

14643

No. _____

Supreme Court of Illinois

Marshall

vs.

Barr

71641  7

STATE OF ILLINOIS,
Apr. 9 1864
SUPREME COURT,

THIRD GRAND DIVISION.

Reported

No. 46

J. W. Middleton & Co. Printers, 106 Lake St.

1864

Marshall

Barr

1864

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION

APRIL TERM THEREOF, A. D. 1864.

VALENTINE H. MARSHALL *et al.* }

vs.

ELIJAH BARR. }

STATEMENT OF DEFENDANT IN ERROR.

The only question seriously urged in this case is, as to the homestead. Marshall absented himself about two years before the trial, March 27, 1862. At the time of the execution of the deed, May 2, 1860, he had already absented himself. He remained away and was away at the time of the trial. If the land in controversy ever had been his homestead, it was not then, because he had abandoned it and taken up his residence elsewhere. The wife of Marshall could not come in in this suit and claim the homestead. She was not a party to the suit, and, whatever equitable rights she may have had to the homestead, could not be asserted for her by plaintiffs in error. Marshall's residence was not on this land but elsewhere, and this carried with it, in law, the residence of his family.

The deed in this case was absolute on its face, and could only be treated as a mortgage in a court of equity.

A. G. KIRKPATRICK,
For Defendant in Error.

46

82

W. H. Marshall et al
vs

Elijah Barr

Defts. Bail

Filed April 28, 1864

Leland M

Supreme Court of Illinois
Third Judicial Division
April Term AD 1863

Valentine H. Marshall
Plff in Error

vs
Elijah Burr.
Def in Error

To Lorenzo Leland Esq
Clerk Supreme Court Ills
Third Judicial Division
Ottawa Ills.

Please issue writ of
Error in above Cause to Warren County
Circuit Court, also Seize facias &
Fornis &

E D Smith
Atty for Plff in Error

Recd April 3rd 1863

~~44~~⁴⁶
Marshall
3

Bar

Precip

Filed April 4 1883
L. Leland
Clerk

State of Illinois
Hauau County

Pleas before the Honorable Charles
B Lawrence Judge of the tenth Judicial Circuit of
the State of Illinois. At a Circuit Court began and
held at the Court House in ^{the city of} Mornmouth in
Hauau County and State of Illinois, on the fourth
Monday in the month of October In the year of our
Lord one thousand eight hundred and Sixty
one. It being the twenty eighth day of said month.

Present Hon Charles B Lawrence Judge
James H Stewart States Attorney
David Turnbull Sheriff
Mr Laferty Clerks

Elijah Barr
vs
Valentine H Marshall
& James Dickson

Ejectment

Afterwards to wit; on the 28th day of October AD 1861
the following order was entered upon the records of
said Court which is as follows.

Elijah Barr
vs
Valentine H Marshall
& James Dickson

Ejectment

This day came Plaintiff by

his Attorney and filed his Declaration, Notice
and due proof of Service. Thereupon it is order-
ed by the Court that the defendant be and they
are hereby ruled to appear and plead to Plaintiff
said Declaration within twenty days from the
date hereof. And in Case of a failure so to plead
a judgment by default will be rendered against
them, and Plaintiff will recover possession of the
premises described in said Declaration, And it
is further ordered by the Court that this cause
stand continued,

Copy of Declaration

State of Illinois / Name Circuit Court
Warren County / October Term 1861

Elijah Barr who is a Citizen of the
State of Illinois by his Attornies complains of Valen-
tine H Marshall & James Dickson who are Citizens of
the State of Illinois in a plea of Trespass in Ejectment
For that whereas heretofore to Wit: on the first day of
April in the Eighteen hundred and sixty one (1861)
at and within the County of Warren & State of Illinois
the said Plaintiff was possessed as of and in his own
demense, in fee simple, of a certain tract or parcel
of land with the appurtenances, situated in the County
of Warren & State of Illinois, and described as follows
to Wit: The North East quarter of Section Twenty one
(21) in Township eight north of range one West of
the fourth principal meridian (N E 21. 8 N 17 of 4th
principal meridian Warren Co Ills) which said

premises exceed in value the sum of Five hundred dollars and which the said Plaintiff claims in fee simple, And the said Plaintiff being so possessed thereof, the said Defendant afterwards to wit: On the day and year last aforesaid, entered into the said premises and ejected the said Plaintiff therefrom, and from the time last aforesaid has unlawfully withheld and do now unlawfully withhold from the said Plaintiff the possession thereof to the damage of the said Plaintiff of the sum of Five hundred dollars. And therefore he brings his suit &c

A. G. & J. M. Kirkpatrick

Attorneys for Plaintiff

Notice

To Valentine Mc Marshall & James Dickson the above named defendant: You are hereby notified that the Declaration, with a Copy of which you are now herewith served and to which this notice is attached, will be filed in the Circuit Court of the County of Hancock in & for the State of Illinois, on the first day of the October term of said Court AD 1861 said term to be holden in the Court House at Monmouth on the fourth Monday of October next, And that upon filing the same a rule will be entered requiring you to appear and plead to the said Declaration within twenty days from the entry of said rule And that if you neglect to so appear and plead, a judgment by default will be entered against you, and the Plaintiff will recover

Possession of the premises described in said declaration.

Dated this 18th day of September AD 1861

Asy & J M Kirkpatrick
Attorneys for Plaintiff

"On the back of said Declaration is the following"
State of Illinois } Hann Circuit Court
Hann County } October Term AD 1861

Before me personally appeared
Harmon Straw who being first duly sworn deposes and says that he did on the 23rd day of September AD 1861 serve the within named Valentine K Marshall & James Dickson defendants in this suit with a true copy of the Declaration herewith annexed and also a true copy of the notice in writing to the said Declaration subjoined and likewise here with annexed by leaving the same with Frances Marshall she being the wife of said Valentine K Marshall and a white person of the family of said Valentine K Marshall and of the age of ten years and upward & at the dwelling house of said Valentine K Marshall upon the premises described in said declaration by the said Valentine K Marshall being then absent and also by delivering a true copy of said Declaration & notice to said James Dickson on said 23rd day of September AD 1861 and that said Valentine K Marshall & James Dickson were at said time of such service of aforesaid in the actual occupancy & possession

5

of said premises and that Valentin H Marshall
at the time of said service was absent

Harmon Straw

Subscribed & sworn to before me this 27th day of
September AD 1861

Wm Laferty Clerk

Filed Oct 28th 1861

Wm Laferty clk

Copy of Plea

The State of Illinois In Circuit Court
Harrison County 3 October Term AD 1861

Elijah Barr

vs

Valentin H Marshall

& James Dickson

And the said defendant by
Philo & Reed their Attorney Come and defend the
wrong and injury where &c And say that they do
not wrongfully & unlawfully withhold the possession
of the said premises in said Declaration described
and of this they put themselves upon the
County &c

Philo & Reed. D.A

Filed Oct 29th 1861

Wm Laferty clk

And afterwards to wit: on the 27th day of March AD
1862 being at the March Term of our said Court
the following order was entered upon the records of
said Court which is as follows to wit:

