

12008

No.

Supreme Court of Illinois

McKay.

vs.

Hunt.

71641 7

C/o H
James McKay
vs
William Bissett et al.

1847

12008

United States of America
State of Illinois Lake County & Co

H

Please before the
Honorable Richard M. Young
one of the Justices of the Supreme
Court of the State of Illinois and
presiding Judge of the Circuit
Court of Lake County in the
Seventh Judicial Circuit of said
State as a Circuit Court for said
County of Lake began and held
at Little Fort in said County, on
the Twentieth day of April
the year of our Lord one thousand
and eight hundred and Forty
Six and of the independence
of the United States of America
the seventeenth.

Present the Honorable Richard M. Young Judge
aforesaid William A. Boardman States Attorney
James M. Hay Sheriff of Lake County.

Attest Isaac R. Gavin Clerk

Be it remembered that on the
eighteenth day of April A.D. 1846 came Butler
Morris and Brown Solicitors for the complainant
& Solicitors of said Court and file with the Clerk
of said Court Their Bill on the Chancery side
of said Court which bill is in the following
words and figures, ^{following} to wit,

To the Hon Richard M Young one of
the Judges of the Supreme Court of the State of
Illinois & Judge of the seventh Judicial Circuit
of said State and as such Judge of the Circuit
Court of Lake County.

Lake county circuit Court

of the April Term AD 1846

Respectfully complaining sheweth
unto your honor your Orator James M Kay of the
County & State aforesaid,

That on or about the 13th day
of September AD 1842 your Orator as the surety
of One Burleigh Hunt became bound with said
Hunt unto One Jesse H Foster of the County aforesaid
in the penal sum of eight hundred dollars to be
paid unto the said Foster his heirs and assigns on
the condition following to wit. The condition of the
above obligation is such that whereas the above
bound Burleigh Hunt and James M Kay
has this day sold to the said Jesse H Foster
his heirs and assigns for the sum of eight hundred
dollars, seven hundred and ninety nine in hand
paid the receipt of which is hereby acknowledged
and one dollar to be paid on the 22nd of September
AD 1843 all the following described Lot or parcel
of land to wit Lot numbered (29) twenty nine
and the building thereon, being part of section
sixteen in township numbered forty four North
range numbered eleven East of the third Principal
Meridian designated on the map of the said
Section as made by the trustees of school lands
within said Township the same being in the
county of Lake and State of Illinois upon

the payment of said sum being made at the time and in the manner aforesaid to the said Berleigh Hunt & James McKay their heirs executors and assigns covenant and agreed to and with the said Jesse H. Foster his heirs Executors administrators and assigns to execute a good and sufficient Bond of conveyance in fee simple free from all incumbrances with full and proper covenants of warranty for the above described premises. Now if the said Berleigh Hunt and James McKay shall well and truly keep observe and perform their said covenants and agreements herein contained on their part then this obligation is to be void otherwise to remain in full force and virtue

Signed Berleigh Hunt *ls*
Signed sealed and delivered James McKay *ls*
in presence of J. R. Gavin,

As will appear by reference to said bond which is herewith filed as exhibit A and which your Orator prays may be taken as part of this bill.

And your Orator represents to your ^{honor} ~~honor~~ that the said Berleigh Hunt at the instance and request of the said Complainant and for the purpose of indemnifying and saving harmless your Orator as his said Hunt's security in the bond aforesaid on or about the 20th day of November 1842 procured one William Bissett of the County and State aforesaid to convey to your Orator the following described land To Wit: The north half of the north east fractional quarter of Section 28 in fractional Township 45 North range 12 east of 3^d principal meridian containing eighty acres, & the same

more or less lying and being in the County aforesaid and
 and ^{which} ~~for~~ said above described land for and in consid-
 eration of the sum of One hundred dollars as exp-
 ressed in said deed was on the day last aforesaid
 by a deed of general warranty bearing date on or
 about the 20th day of November 1842 conveyed to your
 orator and which said deed was recorded in the office
 of the ^{Recorder of} said County of Lake on the 4th day of May 1843
 all of which will appear by reference to the said deed
 herewith filed as part of this Bill and marked exhibit
 "B." - Your Orator also represents that on the 25th day
 of November A. D. 1842. Your Orator by his bond of def-
 easance having date the day and year last aforesaid
 bound himself in the penal sum of Ten thousand dollars
 to be paid to the said Burleigh Hunt his executors
 administrators or assigns with the condition there-
 under written - to the purpose that if the said Hunt
 should save and keep harmless the said McKay (your
 Orator) from liability on and by virtue of the aforesaid
 bond executed to the said Jesse H. Foster by the said
 Hunt and Your Orator as his security as aforesaid that
 then your Orator should upon the request of the said
 Hunt his heirs or assigns on or before the first day of Oc-
 tober next ensuing the date above written ^{(25th} November
 21st 1842) convey and assure, or cause to be conveyed
 and ~~or assure~~ ^{sufficiently} unto the said Hunt his heirs and assigns or such
 other persons or persons and his or their heirs as the said
 Hunt should nominate and appoint and to such uses
 as he might or should direct by such conveyances as
 by the said Hunt should be reasonably required all
 the said described lands as described in the foregoing
 deed by from said Bissett to your Orator as will more
 fully appear by reference to said bond of defeasance
 herewith filed as exhibit "C." - and which your Orator
 prays may be esteemed part of this his Bill of complaint

And your orator further shows unto your Honor that on or about the 27th day of May 1843 the aforesaid bond executed by said Hunt and your orator as his security the same having been settled and cancelled by and between the said Hunt and the aforesaid Foster, was surrendered by the said Foster and acknowledged to be null and of no effect to your orator, as will appear by the endorsement on said bond made by the said Foster, see Exhibit "A."

And your orator likewise represents, that after the aforesaid last mentioned bond was settled and cancelled that is to say on or about the 24th day of May 1844 your orator at the instance and request of the said Benjamin Hunt, conveyed the said land (which had been conveyed as aforesaid by the ^{after} said Bissett, to your orator to indemnify him as aforesaid) to the said William Bissett, excepting and reserving Lots 8th, 2 & 12, in Block No. 7 and Lot No. three 3, in Block No. (1) One and one square acre lying in the north east corner of said north east $\frac{1}{4}$ of the said section in McKays addition to the Town of Littleport and the said deed was recorded, on the 27th day of May 1844 in the office of the recorder, of Lake County aforesaid, as will appear by reference to the said deed filed herewith as part of this bill marked Exhibit "D."

Your orator has omitted to state, and now begs leave further to represent that during the time he was holding the said land under the deed made as aforesaid by said Bissett to your orator - the said orator land was by your ^{orator} ~~orator~~ laid off into Town lots as and for "in addition to the town of Littleport," at the instance and solicitation of the said Hunt and Bissett, and the plat thereof as "McKays addition" to the Town of Littleport was filed for record on the 18th, and recorded on the 20th day of May 1844, in the office of the recorder of ^{said} Lake County,

Wm. Hunt, decd.
vs. Bissett

Your Orator moreover shows that on or about the 26th day of June 1844 the said William Bissett, conveyed the said land "excepting and reserving" as aforesaid, Lots No. 2 & 12, in Block 7 and Lot No. 3 in Block No. one ^{then} and one square acre lying in the N. E. corner of said 1/4 sec, as aforesaid to one Rufus Tiffany in consideration of the sum as alluded in said deed of \$2700 which said deed of conveyance was filed for record on the 26th and recorded on the 27th day of June 1844 as appears by the records of the recorder of the said County aforesaid. And further your Orator shows that afterwards, to wit on or about the 1st day of July 1844 the said Rufus Tiffany conveyed the said land "excepting and reserving" Lot No. 2 & 12 in Block 7 & Lot 3 in Block 1. to one William Bissett & Tiffany (his son) for the alleged consideration of \$5200.00, and the said deed was recorded in the office of the recorder aforesaid on the 2nd day of July 1844, and which two last above recited specify the said land conveyed in and by them as "known as McKays addition to Little Fort." and in the last deed above referred to there are other lands described besides the land above set forth as conveyed to Rufus Tiffany by said Bissett.

And your Orator also states that in the month of May between the first and twenty fourth day of the month your Orator bought from the said Hunt and paid for the said Lot so reserved as aforesaid in full, to wit Lot No. three in Block No. three, not Block One as reserved in McKays addition to the Town of Little Fort." and that Lots No. 2 and 12 in Block No. 7, and One square acre lying in the North East corner of the said N. E. 1/4 of said section in said McKays addition to the town of Little Fort, was at the special instance and request of the said Hunt and with the knowledge and assent of the said Bissett conveyed by your Orator to other persons

W. C. T. is }
son of R. D. }

McKays }
purchase }
of Lot 3 in }
Block 3 of }
Hunt & }
paid in }
full, with }
knowledge & }
consent of }
Bissett }

while ^{he} held the title as aforesaid

And your Orator represents further that the said lot so reserved was so purchased with the full knowledge and assent of the said William Bissett

Charge of
Mistake
in deed
of M. Kay to
Bissett

And your Orator moreover expressly charges that in the exception of the ^{said} lots reserved as aforesaid in the re-conveyance ^{to} the said Bissett "Lot No. three in Block No. One (1)" was so described erroneously by mistake and was intended to be lot No. three in Block No. three, and that in truth and in fact there was and is no such lot on the plat of the said addition to Littleport as Lot No. three in block No. One and that the intention was to reserve Lot No. three in Block No. three was well understood by the said Bissett at the time when said reconveyance was made known to him by your Orator, but that he was not aware of the misdescription until after the said reconveyance was made and that he repeatedly afterwards admitted that it was a mistake.

Charge of
Notice
to R. J.

Your Orator also expressly charges the fact to be, that before and at the time the said Bissett executed the aforesaid deed to the said Rufus Tiffany, he the said Bissett referred ^{him} the said Tiffany particularly to the said lot intended to be and supposed by him to be have been reserved as aforesaid by your Orator in his deed of conveyance and pointed out to the said Tiffany the lot intended to be reserved, to wit Lot No. three in Block No. three, and showed him the precise spot of ground in person and told him that said lot No. three in Block No. 3 belonged to your Orator and subsequently notified him of the misdescription aforesaid, and in addition to the notice furnished by the reservation in the said conveying the said land by Rufus Tiffany, to his son the said William C. Tiffany. Your Orator also charges that the said William C. Tiffany had actual notice before he received the said deed that the said lots were reserved as aforesaid by your Orator, as also ^{of} the

Charge of
Notice to
W. C. J.

[2008-2]

7
mistake in the said reservation in the aforesaid particular
and also of the location of the lot No. 3 in Block No. 3
aforesaid.

And your Orator further states that frequently and in a
friendly manner, and after he discovered the said mistake
and after the said B conveyance was made by the said
Bissett, to the said Rufus Tiffany, and after the said
Rufus had conveyed to the said William C. Tiffany
your Orator requested the said Rufus Tiffany before
he had conveyed the said lands and the said William
C. Tiffany after the said Rufus had conveyed to him
to make and deliver to your Orator a quit claim deed
to the said lot No. three in Block No. three as afo-
resaid informing them of the aforesaid mistake in the
description thereof in the said reservation, and your
Orator had well hoped that they respectively would be
willing to do so. but so it is, may it please your Honor
that the said Rufus Tiffany up to the time of convey-
ing the said land to his son as aforesaid always re-
fused. and the said William C. Tiffany since the
conveyance to him has always refused and still
refuses to the manifest prejudice and injury of
your Orator and for the purpose of securing an in-
^{impossible} ^{unconscionable} ~~unconscionable~~ advantage to himself.

Now therefore your Orator being remediless save in this
honorable Court prays that the said Burleigh Hunt
William Bissett Rufus Tiffany and William C. Tiffany
may be made defendants to this Bill and required to answer
fully thereto and to every allegation thereof as though they
had been severally interrogated as to each allegation.

And this complainant begs leave to represent, further
that a judgment was recovered in the Circuit Court of
Cook County at the Term thereof A.D. 18 for the
sum of \$

by and ~~in~~ the name and at the suit of the pres-

W. C. T. is
son of
R. T.

President directors and company of the State Bank of Illinois
Hart L Stewart Lorenzo P. Sanger & John S. Wallace
against one Charles Taylor the said Benleigh Hunt
et al and that an execution on said judgment was sent
out of the Clerk's office of said Circuit Court of Cook
County on the day of A.D. 18
and delivered to the ~~said~~ Coroner of Lake County on the
 day of A.D. 18 and some time
after your Orator purchased the said lot 3 in Block 3
as aforesaid and the sale of other lots as above specified
and after your Orator had reconveyed as aforesaid to said
Bissett reserving and excepting said lot 3 and the other
above enumerated lots and which said execution was
long afterwards levied by the said Coroner of Lake County
on the said lot 3 in Block 3 and the other lots which
were reserved as above stated by your Orator or int-
ended as above to be reserved in said deed of re-conveyance
to said Bissett by your Orator.

Your Orator also prays that the said President
directors & Company of the State Bank of Illinois
Hart L Stewart, Lorenzo P. Sanger & John S. Wallace
the above named plaintiffs in said suit in Cook
County Circuit Court, and the said Charles Taylor
one of the said Co. defendants of your Orator in said
suit may be made defendants to this Bill and required
to answer all and singular the matters & things herein
charged and stated touching said judgment and execution
And your Orator prays your Honor upon the hearing
of the cause to adjudge order and decree that the
correction be made in the description of the said
Lot No. 3 as above described and that the same be
held and esteemed to have been reserved and excepted
in said deed of ^{re}conveyance from your Orator to said
Bissett as Lot No. three in Block No. three as was
intended instead of ~~to~~ lot No. three in Block ~~at~~ one

and the said William C. Tiffany, be ordered and required
pursuant to said Commission to execute and deliver to your
Orator a good and sufficient deed of quit claim to the
said Lot three in Block ~~three~~ in the said McKays addi-
tion to the Town of Littlefort and to such other of the
lots reserved in the deed of reconveyance made as af-
oresaid by your Orator to the said Bissett, as may app-
ear to your Honor to be requisite and necessary to secure
and perfect to your Orator all the rights and interests
as reserved or intended to be reserved by the said deed
of reconveyance from your Orator to said William
Bissett.

As also your Orator further prays ^{that} the said pla-
intiffs in the above recited suit in ^{the} Circuit Court of
Cook County may be ~~perpetually~~ ^{perpetually} enjoined from proceedings
to sell by virtue of said execution sued out as aforesaid
by them or any that may hereafter be sued out, the said
lot N^o three in Block N^o three in McKays addition
to the town of Littlefort which has been levied on or
any other of the lots so reserved as aforesaid by your Ora-
tor, if indeed any other of said ^{reserved} lots were levied on by
virtue of said execution and that the Sheriff, Coroner and
all deputy Sheriffs of said Lake County be also ~~not~~ ^{enjoined}
~~not~~ to proceed upon said execution to sell or levy
any execution that may hereafter be issued in said
suit from the Clerk's office of said Circuit Court of
Cook County.

And your Orator finally prays that such
and all other and further relief which to your Honor
may ^{be} seem just and equitable in the premises may be
granted, and that Summons may issue &c., And your
Orator will ever pray &c.

By Morris & Brown and
Butler his Sol^y.

The within named James McKay, complainant in
the foregoing bill in Chancery, personally appeared before
the undersigned Clerk of the Circuit Court of Lake County,
State of Illinois and being duly sworn deposes and
says that the said defendant Benleigh Hunt is not
a resident of the State of Illinois.

Subscribed and sworn to } James McKay
before me this 18th day of April
A.D. 1846.

