, and which if produced [illegible] the tract of Land therein described [illegible] number and description of the said [illegible] Complainant cannot state and Com[illegible] never saw the Land but in all these matters relied upon the honesty of said Higgs

Complainant further states that a year or two after the execution of

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said Deed as aforesaid said Higgs represented to Complainant that he had made a contract and signed said Deed for the Convey ance to Complainant of a tract of land he did not own & wished Complainant to receive in lieu thereof another Eighty acre tract of land in the said County of McDonough the numbers of which compl^t does not know and cannot state, he said Higgs then pretending that he was the owner of the second tract of Land, which he proposed to substitute in the place of the one first contracted to be sold. Complainant further states that he knows nothing of the title of said Higgs to said last tract, but assented to the exchange provided that it was equally valuable with the tract first purchased, and that said Higgs would execute to said Complainant a good Deed containing the usual covenants of seizin and Warranty of title. to which said Higgs agreed. Complainant further states that since the Year 1838. he has furnished to said Higgs, and also to said Crane to pay taxes on said tracts, which have been appropriated by said Higgs about the sum of Twenty five Dollars, the payments of which have been controlled by said Higgs on the

Lands so purchased of said Higgs as aforesaid, and also Higgs has for several years made charges of his expenses and trouble in going to and paying the same from year to year since said purchase, to a large amount, the amount of which Complainant does not know, and which has been paid by complainant And the receipts showing the amounts of said Taxes and also the charges aforesaid for expenses &c as aforesaid are all in the possession and control of said Higgs, and he is hereby notified to exhibit the same together with the said Deed and said Notes with his answer hereto. —

Complainant further states that he believes and charges that the said Higgs has no title to the Land he proposed to substitute in the place of the Land first contracted to sell to Complainant - And that he (Complainant) has repeatedly called upon and requested said Higgs to pay back the money he has paid for said Land, or give to Complainant a Deed of Conveyance containing the usual covenants of Warranty of title and Seizin, or to arbitrate before disinterested persons the matters aforesaid All which said Higgs intending fraudulently and wrongfully to

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Cheat and Defraud Complainant he the said Higgs refuses to do, and refuses to comply with any of the just and reasonable propositions aforesaid.

Complainant charges that the said Higgs never had and has not now a good and clear title to either of the tracts of Land he agreed to sell and convey to Complainant. And that Complainant is entitled in equity to a repayment of all moneys he has paid to said Higgs, to wit the amounts paid on said notes with interest from the times of said payments respectively. and also all such sums as complainant has furnished or paid to said Higgs as aforesaid, for the payment of taxes and the charges and expenses aforesaid attending the payment of the same as aforesaid

Complainant therefore prays that inasmuch as he cannot have a full an adequate remedy at Common Law, and can only have redress in a court of Equity, the said Thomas Higgs may be made defendant to this Bill and the process of summons be issued against said Higgs according to the statue in such case made & provided and compelled to answer the matters and things aforesaid upon his corporal oath, as fully and particularly as if the

same were here again repeated and he specifically interrogated thereto, - And that an account be taken of the matters and things aforesaid, and that a decree be rendered by this Honorable Court for such sum as shall seem to be equitably his due upon a consideration of the premises, or for such other and further relief as to your Honor shall seem meet and Equitable upon a full understanding of the premises And as in duty bound will ever pray &c

Edward French By
H. O. Merriman his attorney

Precipe = Edward French vs. Thomas Higgs } Peoria Circuit Court
In Chancery May Term 1845

Clerk will please issue summons in above cause returnable to said Term

H. O. Merriman solicitor
for Compt.

Whereupon said Clerk issued a summons in the words & figures following, to wit,

Summons = The People of the State of Illinois,
To the Sheriff of Peoria County, Greeting:

WE command you to summon Thomas Higgs if he may be found in your county, to appear before our Circuit Court, on the first day of the term thereof, to be held at Peoria, within and for

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the said county of Peoria, on the fourth Monday of May instant then and there, in our said court to answer the matters and things contained in a certain Bill of complaint filed against him by Edward French in our said court on the Chancery side thereof and make return of this writ, with an endorsement of the time and manner of serving the same, on or before the first day of the term of the said Court to be held as aforesaid,

Witness, Jacob Gale, Clerk of our said Court, and the Seal thereof, at Peoria, this tenth day of May in the Year of our Lord one thousand eight hundred and forty five

Jacob Gale — Clerk."

Which summons was returned by said Sheriff indorsed as follows, to wit,

Return = "Served the Within Writ on the within named Thomas Higgs by Delivering a true & correct copy of the same to him this 16th day of May AD 1845

Smith Frye Shf — by C C Wood Depy"

Proceedings in Chancery before the Circuit Court began and held at the Court house in Peoria in the County of Peoria and State of Illinois on Monday the twenty sixth day of May in the Year of our Lord one thousand eight hundred and forty five Present the Honorable John Dean Caton, associate Justice of the Supreme Court of the State of Illinois

~~and~~

and Judge of the Ninth Judicial Circuit. &c.

Edward French vs. Thomas Higgs } For an account to be taken &c

Rule to Answer =

Ordered by the Court, that the said defendant file his answer to the complainants Bill herein in thirty days after the last day of this term of this court.

On the 7th day of July A.D. 1845 - defendants Answer was filed, as follows, to wit,

Answer =

State of Illinois } Circuit Court Peoria County
Peoria County ss } May Term A.D. 1845.