6

Elijah Barr
 vs
 Valentine H Marshall
 & James Dickson } Ejectment

This day came the parties by their Attornies, And issue being joined and jury waived, for trial submit this case to the Court, and the Court having heard the evidence finds the issues for the Plaintiff, Thereupon defendant enters his motion for a new trial,

And afterward to wit on the 29th day of March AD 1862 the following order was entered upon the records of said Court which is as follows Viz,

Elijah Barr
 vs
 Valentine H Marshall
 & James Dickson } Ejectment

This day again this cause coming on to a hearing, on defendants motion for a new trial herein. And after hearing the same the Court overrules the motion. It is therefore considered and is the judgment of the Court that the said defendant are guilty as charged in Plaintiff declaration of unlawfully, withholding the possession from Plaintiff of the North East quarter of Section Twenty one (21) in Township Eight (8) north of range one

7
(1) West of the fourth Principal meridian in Warren
County Illinois. And that the Plaintiff has a right
to recover the possession of the land above described.
And it is further ordered by the Court that Plaintiff
recover of said Defendant his Cost by him in this
suit made and may have Execution therefor.
Thereupon came defendant and pray an appeal
to the Supreme Court, which is allowed by the
Court upon the said defendant James Dickson
entering into bond in the sum of Two Hundred
dollars with E. S. Smith as security Conditioned
according to law. Bond to be filed in thirty
days from this date. And in default of defendant
filing said Bond. It is further ordered by the Court
that said Plaintiff have his Writ of Possession,

6

State of Illinois Warren County Circuit Court
Warren County March Term AD 1862

Elijah Barr Plaintiff.

vs

Valentine W Marshall

& James Dickson Deft

Ejectment

Be it remembered that on the trial of this cause the Plaintiff to maintain the issue on his part, offered in evidence a deed of conveyance of the premises in controversy bearing date the 2^d day of May AD 1860 to the Plaintiff and which said deed is in the words and figures following to wit:

This Indenture made and entered to this second day of May AD 1860 between V W Marshall of the County of Knox and State of Illinois of the first part, and Elijah Barr of the County of Adams and State of Illinois of the second part, Witnesseth that the party of the first part in consideration of the sum of Four thousand dollars paid by the party of the second part the receipt of which is hereby acknowledged doth hereby grant bargain and sell convey and release and confirm unto the said party of the second part his heirs and assigns forever all and singular the following described Real estate situated lying and being in the County of Warren and State of Illinois and described as

follows to wit: The South East quarter of Section
Twenty one in Township Eight North of range one
West of the fourth principal Meridian.
Together with all and singular the appurtenances
thereunto belonging or in any wise appertaining
To have and to hold the above described premises
unto the said party of the Second part his heirs and
assigns forever. And the said N Mc Marshall the
aforesaid premises unto the said party of the sec-
ond part his heirs and assigns against the
lawful claim or claims of all persons whomsoever
do and will warrant and ~~defend~~ forever defend
these presents.

In Testimony whereof the said party of the first
part have hereunto set his hand and affixed his
Seal the day and year first above written
Signed sealed and delivered } N Mc Marshall
in presence of S B Tippet } *TS*

State of Illinois }
Hulton County } *SB*

This day personally appeared before
the undersigned a Justice of the Peace in and for
the County and State aforesaid N Mc Marshall
who is personally known to me to be the person
whose name is subscribed to the foregoing deed as
having executed the same and acknowledged that
he had executed the same for the uses and purposes
therein expressed. Witness my hand and my

10

Seal at St Augustine in the County aforesaid this
second day of May AD 1860

George R Tippet J.P. Esq

State of Illinois
Fulton County

I John H Pierson Clerk of the County
Court within and for said County and State do
Certify that George R Tippet Esq whose name appe-
ars to the foregoing instrument of writing, was on the
second day of May AD 1860 an acting Justice of
the Peace within and for said County duly Comm-
-issioned and qualified, and by the Laws of the
State of Illinois authorized to administer Oaths
and take acknowledgement of deeds and other inst-
-ruments of writing, and full faith and credit
ought to be given to all his official acts as such
and that his signature thereto is genuine



Given under my hand and the Seal of
said Court at Leaviston the 3^d day of May
One thousand eight hundred and sixty

John H Pierson Clerk

No 23462 State of Illinois
Warren County

Circuit Clerk's Office

I William Laferty Clerk of the Circuit
Court in and for the County of Warren and State
of Illinois and Ex Officio Recorder of deeds in said
County do hereby certify that the annexed instru-
-ment of writing was filed for record in my

11
office on the 10th day of May AD 1860 at 1 o'clock
P.M. and has been duly recorded, with the
accompanying Certificate in Vol 33 of Deeds on
page 10. In Witness Whereof I have hereunto
set my hand and the Seal of said Court at
Middletown the day and year above written
It is the Clerk and of Office's Record
By L C Tourtellott Deputy

to the introduction of which said deed and
acknowledgement in evidence by said Plaintiff
the said defendants then and there objected,
but stated no specific objection, but the objection
was overruled by the Court to which decision of
the Court in overruling said objection and admit-
ting said deed and acknowledgement in evidence
on behalf of the said Plaintiff, the said defendants
then and there by their Counsel in Open Court
accepted and still accept.

The said Plaintiff then called Harmon Straw
as a witness in his behalf, who after being duly
sworn testified that defendant Dixon was the
tenant of Marshall and rented the land in
controversy of Mrs Marshall the wife of defendant
Marshall, that Dixon told him so when he
served the Declaration and notice, that said
defendant Marshall was & has been absent
from home about 2 years. To the evidence of
said Straw, the said defendants by their Counsel
objected, but the Court overruled their objection.

to the overruling of which objection and admitting the same in evidence by the Court the defendant then and there by their Counsel objected and accepted and still do object and accept. The Plaintiff here rested his case,

The said defendant to maintain the issue on their part then called William Snapp as a witness who being duly sworn testified that defendant Marshall was a long time before said deed was executed a Married Man, that at and before said deed was executed said Marshall had a Wife and Children under the age of twenty one years and residing with the same, that at the time said deed was executed said Marshall with his wife and Children was living on the premises in Controversy as his residence and Homestead; And that about two years ago said Marshall absented himself and ever since then, his wife and Children have been living and are now on said premises and occupying the same as their residence and Homestead and that the Youngest child of said Marshall is not yet twenty one years of age, that there was a Dwelling House on said premises at the time said deed was executed and has been ever since, which said Dwelling House was then and has ever since and is now occupied by said Marshalls

Family as their residence and Homestead which testimony was introduced for the purpose of claiming the land by virtue of the Homestead Law. To the introduction of which evidence which was introduced for the purpose of claiming the land by virtue of the Homestead Law. The Plaintiff by his Counsel then and there objected and the Court sustained said objection and excluded the same to which decision of the Court in excluding said evidence the Defendants by their Counsel then and there excepted and still except.