J. R. Gavin Clk.

v

And on the same day to wit the eighteenth day of Apr AD 1846 The said complainant by his said solicitors filed with the clerk of said court the following instruments of writing respectively marked Exhibits A, B, C, and D which exhibits are in the words and figures following to wit

"Exhibit A" Know all men by these presents that we Burling Hunt - and James McKay of the County of Lake - and State of Illinois are held and firmly bound unto Jesse H. Foster of the County of Lake and State aforesaid in the penal sum of eight hundred dollars lawful money of the United States, to be paid unto the said Jesse H. Foster his heirs and assigns to which payment well and truly to be made we bind ourselves our heirs executors and administrators and every of them firmly by these presents sealed with our seals This thirteenth day of Sept AD 1842

The condition of the above obligation is such. That whereas the above bounden Burling Hunt and James McKay has this day sold to the said Jesse H. Foster - his heirs and assigns for the sum of eight hundred dollars, seven hundred and ninety nine in hand paid the receipt of which is hereby acknowledged and one dollar to be paid on the twenty second of September AD 1843 - all the following described lots or parcel of land to wit lot numbered twenty nine (29) and the building thereon

being part of section sixteen in Township
number forty four North Range number
Eleven East of the third principle Meridian
designated on the map of the said
section as made by the Trustees of school lands
within said township the same being in the
County of Lake and State of Illinois —

Upon the payment of
said sum being made at the time — and
in the manner aforesaid the said Burling
Hunt and James McKay their heirs executors
and assigns consent and agree to and with
the said Jesse H. Foster his heirs executors
administrators and assigns to execute a good
and sufficient Deed of conveyance in fee
simple free from all incumbrances with
full and proper covenants of warranty for
the above described premises —

Now if the said
Burling Hunt and James McKay shall
well and truly keep — observe and perform
their said covenants and agreements herein
contained on their part then this obligation
is to be void otherwise to remain in full force
and virtue

Signed sealed and Delivered
in presence of
P. R. Gavin

Burling Hunt L.S.

James McKay L.S.

And on the said "exhibit A" is
endorsed in the words and figures following
(to wit)

May 27-1843 I, hereby
surrender the within Bond to Barlygh
Hunt and acknowledge it to be null
and void & of no effect
J. H. Foster

"Exhibit B"

This indenture made this
twentieth day of November in the
year one thousand eight hundred and
forty Two Between William Bisset of
Little Port in Lake County in the
State of Illinois of party of the first
part and James McKay of Little Port
Lake County in the State of Illinois
party of the second part Witnesseth
That the said party of the
first part for and in consideration
of one hundred dollars in hand paid
by the said party of the second part
the receipt whereof is hereby acknowledged
and the said party of the second part
forever released and discharged therefrom
have granted bargained sold remised and
released aliened and confirmed and
by these presents does grant bargain sell
remise release alien and confirm unto
the said party of the second part his heirs
and assigns forever - All the following
described Lot piece or parcel of land
to wit Situated and being in Lake
County in the State of Illinois

Und Known and described as
the north half of the north East Quarter
of section Numbered twenty Eight
(28) in fractional Township numbered
Forty five (45), North of Range numbered
twelve (12) East of the Third Principle
Meridian containing Eighty acres or the
same more or less

Together with all and
singular the hereditaments and appurtenan-
ces thereunto belonging or in anywise appor-
taining and the reversion and reversions
remainder and remainders rents issues
and profits thereof and all the estate
right title interest claim or demand
Whatsoever of the said party of the first
part either in fee simple or in fee tail to the
above bargained premises with the heredi-
taments appurtenances to have and to hold
the said premises above bargained and
described with the appurtenances unto
the said party of the second part his
heirs and assigns forever and the said
party of the first part for himself his
heirs executors and administrators do
covenant grant bargain and agree to and
with the said party of the second part his
heirs and assigns that at the time of execut-
ing and delivery of these presents he is
well seized of the premises above conveyed
as of good sure perfect absolute and indefeasible
estate of inheritance in law in fee simple
and hath good right full power and lawful
authority to grant bargain sell and convey
the same in manner and form aforesaid

And that the same are free and clear
of all former and other grants bargains
sales liens judgements taxes assessments
and incumbrances of what kind and nature
soever — and the above bargained premises
in the quiet and peaceable possession of said
party of the second part his heirs and
assigns against all and every person
or persons lawfully claiming or to claim
the whole or any part thereof the said party
of the first part shall and will warrant
and defend

In Witness Whereof the said
party of the first part has hereunto
set his hand and seal the day and year
above written

(Sealed and delivered) William Bishop
(In the presents of)

"Exhibit C" Know all men by these presents that
I James McKay of Little Fort in the
County of Lake and the state of Illinois
am held and firmly bound to Burleigh
Hunt of the above named place in the
sum of Ten thousand Dollars of good and
lawful money of the United States to
be paid to the said Burleigh Hunt his
executors and administrators or assigns
to which payment well and truly to be
made I Bind myself my heirs
executors and administrators firmly

by these presents sealed with my seal
dated this twenty fifth day of November
in the year of our Lord one thousand
eight hundred and forty two

The condition of the above
Obligation is such that whereas the
above James McKay did on or about
the thirteenth day of September
one thousand eight hundred and
forty two become holder to pay or
cause to be paid a certain Bond with
me the said Burleigh Hunt to one
Jesse H. Foster now if the said Burleigh
Hunt shall save and keep harmless the
said James McKay this Bond shall
be void and of no effect and the said
James McKay shall upon and at the
request of the said Burleigh Hunt his
heirs or assigns on or before the first day
of October next ensuing the date above
written convey and assure or cause to be
well and sufficiently conveyed and
^{assured} ~~conveyed~~ unto the said Burleigh Hunt
^{or his heirs or assigns, and his or their heirs or assigns, and to such} ~~his heirs and assigns~~ ^{as the said Burleigh Hunt shall} or to such, now as he
may or shall direct one certain Messuage
or Tenement and parcel of land situate
lying and being in the County of Lake
in the State of Illinois and known
and described as the north half of the
north East fractional quarter of Section
Number twenty eight in fractional town-
ship number forty five north of Range

Number twelve east of the third principal
Meridian containing eighty acres be the
same more or less. Now in fee simple
of the said James McKay by such
conveyance and assurances in the law as
as by the said Burleigh Hunt his heirs
and assigns or his or their counsel learned
in the law shall be reasonably advised
or advised and required freed and dis-
charged of and from all incumbrances
whatsoever. In Witness whereof the
said Bounder James McKay has
hereunto set his hand and seal
the day and year above written

In presents of
Henry M. Paddock

James McKay

And on the back of said Exhibit
is indorsed as follows to wit

One acre has been Deeded to
A B Wyncoop for the use of a peer or
condition that he deeds it to McKay
if he the said Wyncoop does not build
a peer to which I had given my consent
it being the north east acre of the
eighty acre lot

B Hunt

I hereby acknowledge the title of two
parcels of land deeded to N. C. Bloom (say lots)
two and twelve in Block seven which is a part
of the the within described land which I hold as McKay
Bound for

B Hunt

Exhibit. (D.) This indenture made this
twenty fourth day of May in the
year of our Lord one thousand eight hun-
dred and forty four Between James
McKay and his wife Elizabeth
McKay of Little Port in the State of
Illinois of parties of the first part and
Thellon Bisset parties of the second
part (Witnesseth) That that the said
parties of the first part for and in
consideration of one dollar in hand
paid by the said party of the second
part the Receipt whereof is hereby acknowledged
and the said parties of the second part
forever released and discharged therefrom
have granted bargained sold remised
released aliened and confirmed and by
these presents do grant bargain sell
remise release alien and Confirm
unto the said party of the second part
his heirs and assigns forever all the
following described pieces or parcels of
land Situate in Lake County in the
State of Illinois and known and
described as the North East Quarter
of Section and the North west Quarter
of the North East fractional Quarter of
Section Number twenty eight (28) in
fractional township Number forty five
(45) North of Range Number twelve (12)
east of the third Principal Meridian
excepting however and reserving the

following described parts and parcels
of the above described land to wit Lots
Numbered two and twelve in Block
numbered seven (7) lot numbered three
(3) in Block numbered one (1) and one
square acre of land lying in the north
East corner of said North East Quarter
of the said North East Quarter of ^{said} Section
Numbered twenty eight in McKay
addition to the town of Little Port

Together with all and singular
the hereditaments and appurtenances
there to belonging or in any wise apper-
taining and the reversion and reversions
remainders remainders rents issues and
profits thereof and all the estate
right title interests Right of Dower
claim or demand whatsoever of the said
parties of the first part either in law
or equity of in and to the above bargained
premises with the hereditaments appurtenan-
ces to have and to hold the said prem-
ises above bargained and described with
the appurtenances unto the said part of
the second part heirs and assigns
forever. And the said James McKay
for himself his heirs executors and
administrators does covenant grant
bargain and agree to and with the
said party of the second part his
heirs and assigns that at the time
of enrolling and delivery of these

Presents he is well seized of the
premises above ~~des~~ conveyed as of good
sure perfect absolute and indefeasible
estate of inheritance in the law in
fee simple and has good right
full power and lawful authority
to grant bargain sell and convey

the same in manner and form
aforesaid. And that the same are
free and clear of all former and
other grants bargains sales liens
judgements taxes assessments and
incumbrances of what kind and
nature soever and that the above
bargained premises in the quiet
and peaceable possession of the said
party of the second part his heirs
and assigns against all and every
person or persons
lawfully claiming or ~~or~~ to claim the
whole or any part thereof will Warrent
and defend

In Witness Whereof
the ^{said} parties of the first part have
hereunto set their hands and seals the day
and year above written

(Sealed and delivered)

In the presents of James McKay Esq
H Butler

Elizabeth McKay Esq

State of Illinois } ss I Horace Butler
Lake County }

A Justice of the peace in and for
said County of Lake do hereby
certify that James McKay per-
sonally known to me to be the real
person who signed the within deed
personally appeared before and ack-
nowledged that he signed and sealed
the same as his free and voluntary
act for the uses and purposes therein
set fourth Given under my hand
and seal this twenty fourth day
of May A D 1844 H Butler LV

State of Illinois) ss I David
Lake County
H Sherman Recorder in and for said
County do hereby certify that the within
is a true and perfect copy of the original
deed now on Record in my office as
appears of Record Book B pages
461 & 462 and that the same was
filed for Record May 25th 10 1/2 o'clock
A.M. 1844 and Recorded May 27 A D 1844
and that the within is a full Transcript
of the Records in my office in relation
to the said deed. In Witness whereof
I have hereunto set my hand and
affixed ~~my~~ the seal of my office
this 24th day of November A D 1847

(David H Sherman
Recorder

And on the same day to wit the
eighteenth day of April AD 1846 the
Clerk of said Court in obedience to the
command of the ^{precipio} ~~people~~ filed here
issued the proper writ of summons
which summons is in the following
words and figures to wit
Copy of Summons

State of Illinois }
Lake County } set

} The People of the State
of Illinois - For the
Honors of said County
Greeting

We command you to Summons Mrs
Bessie Burleigh Hunt Refus Liffay
& William C Liffay if they shall be
found in your county personally to be
& appear before the Judge of our Circuit
Court to be holden in and for ^{the} said
County of Lake and State aforesaid
at the Court house in Lake Fort on
the third Monday in April Inst to an-
swer the matters and things contained
in a certain Bill in Chancery ex-
hibited against ^{them} by James McKay in
our said Court on the chancery side
thereof - and further to do and secure
whatever the said Court may then
and there consider in this behalf and
that they shall in no wise omit and
have you then and then this writ
over



Witness J R Gavin Clerk of said
County and the seal thereof at
Little Port this 18th day of April 1846

J R Gavin

Clerk

Which said writ of summons was
afterwards returned by the coroner of
said county with his return endorsed
thereon which said return is in
the words ^{and figures} following to wit

Executed by reading in the hearing
of Rufus Jeffery and William C. Jef-
fery and also by leaving a copy
with each April 18th A.D. 1846

William Bissett and Benj. Hunt
not found in my County

Butt, Brown & Morris

Atty. Genl.

Fees 2 Loco

1.00

2 copy

1.00

2 miles

12^{1/2}

Return

£.12^{1/2}

2.25

J. Granger Connor

And afterwards to wit on the twenty third day of April A D 1846 the same being one of the days of the said term of Court. the following among other proceedings were had to wit

James M. May

vs

William Bissett. Benleigh Hunt
Rufus Tiffany. William C Tiffany
The President Directors and Company
of the State Bank of Illinois. Wm
Stewart Lorenzo P Sanger. John
S Wallace, and Charles Taylor.

Bill

By agreement of the parties, it is ordered that all the defendants, duly served with process answer the complainants bill in sixty days from this date, and it is further ordered that publication be made as to the non resident defendants in conformity with the affidavit on file and it is further ordered that this cause be continued until the next term of this Court.

And afterwards to wit the said Complainant by Butler his Solicitor. to wit on the 20th day of June A D 1846 filed with the Clerk of said Court the following stipulation, which stipulation is in the words and figures following to wit

In Chancery. Lake County Ct Court
James McKay

vs
William Russell et al

I hereby stipulate to extend the
time for the defendants, Rufus Tiffany, and William
C Tiffany, herein, to answer, to the Bill of Complaint
herein, until the first day of August next June 20th
1846.

W. Butler

Compt. Sol.

And afterwards, to wit, on the thirty first day of
July A D 1846. the said Defendants Rufus Tiffany
and William C Tiffany by Hoyt and Cotes their
solicitors filed with the said Clerk, their joint and
several answers to the said Bill of Complaint filed
herein; which answers, are in the words and figures
following to wit.

In Chancery

Lake County Circuit Court

The joint and several
answers of Rufus Tiffany and William C. Tiffany two
of the defendants to the Bill of Complaint of James
McKay Complainant.

These defendants now and at
all times hereafter saving and reserving to themselves
and each of them all benefit and advantage of
exception which can or may be had or taken to the
many errors uncertainties and ^{other} imperfections in said
complaint, ^{into} bill of complaints continued for an-
swers thereto or unto so much ^{and such} parts thereof as
these ^{defendants} ~~complainants~~ are advised is or are material
for them or either of them to make answers unto ^{they} these
defendants severally answering say that they do

Don't know
McRay was
born to Foster

not know and are not informed except from
hearsay and by said bill of complaints ^{whether} ~~which~~ the
said complainants on or about the 13th day of
September A.D. 1842 or at any other time as surety
for one Benleigh Hunt, became bound with the said
Hunt, to one Jesse H. Foster in said Bill named
in the ^{sum} ~~same~~ or manner or form, or upon any such
conditions as are in that behalf in the said Bill
alleged and set forth and these defendants there-
upon leave the said complainant to make such
proof thereof as he may be advised and these def-
endants further answering admit that on or about
the 20th day of November 1842 William Bissett in
said Bill named did convey to the said complainant
(but) as these defendants believe not for ^{the} ~~any~~ consid-
eration of \$100. as expressed in said deed) The north half
of the north east fractional quarter of fractional
section No. 28, in fractional Township number forty
five north range Twelve East of the third principal
meridian lying and being in the County of Lake State
of Illinois but whether such conveyance was made
at the instance and request of the Benleigh Hunt or
by his procurement or whether the same was made
for the purpose of indemnifying ~~and saving~~ harmless
the said complainant as surety for the said Hunt in
the aforesaid Bond these defendants do not know
and are not informed save by hearsay and the said com-
plainants said Bill of Complaints and these defend-
ants ^{therefore} ~~therefore~~ neither admit nor ~~deny~~ the same, but leave
the said complainant to make ^{such proof} thereof as he may be ad-
vised.

convey and
by Mr Bissett
to McRay
Admitted

Don't know
the bond was
executed to
B Hunt
1840-1842

And these defendants further say that they do
not know and ^{that they} are not informed save by the said Com-
plainants said bill of Complaints whether any such
Bond was ever executed by the said complainant to

the said Benleigh Hunt as that referred to in the said bill as exhibit "C;" and they therefore leave the said complainant to make such proof thereof as he may be advised.

admits
laid out
into town
lots by
McKay pff.