The answer of Thomas Higgs to the bill of Complaint of Edward French. Defendant answering says that it is true as alledged in said Complainants Bill, that some time in the fall of 1838 Respondent made an oral Contract with Complainant for the Purchase of a tract of land, situate in McDonough County in the State of Illinois, and that about that time Complainant executed his note for said land for the sum of two hundred and fifty dollars, with twelve per cent interest from date, but respondent denies that said Note has ever been paid or in any way settled by the Complainant except as hereinafter stated. Respondent admits that said note for 250 $ was given up and destroyed, sometime in the summer or fall of 1840 as near as he can

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remember, and that a new note bearing 12 per cent interest was given to respondent by complainant in lieu thereof, but the amount of said new note respondent cannot remember, and as to its amount, can only deny that said second note together with what was paid on the first note, did amount to 250$ as alledged, together with 12 per cent interest.

Respondent denies that either the terms of said first or second note, or the understanding between him and Complainant were that no interest was to be paid, but admits that Complainant was to pay from time to time as he conveniently could,

Respondent also admits that Complainant signed said note upon hearing them read by respondent as alledged, Except that Respondent read the note to him in the manner in which it was written and Complainant well knew the Contents of said note at the time it was given and that respondent alledged then and now that he was and is illiterate & unable to read writing

Respondent admits that on the 8th day of May 1839 he together with David D. Crane executed and acknowledged before W. S. Phelps a deed of conveyance of the South West quarter of Section thirty two in Township four North Range one West of the fourth Principal

West of the fourth principal meridian to Complainant; the original deed is herewith filed, and made part of this answer; which said deed was then delivered to Complainant.

Respondent states that in his first contract with Complainant he agreed to convey to Complainant his, respondents, undivided moiety (the other being owned by David D. Crane) of the N. W. qr. of Sec. 32. T. 4. N. R. 1. W. of 4th Meridian, for the consideration of two hundred and fifty dollars with interest as aforesaid & to be paid as aforesaid, that said deed was also to be a Warranty Deed, and that in the deed herewith filed the words "South West" were inserted by accident and mistake in the place of North West.

Respondent admits that a year or two after the execution of the deed herewith filed, but the exact time he does not now remember upon ascertaining the mistake aforesaid, he did propose a change in the terms of the original contract to the Complainant, and states the facts to have been as follows: respondent finding that the mistake aforesaid had been made in the said deed; and that in consequence thereof the tract of land intended to be conveyed in said deed, to wit the N. W. of 32, had been sold for taxes and was past redemption, offered to said Complainant

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either to rectify the mistake and execute a deed for the N. W. of 32 the real land intended, or to deed his undivided interest in another quarter section to wit; the South West qr. of 32 6 N. 1. W. also situate in McDonough County, and at the same time offered to Complainant either to make a good warranty deed to the N. W. of 32. 4 N. 1 W. aforesaid for the original consideration of 250 $ or to execute a quit-claim deed to the S. W. of 32. 6 N. 1 W. for the consideration of two hundred dollars, and the said Complainant then agreed with respondent to take a quit claim deed for respondents undivided half of the S. W qr. of 32. 6 N. 1. W. for the consideration of two hundred dollars, and soon after in pursuance of said agreement the old note of 250 $ was destroyed, and a new note bearing twelve per cent interest, for a sum which respondent does not now remember, but which he states to have been for two hundred dollars, deducting what had been paid on the 250 $ note, was then given by Complainant to respondent in fulfilment of the said new agreement.

Respondent further states that sometime in the Winter of 1843 before Samuel Emery Esq a Justice of the Peace in said Peoria County, he together with his wife, executed to the said

Complainant a quit claim deed to the South West qr. of Sec. 32. T. 6. N. R. 1. W. of 4. M. in pursuance of said last agreement, and that the said Complainant was then and there present and then and there agreed to accept & received said deed as a compliance by said Respondent with his agreement aforesaid; that said quit-claim deed so agreed to be received as aforesaid included also a another piece of land to wit the aforesaid N. W. qr. of Sec. 32. 4 N. 1. W. the undivided interest in which said Crane was by said deed to convey to Complainant, and in consequence of this the deed was left with the said Emery, till said Crane also should execute it, all with the assent of said Complainant. That since that time Respondent has not seen said quit-claim deed, and is unable to produce the same, & is informed by the said Emery that it is either lost or mislaid, and that said French has never taken it.

Respondent denies that that the Exchange of lands herein stated was upon the condition that the land to be deeded by the new agreement was to be equally valuable with the tract first purchased, or that he was to give a deed therefor with the usual covenants of Seizin & Warranty; and alledges that he had a good

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title at the time of the execution of said quit-claim deed to the land therein contained, to wit the S.W. qr. of 32. 6 N. 1. W. and also had a good title to the N.W. qr. of 32. 4 N. 1. W. until the same was either taken away or destroyed by the Tax-title aforesaid.