The defendants then offered in evidence the following Original Bill and answer of Elijah Barr in the Case of P Henry Baker et al vs Valentine Mc Marshall

The State of Illinois In Circuit Court
Warren County 3 March Term AD 1862

To the Honorable Charles B. Lawrence, Judge
of said Court in Chancery Sitting:

Your Orators P Henry Baker, John
M. Stewart & John Frisbie, bring this
their Bill against Valentine H Marshall, Louis
Richmond, Frederick Richmond, Elijah
Barr, William Little Merrill Ladd & George
S. Williams, Ferdinand O Lattner
Leonard M. Deaw, Andrew N. Simmons
William Snapp, Ephraim S. Swinney,
James M. Rabb, Norace Warren & Daniel
Haleman.

And therefore your orators complain
and say, that hitherto to wit: on the eleventh
day of September, A.D. 1860, P Henry Baker
one of your orators, caused a writ of attach-
ment to be issued from said Warren County
Circuit Court at his own suit, and against
the goods & chattels, lands and tenements of
the said defendant-Valentine H. Marshall which
said writ of attachment was on the day and year
last aforesaid levied, the Sheriff of Warren
County aforesaid on the following described

Real Estate, as the property of said defendant Valentine H. Marshall to wit: The North East quarter of section twenty one - The North West quarter of section twenty two; and the North West quarter of section twenty three. All in Township Eight north of Range one west of the fourth principal meridian & situated in Warren County & State of Illinois and that on said day a certificate of said levy was duly filed by said Sheriff in the office of the Clerk of said Circuit Court - & by him duly recorded.

That afterwards to wit: on the eighth day of November A.D. 1861, by the consideration & judgment of said Court, your orator P. Henry Baker recovered against said defendant Valentine H. Marshall in said attachment suit the sum of four hundred & sixty five dollars & thirty seven cents for the damage which he had sustained for the non-performance of certain promises & undertakings, and the further sum of twenty five dollars & seventy five cents for the costs of your orator in and about said suit expended which were adjudged to your orator P. Henry Baker in and by said Court, whereof the said defendant P. Henry Baker was duly convicted as by the record of said judgment in the

office of the Clerk of said Court, (reference being there to had and to which for greater certainly your orators pray leave to refer) will more fully and at large appear.

And your orators further show unto your Honor that on the same day of the levying of the attachment by said P Henry Baker as aforesaid the said defendants William Little, Merrill Ladd and George S. Williams caused an execution which had been issued out of the Superior Court of Chicago on a judgment rendered in said Court in their favor and against Valentine H Marshall one of said defendants, to be levied on the real estate heretofore described as having been attached by said P Henry Baker and your orators further shows unto your Honor that on or about the first day of December A.D. 1860 as your orators are informed the Sheriff of Warren County sold by virtue of said execution in favor of said William Little & others & to satisfy the same a portion of the property so attached by your orator P Henry Baker that the portion so sold is described as follows to wit. Forty acres the west side of the north west quarter of said section twenty two - and sixty acres from the east side of said North East quarter of said section twenty one.

all in Township Eight north of range one West of the fourth principal meridian in Warren County Illinois and that at such sale the plaintiffs in said execution bid the sum of one Hundred dollars for said Forty acres - & one Hundred & ninety dollars for said sixty acres, (The amounts bid being as your orators believe the whole amount due for principal interests and costs on said judgment in favor of said William Little & others at the date of said sale) and that said Tracts of land were struck off & sold to said plaintiffs in said execution at the prices so bid by them.

And your orators further show unto your Honor that on or about the twenty second day of August A.D. 1861 an attachment writ was issued out of said Warren County Circuit Court in favor of James Ireland, Robert Squires, Henry Bowman P. Henry Baker & William H. Ireland for the use of your orators John M. Stuart & John Frisbie & against the lands & tenements goods & chattels of Valentin H. Marshall & Louis Richmond in aid of a suit at law then pending in said Circuit Court of Warren County & State of Illinois wherein

19

said James Ireland, Robert Squires, C Henry Bowman P Henry Baker & William H Ireland were plaintiffs as partners under the name & style of Ireland Squires & Co. for the use of your orators John Trisbee & John M Stuart as partners under the name & style of Trisbee & Stuart and against Valentine H Marshall, Louis Richmond & Frederick Richmond under the partnership name & style of V. H. Marshall by virtue of which said writ of attachment the sheriff of said Warren County attached the same lands heretofore described as having been attached by said P. Henry Baker as the property of Valentine H Marshall & Louis Richmond, and that on the same day a certificate of said Levy was duly filed in the office of the clerk of said Court & by him duly recorded.

That on the seventh day of November A.D. 1864 at a Term of the said Warren County Circuit Court then being holden the said plaintiffs mentioned in the last described suit recovered a judgment against said defendants therein for the sum of Thirteen Hundred & Eleven dollars & Eighty nine cents damages together with their costs amounting to Thirty nine ⁶⁵/₁₀₀ dollars.

And your orators further show unto your Honor that on the 30 day of November AD 1861 a special Execution & fee Bill. was duly issued out of the office of the clerk of said Circuit Court under the seal of said Court directed to the Sheriff of said Warren County, upon said judgment in favor of said O'Henry Baker and against said Valentine H Marshall commanding him that of said lands so levied upon he make said judgment & Costs - and which said execution & fee Bill are still in the hands of said sheriff in full force and unsatisfied.

And your orators further show unto your Honor, that on the 30th day of November AD 1861 an execution & fee Bill was duly issued out of the Clerk of said Court under the seal of said Court, upon said judgment in favor of said Ireland Squires & Co for the use of your orators Friebe & Stuart & against said defendants Valentine H Marshall, Louis Richmond & Frederick Richmond directed to the Sheriff of said Warren County commanding him that of the said lands & the goods & Chattels, Land & Tenement of the said Frederick Richmond he make the said judgment & Costs, which said execution is still in said Sheriff's hands, in full force

21

and unsatisfied. And that the said Frederick Richmond has no property wherof to make said judgment & costs, as your orators are informed and believe, and so states the fact to be upon information & belief, except his interest in said lands. And your orators further state that on the 15th day of January A.D. 1862 said execution was levied by said Sheriff on a portion of said lands as the property of said Frederick Richmond.

And your orators further state upon information and belief that the said defendants Valentine H. Marshall, Louis Richmond and Frederick Richmond were in fact, copartners as merchants and that the said Richmonds attempted to cheat and defraud the creditors of said firm and that they or one of them claim or pretend to have some interest in and to the land so as aforesaid attached by your orators - or in some part of it, which claim or pretence your orators charge upon belief to be wholly groundless and made with a view to hinder and delay your orators and others of their creditors in the collection of their just debts against them.

And your Orators further state, that said defendant Elijah Barr hold the title to a

portion of the land so as aforesaid attached by your orators, viz. to the North East Quarter of section Twenty one. Township Eight North of Range one west, And that he has commenced an action of Ejectment in the Circuit Court of said Warren County against Valentine H. Marshall and one James Dickson for the recovery of the possession of said land last described.