And these defendants further answering admit that the said complainant after the conveyance of the aforesaid land to him by the said Bissett and before the same was by him re-deeded to said Bissett did cause a part of the said half quarter section of land (but not the whole thereof) to be laid off into Town lots as an addition to the Town of Littlefort and that the plat thereof was filed for record on the 18th, and recorded on the 20th, day of May 1844 in the office of the recorder of Lake County, as appears by the original plat of said addition now in possession of this defendant the said William C. Tiffany, and the Certificate of recording endorsed thereon to which for greater certainty these defendants by leave to refer, but whether the same was so surveyed and platted at the instance and solicitations of the said Hunt & Bissett these defendants do not know and are not informed save by the said Complainant's Bill and therefore neither admit nor deny the same.

admits
Hunt's bond
cancelled
by Foster
if any such was
made

And these defendants further answering admit that the aforesaid bond referred to in the said Complainant's bill as exhibit "A;" & therein alleged to have been executed by Benleigh Hunt and by the said Complainant as surety, for him to Jesse H. Foster, if any such bond was made was afterwards settled and cancelled by and between the said Hunt and the aforesaid Foster and was surrendered by the said Foster to the said Complainant and that the said Foster acknowledged the same to be null and of no effect by an endorsement thereon as alleged in the said Bill of Complaint which endorsement

ent^{is} therein referred to as appearing ^{from} ~~an~~ reference to exhibit "A." To which for greater certainty, these defendants beg leave to refer when the same shall be produced.

admits & ff
reconveys
the land
to Bissett

And these defendants also admit and so change the fact to be that after the settling and canceling of the said Bond as aforesaid, and on or about the 24th day of May 1844, the said Complainant did convey the said land (previously by the said Bissett, conveyed to the said Complainant to indemnify him as in said bill stated) to ^{the} said William Bissett excepting and reserving lots No. 2, & 12, in Block No. 7 and lot No. 3 in Block ~~number~~ ^{No} One, and one square acre being in the north East Corner, of said quarter of section as appears by the deed referred to in said Complainant's said Bill of Complaints & marked exhibit "D", - To which for greater certainty these defendants beg leave to refer when the same shall be produced.

admits
Bissett
conveyed

And these defendants further answering admit and expressly allege and state that afterwards ^{and} on or about the 26th day of June 1844, the said William Bissett for a valuable consideration conveyed the aforesaid tract of Land to this defendant, Rufus Tiffany excepting and reserving said lots of No. 2 and 12, in block No. 7 & lot No. 3 in Block No. One ~~D~~ and one square acre lying in the north East Corner of the said 1/4 section (in McKays addition to the Town of Little Fort) as alleged in said bill and as will ^{more} ~~more~~ fully appear by the deed thereof now in possession of this defendant William C. Tiffany ready to be produced as this Honorable Court shall direct and to which for greater certainty these defendants crave leave to refer.

admits
R. Tiffany
conveyed to
W. C. Tiffany

And these defendants also admit and expressly change the fact to be, that afterwards and on or about the ~~4th~~ ^{1st} day of July A.D. 1844, this defendant Rufus Tiffany for a valuable consideration sold and conveyed the said north half of the north east quarter.

Bill set forth whether any valuable consideration was ever paid or agreed to be paid to the said Benleigh Hunt for said lot &c. 3 in Block 3 nor how nor upon what terms, nor for what sum or consideration if any the said Complainant purchased the same of the said Benleigh Hunt, nor in what year said purchase was made, nor does the said Bill set forth whether such purchase or the contract for the purchase thereof if any was made, was verbal or written, and these defendants verily believe that no valuable consideration ever was paid by the said Complainant to the said Benleigh Hunt for the said lot 3 in Block 3 of all which matters these defendants claim and hope to have the same benefit as if they had demurred to the said Bill of complaint for the causes aforesaid.

And these defendants do not know and are not informed save by the said Bill of Complaint and by statements made in their presence since the aforesaid tract of Land was conveyed to the said defendant William C. Tiffany, that in the deed executed by the said Complainant to William Bissett as aforesaid "Lot No. 3 in Block No. 1," was by mistake therein recurred instead of "Lot No. 3, in Block No. 3."

as in that behalf alleged and set forth in the said bill of complaint, and these defendants believe it was not well or otherwise understood by the said William Bissett, at the time the said conveyance was made to him as aforesaid, ^{that} the said lot 3 in block 3, was to be reserved, or that it was intended by him that the same should be reserved and these defendants do not know and are not informed save by the said bill whether the said Bissett has repeatedly or ever admitted prior to the aforesaid conveyance to William C. Tiffany that there was any such mistake in said conveyance as is in that behalf alleged and set forth in said bill of complaint. but on the contrary thereof it was never claimed or pretended to the knowledge or belief of these defendants by the said Complainant that such a mistake had been made untill a long time after the purchase of the said land by this defendant William C. Tiffany and these defendants humbly submit that if any such admission or admissions were made by the said William Bissett that the same could not and ought not in any way or manner to affect these defendants or either of them or their title to the said lot and these defendants claim and hope to have the same benefit thereof as if they had demurred to the said bill for that cause and these defendants from information and belief admit that there is now no such lot designated on the said original map of McKay's addition to Littleport as lot 3, in block 1, but these defendants allege that from an examination of said map or plat as originally made or first drawn a lot was regularly laid off and platted which in the regular order of numbering, as these defendants believe would have been designated as lot 3 in block one. but that the lines thereof appear to have been since erased but where they were

admit no
such lot
as 3 in Bk 1

but allege that
the map shows
that such
was the fact
originally but
lines have been
erased

so erased these defendants do not know and cannot state
and these defendants further upon information and
belief that upon the ^{field} notes on record Book of
George Gage the County surveyor who surveyed and
platted the aforesaid tract of Land a lot is or was re-
gularly laid off designated and marked on the plat
of said survey as lot 3 in block one (1) of said addi-
tion as from an inspection of the said ^{field} notes
in possession of the said George Gage when produced
will more fully appear and these defendants for
greater certainty in this behalf beg leave to refer to
the said original map now in possession of this de-
fendant William C. Tiffany, ^{ready to be produced} as this honorable Court
shall direct. And this defendant, ^{Rufus Tiffany} from his own know-
ledge and the said William C. Tiffany from informa-
tion and belief further answering deny that at the
time as before the said Bissett executed the aforesaid

Map made
part of
answer

Deed of notes
to Rufus T. at
or before his
purchase

deed to this defendant Rufus Tiffany as stated in
said Bill he the said Bissett referred this defendant
Rufus Tiffany particularly, or otherwise to said lot 8th
3 in Block No. 3, as being one of the lots reserved or
intended to be or supposed by him to have been reserved
in said re-conveyance or that at or before the time of
the execution of said deed to Rufus Tiffany said lot
8th 3 in block No. 3 was pointed out to this defend-
ant Rufus Tiffany by said Bissett or by any other
person as the lot, or as one of the lots intended to
be reserved or that the said Bissett showed this
defendant Rufus Tiffany the precise spot of ground
in person, to wit, lot 3 in Block 3 aforesaid as being
the property of the said Complainant but on the

The contrary is
alleged to be
true

contrary these defendants admit and state the said
Rufus Tiffany from his own knowledge and the said
William C. Tiffany from information and belief that
on the day of the execution of the said deed to this
defendant Rufus Tiffany, ^{by} that the said William Bissett

and previous thereto this defendant Rufus Tiffany called at the residence of the said William Bissett who then resided on the said tract of Land and within a few rods of said lot 3 that the said Bissett walked out with this defendant upon the said tract and upon or in the immediate vicinity of said lot 3 which is situated on the south east corner of Belvidere and Broad streets that said lot 3 in block 3, and the lot situated on the opposite corner of said streets. to wit, lot 1, in Block 7 had before that time been particularly pointed out to him the said Rufus ~~Tiffany~~ as being very valuable lots and the most valuable of the tract on account of their pleasant location and desirableness for business ^{purposes} ~~prospects~~ that this defendant at the time of going upon said land in company with said Bissett had not particularly examined as to the location of the lots proposed by him the said Bissett to be resumed and was not acquainted with the particular location of the lots and blocks of said tract of land according to their numbers upon the survey & plat thereof he having never seen the said land or the plat thereof until the day before the purchase thereof of the same from said Bissett, and this defendant Rufus Tiffany expressly states and charges the facts to be that on going upon said tract of Land in company with said Bissett as aforesaid and upon or into the immediate vicinity of said lot 3 as aforesaid this defendant having had his attention particularly called to the said corner lots, that is to say lot 3 in Block 3 and lot 1, in Block 7, and being apprized that said lots were deemed and considered of greater value than any other of said additions in consequence thereof enquired particularly

of the said Bissett whether either of the said corner lots, (the same being particularly pointed out and referred to) were ^{among} the lots reserved, and that the said Bissett, ^{then} told this defendant that they were not among the lots to be reserved

And this defendant

Rufus Tiffany expressly states that he did not know nor did he believe nor was he even informed until after the making of the aforesaid conveyance to William C. Tiffany, that the said lot 3 in Block 3 had been or was intended to have been reserved in the aforesaid conveyance to William Bissett by James McKay or that in the conveyance to him by said Bissett he the said Bissett ^{expressed} or intended that the same should be reserved or that the said Complainant had or claimed to have any right or interest therein, but the said Rufus Tiffany, ^{from his own knowledge} and this defendant William C. Tiffany believing it to be true allege and insist that the said Rufus Tiffany was and is a bona-fide purchaser for a valuable consideration of the said land without notice that said lot 3 in Block 3, was intended to have been reserved in the aforesaid reconveyance to said Bissett or that said Complainant had any legal or equitable claim to said lot 3 in Block 3 and these defendants humbly submit that the said Complainant has no legal or equitable claim to said lot 3 in Block 3 as against these defendants

And this defendant William C. Tiffany

from his own knowledge and this defendant Rufus Tiffany from information and belief deny that this defendant William C. Tiffany prior to the execution and delivery of said deed by the said Rufus Tiffany to him had actual notice, or any notice,

R. T. is
A purchaser for
valuable
consideration
without notice

W. C. T.
denies
notice
at times
he got his
deed

that ~~the~~ said lot 3 in block 3 was reserved or intended to have been reserved, or that any mistake had been made in relation to the aforesaid lot in the deed of reconveyance from the said Complainant to William Bissett or that the said Complainant had any legal or equitable claim to or interest ~~to~~ in said lot 3 in Block 3 aforesaid.

And this defendant Rufus Tiffany further answering from his own knowledge and this defendant William C. Tiffany from information and belief deny that the said Complainant frequently or ever prior to the conveyance of ^{the} said land to William C. Tiffany requested him the said Rufus Tiffany to make and deliver or to execute to him the said Complainant a quit claim deed of said lot 3 in Block 3, aforesaid, but these defendants severally answering the said Rufus from his own knowledge and the said William C. from information and belief admit that sometime after the aforesaid conveyance to this defendant William C. Tiffany was made the said Complainant told this defendant Rufus Tiffany that by virtue of an understanding or arrangement between the said Complainant and Benleigh Hunt it was understood and agreed that said lot 3 in block 3 should be reserved in the said reconveyance to William Bissett, and that said Complainant should retain the same as his own but this defendant Rufus Tiffany has no recollection or belief that the said Complainant ever requested him to execute and deliver to the said Complainant a quit claim deed of said lot.

And these defendants further severally answering state the said Rufus of his own knowledge and the said William C. from information and belief

Dennis R. T.
was even
requested
to make
before his
deed. to his
son W. C. T.

that after the purchase of the said land by him the
said William C. Tiffany, and after these defendants
had been informed that the said complainant cla-
imed that he had bargained or agreed with the said
Hunt for lot 3 aforesaid the said complainant
in substance stated that he had settled all up
with the said Burleigh Hunt and passed receipts
that he had settled for the said lot and all, that
he supposed he had a good claim on Hunt for the
lot or for damages therefor but did not want to
have any trouble with Hunt about it and had there-
fore settled with him, which conversation occ-
urred at the store of the said William C. Tiffany in
the Town of Littlefort aforesaid and in the presence
of the defendant Rufus Tiffany, and these def-
endants verily believe and so charge the facts to

Charge that be that if the said complainant ever contracted
McKay et al. or bargained for the said lot with Burleigh
Hunt he afterwards settled with said Hunt and
for Burleigh Hunt he relinquished all his interest claim and right
if any he had under by virtue of said contract
is claim if he had any

And these defendants further severally
answering say that they are ^{unable} ~~unable~~ to state from
information or otherwise whether any such
judgment as that alleged in the said complainant's
bill of Complaints was ever recovered against the
said Burleigh Hunt or ~~after~~ otherwise on account
of the indefiniteness and incertainty with which
the same are there in stated and set forth, but
these defendants are informed and believe that
a judgment was heretofore recovered against the
said Hunt et. al, at the suit of the State Bank of
Illinois, ^{and} another at the suit of Hart L. ^{Hart} ~~Hart~~ ^{Stewart} ~~Stewart~~ and
Lorenzo Sanger and John S. Wallace, but as they
think not at the suit of the said bank and the
above named persons jointly upon which an ^{execution} ~~execution~~

~~executions~~ or ~~exceptions~~ were issued and levied upon the said land but that said levy was afterwards relinquished and discharged. But whether the said judgments are the same judgments intended to be stated and set forth in said bill or the particular description of the same these defendants are unable to state and set forth

And these defendants humbly submit to this honorable Court that the said Complainant has not by and by his said bill made or stated such a case as entitles him to any relief in a Court of equity and that the facts and circumstances as stated in said bill in reference to the deed of conveyance therein mentioned from the said Bissett to said Complainant and the bond of defeasance therein stated as having been executed by the said Complainant and in reference to the Cancelling of said bond ^{and} of the reconveyance of said land to William Bissett by the said Complainant and in reference to the said Complainant's frequent recognition of a continued and subsisting interest in said land in said Bissett after the conveyance thereof by him to the Complainant show that the said deed was designed ^{to be} and in fact was ~~designed to be~~ and in fact a mere mortgage to indemnify the said Complainant for executing the bond with the said Hunt and said Foster as stated in said bill and the said bond having been settled and cancelled by and between said Hunt and said Foster and surrendered by said Foster and by him acknowledged to be null and void and of no effect as appears by the statement in said bill. These defendants humbly submit to this honorable Court that the said deed thereby then and from thenceforth became null & void and of no validity force or effect.

Answer

and that the legal title to all the land therein described reverted to and became again the absolute property of the said Bissett, without any reconveyance thereof from the said Bissett and these defendants are advised and humbly submit that if there had been an absolute reservation in the said reconveyance of the said lot 3 in Block three such reservation would not have invested the said Complainant with the legal title thereto of all which matters these defendants claim and hope to have the same benefit and advantage as they had demurred to said Bill, for the want of equity therein or for the cause aforesaid.

And these defendants deny ~~that~~ all unlawful combinations and confederacy in the said bill charged without that any other matter or thing material or unnecessary for these defendants to make answer unto and not herein or hereby well and sufficiently answered unto confessed or avoided or traversed denied is true to the knowledge or belief of these defendants all which matters and things these defendants are ready to aver maintain and prove as this honorable Court shall direct and humbly pray to be herein dismissed with their reasonable costs and charges in that behalf most wrongfully sustained.

Stoyl & Coates {
Sols^rs for Defts. }

Rufus Wiffany
William C. Wiffany }

State of Illinois

Lake County § On this 31st, day of July 1849

before me personally appeared
the above named Rufus Tiffany and William C.
Tiffany and severally made oath that they have
heard the above answer subscribed by them read
and know the contents thereof and that the same
is true of their own knowledge except as to the
matters which are therein stated to be their or
either of their information or belief and as
to those matters they believe it to be true

Isaac Hopkinson

Clerk of Lake Co., Circuit
Court.

United States of America }
Lake County }
State of Illinois }

Plas before the Honorable
Hugh T. Dickey Presiding
Judge of the Lake County
Court in the State of Illinois
at a special Court begun
and held for the County of
Lake at Little Fort in said
County in the Seventh Judicial
Circuit of said State on
the thirty first day of August
in the year our Lord One
thousand eight hundred
and Forty six and of the
Independence of the United
States the Seventy first

Pursuant to an order of Court as appears of
of Record of date the 25th day of April ad.
1846 and of notice given thereof pursuant to
law as in the Statutes in such cases made and
provided. The said Honorable Hugh T. Dickey
presiding on the request of the Honorable
Richard M. Gony the presiding Justice of
the said Judicial Circuit and also in pursuance
of an act entitled An Act to fix the times
of holding Courts on the seventh Judicial Cir-
cuit approved the third day of March in the
year of our Lord one thousand eight hundred
and Forty five

Present the Honorable Hugh T. Dickey Judge of said
William A. Boardman State Attorney
James McKay Sheriff of Lake County
Attest Isaac Hopkinson Clerk

and on the same day the same being
one of the days of said ^{term of} court the fol-
lowing among other proceedings were had
to wit

James McKay

vs

William Bapett Barleigh Hunt
Rufus Tiffany William C Tiffany
The President Directors and
Company of the State Bank of
Illinois. Hart & Stewart Corning
P Sangor John & Wallace and
Charles Taylor

And now comes the Plain-
tiff by Morris his Solicitor and on his mo-
tion time is given said Plaintiff until
Wednesday next to file exceptions or Replication
to Defendants answer.