Respondent admits that Complainant furnished the money to pay the taxes on his said Complainants land, and that the respondent paid those taxes so long as the said Complainant furnished the money, and that the understanding and agreement between them was, that Complainant was to pay the taxes and that Respondent charged Complainant nothing for the trouble of attending to the matter, and receiving from Complainant only enough to pay said taxes and no more, and Respondent denies that he has received more than as above alledged, and that he has charged or received any thing for paying said Taxes, or for expenses or trouble in relation to them, and he herewith files the said tax receipts marked "A" which are all he has in his Possession or Power, and states that he cannot tell what amount he received or paid out for Complainant for said taxes further than said tax receipts show as he kept no account of

the same,

Respondent denies all fraud or fraudulent intentions as alledged. and avers that he has in all respects in good faith kept & performed his agreements with the Complainant, and that he only at length thy suit at law collected the amount due from Complainant, in full, during the Winter last past, and that Complainant might at any time have taken his deed had he chosen so to do, from the Justice of the Peace as aforesaid, and that Respondent is now & always has been ready & willing to make execute & deliver to the Complainant a quit claim deed for the said S.W. qr. 32. 6 N. 1. W. as aforesaid under the agreement aforesaid, and has offered so to do but the Complainant has refused to accept such a deed. And

Respondent hereby renews the offer to make & execute such a deed to the Complainant, And Respondent further states that the Complainant agreed to pay all taxes on the land sold from the time of the contracts of purchase & sale aforesaid thence forward so far as Respondent was concerned, and that if said land has been sold, for taxes since the first contract it is the fault of the Complainant alone,

[12241-8] Respondent further states that he has always

been willing to keep & perform his agreements with the Complainant, and still is, and that in this Transaction he desires only that the terms of the agreement may be kept & performed and that he may be hence dismissed with his costs in this behalf wrongfully sustained And will ever pray &c

Thomas Higgs

This day came before me Thomas Higgs and in due form of law made oath that the matters & things stated, in said answer by him subscribed, are true so far as stated of his own knowledge, and so far as stated from the information of others he believes them to be true. Witness my hand this 31st day of May A.D. 1845

Jacob Gale, Clerk of P.C.C.

And on the 11th day of July A.D. 1845. exceptions were filed to said Answer in said clerks office in the words & figures following, to wit.

Exceptions to answer

Edward French vs. Thomas Higgs } Peoria Circuit Court Vacation after May T. 1845

The Exceptions of the said Complainant to the insufficient answer of said defendant to the Complainants Bill Hond said Complainant by protestation &c for exception to said answer says-

1st That said defendant has not sufficiently answered the Allegations in said Bill contained as to the final disposition of said note of $250.00 nor what was done with the same when settled

2nd That said defendant has not fully answered the Allegation in said Bill that he Complainant was & is illiterate and unable to read writing.

3 The defendant has not answered the allegation in said Bill that Complainant having full confidence in the defendant suffered him to keep all papers, accounts of money paid - and make Endorsements on sd note.

4 The Deft has not answered whether he professed at the date of the Deed before Phelps to be the owner of the Land therein conveyed or intended to be conveyed to said Complainant.

5 The Deft has not answered the allegations in said Bill contained that said Deed was a short time since in hands of the deft - nor that Complainant never saw the Land nor knew the numbers or description thereof.

6 The Deft has not sufficiently answered the allegation in said Bill contained that the deft represented to Complainant that he had signed deed and contracted to sell to Compt. Land he did not own &c

7 The Deft has not answered the allegation in said Bill that at the time of the 2nd Trade said Deft agreed to execute Deed to 2nd Tract containing covenants of Warranty &c And in the answer thereto does not state whether the arangement for Quit Claim Deed was then made or afterwards.

8 The Deft has not sufficiently answered the Allegation in said Bill contained "that since 1838 Compt furnished money &c and that said Higgs had appropriated about the sum of $25.00 but has answered the same evasively

9 The defendant has not answered the allegation in the Bill that "the receipts showing the amounts of said Taxes & also the charges aforesaid are all in the possession of said Higgs"

10 The Defendant has not sufficiently answered the allegation contained in said Bill "that he (complainant) believes and charges that the said Higgs has no title to the land he proposed to substitute in the place of the same first contracted to sell

to Complainant - and that he (complainant) has repeatedly called upon and requested said Higgs to pay back the money he has paid for said land &c And said defendant has not in any manner shown what title or right he has or ever had to any of said Lands - nor exhibited any title papers, or other evidences of such title to said Lands Nor has the defendant answered any of the allegations in said Bill contained in relation to the title of said defendant to any of said Lands But in the attempted answer of said defendant to the matters aforesaid if said defendant has answered the same at all he has done so evasively insufficiently, impertinently and irrelevently.

11. Said answer is not signed by counsel or the solicitors for the deft

In all which particulars said Complainant excepts to the said answer put in by the said defendant to said Bill of Complaint — And he insists that said Answer should be rejected

H. O. Merriman for Compt"

And afterwards on the seventeenth day of November in the year of our Lord one thousand eight hundred and forty six. the Complainant filed his Replication in said cause in the words and figures following; to wit,

[12241-10]

Replication = Edward French vs. Thomas Higgs } Peoria Circuit Court In Chancery

And the said Complainant for Replication to the answer of said defendant says that the matters and things stated and set forth in said Bill of Complaint are true, and the matters and things stated and set forth in said defendant's answer are untrue, and this the said Complainant is ready to aver maintain and prove as this Hon. Court shall direct.

H. O. Merriman Solr for Compt"

And on the 26th day of May 1846 there was filed in said Clerks office and on the 6th of March AD. 1849 opened & filed in this cause the following depositions. of David R. Gregory, William Jacobs. Thomas Johnson. Benjamin W. Crane. and John M. Crane and also the following notice to take said depositions and subpoena, which were enclosed with said depositions, to wit,

David R. Gregory's deposition - Deposition of David R. Gregory of the County of Peoria and State of Illinois taken on the fifteenth day of May AD 1846 between the hours of Nine O'Clock A.M. & 6 P.M. of said day, to wit at 2 O'Clock P.M. at the office of H. O. & A. L. Merriman in the City of Peoria & State of Illinois, pursuant to enclosed notice to be read in Evidence in a cause now pending in the

Circuit Court of Peoria County, on the Chancery side thereof, wherein Edward French is Complainant and Thomas Higgs is defendant

On the part of the Complainant, The said David R. Gregory in answer to the following interrogatories doth depose & say.