And your orators further state upon information and belief that said defendant Barr claims the title and the right to the possession of said land under and by virtue of a deed made and executed by said defendant Marshall to him and dated on the 2nd day of May A.D. 1864, but your orators charge upon information and belief that if any consideration ever passed from the said defendant Barr to said defendant Marshall for said conveyance that it was simply a Loan of money, and such deed was given and intended as a conveyance for the security of such money so as aforesaid loaned, to said Marshall from said Barr, or that said deed was given only and intended as a Mortgage to secure an indebtedness from said

2B

Marshall to said Barr and that the same was and is in law simply a Mortgage upon said premises.

And Your Orators further state upon information and belief that the sum or sums of money to secure the payment of which said conveyance was made to said Barr as aforesaid have been wholly or in part paid by said Marshall or by some person or persons for him and further that the person or persons so loaning money to said Marshall or to whom said Marshall was indebted made an usurious contract with said Marshall and took or reserved a greater rate of interest than is allowed by the laws of this State.

And your orators further state upon information and belief, that the said Valentine H. Marshall on or about the 12^{3rd} day of March. A. D. 1859 conveyed a portion of said land so attached by your orators and described as follows to wit: One hundred and twenty acres off from the East side of said North West Quarter of section Twenty Two. And the undivided one half of said North West Quarter of said section Twenty three. to said defendant Frederick Richmond. And that said

dud has been recorded in the Record Book of said Warren County. And to which your orators by leave to refer for greater certainty

And your Orators further state to your Honor that on or about the 26th day of March A.D. 1859 said Frederick Richmond pretended to convey said two last described portions of said land by a Mortgage due to said defendant Horace Warren to secure the payment of fifteen hundred dollars, as is therein recited & also on said day again pretended to convey said last described portions of said land to said defendant Horace Warren by another Mortgage due to secure the payment of fifteen hundred dollars as is therein recited, And also on or about the 16th day of April A.D. 1859, again pretended to convey said two portions of said land by another Mortgage due to said defendant Horace Warren to secure the payment of five hundred dollars as is therein recited. All of which said Mortgages have been recorded in the Records of said Warren County And to which your orators by leave to refer for greater certainty.

25

But your Orators charge upon information & belief that said Mortgages are only colorable and were made without any good or valuable consideration whatever, but for the purpose of hindering, delaying & defrauding the creditors of the said Frederick Richmond, or that if there was any consideration therefor that the same have long since been paid. And that they are allowed to remain uncanceled upon said Records for the purpose of hindering delaying and defrauding the creditors of said Richmond.

And your Orators further state unto your Honor that on or about the 6th day of April A.D. 1859. said Frederick Richmond pretended to convey said two last described portions of said land to said defendant Louis Richmond by deed of General Warranty, which said deed was recorded in the Records of said Warren County & State of Illinois and to which your Orators refer for greater certainty.

That on or about the 28th day of January A.D. 1860 said Louis Richmond pretended to convey said last two described portions of said land to said defendant Leonard M. Dean by deed of

which said deed is recorded in the Records of said Warren County & to which your orators pray leave to refer for greater certainty.

But your Orators resolutely charge upon information and belief that said conveyance was made without any consideration whatever and for the purpose of hindering delaying and defrauding the creditors of said Richmond.

And your Orators further state that on or about the 16th day of April 1859 the said defendant Valentine H. Marshall, pretended to convey a portion of said land so attached by your orators to wit. The undivided one half of said North West Quarter of said section twenty three to said Horace Warren by a deed of General Warranty which said deed is recorded in the Record Books of said Warren County & to which your Orators pray leave to refer for greater certainty.

207

But Your Orators expressly charge upon information and belief, that the said deed was made without any consideration whatever, And for the purpose of hindering delaying and defrauding the creditors of the said Marshall, or that the same is held in the name of said Warren for the benefit of said Frederick Richmond or Marshall for the purpose of hindering delaying & defrauding the creditors of said Richmond & Marshall.

And Your Orators further state unto your Honor that on or about the 21st day of November A.D. 1860. Said defendant Horace Warren conveyed said last described portion of said land to one Arthur N. Griffith. In Trust to secure any person who should go security, that said defendant Frederick Richmond should be and appear before the Circuit Court of said County of Warren & State of Illinois at the Term A.D. 1861 thereof to answer to an indictment then pending against him the said Richmond for the crime of Forgery.

And your orators state & aver that said indictment was at the March Term A.D. 1861 of said Court dismissed and the said defendant discharged.

And your Orators further state that on or about the 21st day of March A.D. 1861 said Arthur N. Griffith pretended to convey said last described portion of said land, to said deftnt. ants., Ephraim S. Swinney & James M. Rabb, to secure them in giving the security of said defendant Frederick Richmond in the sum of \$700 for his appearance at the October Term A.D. 1861 of said Court to answer to another indictment for the crime of Forgery then pending against him. But which was not the same indictment pending in said Court at the time said deed was made from said Warren to said Griffith. And your Orators further state that said Richmond did appear at said October Term of said Court to answer to said indictment

And your Orators further state to your Honor that on or about the 4th day of April A.D. 1860 said Valentino N. Marshall conveyed another portion of said land to said defendant Louis Richmond to wit forty acres off the west side of said North West Quarter of said section twenty two. And sixty acres off from the East side of said North East Quarter of said section Twenty one - by deed of general Warranty - which said deed was duly

29

recorded in the Records of said Warren County on the 3^d day of May 1860 (as by reference to said deed & Records will more fully & at large appear.

And Your Orators further state and show unto your Honor, that said Louis Richmond on or about the 11th day of July A.D. 1860 pretended to convey said last two described tracts of land to the said defendant Ferdinand C. Lattner - by a Mortgage Deed to secure the sum of Twenty five hundred dollars as is therein recited, And that said Mortgage has been recorded in the Records of said Warren County & to which your Orators pray leave to refer for greater certainty,

But your Orators expressly charge upon information & belief that said Mortgage is only colorable and that the same was made without any consideration whatever & with the intent & purpose of hindering, delaying & defrauding the Creditors of said Louis Richmond or that if there was any consideration therefor that the same was only one hundred dollars and that the same has been fully paid.

And your Orators further state that on or about the 8th day of June 1860 said Valentine H. Marshall pretended to convey said tract of land above described as the Forty acres off the west side of the North west Quarter of Section twenty two, by deed of general Warranty which said deed is Recorded in the Records of said Warren County, and to which Your Orators pray leave to refer for greater certainty

But your Orators expressly charge upon information & belief that said deed was made without any consideration whatever and for the purpose of hindering, delaying and defrauding the Creditors of said Valentine H. Marshall, or that if there was any consideration therefor that it was only given to secure the loan of money, and that if so the same has been fully paid

And your Orators further show unto your Honor that on or about the 26th day of April AD 1861 and since the levying of the attachment as aforesaid by your Orator P. Henry Baker and the filing of said Certificate of levy, the said Daniel Holman has pretended to convey said land

31

described tract of land to said defendants Andrew Simmons & William Snapp by deed of quit claim which has been recorded in the Records of said Warren County & to which your Orators pray leave to refer for greater certainty

But your Orators charge that said Andrew Simmons & said William Snapp had full notice of your Orator P. Henry Baker claim to the said premises before & at the time of the making of said deed.