And afterwards to wit on the 31st day of
August AD 1846 the said Complainant
by his Solicitors Morris & Brainerd filed with
the said Clerk his Replication herein which
Replication is in the words and figures
following to wit

James McKay

vs

Rufus & William C Tiffany
impleaded with others

In Chancery

And the said Com-
plainant for Replication comes and says
that the matters and things alledged in his
said bill of complaint are true in

substance and matter of fact, and that the
matters and things set forth, in the joint answer
of the said defendants, Rufus Tiffany and
William C Tiffany, contrary thereto are untrue
and this he is ready to make appear as by this
Court shall be directed. whereupon he prays
as in and by his said bill he has already prayed
for.

by Morris I Brown his
Solicitor

United States of America
State of Illinois
Cass County

Plene before the
Honorable Hugh
S. Dickey Presiding
Judge of the Cass
County Court in
the State of Illinois
At a Circuit Court
begun and held for
the County of Cass
at Salt Lake in
said County in the
Seventh Judicial
Circuit of said State
on the seventh day
of Sept in the year
our Lord one thousand
eight hundred and
forty six and of
the Independence of
the United States the
Seventy first)

The said Honorable Hugh S. Dickey
presiding on the request of the
request of the Honorable Hugh
Richards M. Young the presiding
Justice of the said Judicial
Circuit and also in terms of
an act entitled an act to fix
the times for holding Courts in
the Seventh Judicial Circuit
approved the third day of March
in the year of our Lord one thousand
eight hundred and forty five

Present the honorable Hugh T. Dickey
Judge aforesaid - William A. Boardman
States Attorney James McKee Shuff

Attest

Isaac Hopkinson Clerk

And afterwards to wit on the tenth day of
September A.D. ¹⁸⁴⁶ ~~1847~~ the same being one
of the days of said term of Court
the following among other proceedings were
had to wit

James McKee

vs

William Bissett Burleigh H. Hunt
Rufus Tiffany William C. Tiffany
The President Directors and company
of the State Bank of Illinois H. Hunt
L. Stewart Lorenzo P. Sangor John
- S. Wallace and Charles Taylor

And now come
the defendants by Hoyt & Bates their attorneys
and on their motion ^{leave} ~~leave~~ is given to
amend their answers herein on file

substance and matter of fact and that
the matters and things set forth in said
the joint answer of ^{the} said defendants Rufus
Jeffery and William C. Jeffery contrary
thereto are untrue and that he is ready to
make appear as by this Court shall be di-
rected whereupon he prays aid by his said
bills he has already prayed of

by Morris & Brown his
Solicitors

United States of America
State of Illinois
Saski County

Please before Honorable
Jesse B. Thomas one of the
Justices of the Supreme
Court of the State of
Illinois and presiding
Judge of the Circuit
Court of Saski County
in the Seventh Judicial
Circuit of said State
At a Circuit Court held
for said County of Saski
began and held at Sinks
Port in said County on
the Twenty Second day
of March in the year
our Lord one thousand
eight hundred and Forty
Seven and of the Inde-
pendence of the United

United States of America on the twenty first
Present William A Boardman States Attorney
James McKay Sheriff of Lake County
Attest Isaac Hopkinson Clerk

The Honorable Jesse B Thomas Judge aforesaid
not being present the Sheriff adjourned the
Court at four o'clock to meet to morrow
morning at nine o'clock

Tuesday the twenty ~~second~~^{third} day of
March one thousand eight hundred
and forty seven

This day the Court met at
nine o'clock in the morning the
hour to which it formerly adjourned
Present the Honorable Jesse B Thomas
Judge William A Boardman States
Attorney James McKay Sheriff
Attest Isaac Hopkinson Clerk

And afterwards to wit on the said twenty third
day of March A.D. 1847 The same being one
of the days of the said Term of Court the
following among other proceedings were had
to wit

James McKay

William Biddell Burleigh Hunt
Rufus Liffany the President
and Directors and Company
of the State Bank of Illinois
Hart L Stewart Vorneys Plangor
John L Wallace & Charles Lagers

complainants Bill of complaint for answer thereto or so much thereof as this Defendant is advised is or are material for him to make answer unto he this Defendant says

That he does not know of his own positive knowledge that on or about the 15th day of September A.D. 1841 the said complainant became surety for one Burleigh Hunt to Jesse H. Foster in the penal sum of eight hundred Dollars as in said complainants bill of complaint mentioned and set forth and that he has no other knowledge of said bond except that he has been frequently informed by the said complainant and the said Hunt - That such a bond as set forth in said complaint bill was executed by and between the said complainant as surety & the said Hunt as Principal ~~to~~ to the said Jesse H. Foster and believes the ~~same~~ ^{same} to be true as set forth in said complaint bill of complaint

And this Defendant further answering says and admits that on or about the 20th day of October A.D. 1842 the said Burleigh Hunt did procure this Defendant to convey to the said complainant the North half of the North East fractional Quarter of section No 38 in Township 45 North Range 13 East of 3rd Principal Meridian containing eight Acres situate in said County of ^{Franklin} ~~Franklin~~ as set forth and charged in the said complainants bill of Complaint and for the purpose as they therein alleged of indemnifying and saving harmless the said

Convey and
to M^cKay
waste in dms.
rights against
Foster Bond

And now comes the defendant Bissett in
his own proper person and files his answer
herein whereupon the said complainant by
Morriss his Solicitor moves the Court for leave
to take the deposition of said Bissett herein
for the purpose of using the same as tes-
timony in this cause

And afterwards to wit the said defendant
William Bissett by his Solicitor aforesaid
to wit on the twenty third day of March
AD 1847 Filed with the said Clerk his
answer herein which answer is in the fol-
lowing words and figures to wit

William Bissett	}	State of Illinois
Burleigh Hunt		
William Bissett	}	Clerk
Rufus Liffany		
William C Liffany	}	Clerk
The President Direc-		
tors of the S Bank	}	Clerk
of Illinois		
Hart S Stuart	}	Clerk
George P Sanger		
John S Wallace	}	Clerk
Charles Gaylor		
& ad.	}	Clerk
James M Hay		
	}	In Chancery
	}	This Defendant William Bissett now and at all times saving to himself all benefit of exception which can or may be had or taken to the said

Consideration

Compliment as the said Hunt Security
in the said Bond executed by them to the
said Jeph H Foster and that on or about
the 20th day of November A.D. 1842 the
Defendant for and in consideration
of one hundred Dollars as expressed ^{did} by a
Deed of general Warranty convey to the
said Complainant the aforesaid Tract of
Land and that said Deed was recorded
in the Recorder's office of said County
of Vt as set forth in said complaint
bill.

And this Defendant further answering
admits that on or about the 25 day of
November A.D. 1842 the said Complainant
did bind himself in the final sum of Ten
thousand Dollars to be paid to ^{the} said
Hunt his heirs executors administrators
or assigns with the conditions therein
expressed as set forth and charged in
said Complainant's bill of Complaint.

and that after said bond had been
cancelled that is to say that on or about
the 24th day of May A.D. 1843 the said
Complainant at the instance and req-
-uest of the said Burleigh Hunt did
convey the said tract of Land herein
first described to this Defendant excepting
and reserving Lots No 2 and 12 in Block
No 7 and Lots No 3 in Block No one
& one square acre lying in the North
East corner of said North East $\frac{1}{4}$ of said
section in effect as addition to the

Town of Little Fort and that said
Ded was Recorded as set forth and
charged in said complaint, bill of com-
plaint.

And this complainant ^{also} further ad-
mits that a portion of said tract ~~was~~
land (but not all of it) was by the said
complainant laid off into town lots as
and for an addition to the Town of
Little Fort at the special instance
and request of ^{the} said Burleigh Hunt
and that a plat thereof as McKays addition
to the town of Little Fort was filed for
Record and Recorded and Recorded as
charged in said bill of complaint.

And this Defendant further
answering admits that on the 26th
day of June A.D. 1884 he conveyed
the said Tract excepting and reser-
ving (as aforesaid) Lots No 2 and
17 in Block No 7 and Lot No three
in Block No one and one square
now lying in the NW corner of said
1/4 section to one Rufus Liffany
as charged in said complaint, bill
of complaint and that said Ded
of conveyance was Recorded as
therein set forth in the Records, office
of said County and that the same
land was then called and known as
McKays addition to the Town of
Little Fort.

And this Defendant further an-
swering says that he has no knowledge

of any conveyance of said land
having been made by ~~him~~ the said
Rufus Jeffery to the said William
C. Jeffery other than by hear say &
information from other persons and
therefore can neither admit or deny
the same.

admits the
compt. vol
lot 3. in
Block 3. as
he was
informed
by the parties
& was paid
for.

And this defendant further states
that while the said complainant
held the title to the land as aforesaid
he understood from the said Burleigh
Hunt and the complainant that the
said complainant had purchased
lots 2 & 3 in Block 3 & 3
^{being} a portion of the land above
mentioned of the said Burleigh
Hunt & that the same was paid
for and is a part of the said
Block 3 addition to the Town of
Little Fort & that he has no other
knowledge of the transaction and
that lots 2 and 12 in Block
3 & 7 and one square were ^{separately}
lying as aforesaid in said Block 3
addition to said Town of Little
Fort were conveyed to other persons
by the said complainant while he
held the title as aforesaid at the special
^{instance} ~~instance~~ and request of the said Hunt and
with the knowledge and consent of the said
~~Hunt and with the knowledge and consent of the said~~
defendant.

No other
knowledge of
the transaction
but their ad-
mission -
with allegations
in Bill!

admits lot 3
in Block 1
was wrong-
ly described
for block 3

And this defendant further admits that in
the reconveyance of the said land from the said ~~complainant~~

admits the
mistake
alleged

complainant to him Lot No. three in Block No. one
was thus described by mistake and was intended to
be lot No. three in Block No. three instead of ^{Block} No. one
and that there is and was not any such lot in said addition
and that the intention to reserve lot No. 3 in Block No. 3
as lot No. 3 in Block No. 3 was well understood by this
defendant and this defendant admits that he referred
the said Rufus Tiffany particularly to the said lot
intended to have been reserved, and pointed out the said
lot No. 3 in Block No. 3 particularly to the ^{said} Tiffany
as having been sold to the said complainant and to
be reserved at the time and previous to the conveyance of
said land made by this defendant to ^{the said} Rufus Tiffany
and has since and as soon as said mistake was disco-
vered did notify said Tiffany of the said mistake &
misdescription.

And this defendant says that he has
no knowledge of a judgment having been obtained in
the Circuit Court of Cook County by the President
directors and Company of the State Bank of Illinois
& Hart L. Stewart & John S. Wallace against one
Chas. Taylor and the said Hunt, or that an execution
was issued on said judgments and levied on said lot
No. 3 in Block No. 3 other than by the said complainant,
Bill of Complaint and the information of others and
therefore can neither deny or admit the same.

And this defendant denies all combination and con-
spiracy in said Bill charged without that any other
matter or thing material or necessary for this defend-
ant to make answer unto, and not herein or hereby
expressly answered unto confessed or avoided traversed or
denied is true to the knowledge or belief of this defendant,
And this defendant ^{humbly} prays to be hence dismissed
with his reasonable costs and charges herein ^{expended} ~~expended~~ ^{retained}

William Bessett

State of Illinois
Lake County

This day personally appeared
William Bissett before me the undersigned and being by
me duly sworn according to law deposes and says
that all the matters and things set forth in the fore-
going ^{answer} as stated of his own knowledge are true and those
stated on the information of others he believes to be true.
Sworn to and subscribed
before me this 25th day of
Jan^y 1847

W. Bissett

James H. Hacker

United States of America
State of Illinois Lake County



Please before the Honorable Hugh
J. Dickey Presiding Judge of the Cook
County Court in the State of Illinois.

At a Special Court begun and
held in and for the County of Lake
in the Seventh Judicial Circuit of said
State at Little Egypt on the twenty ninth
day of November in the Year of our
Lord One thousand eight hundred and
forty seven; and of the Independence
of the United States the seventy second
said term of Court being held pursuant
to a special order of the Honorable Jesse
B. Thomas, one of the Justices of the Supreme
Court of said State of Illinois, and presiding
Judge of the Seventh Judicial Circuit of
said State. bearing date the first day of
November A D 1847. Calling said special
term to commence on said 29th day of
November for the Inquisition and trial of
Devers persons, then Confined in the Common
Jail of said County of Lake, charged with
Capital Crimes, due notice of said term
having been given by the Sheriff of said
County, according to the Statute in such
case made and provided.

And the said Honorable Hugh
J. Dickey presiding in said Court by
agreement with the Honorable Jesse B.
Thomas presiding Judge of said Seventh
judicial Circuit, and also in terms of

third section of an act entitled "an act fixing the
times of holding Courts in the seventh judicial
Circuit" Approved February 22^d A.D. 1847.

Present the Honorable Hugh S. Dickson
Judge aforesaid. William A. Boardman States
Attorney. Henry W. Persett Sheriff of Lake County
Alfred George Thomas Clerk

And on the same day to wit, the twenty ninth
day of November A.D. 1847. the said defendants
Wart L. Stewart, ^{John} Wallace and Lorenzo P. Sanger
and by H. S. Stewart ^{for} the said ^{complainant's} bill.
their answer, which answer is in the words
and figures following to wit

The answer of Wart L. Stewart, John S. Wallace
and Lorenzo P. Sanger. Defendants to the bill
of complaint filed in the Lake County Circuit
Court in Chancery by James McKay Complainant
against these and other defendants named in said
Suit for answer to said bill of complaint
answer and say that they have no interest in
the said lot in the said bill of complaint
mentioned, and if any they have, they are willing
the same may be decreed to the Complainant
McKay. But they disclaim all interest in
the premises.

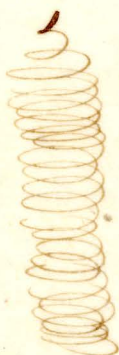
Having fully answered the premises, pray
to be dismissed, and that the Complainant pay
the Costs &c.

H. S. Stewart

And on the same day to wit the twenty ninth
(29th) day of November A.D. 1848 the said
Defendants, to wit, The President Directors and
Company of the State Bank of Illinois file their
answer to the said complainants bill, which answer
is in the words and figures following to wit

James McMay

vs
Rufus Tiffany. The
President, Directors &
Company of the State
Bank of Illinois & others



State Circuit Court
In Chancery

The President Directors and Company
of the State Bank of Illinois for answer to the
bill of James McMay complainant, answer and say
that they have no interest in the lot in question, in
said bill mentioned, and so far as they are concerned
in the premises, are willing that the Court may render
such decree in the premises, as the Court may think
just in the premises. And these defendants disclaim
all interest in the premises in said bill mentioned
And they having answered pray to be dismissed &c

M. Dougall

for State Bank

And now on this, the same day, to wit the
29th day of November A.D. 1848. This cause is
being brought to a hearing. The following depositions
having been filed with the said Clerk ^{and by the said clerk offered into the Court} were read
introduced and read in evidence, ~~to wit~~ on the part
of the said Complainant, - which Depositions are in
the words and figures following to wit

Lake Circuit Court
James M. Hay

In Chancery

Berley Hunt Rufus
Tiffany & others

Depositions of William
Bessett taken before
Mark W. Fletcher

Clerk of the Circuit Court of Kane County at
his Office in Geneva on the 13 day of August
AD 1847

Questions by the Plaintiff

1st what is your age and place of residence

Answer My age is forty years and I reside in
St Charles in Kane County Illinois

2 Interrogatory Are you acquainted with the north half
of the North east fractional quarter of section
twenty eight in fractional Township 45 North
Range 12 East of the 3rd principal meridian and
and how long have you known it?

Answer I am acquainted with it, and have known it
five or six years

3 State what interest if any the Defendants Berley
Hunt had in said land at any time to your
knowledge and state the nature of that interest

Objected to E. W. Hoyt solicitor for Defendants
Tiffany

Answer When he paid me for money I lent him and for services
rendered the land was to be his the land was conveyed
to me from W. Snapp the land never was Hunt's Snapp
was the purchaser of the Land of the United States

4th In who purchased and paid Knapp for said land
(objected to by the Tiffanys Counsel)

Answer Hunt purchased and paid Knapp for the land
and the same was conveyed to me as security as above
stated

5th In State how and upon what consideration if any you
made the conveyance of said land to the complainant
McKay on or about the 30th November 1842

Answer I conveyed the land to ^{Mr} McKay to secure him for
money that he had lent to Burley Hunt and I do
not recollect any other consideration.