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

Ans. I am.

Ques: 2d Were you or not in the year 1844 a Justice of the Peace of Peoria County, Illinois?

Ans. Yes,

Ques: 3d Did or did not in the year 1844 Thomas Higgs the defendant in this suit, bring a suit before you against Edward French the Complainant & if Yea, what was the nature of it?

Ans. There was a suit brought, suit was commenced in Oct: 11th 1844 on a note dated Nov 18 1843 given by French to Higgs for $61 dollars with interest at twelve per cent, there was an endorsement of three dollars on the note dated May 3rd 1844, defendant did not appear I entered judgment by default against him Oct 17th 1844 for the sum of Sixty five dollars & ninety cents the amount of the note & interest, Execution issued Nov. 15 1844 to Thomas Johnson Constable, which was returned Decr 20th 1844 satisfied and the plaintiffs receipt thereon for the amount of the debt,

[10244-11]

Ques 4th Did or not Mr Higgs state to you the consideration of that Note?

Ans. He said it was a balance due from Mr French for a piece of land he had sold him some time before

Ques. 5 Are you acquainted with Mr Higgs hand writing?

Ans: I am

Ques: 6 Examine the paper now shown you Endorsed A. and made part of this deposition, and state whether or not the signature of that paper is in the hand writing of Mr Higgs?

Ans I should think it was

Ques: 7th Do you know of any other matter or thing tending to the benefit of the Complainant in this Suit?

Ans I do not

Cross Examination

Ques 1st Is the exhibit marked A which has been referred to, the receipt for the judgment spoken of in your answer to direct interrogatory No 3.

Ans: I do not know, I suppose from circumstances which I have heard that it is

David R. Gregory

State of Illinois } I William Mitchell Clerk of the
Peoria County } ss. County Commissioner's Court within and for said County do hereby Certify that David R Gregory was by me duly sworn previous to his Examination to testify the truth, the

whole truth and nothing but the truth so far as he might be interrogated as a witness in the foregoing cause, that the deposition by him subscribed, was reduced to writing by me and taken at the time and place, in the enclosed notice specified

Seal

Given under my hand and Seal of said Court at Peoria this 15th day of May AD 1846

William Mitchell Clk

attached to above deposition is exhibit marked A as follows. viz

Nov th 12 1844

Received of Mr French One pair of Oxen & 25 B. of Oats & 30 B of good wheat P5 dolors against Mr Poter Being the full Amount against him

Thos Higgs

A.

Jacobs deposition

Deposition of William Jacobs of the County of Peoria & State of Illinois taken at the office of H. O. & A. L. Merriman in the City of Peoria pursuant to enclosed notice on the fifteenth day of May 1846 between the hours of 9 O Clock A.M. & 6 O Clock P.M. of said day to be read in evidence in a cause now pending in the Circuit Court of Peoria County on the Chancery Side thereof wherein Edward French is Complainant

and Thomas Higgs is defendant
On the part of the Complainant The said William Jacobs in answer to the following interrogatories deposes & says

Ques. 1st Are you acquainted with the Parties to this suit?
Ans. Yes.

Ques. 2d Did or not at any time Mr French give to Mr Higgs Money to pay taxes, on lands that he had purchased of Mr Higgs in Mc Donough County & if so, when & how much

Ans: Mr Higgs was going to Mr French to get money to pay taxes when he came back he said he had got five dollars, this was in the year 1840, in the Year 1841 he got the same amount, so he told me he got it of Mr French.

Ques: 3d Did you or not ever have a conversation with Mr Higgs in relation to his land contract with Mr French?

Ans. I did, he was telling me he had sold Mr French a piece of land, the was to give him a warrantee deed for it, and French, was to pay Higgs, three hundred dollars for it, then Higgs said he had made another bargain concerning the land and he was only to make him a quit claim deed & throw off fifty dollars, we had a dispute about the deed Higgs said a quit-claim deed was just as good as a warrantee. I told him he could not sell me land in

that way. Higgs said it did not make much odds which he gave him as French was an ignorant fellow.

Ques: 4th Is Mr French illiterate & can he read writing?

Ans: I do not know

Cross Examination

Ques: 1. At the time that Mr Higgs told you that he received money from Mr French to pay taxes, did he state on what land or property the Taxes were to be paid Whether on his own or some other?

Ans: He did not say whether it was to pay on his Land alone or not. He said it was to pay the taxes up there.

Ques 2d How have you means of remembering the precise time that Mr Higgs got the money from Mr French

Ans: It was the Year I lived on his place.

Ques 3d Are you certain the amount to be paid by Mr French was three hundred and if a quit claim deed was taken two hundred and fifty dollars, or was the original amount two hundred and fifty and two hundred if a quit claim deed was taken?

Ans: I understood him that it was two hundred and fifty dollars for a quit claim deed, I am not quite certain.-

Ques 4. Is it your opinion, if a man has a good title to land he cannot convey as good a title by a quit-claim as a warrantee deed?

Ans: I do not know whether he could or could not.

By the Complainant.

Ques: At the time of the Conversation above referred to by you in relation to the deed, did or not Mr Higgs pretend that he had a good title to the land which he had sold or agreed to sell to Mr French?