And your Orators further charge upon information and belief that said deed was made without any consideration whatever & for the purpose of hindering, delaying and defrauding the creditors of the said Marshall & Richmonds

And your Orators further charge upon information and belief that all the property so attached and levied by your Orators as aforesaid is in fact the property of said defendants, Valentine H. Marshall & Louis Richmond & Frederick Richmond And that all the claims or pretended claims of said other persons to said land are groundless and their title or titles to the same or to any

portion thereof are merely colorable but that your orators are unable to tell which portion of said land belong to said Richmonds or to said Marshall on account of the many conveyances made by them.

Now therefore as your orators are remediless in the premises at and by the strict rules of the common law and cannot have adequate relief save in a court of equity, where matters of this and a similar nature are properly cognizable and relievable and cannot without the aid of this court safely proceed to sell said land so attached.

by reason of the claims of other persons to the same or to portions thereof as herein before stated.

To the end therefore that the said defendants may, if they can show why your orators should not have the relief hereby prayed. And that the said defendants Valentine H. Marshall Elijah Barr. William Little Merrill W. Ladd George S. Williams Daniel Naleman, Andrew W. Simmons William Snapp Leonard M. Dean Ferdinand

C. Lattimer, Horace Warren. may upon their several and respective oaths, and the said Louis Richmond, Frederick Richmond.

James M. Robb. Ephraim S. Swinney may without oath. (their oaths being hereby expressly waived), according to the best of and at most of their respective knowledge, remembrance, information & belief full, true direct and perfect answers make to all and singular the matters and things herein stated and charged.

And particularly to such of the interrogations herein after numbered set forth as by the note hereunder written they are required to answer.

1st Whether the said conveyance from said defendant Marshall to the said defendant Barr as hereinbefore stated was not intended simply as security for money loaned or owing from the said defendant Marshall to the said defendant Barr.

2nd What was the real and exact amount of money owing by the said defendant Marshall (if any) and for which he executed

the deed to said defendant Barr to secure^v,

3rd
" "

What was the rate of interest agreed upon between said defendant Marshall and said defendant Barr for the loan or forbearance of the sum of money which was intended to be secured by said deed of conveyance to said defendant Barr as aforesaid v.

4th
" "

What proportion of the amount of money so secured by said deed of conveyance from said defendant Marshall to said defendant Barr remains due and unpaid at this date, and what amount has been paid by said defendant Marshall or any one for him on such indebtedness since the same was contracted? set forth a full and complete statement of your transactions Marshall from the date of his said conveyance to said defendant Barr.

5th
" "

Were not the said defendants Louis and Frederick Richmond copartners with said defendant Marshall in trade

35 6th/₁₁

What was the real consideration for the said Mortgage from said Frederick Richmond to said Horace Warren?

And if any, what was the exact amount thereof & when paid. And what portion of the amount of money so secured by said deed of conveyance from said defendant Richmond to said defendant Warren remains due and unpaid & what amount has been paid. Set forth a full statement of all your transactions with said defendant Richmond from the date of his said conveyance to said defendant Warren.

17th/₁₁

For what purpose the said Mortgages were executed & why the same are kept on said Records uncancelled.?

8th/₁₁

What if any thing was the consideration for said deed from said Louis Richmond to said Leonard M. Dean made on or about the 28th day of January AD 1860, as hereinbefore stated. And for what purpose said deed was made, And whether the same was not made for the purpose of covering up the property of said Richmonds and placing it beyond the reach of their creditors. Was said deed given as an absolute deed or as a Mortgage or security. And if as.

security for what amount & when was the same to be paid, and what interest was to be paid on the same, & what amount has been paid thereon by the said Richmond or any one for him, -

9th What the consideration given for said deed from said defendant Marshall to said defendant Warren.

10th Was not the same made for the purpose of covering up the property of said defendant Richmond or Marshall, and placing the same beyond the reach of their creditors,

11th For what purpose was said deed made.

12th What was the consideration paid for said deed from said defendant Marshall to said defendant Noleman? And for what purpose was the same made, was the same intended as an absolute deed or only as a security and if as a security for what amount & when was the same to be paid & whether said claim if any such there was has not been fully paid.

13th

What was the consideration for said deed from said defendant Huleman to said defendants Summons & Snapp & for what purpose was the same given?

And that the said conveyance of the North East Quarter of said section Twenty one Township Eight north of range one west of the fourth principal meridian by said Marshall to said Barr may be adjudged and decreed to be a mortgage given to secure the payment of a sum of Money by said Marshall to said Barr.

And that the estate so attached and levied upon by your orators may be adjudged & decreed to be the property of said defendants Marshall & Richmond and may be ordered to be sold to satisfy the judgments of your orators as herein before set forth.

And that the said William Little Merrill Ladd & George S. Williams may be enjoined and restrained from obtaining title to said Real Estate so as aforesaid levied upon & sold by them to the prejudice of the rights of your orators therein.

And that said defendants Elijah Barr
 Horace Warren, Daniel Halemman, Andrew
 Simmons, William Snapp, Leonard W
 Dean, Ferdinand, C. Lotmer, Ephraim
 S. Sweeney & James McKee may be
 enjoined & restrained from selling
 apigning transferring or in any manner
 incumbering or disposing of any of said
 land & from prosecuting any suit at law
 to recover title or possession to said property
 until the further order of this Court,

And for such other further & different relief
 as to your Honor shall seem meet & just
 & your orators will ever pray &c.

Henry Baker

John Friskie

John M Stuart Complainants
 by Phil Reed

their solicitor

O. S. Smith &
 J. S. Strain of Counsel.

Filed Jan'y 16th 1864.
 W. Lafaty. clk.

39

State of Illinois Warren Circuit Court
Warren County March Term AD 1862
Henry Baker et al

vs
Valentine H Marshall et al

The answer of Elias
Barr one of the defendants in the above
entitled cause

This defendant reserving to himself all
right of exception to the said bill of com-
plaint - for answer thereto saith.

It may be true for any thing he knows to the con-
trary, that said complainant Baker did
cause said writ of attachment to be issued
out of said Warren Circuit Court against
the goods & chattels lands & tenements of
said Marshall & that such proceedings
were thereupon had as is stated in said
complainant's Bill -

And that said Baker did recover a judgment
thereon against said Marshall at the time
& in the manner as set forth - And that
said Little, Ladd & Williams caused an
execution to be issued out of the Superior
Court of Chicago & levied on the same
day & upon the same lands herein owned
by virtue of said writ of attachment.
And that under & by virtue of said
execution the Sheriff of Warren County.

sold a portion of said lands, at the
 time for the amounts & to the persons as
 set forth & alledged in said complainants
 bill, And that a writ of attachment was
 issued out of said Court in favor of
 James Ireland et. al, for the use of the
 complainants Stuart & Trisbee against the
 goods, chattels, lands & tenements of said
 Marshall & Louis Richmond, at the time
 & for the purposes as alledged & set forth
 in said bill, And that said writ of
 attachment was levied upon said lands
 as the property of said Marshall & Louis
 Richmond as set forth, And that said
 plaintiffs last mentioned recovered a
 judgment against said Marshall [&] Richmond
 in said Circuit Court at the time ~~before~~
~~the~~ & for the amount alledged, And that
 such proceedings were thereupon had
 as is set forth & alledged in said com-
 plainants bill, - And that the executions
 & fee bills issued in said cause
 remain in the hands of the Sheriff of
 said County in full force & unsatisfied,
 And that said Frederick Richmond has
 no property out of which to make the
 amount of said judgment, but this
 defendant is an entire stranger to all

41

+ any such matters + cannot form any belief concerning the same.