6th In State what if any thing you know of said McKay
signing abroad with Burley Hunt as security for said
Hunt to Jesse H Foster in September AD 1842 and
whether the same had any relation to the conveyances
of the land by you to said McKay if so what?
(objected to by the Counsel for Tiffanys)

Answer I do know that he signed abroad with Hunt to
Foster and that was a part of the consideration for
my conveying the land to McKay

7th In State ~~what~~ who made the contract of sale to Rufus
Tiffany of the land above mentioned by which you
conveyed to said Tiffany by deed dated June 26th AD
1844 and for whose use and benefit was the
sale made? objected to by Mr Hoyt

Answer The sale was made by me and Mr Hunt and the
first payment was paid to me The sale was made
for my benefit and a part for Mr Hunt

8th In

What part was going to you and how much to Mr Hunt (Objected to by Mr Hoyt.)

Answer

I don't recollect how much was to be paid to me nor how much to Mr Hunt but after paying what was due me from Mr. Hunt the balance was to be paid to Mr Hunt

9th In

State what if any thing you know of a misdescription of the lots reserved or intended to be reserved in Mr Kays Deed to you, P dated the 24th of May A.D. 1844 State all you know about it

Answer

I know there was a misdescription of one lot reserved in said Deed of Mr Kays addition to me. I did not know it until two days after I had conveyed the same lands with a like reservation to Mr Rufus Tiffany The one intended to be reserved was Lot three in Block three and the Deed reserved Lot three in Block One and there was no such lot on that addition.

9th In

State what conversation if any was had between you and Rufus Tiffany and between Hunt and Tiffany in your presence if any about the Lots reserved in the Deeds mentioned by you in your last answer as to Tiffanys knowledge of the location of said reserved property before you made such conveyances to Rufus Tiffany or his son William

Answer

We (Rufus Tiffany and myself) had considerable talk about the reserved lot and likewise had Hunt and Rufus Tiffany in my presence and I went on to the corner Lot that is Lot three in

House Plot if M^r Kay would give up his claim to
Lot 3 in Block 3

13. In Have you any Interest in this matter in dispute
other than your liabilities on your ^{Deeds} Lands to Tiffany
M^r Kay above mentioned if any there is or not

Answer I have none

14 In Has Rufus Tiffany paid the purchase money
for Said Lands or not to you or Hunt in full
if not state how much remains unpaid to your
Knowledge

Answer the last time I knew about it there was some
Seventeen hundred & dollars remaining unpaid
William Besset

Questions by solicitors for Defendants Rufus
and William C Tiffany

1 In State according to your best recollection the amount
of Indebtedness from Benley Hunt to you to some
which the conveyance of said lands was made to
you by Henry Knapp as stated in your direct
Examination.

2. In.
Answer

Answer. I do not recollect exactly. but it was between two and
three hundred dollars. I worked two years after that for him
and held the land in security for that also.
State the amount of money loaned by James
M^r Kay to Benley Hunt to secure which the
conveyance of said Land was made by you to said
M^r Kay and how you ascertained the fact that
money had been so loaned by M^r Kay to Hunt

Answer. I don't recollect the amount of money loaned
but I learned from both M^r Kay and Hunt that
money was loaned

3rd Int Did you know at the time of making said Conveyance how much money was so loaned by M^r Kay to Hunt

Answer I believe I did

4th Was there any contract or stipulation in Writing made at the time of making said Conveyance by you setting forth the terms and conditions upon which the same was made?

Answer There was a Bond from M^r Kay to me or to Hunt I don't recollect which for a Reconveyance.

5th In Where is the said Bond and with whom it was left

Answer I don't know where the Bond is it was left with M^r Kay

6th In Did the said bond embrace all the conditions & terms upon which such reconveyance should be made?

Answer I don't know what conditions was in it

7th In Was there to your knowledge more than one Instrument of Writing executed by said M^r Kay agreeing to reconvey at the time of such Conveyance by you

Answer I don't know of but one

8th In Was the Deed of said Land and the bond for a Reconveyance of the same both handed by you to said M^r Kay and did he sign the Bond and hand it immediately back to you

Answer I signed the Deed and handed it to M^r Kay the bond was handed by Hunt to Kay and he signed the bond and handed it back to Hunt.

9th Q

How much of the money which said Rufus Tiffany paid towards said land has been received by you

Answer

~~Five~~ ^{Eighty} hundred Dollars at the time the land was conveyed and I have received more since

10th Q

When did you first learn as stated in the direct examination that a mistake had been made in the reconveyance of said lands by said McKay to you

Answer

I did not learn till two days after I had sold to Rufus Tiffany. McKays told me that he had examined the Plat and found ~~it~~ the deed, was wrong

11th Q

How long after that did you apprise Rufus Tiffany that such a mistake was made

Answer

As soon as I saw him I told him. it might have been one or two days

12th Q

Where was said Tiffany at the time you told him there had been a mistake made and who was present beside your self and said Tiffany?

Answer

I believe it was in McKays store in Little Fort. I dont recollect than any one was present but there might have been. I was working on the store at the time

13th Q

Are you sure that you had no conversation in relation to the ^{mis} description in the reconveyance from James McKay to you with James McKay or any other person prior to the conveyance of the same lands by you to Rufus Tiffany

Answer
14th In

I am sure I had none
Did you go upon said lands with Rufus Tiffany
more than once or upon said Lot 3 in Block 3 prior
to the conveyance by you to Tiffany

Answer
15th In

I believe not
Did you know at the time said Rufus offered
to convey Lot 2 in Block 3 with the house upon it
to you as stated on your direct examination that
A B Wynkoop or any other person than said Tiffany
claimed to be the legal or equitable owner of said Lot
2 in Block 3?

Answer

I knew that Wynkoop claimed to be it but had no
right in consequence of failing in his payments,
which was by virtue of an agreement with Hunt

16 In

State all the particulars of the conversation between
you and said Rufus Tiffany wherein said Tiffany
made the aforesaid propositions to convey Lot 2
in Block 3 to you?

Answer

The conversation commenced about the house that
Wynkoop was living in first Tiffany said he did
not care anything about the House Wynkoop was
living in that he would give me a deed of it. If
I would clear him from James McKays claim on
Lot 3 in Block 3 and I told him that was a thing
I could not do

17 In

Did M. Tiffany in this conversation claim that he was
^{under} no obligation to convey said Lot 3 in Block 3
to said McKay and that he had no notice of said
McKays interest therein till after your conveyance to
him?

Answer he did not claim any such thing

18th Did said Tiffany not insist in that conversation that said M^cKay had no just claim upon himself or William C Tiffany for said Lot 2 in Block 3

Answer I believe he did

19th Who besides yourself and said Tiffany was present at that conversation?

Answer Freeman Bridge

20th Who beside yourself said Tiffany and M^cKay were present at the time of the offer to M^cKay to convey said Lot 2 in Block 3 to him

Answer William C. Tiffany

21st Was the offer of M^cTiffany this that he would quit claim or convey his interest in said Lot 2 in Block 3 to you if you would clear him from ~~from~~ all trouble with James M^cKay, about ~~Block~~ Lot 3 in Block 3.

Answer It was

22nd Was not the offer made to James M^cKay for the like purpose of avoiding litigation with the said James M^cKay about said Lot 3 in Block 3

Answer It was

23rd Had Rufus Tiffany or some other person at the time when said offer was made commenced a building or digging for a foundation for a building on said Lot 3 in Block 3?

State of Illinois
Hane County ss I Mark W Fletcher Clerk
of the Circuit Court of said
County Certify that ^{that} William Bisset was duly sworn
by me before the commencement of the taking of
this deposition that after the same was taken
I carefully read the same over to him he then
Subscribed his name thereto and was again
Sworn by me to said Deposition at the time and
place mentioned in the Caption

(Seal)

Witness my name and the Seal
of the said Court at Geneva this
13th day of August AD 1847
M. W. Fletcher CLK

State of Illinois }
Lake County }

James M. Kay

vs

William Bessett Burleigh Hunt Rufus Tiffany
William C. Tiffany the President directors and Company
of the State Bank of Illinois Hunt L. Stewart Lorenzo
P. Sanger John Wallace and Charles Taylor
In Chancery

The depositions in this cause having been by
consent continued from day to day till the 9th day
of June A.D. 1847 from the fourth instant personally
came before me the undersigned clerk of the
Circuit Court for the County of Lake at my Office at
Lisleport in said County on the said 9th day of

D. Ballentine }
Dipos. } June Inst. David Ballentine who being by me
duly sworn as a Witness to^{be} examined on the part
of the Complainant in the above entitled cause,
deposed as follows to wit. question by Complainant
First What is your age Answer Forty six years
Second Are you acquainted with William Bessett
Answer, I am
third Ask if the said Bessett ever at any time
pointed out to you a Certain Town lot situated in
M. Kay's addition to the Town of Lisleport in Lake
County Illinois as being the lot reserved or intended
to be reserved by the Bessett to James M. Kay
in a certain Sale and deed of the said M. Kay's
addition to Rufus Tiffany. Objected to by
Counsel for the defendants Tiffanys
Answer. He did,

Fourth what is the number of said Lot so pointed out to you by said Bessett and the number of the Block as appears on the map or plat of said McKays addition to the Town of Littleport? Objected to
Answer Lot three in Block three.

Fifth Have you examined the map of said addition and had you the same with you at the time said lot was pointed out to you by said Bessett Objected to. Answer Yes

Sixth Have you compared the said map with the one on Record in the Records Office in Lake County and is it the same as one recorded or not? Objected to. Answer I have and it is the same
Cross examination by Hoyt Solicitor for said Tiffany
First when did the conversation related by you as having taken place with Bessett occur

Answer some time during last fall

David Ballentine

State of Illinois }
Lake County } I George Thomson Clerk of the
Circuit Court of said County do
hereby certify that the foregoing depositions was sworn to and signed by the deponent David Ballentine before me at my Office in Littleport this 9th day of June A.D. 1847



In testimony whereof I have
hereunto subscribed my name and
affixed the seal of said Court at
Littleport the day and year last aforesaid
George Thomson Clk

State of Illinois }
Lake County }
James M. Hay
vs

William Bissett Burleigh Hunt Rufus Tiffany
William C. Tiffany The President Directors
and company of the state Bank of Illinois Hunt
J Stewart Lorenzo P Lunge John S Wallace and
Charles Taylor. In Chancery

The depositions of Freeman Bridge who came
before the undersigned clerk of the Circuit Court
for the County of Lake at Little Fort in said County
on the fourth day of June A.D. 1847 pursuant
to previous notices and was by me duly sworn as
attitnss to be examined on the part of the complai-
nant in the above entitled cause.

Interrogatory first. What is your age
answer a little short of Forty years

Second Are you acquainted with William C. Tiffany
Rufus Tiffany and William Bissett?
answer I know them all.

Third Were you present at a conversation on or
about the eighth day of November 1845 between the
said Tiffany or either of them and the said Bissett
in reference to a certain Town Lot in which James
M. Hay was interested Situated in M. Hay's
addition to the Town of Littlefort Lake County
Illinois.

Answer I was present at the conversation.
(This question objected to by dependants Counsel)
Fourth. State the number of the lot and Block
referred to you if you know.

Answer I think the lot spoken of was lot three in Block three

objected to by defendants Counsell
Fifth, State which Tiffany or either of them said
at the time ~~consideration~~ conversation relative
to the said lot and relative to the said lot deed
James McKay right and interest in the same
objected to by defendants counsell,

answer Rufus Tiffany said to Bessett that if he
Bessett would clear him of all trouble with McKay
on the corner lot of Block three that he Tiffany
would give Bessett lot two in the same block with
the house

Freeman Bridge
Cross Examined ^{also} by Solicitor Hoyt for Rufus Tiffany
and William C Tiffany

State who was present beside you self Rufus
Tiffany and Bessett if any one

answer I do not recollect of any person

Where was that conversation when did it occur

answer On the south side of the river where he
was building a stable Freeman Bridge

State of Illinois }
Lake County } I George Thomson Clerk of the
Circuit Court of said County do
hereby certify that the foregoing depositions was
sworn to and signed by the deponent Freeman
Bridge before me at my Office in Little Fort
this 4th day of June A D 1847

In testimony whereof I have hereunto
Subscribed my name and affixed the seal of
said Court at Little Fort the day and year last
aforesaid

Seal

George Thomson Clerk

The Deposition of Horace Butler of lawful age
and first duly sworn according to the law to
testify the truth in relation to matter in controver-
sy in the hearing after entitled suit as far as he
may be interrogated taken at the office of the Clerk
of the Circuit Court of Lake County and State of
Illinois on the sixth day of November AD 1847
before the Clerk of the said Court to be read in
evidence on the trial of a suit now pending and
undetermined in said Circuit Court on the Chancery
side thereof wherein James M Kay is complainant
and William Bessett Burlingh Hunt Rufus Tiffany
William C. Tiffany The president directors and
Company of the State Bank of Illinois Hart L
Stewart Lorenzo P Sanger John A Wallace and
Charles Taylor are defendants
question first. where do you reside?
answer. At Liberty in Lake County
question Second are you acquainted with the parties
in this suit

ans. I am acquainted with the complainant
James M Kay Burlingh Hunt William Bessett
Charles Taylor the Tiffanys the President of the
State Bank of Illinois and Hart L Stewart
Third state what you know of any thing relative
to the purchase of Lot ^{number} three in Block
~~number~~ three in M Kays addition to the Town
of Little Fort by James M Kay of Burlingh Hunt
or William Bessett.

Answer I have understood from James M Kay and
Burlingh Hunt ^{that Mr Kay had obtained} a certain ^{of said Hunt} Town lot in ^{what}
is called M Kays addition to the Town of

Little Fort (Counsel for the defendants Jeffamps
then objected to any further statements on the part
of the witnesses as to conversations had between
the witness and James McKay & Burleigh Hunt
as not being responsive to the question and im-
proper evidence) But I am unable to say what
the number of said Lot was or the number of the
Block to which they had reference

4. Fourth Were you present when a certain deed of
the north east quarter and the north west quarter
of the north east fractional quarter of section Twenty
eight in fractional township Forty five north
Range Twelve east third principal meridian
was executed by James McKay to William Bissett
The deed here
referred to is
copied as
Exhibit D
answer I think I was present witnessed the said
deed and drew the same with certain reservations
therein named and took McKay's acknowledgment
to the same as a Justice of the Peace at that time

5. Fifth State if the deed you hold in your hand
I marked It is a copy of the said deed and when
the same was executed, P. objected to
Answer From examination I think it is the same
and appears to have been executed on the 24th day
of May A.D. 1844

6. Sixth State what you know relative to the
reservations in said deed mentioned and particularly
what you know relative to the reservations of Lot
three in Block numbered One?

Answer At the time this deed was executed
Burleigh Hunt and James McKay came to my
house at Libertyville and requested me to draw
a deed from James McKay to William Bissett
of the north east quarter and the north west
Quarters of the north east fractional ^{quarters} of section
number twenty eight fractional Township

Numbered forty five north Range number twelve east of the third principal Meridian with the ~~same~~ reservations. I think which I described in the deed above alluded to, at that time Mr Hunt stated that he had disposed of a certain lot being a portion of the above described land to James McKay and wished that the said lot be reserved in the deed, the said Hunt and McKay were then in doubt as to the description of the lot which he had disposed of I mean as to the number of the lot and the Block Mr Hunt mentioned one or two lots besides the one reserved in the deed as being the same which he had disposed of to McKay but finally said that he believed it must be lot three in Block Number One, but was not sure, and that if it proved not to be the one it might be rectified afterwards or new words in substance the same they did not either of them apparently know the number of the lot or block intended to be reserved; there was no map or plat of McKay's addition to the Town of Little Fort then at the time nor no means of ascertaining a description of the lot which Hunt had disposed of to McKay except from recollection. There were other lots and parts of the above mentioned Tracts also requested to be reserved by the said Hunt as having been disposed of to other persons and I drew the deed mentioned above in accordance with ~~this~~ request the first above described land had then been laid out into town lots or a portion of it at least, and called McKay's addition to the Town of Little Fort I may further state that Mr Hunt hesitated a long time and conversed

upon the subject some length of time before he called could fix in his mind any description of the lot which he said he had disposed of to McKay and was not certain that the description of Lot three in block number one was correct.