Ans: I understood him that he had, he said had a Warantee deed, Mr Higgs didn't say any thing about whether he was afraid of the title, he said he had a warantee deed, he considered the title good

Ques: Did he give any reason, why he wanted French to take a quit claim instead of a warrantee deed?

Ans: He did not within my recollection, he contended that a quit claim was just as good as a Warrantee

By the defendant

Ques: At what time was this conversation in relation to this deed

Ans: I cannot say positively whether it was in 1840 or 1841.

Ques: Whether at this conversation did Mr Higgs say any thing about a mistake having been made in relation to the first deed which he made to Mr French?

Ans: I think there was, Mr Higgs said he had made out a deed on a wrong quarter, Mr Higgs said Mr French had agreed to take another

that way. Higgs said it did not make much odds which he gave him as French was an ignorant fellow.

Ques: 4th As Mr French illiterate & can he read writing?

Ans: I do not know

Cross Examination

Ques: 1. At the time that Mr Higgs told you that he received money from Mr French to pay taxes, did he state on what land or property the Taxes were to be paid Whether on his own or some other?

Ans: He did not say whether it was to pay on his land alone or not. He said it was to pay the taxes up there.

Ques 2d How have you means of remembering the precise time that Mr Higgs got the money from Mr French

Ans: It was the Year I lived on his place.

Ques 3d Are you certain the amount to be paid by Mr French was three hundred and if a quit claim deed was taken two hundred and fifty dollars, or was the original amount two hundred and fifty and two hundred if a quit claim deed was taken?

Ans: I understood him that it was two hundred and fifty dollars for a quit claim deed, I am not quite certain.-

Ques, 4. Is it your opinion, if a man has a good title to land he cannot convey as good a title by a quit-claim as a warrantee deed?

Ans: I do not know whether he could or could not.

piece of land and take a quit claim deed and he Higgs was to throw off fifty dollars.

By the Complainant

Ques: At that time did Higgs state that he had made a deed to the wrong quarter, or that he had sold a quarter to Mr French which he did not own?

Ans: He said there had been a mistake made and he had given a deed on a wrong piece of land that he had sold him

Ques: Did or not Mr Higgs keep in his possession the papers and writing of Mr French, and transact his business generally?

Ans: Mr Higgs said he had papers & accounts belonging to Mr French, I do not know any thing about him transacting French's business, the writings betwixt Mr Higgs & Mr French were in the hands of Mr Higgs and Mr Higgs kept the account and gave French credit for what he paid

William his × mark Jacobs

State of Illinois } I William Mitchell, Clerk
Peoria County } ss. of the County Commissioner's Court within & for said County do hereby certify that William Jacobs was by me duly sworn previous to the examination to testify the Truth the whole truth & nothing but

[12241-13]

the truth as a witness in the foregoing cause, so far as he might be interrogated, that the deposition as above by him subscribed was reduced to writing by me and taken at the time and place in the within notice herewith Enclosed specified

Given under my hand and seal of said Court at Peoria this 15th day of May AD. 1846

(Seal)

William Mitchell Clk

Johnson's Deposition

Deposition of Thomas Johnson of the County of Peoria & State of Illinois taken at the office of H. O. & A. L. Merriman in the City of Peoria on the fifteenth day of May A.D. 1846 between the hours of 9 O'Clock A.M. and 6 O'Clock P.M. of said day, to be read in Evidence in a cause now pending in the Circuit Court of Peoria County, in the Chancery side thereof wherein Edward French is Complainant and Thomas Higgs is defendant.

On the part of the Complainant. The said Thomas Johnson in answer to the following interrogatories doth Depose and say,

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

Ans: Yes.

~~Ques. 2nd~~ ~~Ans~~

Ques. 2nd Was or was not there issued to you as a Constable in the County of Peoria in the year 1844, an Execution from D. K. Gregory Justice of the peace in favor of Thomas Higgs against Edward French & Yea, was said Execution settled how?

Ans: Yes, there was such an Execution issued & settled by receipt from Mr Higgs for the amount of debt.

Ques. 3. Examine the paper shewn you endorsed A. & attached to Gregory's deposition & state whether or not that was the receipt given by Mr Higgs at that time?

Ans: I should think it was, but I could not be positive.

Ques. 4 In whose hand writing is the said receipt?

Ans: I should think it was written by Mr Higgs.

Ques. 5: Was or not there any thing said at that time by Mr Higgs in reference to a contract for land with Mr French?

Ans: Yes, when I served the Summons, on Mr French he requested me to say to Mr Higgs if he would discharge that debt he would give up all he had paid him and he Mr Higgs might keep the land too. Mr Higgs said he should not do it, he said he did not want to take advantage of Mr French in that way: this conversation took place in October or November 1844

Thomas Johnson.

[12241-44]

State of Illinois } I William Mitchell Clerk of
Peoria County } ss. the County Commissioner's
Court within & for said County do
hereby certify that Thomas Johnson was by me duly
Sworn previous to his Examination to testify the truth,
the whole truth and nothing but the truth so far
as he might be interrogated as a witness in the fore-
going cause, That the above Deposition by him
Subscribed was reduced to writing by me and taken
at the time & place in the Enclosed notice specified
Given under my hand and Seal of said
Court at Peoria this 15th day of May A.D.
1846 William Mitchell Clk

(L. S.)