And this defendant further answering saith he hath been informed + he believes it to be true that said Valentine A Marshall, Louis Richmond, and Frederick Richmond were copartners as merchants. And he believes it to be true that said Richmond, attempted to cheat + defraud the creditors of said firm + that they pretended to have some interest in the land set forth + described in said complainant's bill.

This Defendant further answering saith he admits he holds the title to the North East Quarter of Section twenty one, township eight north in Range one West + that he has commenced an action of ejectment against said Valentine A Marshall + one James. Dickson in the Circuit Court of Warren County for the recovery of the possession of said land.

And this defendant further answering saith he admits that he claims the title + the right to the possession of said

land by virtue of a deed made & executed by said Valentine H Marshall to him on the 2^d day of May A.D. 1860 and admits that said deed was made by the said Marshall to secure the payment to him (the said Barr) of the sum of four hundred & seventy five dollars being the amount of the faces of two certain promissory notes dated the 3^d day of May A.D. 1859, which said notes were drawing ten per cent interest from the date thereof & copies of which are herewith filed & marked "Exhibit A" & made a part of this answer, and also to secure one note for the sum of twenty one dollars due Mch 11. 1860, a copy of which is herewith filed, marked "Exhibit B" & made a part hereof, and also to secure the payment of the amount due from the said Marshall to one John P Wood's said amount being nearly four hundred dollars at the time of the execution of said deed, - the exact amount not being known to this defendant.

This defendant says that it appears by the records of said Warren County that sixty acres of said land was sold & conveyed to Frederick Richmond & that the deed to Richmond was dated & received prior

43

to the deed to this defendant, - He further saith that the wife of said Marshall did not sign the deed from said Marshall to this defendant & that she now has possession of the same.

And this defendant further answering saith that the real & exact amount of money due & owing by the said Marshall to this defendant at the time of the execution of said deed was five hundred forty three & $\frac{54}{100}$ Dollars. - The exact amount due & owing said Hoods he cannot state only as above set forth:

And this defendant further answering saith that the rate of interest agreed upon between said Marshall & this defendant for the forbearance of the Money loaned him by this defendant was ten per cent per annum & that no greater or higher rate of interest than said ten per cent was ever added to or in any way included in the sums of money due this defendant - to secure which said deed of conveyance was made.

And this defendant further answering saith that the whole of said amounts of money said deed was given to secure to this.

44

defendant remains due & unpaid & that this defendant has never been paid anything on account of said indebtedness by said Marshall or by any one for him.

and this defendant further saith he has no knowledge whether said Wood has been paid anything on account of said indebtedness from said Marshall to him.

And this defendant further state that the amount due this defendant at this time to wit March 19th 1862 on said notes. said deed of conveyance was given to secure is six hundred forty eight & ⁸⁵/₁₀₀ (\$648⁸⁵/₁₀₀) dollars - and that this defendant at the time said deed was made supposed said Marshall would pay the taxes on said land but that he (Marshall) failed to do so - & this defendant not being a resident of this Warren County said land was sold for taxes on the 25th day of June A.D. 1860 for the sum of eighteen & ⁹¹/₁₀₀ (\$18⁹¹/₁₀₀) dollars to one Seth Smith & that said Smith in the year A.D. 1861 paid a portion of the taxes levied on said land for the year A.D. 1860 to wit the

45

sum of seven dollars & this defendant exhibits (in order to secure himself from loss), to be compelled to redeem said land from said sale, & that the amount of money required for the redemption thereof is forty seven & $\frac{22}{100}$ ($47 \frac{22}{100}$) dollars. And this defendant further states that in the year A.D. 1861 he paid a portion of the taxes levied on said land from the year A.D. 1860 to wit the sum of eleven & $\frac{55}{100}$ ($11 \frac{55}{100}$) dollars. And that he has paid the taxes levied on said land for the year A.D. 1861 amounting to the sum of sixteen & $\frac{96}{100}$ dollars. And that this defendant has laid out & expended since the date of said conveyance the additional sum of about fifty dollars the exact amount not being known to this defendant.

This defendant further answering said that since the date of said conveyance he has had no dealings whatever in any shape with said Marshall.

This defendant further answering said he denies that the sums of money ~~and~~ due this defendant to secure which the said deed of conveyance was made

to this defendant have been wholly or in part paid by said Marshall or by any one for him & denies that this defendant made an usurious contract with said Marshall or took or received a greater rate of interest than is allowed by the laws of this state.

And this defendant further answering said he hath been informed & believes it to true. That said Marshall at the time set forth conveyed a portion of said land described in said complainants bill to wit, - 124 acres off the East side of said N. W. 2^d. section 22 - & the undivided $\frac{1}{2}$ of N. W. 2^d. of said section 23 - to Frederick Richmond. And that on or about the 26th day of March AD 1859 said Frederick Richmond pretended to convey said land last described by a Mortgage deed to one Horace Warren to secure the payment of the sum of money recited therein And that on the same day he again pretended to convey the last described tract of land to said Horace Warren by another mortgage deed to secure the payment of the sum of money set forth

409

And that at the time alleged again conveyed both of said parcels of land by another Mortgage deed to said Horace Warren to secure the payment of the sum of money alleged.

And this defendant further answering saith he has been informed & believes it to be true - that said Mortgages were only valuable & made without any good or valuable consideration whatever - but was made for the purpose of hindering delaying & defrauding the creditors of said Frederick Richmond.

But this is merely hearsay & this defendant has no actual knowledge in regard to such fact.

And this defendant further answering saith he has been informed & believes it to be true that on the 6th day of April A.D. 1859 said Frederick Richmond pretended to convey said two last described tracts of land to Louis Richmond. And that on the 28th day of January A.D. 1860 said Louis Richmond conveyed said last two described portions of said land to Leonard M. Dean. And this defendant

believes it to be true that said conveyances were made without any valuable consideration whatever & for the purpose of defrauding the creditors of said Richmond. But this is merely hearsay - this defendant having no knowledge in regard to the fact,

And this defendant further answering saith he has been informed & believes it to be true that on the 16th day of April. A.D. 1859. the said Marshall conveyed a portion of said land described in said plaintiff's bill, - to wit the undivided one half of said North West Quarter of said section twenty three to Horace Warren. And this defendant believes that said deed was made without any consideration whatever & for the purpose of defrauding the creditors of said Richmonds, but this is hearsay & he has no actual knowledge of such fact.

And this defendant further answering saith he has been informed & believes it to be true. that on the 12th day of November A.D. 1860 said Warren conveyed said last described portions of said land to Arthur

49

H. Griffith & that said conveyance was made for the uses & purposes set forth & alleged in said Bill & that he believes that said indictment against said Richmond was dismissed at the March Term A.D. 1861. of said Court, but this is merely hearsay as this defendant has no actual knowledge in regard to the fact.