7. Seventh State what you heard the defendants or any of them say relative to the reservations ~~in~~ deed mentioned and particularly in relation to this reservation of Lot Number three in block Numbered One.

Objected to.

Answer. I recollect of hearing Mr Hunt say in a conversation which I had with him subsequent to the execution of the deed ~~aforsaid~~ that we had made a mistake in describing McKay's lot. We had then as he said sold the above mentioned tracts of Land to Hugenian and Tiffanys and that they would be willing to rectify it and that there would be no ~~more~~ ^{trouble} about it as they did not buy it with the rest of the land or used words in the substance the same.

8. Eighth. State all you know as will benefit the Plaintiff in this suit.

Answer. I have stated to the best of my recollection all that I remember in regard to this particular transaction. I have however heard Burlington Hunt say that he was indebted to McKay stating at different times that he owned him borrowed money and gave that as an excuse of not being able to pay a certain demand which I held against him. This was before the execution of the deed of which I have before spoken and it is very probable that I have heard him make ^{use of} similar expressions since that time. I feel quite positive that he has.

Cross Interrogatories by Hoyt Solicitor for
defendants Jeffarays

1 question First, who did you understand was the
owner of the land conveyed by said deed at the
time of the execution of the same

Answer I understood at that time from Hunt
and McKay that the land after it was deeded
to Bessett by McKay that it was in fact Hunt's
land. Although the deed was executed to
Bessett, ^{that previous to the execution of the deed by McKay to Bessett} that McKay held the title of the land
specified in the ~~same~~ ^{before} mentioned deed in security
and to indemnify McKay against a certain
liability which McKay had assumed for the
said Hunt to one Jesse H Foster and for the
payment of some debts that he owed him or
something to that effect. I understood from them
at the time that Bessett was to hold the land
in trust for Hunt.

2 Second To whom was the deed delivered after
the same was executed.

Answer. It was delivered to Penleigh Hunt
by me after taking the acknowledgement of James
McKay. I think I was not present when Mrs
McKay signed the deed.

Third Was James McKay at the time of the execu-
tion of the deed Sheriff of Lake County

Answer He was the acting Sheriff Helvie at that time
Fourth Did you at that time understand from
either Hunt or McKay that an execution against
said Hunt or McKay had been placed or was about
to be placed in the hands of the coroner of Lake
County?

Answer I did not but I understood from them at the time that Hunt would be troubled before long troubled by some debts that were against him and that in all probability there would be an execution on his property that he and M. Kay had arranged their matters that he had released M. Kay from the bond of indemnity which he had given to Foster of which I have before spoke that they had come to some settlement as to their other matters and that M. Kay had no occasion to hold the title of this Land any longer and desired to deed it back again this was the understanding I obtained from them at the time

5 Fifth Did you understand that the immediate object of making such conveyances was to avoid said debts or that it had any relation thereto? Answer I did ^{not} understand that to be the immediate object nor can I say what was the real Object of Executing the deed to Bissett other than what I have before stated except that it might be to secure Bissett for what I had heard Hunt previously say he owed him and it might have been for the purpose of avoiding the payment of those debts for aught I know. I asked no questions as to the objects of the conveyances.

6 Sixth Have you ever heard James M. Kay say that he was to have the lot intended to be reserved to him in said deed as a compensation for covering up said property of said Hunt from his creditors or any of them ^{thing} of that import? Answer I have never heard him say that or any thing like it directly or indirectly.

Direct examination resumed

First What have you heard M^r Hay say relative to the compensation which he gave if any thing for said lot intended to be reserved objected to

Answer I have heard him say that he had bought it of Hunt and paid him for it that Hunt was owing him considerably besides

H. Butler

State of Illinois }
Lata County }

I George Thomson Clerk of the Circuit Court in and for said County do certify that the foregoing deposition was sworn to and signed by the said Horace Butler before me at my office in Lata Co the sixth day of November A^d 1847.

Seal

Witness my hand and seal of said Court

George Thomson

And the following affidavit on the part of the said Defendants was introduced and read in evidence

The Deposition of Hiram Huggins of lawful age & first duly sworn according to Law to testify the truth in relation to the matter in controversy in the hereinafter entitled suit as far as he may be interrogated taken at the Office of the Clerk of the Circuit Court of Lake County and State of Illinois on the sixteenth day of August A.D. 1847

before the Clerk of said Court to be read in evidence on the trial of a suit now pending & undetermined in said Circuit Court on the Chancery side thereof wherein James Mc. Ray is Complainant & William Beckett Burleigh Hunt. Rufus Tiffany William C. Tiffany The President directors & Company of the State Bank of Illinois Hart & Stewart Lorenzo P. Sanger John S. Wallace & Charles Taylor are defendants

Question First By Solicitors Hoyt & Bates for Defts W C & R. Tiffany What is your age & place of Residence?
Answer Forty eight residence Little Fort

Second By the same

Are you acquainted with the North East fractional $\frac{1}{4}$ & the North W. $\frac{1}{4}$ of the North E. fractional $\frac{1}{4}$ of fractional sec. 28 Township 45 north of Range 12 East of the third principal Meridian in the County of Lake & State of Illinois & how long have you known the same

Ans I am acquainted with it & have known it about three years

Third By the same

Were you present on or about the 26th day of June 1844 when William Bipell conveyed the said lands to Rufus Tiffany and during the negotiation with said Bipell for purchase of the same?

Answer I was

Fourth By same

Did the said Tiffany with yourself and said William Bipell and any other person & if so what others go on the said land or any part thereof prior to said conveyance by the said Bipell to said Tiffany & if so when?

Answer I have no distinct recollection of any particular time or any peculiar circumstances attending any visit to the lands except generally that sometimes myself & Mr. Tiffany and sometimes accompanied with Bipell & Helmut we walked upon the lands mentioned prior to the purchase by Rufus Tiffany

Fifth By same

Was there to your knowledge and in your presence at such time or times any conversation while upon said land & upon or in the immediate vicinity of Lot 3 in Block 3 of said land

between Rufus Tiffany & said Bepett or between
yourself & said Bepett in the presence of said
Tiffany in relation to said lot 3 in Block 3 &
as to whether the said lot was to be reserved in
the ^{proposed} purchase of said sale or Conveyance from the
said Bepett to the said Tiffany of the aforesaid
tract of land if you state the same fully &
particularly?

Answer

I clearly understood from Bepett & heard by
Conversation had in the presence of Rufus
Tiffany that lot 3 of Block 3 was not intended
to be reserved from sale but to be Conveyed with
the rest of the purchase to Tiffany whether the
Conversation was had on the premises or in
the house I cannot now recollect. I think
it was on the 25th of June the day previous to the
Conveyance

Sixth

By the same
State whether the said Tiffany in your presence
made any inquiry of said Bepett prior to such
Conveyance as to whether lot 3 in Block 3 &
the lot south & on the opposite Corner in Block
7 were to be reserved?

Answer

Mr. Tiffany made the inquiry of either Mr. Hunt
or Mr. Bepett in presence of both whether those
lots were intended to be Conveyed to him in the pur-
chase and he was answered in the affirmative.

Seventh

By the same
State if you know the reason why such inqui-
ry was made & whether it was understood that
any lots were to be reserved & whether said Tiffany

was generally acquainted with the lots of said addition from the plat any by their numbers?

Answer

The reason which Mr. Tiffany gave for the inquiry was that he Concurred them the most valuable lots of the plat it was understood that three lots were to be reserved. He was not generally acquainted with the lots so as to be able to locate them on the ground from their numbers.

Eighth

By the same

State whether you have previously had any conversation with said Tiffany with reference to said lot 8 and the one on the opposite corner and in reference to their value - if yes - state the same particularly

Answer

I have no recollection of having had

Ninth

By the same

Do you know whether the same had been pointed out to him by any person previously as being more valuable than the other lots?

Answer

They were the subject of conversation and it was remarked that they were more valuable than the others which appeared to be Concurred in by Bissett & Hunt

Tenth

By the same

State all the circumstances of the negotiation by said Tiffany with said Bissett for the purchase of said lands the time when said Tiffany first become acquainted with or saw said land. How

long thereafter the said purchase was completed and how long before the completion of said purchase and the conveyance of said lands the conversation occurred in which the said Tiffany made the aforesaid inquiry with reference to the reservation of said lot three

Answer

I think Tiffany first saw the land on the 25th June 1844 and the purchase was completed on the 26th June according to my best recollection the inquiry whether that lot had been sold was made either on the 25th or morning of the 26th my impression is that it was on the morning of the 26th. Tiffany & myself arrived on the evening of the 24th and we were negotiating making inquiries as to location fixing preliminaries until the afternoon of the 26th when the conveyance was completed this is according to my best recollection

Eighth By the same

Did said Ripett to your knowledge or in your presence notify the said Tiffany prior to the conveyance of said lands to him that said lot 3 in block 3 was to be reserved or that the same belonged to James McKay or to any other person than himself?

Answer

He did not

Ninth By the same

Did you after such conveyance and how long after learn that James McKay claimed to be the owner of said lot 3 by virtue of a purchase or other arrangement for the same with Berleigh Hunt?

Answer I did afterwards so learn & after the conveyance

some months I was first informed of the fact
Thirteenth By the same

Did you ever after such Consueance understood from James Mc Kay the nature of the interest claimed by him & how the same was acquired?

Answer

I had a number of Conversations with James Mc Kay on the subject of that lot and in those Conversations I gathered from Mr. Mc Kay that the lot was promised to him by Hunt for services rendered to Hunt by Holding Hunts property or the lands spoken of as the Trustee or agent of Hunt

Fourteenth By the same

State according to your best recollection the substance of the Conversations from which you gathered that such was the Consideration for which said Mc Kay claimed that Hunt had promised him the said lot?

Answer When I learned that Mr. Mc Kay laid claim to the lot I mentioned the fact to Mr. Hunt & desired him to arrange ~~the~~ & settle the difficulty with Mr. Mc Kay. Mr. Hunt replied You have got a Title to the lot (having reference to the sale to Mr. Tiffany) be satisfied with that. Mr. Mc Kay owes me an amount of money. I will settle with him for any claims he may have on the lot or words to that effect. This Conversation I afterwards reported to Mr. Mc Kay and desired him to settle the matter with Mr. Hunt. Mr. Mc Kay replied in the last Conversation I had with him on the

subject of the lot and of settling with Mr. Hunt that he had that day settled with Mr. Hunt & passed receipts with him & added that he would never again hold a mans property for him. that he had had great trouble as an agent in holding Mr. Hunts property & that he was not likely to be fully rewarded or that he was likely to get nothing for it or words to that effect

Fifteenth By the same

Was there ever to your knowledge an offer made by the Tiffanys or any one for them or either of them to Mr. Hunt to sell back said lot & or Block 3 or to let said Hunt have the same for reasonable compensation to be applied on the Mortgage given by Tiffany for the purchase money so as to enable said Hunt to fulfil his engagements with James McKay in reference to said lot & if any engagement had been made by him to let said McKay have the same? if you state the same particularly

Answer

In Conversations with Mr. McKay I stated that Mr. Hunt could have the lot for a valuable consideration & the amount might be indorsed upon the Mortgage held by Bispett against Mr. Tiffany. My impression is that the same proposition was made to Mr. Hunt that was to enable Mr. Hunt to comply with any bargain he might have made and save us from the disagreeable necessity of litigation

Sixteenth By the same

Where was Rufus Tiffany residing at the time of the purchase of said Lands of said Bispett?

said Tiffany, was it known to him & yourself that said McKay claimed to have purchased said lot of Burleigh Hunt & that the same should have been reserved in the Conveyance to Rufus Tiffany by him to William L. Tiffany and that he said McKay still had a right to said lot?

Answer It was not known to me at the time Mr. Tiffany became sole proprietor of the lot mentioned that Mr. McKay had any claim to the lot

Twenty first by the same

Does William L. Tiffany hold the said lot by virtue of any Conveyance from you, and has he ever claimed that you were under obligations to indemnify him against the Costs?

Answer I have had no conversation with William L. Tiffany in relation to the Costs. Mr. Tiffany does not hold by any transfer from me nor has either of the Mr. Tiffanys claimed that I was justly liable legally or equitably to pay any portion of the Costs.

Twenty second

Was the ^{consideration} ~~Consideration~~ between yourself and Rufus Tiffany in which you promised to pay a portion of the expenses of this suit had before or after the division of said land with said William L. Tiffany?

Answer

It was after the division

Twenty third

Did any Consideration pass between yourself & the said Rufus Tiffany at the time of making said promises as the Consideration thereof?

Answer There was no Consideration given for making
the promise nor promised to be given.

Twenty fourth

Have you any other interest in the event of
this suit than that you have already stated?

Answer None that I know of

Hiram Huggenim

State of Illinois

Sake. vs.

I George Thompson Clerk of the Circuit
Court for said County Certify that the
foregoing deposition was sworn to & signed before me
at my Office in Little Fort this 16th day of August
A. D. 1847 Witness my hand & seal of said Court
George Thompson Clerk

Seal

The following is a copy of the notice of Publication herein, and the Publisher's certificate

St. Chmery

State of Illinois
Lake County

April Term of the Lake
County Court circuit Court
Ad 1847

James McKay
vs

William Bissett Burling Hunt
Rufus Tiffany Wm. C. Tiffany
The Presidents Directors and
Company of the State Bank of
Illinois Hunt S. Stuart Lorenzo
P. Sanger John S. Wallace and
Charles Taylor

It having been made to appear by affidavit duly filed in the Clerk's office of said Court that Purleigh Hunt one of the above named Defendants is a nonresident of the State of Illinois,

A notice is hereby given to the said Burlington Hunt one of the above named defendants, now resident as aforesaid that a Bill in Chancery has been filed against him among others above named in said Court on the Chancery side thereof by the said James M. Kay Now unless you the said Burlington Hunt now resident aforesaid be and appear before the Judge of said Court at a term of Court to be begun and held at the Court House in Little Fort on the third Monday in the

month of April next and answer said Bill of
Complaint the same will be taken for confessed
and decreed entered accordingly.

Dated at Little Fort this 15 day of Jan'y
AD 1847 Isaac Hopkinson JCR

State of Illinois }
Lake County } I A B Wyrkoop Editor
proprietor & Publisher of the
Democratic Banner a Weekly paper Published
at Little Fort Lake County Illinois do hereby
certify that the appended Chancery Notice James
M. Ray vs William Brissett et al has been published
in my paper four weeks successively from
No 43 to 46 of Vol 2 inclusive.

Given under my hand at Little Fort Ill.
this 15th day of February AD 1847

A B Wyrkoop

The following is a copy of the Map filed herein -



In the above Map the distances are given in feet & inches. The N.E. corner is the N.E. corner of frac Sec 28 frac Town 45 R 12 and the S.E. corner of the S.E. 1/4 of the S.E. 1/4 of said Sec. At the N.E. corner of B.7. placed a stone corner from which run West, four chains to the N.W. corner of said Block which line corresponds in course with all of the East & West lines of the above Plot. From the N.E. corner of B.7. run S 1/4 W 6 chains to the S.E. corner of said Block placed a corner stone for a point from which to make future surveys. The last mentioned line corresponds in course with all of the North & South lines in the above Plot. The S line of the above described lands bears five minutes North of West.

Surveyed Apr 22nd 1844.
Geo Gage. Surveyor

State of Illinois } I, James H. Trader a Justice of the Peace in
Lake County, do for the County of Lake and State of Illinois
duly commissioned and sworn according to law
do hereby certify, that James McKay and Elizabeth McKay his wife
to me personally known, acknowledged that they are the
owners of the land described in the within Plat, and that
the same has been laid out as appears by the face of the
said Plat and the certificate of George Gage the County Surveyor
of the County of Lake State of Illinois, by their direction
and consent as an addition to the Town of Little Fort
To be known called & styled "McKay's Addition to Little Fort."
James McKay & Elizabeth McKay Given under my hand & seal this 18th
day of May in the year one thousand
eight hundred & forty four at my
office in Little Fort County & State
of aforesaid James H. Trader J. P. Seal

State of Illinois } I, Samuel McDougal Recorder of said
Lake County, do hereby
certify that the within Plat styled "McKay's
Addition to Little Fort" with the accompanying certificate,
was entered for Record at the Recorder's Office in
and for said County, this 18th day of May 3 o'clock
P.M. 1844. And duly Recorded May 20th 1844 in
Book B page 452.