W. Crane's Deposition

Deposition of Benjamin W Crane of the County of
Peoria & State of Illinois taken at the office of H.C.
P.A.C. Merriman in the City of Peoria on the fifteenth
day of May A.D. 1846. between the hours of Nine O.
Clock in the morning & Six O'Clock in the evening of
said day to be read in Evidence in a cause now
Pending in the Circuit Court of Peoria County, on
the Chancery side thereof, wherein Edward French is
Complainant, and Thomas Higgs is defendant
On the Part of the Complainant. The said Ben-
jamin W Crane, in answer to the following interroga-

John M. Crane
Deposition

Deposition of John M Crane of the County of Peoria & State of Illinois taken at the office of H. C. & N. L. Merriman in the City of Peoria, between the hours of 9 O'Clock A.M. & 6 O'Clock P.M. of the fifteenth day of May A.D. 1846 to be read in Evidence in a cause now pending in the Circuit Court of Peoria County, wherein Edward French is Complainant and Thomas Higgs is Defendant on the Chancery side of said Court

The said John M. Crane in answer to the following interrogatories doth Depose & Say.

Ques: Do you know of the manner in which the taxes were paid on the land which Higgs sold to French by whom, and how the money was raised, and for how many years?

Ans: I frequently heard Mr Higgs say he wanted Mr French to raise money to pay taxes on the McDonough land, whether it was his own tax, or French or both I cannot tell, I believe Mr French generally paid the money over to Mr Higgs, so I understood it, probably for two or three years

John M. Crane

State of Illinois } William Mitchell Clerk of
Peoria County } ss. the County Commissioner's
Court within & for said County, do
hereby certify that John M Crane was by me duly
sworn previous to his Examination to testify the
Truth, the whole truth and nothing but the Truth
so far as he may be interrogated, as a Witness in
the foregoing cause that the deposition by him
subscribed was reduced to writing by me and
taken at the time & place in the enclosed notice
specified. Given under my hand and
Seal of said Court at Peoria this 15th May
A.D. 1846.

(S.)

William Mitchell Clerk

Notice to the Deps.

Edward French
Thomas vs. Higgs } Peoria Circuit Court
In Chancery

To the above named Deft.
or Geo T. Metcalfe his Solr. Sir.
Please to take notice that on the fifteenth day of May
next Between the hours of 9 O'Clock A.M. & 6 P.M. of that day, at the office of H. C. & W. L.

[12241-16]

Merriman in the City of Peoria & State of Illinois before William Mitchell Clerk of the County Commissioners Court of Peoria County, or before some other officer authorized by Law to take depositions, will be taken the depositions of David R Gregory, David D Crane, Hazard Larkin, John M. Crane, Thomas Johnson, William Jacobs, Benjamin Jacobs & others, to be read in evidence on the trial of this cause, on the part & behalf of said Complainant, and that the taking of said Depositions will be continued from day to day until concluded when & where you may be & appear & cross examine said Witnesses if you deem proper. Dated at Peoria this 28th day of April 1846.

Yours &c H.C. Merriman Sol^r for Com^ts

State of Illinois } The people of the State of Illinois
Peoria County } Thomas Johnson Constable

You are hereby commanded to summon David D Crane Benjamin Dickinson Hazard Larken John M Crane William Jacalos Beng W Crane to be and appear at the office of H.C. Merriman in the City of Peoria on the 15th day of May Ins^t at 10 O'clock A.M. then and there to testify the truth and give evidence on behalf of the Plaintiff in a certain Suit in the Circuit Court of said

County in the Chancery wherein Edward French is plaintiff and Thomas Higgs Defendant. Hereof fail but of this writ and your service make due return Given under my hand and seal this 12 day of May David R Gregory

N. P. C.

[Returns Endorsed]

Personly served the within on the within named by reading the it to them the undersigned Benjamin Dickson David R Crane Hasard Larkin John M Crane Wm Jacobs Benjn W Crane May 12, 1846. Thomas Johnson Constr

Proceedings in Chancery before the Circuit Court began and held at the Court House in the City of Peoria in and for the county of Peoria in the State of Illinois on the fourth monday of May in the year of our Lord one thousand eight hundred and forty seven it being the twenty fourth day of said month. Present the Honorable John D Caton, associate Justice of the Supreme Court of the State of Illinois and presiding Judge of the Ninth Judicial Circuit in said State, To Wit:

Friday June 4th A.D. 1847.

[12041-17]

Edward French
vs. } For account &c.
Thomas Higgs

This day came the complainant by Merriman his counsel and the defendant Metcalfe his counsel and this cause came on to be heard upon the bill, answer, replication and testimony, on consideration whereof, It is ordered, that this cause stand referred to William Mitchell master in chancery of this court to take and state an account between the parties And it is further ordered that the said Master proceed to take said account at the request of either party, giving the adverse party or his solicitor ten days previous notice of the time and place of commencing the same, And it is further ordered that the said Master make his report in the premises at the next term of this court, to which time this cause is continued

Proceedings in Chancery before the Circuit Court begun and held at the Court-House in the City of Peoria in and for the county of Peoria in the State of Illinois on the fifth Monday of May in the year of our Lord one thousand eight hundred and forty eight it being the twenty ninth day of said month. Present the Honorable John D. Caton.

associate Justice of the Supreme Court of the State of Illinois and presiding Judge of the Ninth Judicial Circuit in said State, to wit,

Thursday, June 8th A.D. 1848
Edward French
vs. } For account &c
Thomas Higgs.

Ordered that this cause be continued to the next term of court for the coming in of the Master in Chancery to whom this cause has been referred to take and state an account between the parties.

At the January Term of said Court A.D. 1854 there was filed in said cause an exemplified copy of a Record of a Patent in the words and figures following, to wit.