And this defendant further answering said he has been informed & believes it to be true that at the time set forth said Griffith conveyed said last described portion of ^{said} land to E. L. Swinney & James M. Robb for the uses & purposes as alleged & set forth in said complaint's bill. - believes it to be true that said Richmond did appear at the time & place alleged - but this is merely hearsay & he has no knowledge of the fact.

And this defendant further answering said he has been informed & believes it to be true that said Marshall did on the 4th day of April A.D. 1860 convey another portion of said land to Louis Richmond; to wit 40 acres off the west side of said North West Quarter of section twenty two & sixty acres off.

the east side of said North East Quarter of section twenty one & that at the time set forth said Louis Richmond conveyed said last two described tracts of land to said Lattner by a Mortgage deed as stated in said Complainants bill, And this defendant saith he believes it to be true that said last two conveyances are only valuable & without any consideration whatever & made for the purpose of defrauding the Creditors of the said Marshall & Richmond.

And this defendant further answering saith he is informed & believes it to be true that on the 8th day of June AD 1860 said Marshall conveyed said 40. acres tract to Daniel Halem and believes it to be true that said conveyance was made without any consideration whatever & for the purpose of defrauding the Creditors of said Marshall, but this is merely hearsay and he has no knowledge in regard to the matter,

And this defendant further answering saith that he is informed & believes it to be true that on the 26th day of April AD 1861 Daniel Halem conveyed said last

described tract of land to said Simmons & Snapp.

And this defendant further answering saith it may be true for anything this defendant knows to the contrary that said Simmons & Snapp had at the time said deed was made full notice of the claim to the said premises of the complainant Baker - But this defendant is an entire stranger to said fact or facts & cannot form any belief concerning the same.

And this defendant further answering saith he has been informed & believes that the consideration for said last mentioned deed, was that said Simmons & Snapp should on security for said Marshall on a replevin bond in the Circuit Court of Warren County for the recovery of some horses levied on as the property of Fred Richmond.

And this defendant further answering saith from information but he has no knowledge of the fact, he believes it to be true that said lands described in said complainant's bill (except the North East Quarter of said section twenty one) are in fact the property of Valentine H. Marshall. Louis Richmond.

+ Frederick Richmond or of one of them
 + that all the claims or pretended claims
 of any other person or persons to said lands
 (except as above) are groundless - but this
 defendant denies that the said North
 East Quarter of Section twenty one belongs
 to or is in fact the property of said
 Marshall & said Richmonds or either of
 them or that the title of this defendant to
 the said Quarter is merely valuable.

And this defendant further answering saith
 that at the March Term A.D. 1860 of the
 Adams Circuit Court, this defendant
 brought suit against said Marshall on the
 said notes (filed herewith marked "Exhibit
 A.") but failed to get service on said
 Marshall in time to get judgment at that
 term of said Court, - that afterwards
 he caused said suits to be dismissed
 That on the 2^d day of May A.D. 1860 (the
 day of the date of said conveyance) this
 defendant went to see said Marshall to
 get him to secure him (defendant) in
 some way on said notes, said Marshall
 then said to this defendant he would sell
 defendant the tract of land mentioned
 in said conveyance to wit, The North

East Quarter of said section twenty one & that said tract was all clear of incumbrance - that at or about the time said deed of conveyance was drawn & executed said Marshall told this defendant he Marshall was indebted to said John P. Woods & that he (Marshall) wanted to pay Woods also. It was then agreed between said Marshall & this defendant that he (defendant) should sell or dispose of said land & he should first retain out of the proceeds of said sale, the amount due & owing from said Marshall to him at the time of such sale, & that after deducting the amount due him he (def't) should pay said Woods the amount due said Woods from said Marshall - & the balance if any, was to be paid to said Marshall & thereupon said deed was delivered to this defendant.

And this defendant further said that said Woods refuses to defray any of the expenses attending said deed of conveyance or for protecting his rights under the deed of conveyance to this defendant - although he has requested said Woods so to do. But he asks to be protected by the Court

on account of said contract in the premises.

And for that purpose he prays that the Court will make said Woods a party defendant herein & that he be required to appear & defend his interest in the premises.

And this defendant denies all & all manner of unlawful combination & confederacy whereunto he is charged by the said bill — without this that there is any other matter or thing in the said Complainant's said Bill of complaint contained material as necessary for this defendant to make answer unto and not ~~known~~ herein & thereby well & sufficiently answered, confessed, traversed & avoided or denied is true to the knowledge or belief of this defendant all of which matters & things this defendant is ready & willing to aver, maintain & prove as this honorable Court shall direct & humbly prays to be have dismised with his reasonable Costs in this behalf sustaining & prays that inasmuch as the said John P Woods refused to protect his own interests in the conveyance to this defendant that he may be protected against liability

53

to said Wood. for or on account thereof.
Elijah Barr

State of Illinois
Warren County

Elijah Barr after being by me duly sworn
deposes & says that he has read the above
answer & that the matters & things therein
stated as upon his own knowledge are
true in substance & in fact & that the
matters & things stated upon information &
belief he believes to be true.

Elijah Barr.

Sworn & subscribed to before
me this 19th day of March A.D. 1862
W^m Lafaty clk.

34

\$275

One ~~day~~ after date I promise to pay
to the order of Elijah Barr two hundred
and seventy five dollars for value
received with ten per cent interest per
annum.

Quincy May 3 1859 V. H. Marshall

On or before the first day of October I
promise to pay to the order of Elijah Barr
Two hundred dollars for value received
with ten per cent interest from date
Quincy May 3 1859

V. H. Marshall

\$21

Prairie City Nov 11. 1859

Four Months after date we promise to pay
to the order of Elijah Barr the sum of
twenty one dollars value received

J. W. Ireland
V. H. Marshall

Filed Nov 22 1862

M. Lafaty clk

Exhibit "A"

Exhibit "B"

57

To the introduction of which as evidence, which was offered for the purpose of settling up the claim by virtue of the Homestead law, the Plaintiff by his Counsel then and there objected and the Court sustained said objection and excluded the same as evidence to which decision of the Court in sustaining said objection and excluding said record evidence the defendant by their Counsel then and there excepted and still except. This was all the evidence in the case,

Whereupon the Court found said Defendant guilty,

To the finding of the Court the said defendant then and there excepted,

The said defendant then and there in Open Court by their Counsel moves the Court for a new trial and arrest of judgment for the following reasons to wit;

- 1st That the Court erred in admitting Plaintiffs deed in evidence and overruling defendants objections thereto,
- 2^d That the Court erred in excluding proper evidence offered on the part of the defendant and admitting improper evidence on the part of the Plaintiffs,
- 3^d The Court erred in finding the issues for the Plaintiff
- 4th The Court erred in rendering judgment for the Plaintiff

58 5th That the Court Erred in overruling the motion for a new trial and in arrest of judgment

6th That the finding of the Court was against the Law and the evidence,

But the Court Overruled the motion and entered judgment for the Plaintiff as follows to wit:

This day again this Cause coming on to a hearing on defendants motion for a new trial herein. And after hearing the same the Court overrules the motion, It is therefore Considered and is the judgment of the Court, that the said Defendants are guilty as charged in Plaintiff declaration of unlawfully withholding the possession from Plaintiff of the South East quarter of Section Twenty one (21) in Township Eight (8) north of range One (1) West of the fourth principal meridian in Hancock County Illinois, And that the Plaintiff has a right to recover the possession of the land above described, And it is further ordered by the Court that Plaintiff recover of said defendant his costs by him in this suit made and may have execution therefor. Thereupon Came Defendants and pray an appeal to the Supreme Court which is allowed by the Court upon the said defendant James Dickson entering into

59

bond in the sum of Two hundred dollars with E. S. Smith as security Conditioned according to law. Bond to be filed in thirty days from this date. And in default of defendant filing said bond it is further ordered by the Court that said Plaintiff have his writ of Possession.