In Testimony whereof I have hereunto
set my hand & affixed the seal of said Office
this 20th day of May A.D. 1844.
Seal of Samuel McDougal Recorder,

And on the same day to wit the twenty ninth day of November A D 1847. the same being one of the days of said term of Court. the following among other proceedings ~~was~~ had.

James McWay

vs

Bill

William Wissett, Burleigh Hunt
Rufus Tiffany, William C Tiffany
The President Directors and Company
of the State Bank of Illinois
Mart S Stewart, Lorenzo P Sanger
John S Wallace and Charles Taylor

This day came the complainant by Morris and Butler his Solicitors, and the Defendants Tiffany's by Hoyt and Cotes their Solicitors. And by agreement this cause is submitted to the Court for trial, at this term, and the Court having heard the evidence and arguments of Counsel takes the same under advisement.

United States of America
State of Illinois Lake County

Plas before the
Honorable Jesse B Thomas, associate Justice of
Supreme Court of the State of Illinois
and presiding Judge of the seventh
Judicial Circuit of said State

At a special term of Court
began and held for the County of Lake
in said seventh judicial Circuit at Little
Flat on the thirteenth day of November
in the year of our Lord One thousand
Eight hundred and Forty eight, and of
the Independence of the United States the
Seventy third

Said term of Court being held
pursuant to a special order of the Hon-
orable Jesse B Thomas, one of the asso-
ciate Justices of the Supreme Court of
said County of Lake, bearing date the
thirteenth day of September A D 1848
Calling said special term to commence
on the second Monday of November
A D 1848. Due notice of said special
term having been given by the Sheriff
of said County according to the Statute
in such case made and provided

Present the Honorable Jesse B Thomas Judge
aforesaid, William A Boardman States
Attorney. Henry H Dorsett Sheriff of
said County

Attest George Thomson Clerk

And afterwards to wit, on the fourteenth day of November A.D. 1848. the same being one of the days of the said term of Court. the following among other proceedings was had, to wit.

James McKay

vs

Bill

William Bissett. Burlingh Hunt
Rufus Tiffany, William C Tiffany
The President Directors and Company
of the State Bank of Illinois. Hart
L Stewart, Lorenzo P Sanger, John
S Wallace and Charles Taylor

The Honorable Hugh J. Drake to whom this cause was formerly submitted, being now fully advised herein, finds the issue for the Defendants.

It is therefore ordered that the Bill herein be dismissed, at the costs of the said complainant. Whereupon the said complainant prays an appeal to the Supreme Court.

And afterwards to wit, on the Eighteenth day of November A.D. 1848. the same being one of the days of the said term of Court. the following among other proceedings, was had, to wit.

James McKay

vs

William Bissett

Bill

Burlingh Hunt, Rufus Tiffany William
C Tiffany. The President directors and
State Bank of Illinois, Hart L Stewart
Lorenzo P Sanger, John S Wallace and
Charles Taylor

Now comes the Complainant by
Butler his solicitor, and the Defendants, William
C Tiffany and Rufus Tiffany by Hoyt their
solicitor. and the Court being fully advised as to
the motion of the said complainant for an appeal
of this cause to the Supreme Court of this State
sustains the same; It is therefore ordered that the
appeal prayed for be allowed upon the Complainant
entering into Bond with Charles Ireland and
Horace Butler, as security in the penal sum of
of Three Hundred Dollars before the Clerk of
this Court within twenty days from this date.

And on the same day of the said
term of Court to wit the 18th day of November
A D 1848. The said Complainant filed ~~his~~
with the said Clerk, his certain Bond as required
in the preceding order. Which Bond is in the
words and figures following to wit.

Know all men by these presents that we James McKay as principal and Horace Butler and Charles Orleans parties of the County of Lake and State of Illinois are held and firmly bound unto William Bissett Burleigh Hunt Rufus Tiffany and William C. Tiffany. -

The president directors & Company of the State Bank of Illinois Hart L. Stewart Lorenzo P. Sanger John S. Wallace and Charles Taylor in the penal sum of three hundred dollars lawful money of the United States for the payment of which well and truly to be made we bind ourselves our heirs executors and administrators jointly and severally and firmly by these presents.

Witness our hands and seals this eighteenth day of November A.D., 1848

The condition of the above obligation is such that whereas the William Bissett, Burleigh Hunt Rufus Tiffany, William C. Tiffany, The president directors and Company of the State Bank of Illinois Hart L. Stewart Lorenzo P. Sanger John S. Wallace and Charles Taylor did on the fourteenth day of November in the year of our Lord 1848 in the Circuit Court of Lake County at the November Special term in and for said County of Lake recover a judgment against the above James McKay for the sum of _____ dollars and _____ cents, from which said judgment of said Circuit Court the said James McKay has prayed for and obtained an appeal to the Supreme Court of this State.

Now if the said James McKay shall duly prosecute his said appeal with effect and shall moreover pay the amount of the judgment cost interest and damages rendered and to be rendered against him in case the said judgment shall be ^{affirmed} approved in the said Supreme Court, Then the above obligation to be void otherwise to remain in full force and virtue.

James McKay J.B.

Horace Britton Esq
Charles Antland Esq

Given and ^{entered} ~~subscribed~~ into before
me at my office in Littleport, this
18th day of November A.D. 1848

George Thomson Clerk
Clerk of the Lath County Circuit Court
on which Bond is the following endorsement

Bond
James McKay

vs
William Bissett

Filed 18th November
1848

George Thomson Clerk

Charges for copy of Transcript
of record \$23.00
Cert. & seal .50
\$23.50

State of Illinois
Lake County



I George Thomson Clerk of
the Circuit Court in and for said County
Do hereby certify the foregoing
to be a true and perfect transcript of the
Records of said Court and of the Papers on
file relating to the said foregoing cause

In testimony whereof I have hereunto
subscribed my name and affixed the
Seal of said Court at Little Rock
this fourth day of December in the
year of our Lord one thousand eight
hundred and Forty eight

George Thomson
Clerk

State of Illinois }
Supreme Court } et.

And the said James
McKay assigns for error to his prejudice in
the foregoing and annexed Record as
follows to wit.

First. That the decree of the Court below, dismissing
the Complainants Bill with costs, is wholly erroneous
and should have been for the appellant and the
correction of the alleged mistakes.

Second That said Decree and every part & branch
thereof is erroneous in substance & in
form & should have been for the appellant.

Wherefore he prays that said decree
may be reversed &c.
by Morris & Brown his attys

And now come the said defendants Rufus Tiffany
and William C. Tiffany by Hoyt & Blodgett their
Solicitors & say that there is no error either in the record
& proceedings aforesaid or in the decree aforesaid and
pray that the Supreme Court now here may pro-
ceed to examine the record & proceedings aforesaid &
the decree aforesaid and the matters assigned for error
therein, and that the decree aforesaid in form aforesaid
said rendered may be in all things affirmed &c.

Hoyt & Blodgett
Sols for Defts. Tiffanys

State of Illinois }
County Clerk's Office

James McKay

vs

William C. Tiffany

et al

It was ordered

Filed Feb. 1849
J. Ireland Clerk

Errors assigned

- 1st That the decree is wholly erroneous & should have been for Appellant & for correction of the mistake
- 2nd That the decree is erroneous in substance & form & should have been for the Appellant

Points of dispute

First - There is no allegation in the bill showing that Hunt was the equitable owner of the property in question, or that he had ^{interest} any, or what interest if any, which he could convey to McKay.

This is material, and essential to be stated, inasmuch as complainant claims by purchase from Hunt in his own right.

Subs Eq Pl

Storys Eq Pl Sec 257.241

If demurrer would hold court, ~~would~~ ^{will} not grant relief on the hearing. Mitfords Eq Pl 42. 156-7 No relief can be granted for matters not stated in bill though appearing in proof Subs Equity Pl 19 (note), Gualys Eq Ev 230

No other facts are in issue. Storys Eq Pl Sec 257 241 1 Barbours Ch Pr 39.40. Gualys Eq Ev 230

Certainly requiring Mch Eq Pl 71

Second - There is no sufficient state statement of the agreement with Hunt. No time, or place, or consideration which the Court can determine to be valid or sufficient in the law. All is vague, uncertain

See Appellants & unsatisfactory. See 1st Summ 507, & 574 and
II II Point 2^d Summ 549-50 cited by Appellants. Also
IV Do authorities above cited. Subseq Pl 200-202
Demurrer in answer for this cause. Bussitt is claiming in answer of these defects
the same as if Bill had been demurred to for this
cause. 2 Barbons Chancery practiced 453, 413 457

Appellants
II Point The testimony on this point is equally vague &
Bissitts answer unsatisfactory. It is all embraced in depositions
evidenced to of Bissitt & Butte; but if it were otherwise
4th Bibb 231 x it cannot aid the defects in the bill.
4th Little 218
1 Grunhof 178 x Bissitts testimony is entitled to but little
4th Bibb 195 x weight, compared with his own answer and
See Point & authorities & with the charge in the bill which
& Contra is sworn to & which state the purpose & object
Geo & Co 28 x of the first conveyance to Mc Kay, & but one
B object, to indemnify against the Foster bond,
it is contradictory & improbable. See questions
& answers No 5 & 6 x 2 & 3

Third
Second - If the other two points were satisfactorily
& sufficiently averred & proved, still the
Appellants mistake must be fully & completely proved.
II II Point & by the most satisfactory evidence. See 2^d John Ch
2 John Ch 596 Reports 592
6 Paige 350 x Bibb R 231 cited by Appellants, and not merely
that there was a mistake but, that the mis-
take consisted in describing & reserving Lot
Wynkoop's 3 in Block one, instead of Block three
Lot mistake. Storys & Co 152, 157 cited by Appellants. Now the
as to. proof rests wholly on Bissitts testimony.
Fourth. The bill alleges actual notice to R Liffany of
Mc Kays intent & that Lot 3 in Block 3 was
to be reserved. The answer denies fully the

allegation. In answer, It will take at least two witnesses proving the notice, to overcome the positive & circumstantial denial of the answer. Subseg Pl 112

Appellants
V Point

There is only the testimony of Bissett as-
sailing it which is shown to be entitled to
but little consideration

The answer is fully sustained by the tes-
timony of Anguine who, Bissett swears, was
present at time of Notice to R. J. & he disproves
the facts alleged.

Fifth
V Point

The Mill Charges Notice to Wm C Siffany
before his purchase & the conveyance to
him.

1st By the reservation in all the deeds.

The reservation is notice of reser-
vation only, & not of mistake, unless appa-
rent on the face of the deed.

If W. C. J. was bound to know
that there was no such lot in Block and
as Lot 3 because the plat was recording, and
if it can therefore be fairly said to be notice
to him of the mistake, as appellants claimed
in their V point, then

It is equally true
that complainant knew there or was bound
to know that there was no such lot at the
time he assented to the reservation & the same
in the deed, and having assented to the mis-
description he cannot now take advan-
tage of his own wrong - Was Careless & indifferent to his own interest
2nd It is also averred that he had actual notice

Mc Kays
Careless
[12008-55]

of the intention to reserve Lot 3 in Block 3 instead of L 3 in B 1. And also of the mistakes in the former conveyances, prior to his purchase &c.

This Allegation is fully & explicitly denied in the answer which is on oath & evidence for deft.

There is no proof whatever sustaining this charge of actual notice to W. C. T.

This alone whatum might be the fact as to notice to R. J., ^{independent of other considerations} is conclusive against the complainant & so the Circuit Court after mature consideration decides, but

Sixth. It is contended by the appellant (see his point) that there is no proof that W. C. T. is a purchaser for valuable consideration.

1 We say there is, the consideration recited in the deed is of more force, than the parol proof of admissions made by Hunt which constitute the sole evidence upon which the complainant relies to prove his own purchase from Hunt. 2^d The deed itself imports consideration paid. 3^d The Bill does not place claim relief on this ground but on the ground of notice & Compt cannot thus shift his ground & claim the conveyance as fraudulent, not having so alleged in the bill. Story Eq P S 263. 4th The bill tacitly admits consideration & the answer admits the conveyance to W. C. T. that it was for valuable consideration. It is responsive to the bill & therefore evidence.

5th There is no such issue and no proof is required. It is a fact conceded by the pleadings.

Srowth - Appellants Contends that Tiffanys are
V app ? not entitled to protection as bona fide purchasers without notice, because (as he says) the full consideration has not been paid.

Cites 1st Sumner 506

" 2^d Do 487 & other authorities.

But they do not sustain the position. They only show that complainant may under some circumstances be entitled to the balance or a portion of the consideration remaining unpaid - Vide 2^d Sumner 547 to 52

1st Do 507-8-10-12
" 2^d Bissell 197
Again we say if Compt intended to claim on this ground he should have charged the facts in the bill instead of misleading by placing it on the ground of notice. It is a material fact & facts could not take issue upon it unless charged in bill. but

2^d Though Bissell swears there was \$1700, due on the mortgage when he last knew anything about it, yet he states also that he had assigned & transferred it to some one else & it cannot be presumed that the purchaser bot mortgage with notice, such as would enable Tiffany to indemnify himself out of the mortgage, if a conveyance should be decreed -

3^d The Court could not have decreed

not assigned
for error

purchase money or a part thereof to be decreed to
to M^c Kay because it had been transferred to
some 3^d person not a party to the suit.

B^c Because there was no evidence showing
how value of the lot or what portion M^c Kay
might justly claim to be decreed to him.

Eighth - It is proved that M^c Kay confessed to have
subsequently settled with Hunt for this lot
& to have passed receipts, as charged in
the answer.

Ninth - We claim advantage of the defects in
the Bill which are specifying as causes
of demurrer -

VII And that ^{the} Contract if any was
made between Hunt & M^c Kay is void by the
Statute of frauds - See 2nd Sec R 219. 3rd Sec R
356. 4th Bill R 600

Appellants cite 2^d John Chaney 601. 1 Day CE 139 - Not in
point - They sought to prove mistake not contract - A mere mistake can
^{only contract}

~~See Appellants Miscellaneous points~~ only avail
as against the legal holder for consideration whether with or with-
out notice in favor of a party having an equitable right. But
the Statute is a bar to the claim of equity in M^c Kay if insisted
upon - See 4 Bill 97, & are properly ^{plus} admissible
~~miscellaneous points~~

Interrogatories objected to. ~~Ballentine~~

Ballentine 1st to 6

Bridges 4th 2 & A

Butter 5th A & 25 & 28 2 & A 13 & A 7 & A

Bissell 3 & A 4, 7, 8.

Risett

Answer

Conveyance to M^cK Con 52 & A & 6th X 2, 3 Nothing said in Bond
mistake 9th & Purchase in Butler 6th

Notice 9th X 32 (Huguenin) 6, 7, 8, 11

Offer to compromise in Nov 1845 11, 12 X 15, 18, 21, 22

R J Purchase Money payment of 14, 16 X 27 Securities transferred

Huguenin

Consideration of M^cK's purchase 14.

interest 18 to 24

Erasmus Cant

James M. Kay
Appellant

vs.
Rufus Tiffany
William C. Tiffany
et al Appellees

Plaints & answer in
Appellate

E. W. Hoyt.

James M. May
Compt. & Appellant
vs.
R. T. Jeffery & W. C. Jeffery et al.
Appellants

Sup. Court
Appeal from Decree of District Ct

Errors assigned

1st That the decree is wholly erroneous and should have been for the Appellant and for correction of the mistake.

2nd That the decree is erroneous in substance and form and should have been for the appellant.

Points of defense

First - There is no allegation in the bill showing that Hunt was the equitable owner of the premises in question, or that he had any interest, or what interest if any, which he could convey to the complainant.

This is material, and essential to be stated in the bill, inasmuch as complainant claims by purchase from Hunt in his own right.

Story's Equity Pl 257-241

It is good ground for demurrer.