Copy of Patent — James Monroe President of the United States of America, To all to whom these presents shall come, Greeting: Know Ye, That, in pursuance of the Acts of Congress appropriating and granting Land to the late Army of the United States, passed on and since the sixth day of May, 1812 Benjamin Pettit having deposited in the General Land-Office a Warrant in his favor, numbered 14.173 there is granted unto the said Benjamin Pettit late a musician in Betts Company of the 28th Reg't of Infantry a certain Tract of Land containing One hundred and sixty acres being the South West qr of Sec-

tion of thirty two of Township Six North in Range One West in the Tract appropriated (by the Acts aforesaid) for Military Bounties, in the Territory of Illinois To have and to hold the said quarter Section of Land, with the appurtenances thereof, unto the said Benjamin Pettit and to his heirs and assigns forever, In Testimony Whereof, I have caused these Letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed. Given under my Hand, at the City of Washington, this Seventh day of February in the Year of our Lord one thousand eight hundred and Eighteen and of the Independence of the United States of America the forty second.

By the President, J. M.

Josiah Meigs Commissioner of the General Land Office.

[Annexed to above]

General Land Office, January 23d 1853.

In accordance with the seventh section of the Act of Congress, approved the 4th of July, 1836, entitled "An Act to re-organize the General Land Office" and with the Act of Congress approved the 3d of March, 1843, entitled "An Act in relation to the exemplifications of the Records of Land Patents and other evidences of title, and amendatory of the Act entitled "An act to re-organize the General Land Office" I, John Wilson Commissioner

of the General Land Office, do hereby certify, that the annexed is a true and literal exemplification from Page 27. Vol. 17. Illinois Bounty Land Records (war 1812) on file in this Office.

The Record of the patent in this case, of which the annexed is a literal exemplification as aforesaid, was omitted to be signed as required by law, as appears from the record of the same in this office; but the 1st Section of the act of March 3d, 1843, above referred to, provides, that "where such exemplifications are adduced in evidence, they shall be deemed and held to be of the same validity in all proceedings, whether at law or in equity, as if the names of the officers signing and counter-signing the same, had been fully inserted in such record". In Testimony Whereof, I have hereunto subscribed my name, and caused the Seal of this Office, to be affixed, at the City of Washington, on the day and year first above written.

L.S.

John Wilson

Commissioner of the General Land Office

5/12241-197

Proceedings in Chancery before the Circuit Court begun and held at the Court House in the City of Peoria in and for the county of Peoria in the State of Illinois on fourth Monday of January in the year of our Lord one thousand eight hundred and fifty four, it being the 23rd day of said Month, The Honorable Onslow Peters presiding, to wit

Wednesday, February 8th A.D. 1854.

Edward French
vs.
Thomas Higgs } For account &c.

And now on this day this cause came on to be heard upon the Bill Answer and Proofs, And it appearing to the Court that said Complainant did in the fall of the year 1838 purchase of and from the said defendant a certain tract of land described in the Deed executed by said defendant to said Complainant as being the South West quarter of Section thirty two in Township four North in Range One West of the 4th principal Meridian situated in McDonough County Illinois, for the sum of two hundred & fifty Dollars, for the payment of which said Complainant gave to said defendant his note of the date of the Contract made in the fall of 1838 as aforesaid, which note was to draw twelve per cent per annum until paid, that said Complainant is an illiterate person and unable to read writing, and entrusted his accounts to said defendant, that said defendant afterwards

ascertained that he had described in his Deed a tract of land to which he had no title, and that the contract was changed and a quit-claim deed executed by said defendant for another tract of land, which Deed was never delivered to said Complainant - that defendant had no title to said last described tract, that a deduction was made from said note of the sum of fifty Dollars, that Complainant was deceived as to the last mentioned tract - by the representations of said defendant, as to the title thereto that in the years of 1840 & 1841 Complainant advanced to said defendant ten dollars to pay taxes on said land - that Complainant has paid the full amount of said note to defendant at different times subsequent to the Execution thereof - And it further appearing to the Court upon an accounting had in relation to the matters aforesaid, that there is now due from defendant to Complainant for the Amount of the said note & interest & other moneys so advanced and paid by complainant to defendant as aforesaid the sum of three hundred & ninety nine Dollars & fifty cents ($399.50)

It is therefore ordered adjudged and decreed that said defendant pay to said Complain-

[12241-20]

ant the said sum of three hundred & ninety nine Dollars and fifty cents within ninety days from the date hereof with interest that in default thereof that the Clerk of this Court issue Execution for the same together with the costs of this suit, as in cases of Judgments at Law to the Sheriff of any county of Illinois.

State of Illinois
Peoria County } I, Jacob Gale clerk of the Circuit Court in and for the county of Peoria in the State of Illinois do hereby certify, that the foregoing is a full, correct and complete transcript from the Record of all the proceedings evidence and pleadings in a certain cause in said Court on the Chancery side thereof wherein Edward French is complainant and Thomas Higgs is defendant as the same remain of Record and on file in my office.

In witness whereof I hereto set my hand and affix the seal of said Circuit Court at my office in Peoria this 16th day of August in the year of our Lord one thousand eight hundred and fifty four.

Jacob Gale, clerk

Clerk's fees: for transcript & certificate $9.50

Received payment of Thomas Higgs
Jacob Gale, Clerk

Thomas Higgs
vs
Edward French

In the Supreme Court.

Plea Writ of Error and Scire facias in the above cause purchased & laid on the rules of Court Returnable to next Term. Send Sci fa to Sheriff Peoria County

Peoria Aug 22, 1856.