To the overruling of which motion then rendering said Judgment the said Defendants by their Counsel then and there in Open Court accepted and still accepts.

And inasmuch as the foregoing do not appear upon record the defendants pray that this their Bill of exceptions may be signed and sealed and made a part of the record in this case which is accordingly done this 31st day of March AD 1862

L B Lawrence

(Seal)

Filed March 31-1862

Wm. Lafferty Clerk

And afterwards to wit on the 1st day of April AD 1862 the following order was entered upon the records of said Court which is as follows.

Elijah Bow

Valentine H. Marshall

James Dickson

Ejectment,

This day again came Phils Reed agent and attorney for Valentine H Marshall James Dickson and enters his motion for leave to file his bond in appeal in this case with E. S. Smith as security in lieu of James Dickson bond, which motion is allowed by the Court. Thereupon came the Plaintiff and excepts to the decision of the Court in allowing said motion.

Know all men by these Presents, That we, Phils Reed as agent and attorney for James Dickson & Valentine, H. Marshall & Ezekiel S. Smith are held and firmly bound unto Elijah Barr in the penal sum of Two Hundred dollars for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly, severally and firmly by these presents: Witness our hands and seals, this 1st day of April Anno Domini one thousand eight hundred and sixty two,

The Condition of the above obligation is such; That whereas, the said Elijah Barr did, on the 29th day of March, 1862, in the Circuit Court, within and for the County of Warren, and State of Illinois, recover a judgment against the above bounden

James Dickson & Valentine N. Marshall
for costs of suit in a certain action of eject-
ment from which judgment of said Circuit
Court, the said James Dickson & Valentine N.
Marshall has prayed for and attained an
appeal to the Supreme Court of said State,
Now if the said James Dickson & Valentine N.
Marshall shall duly prosecute their said
appeal with effect, and shall moreover pay
the amount of the judgment, costs, interest and
damages, rendered and to be rendered against
in case the said judgment 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.

Phil. E. Reed *L.S.*
agent & attorney for James
Dickson & Valentine N. Marshall
E. S. Smith *L.S.*

Filed April 1st 1862

W. Lafay. CK.

State of Illinois
Warren County

I Mr. Safety Clerk of the
Circuit Court in and for said County do
hereby Certify that the foregoing is a true
copy of the record and proceedings in the
foregoing case as the same appears from the
files and records of my office

Witness my hand and the seal of
our said Circuit Court at my office
in Mornmouth this 7th day of April
AD 1862

Mr. Safety Clerk

Fees \$12.00

Supreme Court of the State of Illinois

Third Grand Session

Valentine H. Marshall

and James Dickson

Appellants

vs,

Elijah Barr

Appellee

} Of the April Term
AD 1862

And now Come the said Appellants Valentine
H. Marshall, ^{and} James Dickson by C. D. Smith their
Attorney And say, that in the Record & proceedings aforesaid
and also in giving the judgment aforesaid there

is Error in this Court

1. The Court Erred in permitting the deed offered in Evidence by the Appellee upon this trial to be read in Evidence And in Overruling the Appellants Objections thereto
2. The Court Erred in Sustaining the objection made by the Appellee to the testimony of Harmon Straw offered by the Appellants And in Excluding said Evidence
3. The Court Erred in Sustaining the objection made by the Appellee to the reading of the bill and answer in this case pending in the Harrow County Circuit Court in Chancery wherein P. Henry Baker & others were complainants and Valentine H. Marshall, Elijah Parr and others were defendants, offered in Evidence by the Appellants & in excluding the same
4. The Court Erred in giving judgment for the plaintiff in the Court below, for the reason that the premises described in the declaration were at the time of the execution of the instrument under which the plff in the Court below claimed title, ever since had been, and then were in the actual occupancy and possession of the wife and minor children of Mrs. Sarah Valentine H. Marshall as a homestead and claimed as such by them, and that the wife of said Valentine H. Marshall had never released her homestead rights thereto nor was she a party to the instrument under which the Appellee claimed title
5. The Court Erred in Overruling motion for a new trial
6. The Court Erred in admitting improper Evidence for the Appellee and in rejecting proper and competent Evidence for the Appellants.

7. The fragment of the Court below is against law & wrong.
 Another said Valentine H. Marshall James
 Dickson pray, that the fragment aforesaid for the
 Error aforesaid & that the Error in the record and
 proceedings aforesaid may be reversed Annulled
 and Retraquies held for nothing. And that they
 may be restored to all things which they have lost
 by occasion of said fragment.

J. J. Smith
 Appels Atty

#7
 Supreme Court
 Valentine H. Marshall
 James, Dickson - Appels

39.

Calypso Barn
 Appels
 Record & Appels to Error

Filed Apr. 14, 1862
 L. Ireland
 Clerk.

Re-filed March 22, 1864
 L. Ireland
 Clerk.

And now comes said defendant
 in error & says that no such
 error appears of record in said
 cause as above alleged. He
 therefore prays that said judgment be
 affirmed. A. H. Humphreys
 for R. in Error

Princeton, April 21-1864

O. N. Gray Esqr

Dear Sir, in *Bureau les. vs. Jacob
J. Thomson*, it is the particular desire of both parties that
the case shall be determined at the present term, yet
it disposed if possible.

G. W. Stipp

It is also agreed upon honor between Mr. Paddock
and myself, that no technical question shall be raised,
that no motion to dismiss the appeal, no position that the
plffs. form of action is not right, but only such ques-
tions as arise under the facts stated in the Bill of exceptions
and the act of Congress of the legislature, but this whole
question shall be tried, admitting plffs. form of action to be
right, Can be recovered under the facts and the laws -

Geo. W. Stipp Atty for
J. J. V.

Geo. L. Paddock
for Co Bureau

and it is further agreed that the defendant, below
shall have the same benefit upon the facts
that they could have had under any special
plea setting up the same matter

Geo. L. Paddock

for Co Bureau

Geo. W. Stipp

Atty for J. J. V.

188 84

Board Supervisors
Bureau County
vs.
Jacob J. Thomson
Stipulation

Filed April 28. 1864
L. L. L. L. L.