N. C. Pepper Pltff Atty

L Leland Esq Clerk
Supreme Court.

Thomas Higgs
vs
Edwards French

In the Supreme Court

And now comes the said Plaintiff in Error and says that in the Records & proceedings and in the Rendition of the decree aforesaid there is manifest Error in this to wit.

1. The circuit Court Erred in Rendering a decree in favor of the complainant and against the defendant in the Court below.
2. Said decree of the circuit Court, should have been in favor of defendant in said Court.
3. Said decree is otherwise Erroneous

Wherefore the said Plaintiff Prays that the said decree may be reversed set aside & wholly for nothing esteemed

Aug. 22. 1856.

N. C. Pepper
Attys for Pltff in Error

[2241-21]

Let a Supersedeas issue in the above cause upon the deft in error filing a bond in the penal sum of one hundred dollars conditioned as the law directs and with Ebenezer Tyler as security

Adams Cty Oct 1 1854 J. D. Carter

And now comes the said deft in error and says there are no errors in said record and proceedings as above alleged: wherefore he prays that said judgment be affirmed

Q. & J. Feb. 1855. Manning & McCreary

Pl. in Error 26

Thomas Riggs
vs.
Edward Tracy

Record & errors.

26

Filed September 8th 1854.
L. Leland Clk.
By W. R. Leland Dep.

1241

1855

STATE OF ILLINOIS, } ss. **The People of the State of Illinois,**
Supreme Court,

To the Sheriff of the County of Peoria — **Greeting:**

BECAUSE in the record and proceedings, and also in the rendition of the ~~judgment~~ decree, of a plea which was in the circuit court of Peoria county, before the Judge thereof, between Edward French plaintiff, and Thomas Higgs

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

as we are informed by his complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the state of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said

Edward French

that he be and appear before the Justices of our said Supreme Court, at the next term of said court, to be holden at Ottawa, in said state, on the Second Monday in June next, to hear the records and proceedings aforesaid, and the errors assigned, if he shall see fit; and further to do and receive what said court shall order in this behalf; and have you then there the names of those by whom you shall give the said Edward French notice, together with this writ.

WITNESS, the Hon. **Samuel H. Treat,** Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 8th day of September in the Year of Our Lord One Thousand Eight Hundred and Fifty-four

L. Leland Clerk of the Supreme Court.
By P. R. Leland Depy

[1224-22]

I served the within Writ by reading the same to Edwards French — October 30th. 1854

L. B. Cornwell, Sheriff
by Th. Clark Dept. F. C. Co.

Serving — .50
22 Miles travel 1.10
return .10
$1.70

Filed Nov. 7th 1854.
C. Leland Clk.
By P. R. Leland Dep.

12241

WRIT OF ERROR.

STATE OF ILLINOIS, Supreme Court, } ss. **The People of the State of Illinois,**

To the Clerk of the Circuit Court for the county of Peoria **Greeting:**

BECAUSE in the record and proceedings, as also in the rendition of the ~~judgment~~ decree of a plea which was in the circuit court of Peoria county, before the Judge thereof, between Edward French

plaintiff, and Thomas Higgs

defendant, it is said manifest error hath intervened, to the injury of the aforesaid defendant as we are informed by his complaint, and we being willing that error, should be corrected if any there be in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly withot delay, send to our Justices of the Supreme Court the record and proceedings of the plaint, aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the county of La Salle, on the second Monday in June next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law;

WITNESS, the Hon. **SAMUEL H. TREAT,** Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 8th day of September in the Year of Our Lord One Thousand Eigh. Hundred and Fifty-four.

L. Leland Clerk of the Supreme Court.

By P. K. Leland Dep.

[12241-23]

Peoria 25

Thomas Higgs
vs.
Edward French

Writ of error

Filed Sept. 8. 1854.
L. Leland Clk.
By P. K. Leland Dep.

This writ of error is made a Supersedeas as such is to be obeyed accordingly by all concerned.
Sept. 8. 1854.
L. Leland Clk.
By P. K. Leland Dep.

Know all Men by these presents that we Thomas Higgs and Ebenezer Tyler of the County of Peoria and State of Illinois are held and firmly bound unto Edward French in the sum of Six hundred dollars lawful Money of the United States to which payment well and truly to be made and done, we do bind ourselves our heirs Executors and administrators jointly and severally by these presents

Witness our hands and seals this 25th day of August A.D. 1854.

The Condition of this obligation is this, Whereas on the 8th day of February A.D. 1854 in the Circuit Court of Peoria County a certain decree was rendered in a Suit in Chancery then pending in said Court wherein Edward French was ~~Plaintiff~~ Complainant and Thomas Higgs defendant that the said defendant should pay to the said Complainant the sum of Three hundred and Ninety nine dollars and fifty cents as specified in said decree; On which said decree the said Thomas Higgs has sued out a writ of Error to the same Circuit Court of Peoria County to remove the Record in said cause to the Supreme Court of the State of Illinois. Now if the said Thomas Higgs shall duly prosecute his said writ & shall pay the amount of the said decree, with Costs interest and damages in case the same shall be affirmed, then this Obligation shall be void, otherwise in force

Thomas Higgs (Seal)
Ebenezer B Tyler (Seal)

[12241-04]

Thomas Higgs 25 26

vs

Edward Hunck

Bond

Filed September 8. 1854.
L. Leland Clk.
By P. K. Leland Dep.

12241

Costs taxed

~~12578~~

12241-15