"If demurrer would hold Court will not grant relief on the hearing."

Mitfords Eq Pl 156-7-42

"No relief can be granted for matters not stated in the bill though appearing in proof."

Cubes Eq Pl 19 (note)

"No other facts are in issue."

Story's Eq. Pl. 257-241

1 Barbours Ch Pr 39-40

Grisley's Eq Ev 230

Certainty requires Mitf Eq Pl 71

Second - There is no sufficient statement of the agreement

with Hunt, in the bill - No time - or place - or consideration which the Court can determine to be valid or sufficient in law - All is vague, uncertain & unsatisfactory.

1st Sumner 507 & 514 }
2^d Do 549-550 } Cited by Appellant

Cubes Eq M 199-200-202 and the authorities cited above to first point.

Benefit is claimed in answer of these & other defects the same as if bill had been demurred to for such defects - 2 Barbons Chancery Pr

The testimony on this point is equally vague & unsatisfactory - It is all embraced in dispositions of ^{Butler} Hunt & Ripitt - But if it were otherwise it could not aid the fatal defects of the bill.

Bissitts testimony is entitled to but little weight. Compared with his own answer on oath, & with the charge in the bill which is sworn to by Complainant who should know the facts, & with the bonds of defeasance - Bissitts answers No 5 & 6 & X & Y relative to the purpose & object of the conveyance by him to Mc Kay. No other witness proves that Lot 3 in Block 3 was to be reserved. His testimony is contradictory to his answer & to the bill, ^{& to the bonds} where he swears that conveyance to Mc Kay was in part to secure and indemnify as well as to indemnify.

At first he remembers nothing about its being for indemnity till suggested by form of the question.

Thirds If the other two points were satisfactorily and sufficiently averred & proved - Still the mistake must

be fully & completely proved and by the most satisfactory evidence - 2^d John Ch 18592 cited by the Appellant - Not merely that there was a mistake, but, that mistake consisted in describing & reserving Lot 3 in Block one instead of Block three.

1 Story Eq Juris §152, 157

As to what lot was intended rests wholly on Bissett's testimony & as to actual notice to R.T.

See Nugent's dep 2 & A 6, 7, 9, 11 contradicts him.

Fourth - The bill alleges actual notice to R. Tiffany of M^c Hays interest and that Lot 3 in Block 3 was intended to be reserved.

The Answer denies fully the allegation. It will require at least two witnesses proving the notice to overcome the positive & circumstantial denial of the answer. See Eq Pl 112

There is only the testimony of Bissett assailing it -

It is sustained fully by testimony of Nugent who, Bissett swears, was present at time of notice to R.T. He disproves the fact alleged - See dep 2 & A 6, 7, 9, 11

Fifth - The Bill charges notice to M^c H. Tiffany before his purchase & the conveyance to him

1st By the reservation in all the deeds.

The reservation is notice of reservation only, and not of mistake, unless apparent on the face of the deeds. And it could not appear from inspection of the deed or the deed and plat that Lot three in Block three instead of Block one was intended. Nor even that there was a mistake clearly.

2^d It is averred that he had actual notice of

the intention to reserve Lot 3 in Block 3 instead of Lot 3 in Block 1 and also of the mistakes in the former conveyances. prior to his purchase &c.

This allegation is fully & explicitly denied in the answer which is on oath & evidenced for defendant.

There is no proof whatever sustaining this charge of actual notice to W. C. T.

This alone, whatever might be the fact as to notice to R. T. & independent of the other questions, and so the Circuit Court after mature consideration decided - but

Sixth - It is contended that there is no proof that W. C. Tiffany is a purchaser for a valuable consideration. That he is a mere trustee.

1st We say there is. The recital & acknowledgment of consideration in the deed is of now force as admissions, than the parol proof relating to Hunt's admissions of the purchase by M^cKay or that "M^cKay was to have the lot" which constitute the sole evidence upon which the complainant relies to prove the alleged purchase from Hunt.

2nd The deed imports consideration.

3^d The Bill does not seek or ask relief on this ground, but on the ground of notice. Complainant cannot thus shift his ground & claim that the conveyance is fraudulent or without consideration, not having so alleged in the bill. Storys Eq Pl. § 263-4.

It would work injustice to defeat & surprise them on

on a point of which bill gave no notice.

4th The bill alleges the conveyance to R. T. to have been made for the consideration of \$2700. as stated in the deed, and tacitly the same with reference to W. C. T. And they prove the fact with reference to R. T. ^{by receipt} And the answers admit the conveyances respectively to have been for valuable consideration. They are responsive to the bill & therefore evinced.

5th There is no such issue. It is a fact conceded by the pleadings and no proof was required.

Seventh - Appellant contends that Tiffanys are not entitled to protection as bona fide purchasers without notice because (as he says) the full consideration has not been paid - Cites

1st Sumner 506

3^d Do 487 & other authorities - But they do not sustain the position.

They only show that complainant may under some circumstances entitle himself to the balance or a portion of the consideration money remaining unpaid - Vide

2^d Sumner 547 to 52

1st Do 507. 8. 10. 12

Again we say that if Comptt intended to rely upon this ground he should have charged the facts instead of attempting to mislead by placing his claim on the ground of Notice. It is a material

fact which shifts were entitled to controvert. But they could not take issue upon it unless changed in the bill.

2^d Though Bissell swears there was \$1700. due on the Mortgage ^{from R.T.} \$1000. having been paid, the last he knew about it. Yet he says he had transferred it to another, & nothing appearing as to date of the transfer or any other fact from which it can be inferred that Tiffany ~~if compelled to make title to~~ complainant on this ground, R.T. could have indemnifying himself out of the Mortgage, if a decree of conveyance were made on this ground.

He would sustain loss being liable over to M.C.T. on the covenants in the deed, if a conveyance should be decreed.

3 In order to a decree of payment of part of the unpaid consideration money (if any) to McKay, ^{as in com. in 3^d Summ. 547} the assignee of the Mortgage would be a necessary party. Nor was there anything from which the Court could determine the portion to which McKay would be entitled - no evidence -

Eighth - It is proved that McKay confessed to have settled with Hunt subsequently for this lot & that they had passing receipts as alleged in the answer.

Ninth - No claim advantage of the defects in the bill which are specified in the answer as causes of demurrer according to the prayer of the answer
See Abstract furnished by Appellants 13-

Also that the contract between Hunt & McKay

was void by Statute of frauds if there was any
made - It is pleaded in the answer.

See 2^d Sec R 219.

" 3 " " 566.

Appellant cites on this point 2^d John Ch 601
& 1 Day CE 139. Not in point, they were
cases of mere mistake. There was no parol
contract in the case upon which Comptts
relying to show an interest in themselves. They
were absolute owners in fee & sought to have
a mistake rectified merely.

See 4th Bibb 197 where the heir was
allowed to set up ~~the~~ statute as a bar to
the parol contract of his ancestor. So also
may a devise. - And may not a purchase
for a consideration whether with or without
notice?

11
Carthage Securit

James M C Long

Appelland

W.

Carthage Jeffery

W C Jefferyson and

Appelland

Appelland Bm and
Bm

Wm M. M. M.

Wm M. M.

Fitch June 28. 1869.
L. L. L.

Supreme Court. In Chancery
James M^c Kay Compt^r
vs

Burling Hunt
Rufus Tiffany &
Wm C Tiffany et al
Defendants

Appeal

It is hereby mutually
stipulated that the above case shall be passed
to Wednesday of the second week of the next
Term of the Supreme Court without any action
being taken therein by either party
Chicago Aug 7th 1849

Monie Browne for
J. M. Kay Compt^r
vs
Rufus Tiffany &
Wm C Tiffany et al

Sup Court

James M^c Kay

Applicant

vs.

Burleigh Hunt

Refus Tiffany et al

Stipulation

Filed June 14. 1849
Stelard Clk.

James M. Kay

res.

Rufus Tiffany & al

} Appeal from the Lake County Circuit Court.

The Bill alleges - that on the 13 Sept. 1842 McKay as surety for Hunt, signed his bond to Foster for several hundred dollars - that to secure McKay, Bissitt conveyed to him by deed dated Nov. 20. 1842 Eighty acres of land, & McKay gave a bond to reconvey the land to Hunt or ^{or} any other person ~~to whom~~ Hunt should request - if s^d Hunt should save him harmless against Foster &c.

In May 1843 Hunt discharged the Bond of Foster.

In the mean time McKay at the request of Hunt, with Bissitts knowledge & consent - laid out part of said land into town lots & called it McKay's addition to Littlefort: & the Map ^{or plat} thereof was filed & recorded the 20 May 1844 - in Records office

That McKay on the 24 May 1844 by deed at the request of Hunt reconveyed the land back to Bissitt, excepting & reserving lots 2 & 12 in Block 7. And Lot No 3. in Block No 1. and one square acre lying in the N. E. corner of s^d tract, in McKay's addition to the town of Littlefort - which deed was filed & recorded 27 May 1844.

That on the 26 June 1844 Bissitt conveyed s^d lands with like reservation as afo^e to Rufus Tiffany, for an alleg^d con- of \$2700. That on the 1 July 1844 (five days after he obtained his deed) R. T. conveyed s^d lands with the same reservations, to his son W. C. Tiffany - for an alleged consideration of \$5200.

That McKay bot & paid Hunt ^{in full} for Lot 3. in Block 3 of s^d land previous to his deed of reconveyance of said land back to Bissitt as afo^e with the knowledge & consent of Bissitt & not lot 3 in block one as reserved - and charges that in said deed to Bissitt, lot 3 in Block one was erroneously & by mistake reserved instead of lot 3 in Block 3 as was intended to be reserved, & that in truth there is no such lot as lot 3 in Block 1 in said addition and the intention was to reserve lot 3. in Block 3 and

was not aware of said mistake in said description till after
s^d. reconveyance was made.

That said Defts Rufus Tiffany & Son had notice of such
mistake before & at the time of their alleged several purchases

Answers { The other Defts (except Hunt who has fled from the country)
disclaim all interest in the matter, & the Tiffanys
answer jointly.

Admitting after the deed to McKay & before reconveyance to Bissitt
part of the land was laid out in lots & the Plat filed & Recorded
Bissitt & sold & for a valuable consideration conveyed to R. T.
with the same reservations in Bissitt's deed from McKay set forth,
as alleged in the Bill.

This answer
makes an
issue, which
helps the bill
& the proof
shows the
consideration
was a valuable
{ They say they don't know & not informed except by the bill that McKay
bought & paid Hunt a valuable consideration for said lot
3 in Block 3 in May or any other time prior
to McKay's deed to Bissitt.

They admit there is no such lot as lot 3 blk. no.
1 in McKay's addition of

1st - (But they say) that ^{not} to their knowledge & belief, did
McKay pay any thing valuable to Hunt or to any other
person for said lot 3 in Bk. 3

2 Nor does it appear by the bill any conveyance was made by Hunt

3^d Nor that Hunt ever owned the ~~land~~ lot.

4 Nor that Hunt ever had any interest therein.

5 Nor that Hunt had any right or authority to sell said lot.

6 Nor that said Bissitt was party to said contract.

7 Nor that any consideration was paid or agreed to be paid.

8 Nor does the bill set forth any valuable consideration was paid or agreed to be paid to Hunt

9 Nor in what year the purchase was made.

10 Nor whether the contract was verbal or written

11 Nor do they believe any valuable consideration was ever paid to Hunt

12 Nor was any written contract made & set up the Statute of frauds
all which matters they claim & hope to receive the same
benefit as if they had answered to said bill for these causes.

13. That Rufus Tiffany is a purchaser bona fide without
notice, for a valuable consideration -

14. That W. C. Tiffany denies notice of McKays equity -

Bissetts depo: says - that the land was to be Hunt when he paid me for
344 ans. money lent & work done - it was conveyed to me by Knapp as
ser 1 x ques: security - Hunt paid Knapp for the land.

546 ans. I conveyed it to McKay Nov. 4/2 to secure him for money lent to Hunt &
2 X ques: as Hunt for signing Hunt's bond as security to Foster as part consideration.
& McKay both?

4 ans. The sale was made to R. Tiffany by Hunt & me for our use & benefit

9 ans. I know there was a mistake made of one lot reserved
in McKays deed to me - I did not know it till 2 days after
I conveyed it to R. Tiffany with like reservation - the one intended
to be reserved was lot 3 in Block 3 and the deed

24 X ques: I show R. T. all the reserved
lots, before sale. reserved lot 3 in Block 1 and there was no such
lot in that add: as lot 3 in Block 1. I went on to
25 X ques: I am position I pointed it out to R. T. as
the one reserved that lot was reserved by McKay & I said the finest lot
26 I never told him it was not reserved was reserved

10 ans. from 2 to 3 days after I sold to Tiffany I discovered the mistake

12 X I told him of the mistake at McKays
store in Littleport I went to R. T. & told him thereof - he then s. he would make it
13 X never knew it the all right with Jas. McKay
mistake before

11 ans. Nov. 1845 I was present - had much conversation with R. T. - who
19 X ques: F. Bridger was present at that
conversation - offered me lot 2 in Block 3 ^{with frame house on it} If I would clear him
from McKays claim to lot 3 in bk 3
various to the same fact

12 ans. and on the same day R. T. made McKay the same offer he
20 X W. C. T. was then present. made to me of the four house & lot

13 ans. I have no interest in this suit other than my liabilities on
14 ans. my deed to R. T. who has not paid the purchase
money by \$1700-00
(12008-62)

Butters Deposition

- 6th Apr. - Hunt & McKay came to my house at Libertyville - requested me to draw a deed from McKay to Bissitt (for the lands afo.) with same reservations in the deed mentioned - at the time Hunt s^d he had disposed of a certain lot, a portion of s^d. lands, to McKay & wished it reserved in the deed they were in doubt as to the discription of the lot - that is its no. of block - Hunt mentioned one or two besides the one reserved in the deed as being the same which he had disposed of to McKay - finally he s^d he believed it was lot 3 in bk. 1, but was not sure. & if it proved not to be the one it might be rectified afterwards - neither of them seemed to know the no. of the lot or block intended to be reserved - no Map of s^d. ad was present & no means of ascertaining the lot except from recollection - there were other lots requested by Hunt to be reserved as having been disposed of to other persons - I drew the deed in accordance with their request.
- 7th Apr. after this Hunt went say after land sold R. J. that a Mistake was made in describing McKay's lot - but he s^d Hegganin & Tiffany would rectify it - no trouble - as they did not buy it.
- 8th Apr. I heard Hunt say at different times before execution that deed he owed McKay for borrowed money -

1st X ques Understood from Hunt & McKay - the land in the deed to Bissitt was in fact Hunt's land - that McKay held the title while he had it - to secure him afo. Foster & for the payment of some debts he owed McKay - & that Bissitt was to hold the land in trust for Hunt -

2nd X ques Deed was delivered by me to Hunt -

Defts. proof.

H. Hapkegon Hapkegon's deposition - for Defts

4th Dec. Has no distinct recollection of any particular time or circumstance attending any visit to the land - except generally - some times myself & J. and some times in company with Bissitt & Hunt prior to the purchase by J.

5th Dec. I clearly understood from Bis. & Hunt by conversations had in presence of J. that lot 3. in Block 3 was not intended to be reserved from sale - but whether it was on the premises or at the house - could tell - recollect -

6th Dec. Mr. J. made the enquiry, either of Hunt or Bissitt in the presence of both - whether those lots (3 & 4) were intended to be conveyed to him - he was answered in the affirmative -

The reason he made the enquiry was that he said they were the most valuable lots.

10th Dec. J. first saw the land on the 25th - but on 26th - & completed the purchase ^{26th day} then - 44 - we arrived on 24th -

13th Dec. I gathered from M. Kay - that Hunt promised him a lot for services for holding the lot as trustee or agent.

18th Dec. I have an interest in this suit - am interested therein -

Jas. McKay appears for error to his prejudice in the foregoing and annexed Record as follows to wit -

1st That the decree of the court below dismissing the bill and every part & branch thereof is wholly erroneous & should have been for the appellant for the correction of the mistake alleged -

2nd That the 5th decree is erroneous in substance & form & should have been for the appellant - wherefore he prays 5th decree may be reversed &c.

M. & B. his attys

"A bona fide purchaser is one who has not only purchased bona fide for a valuable consideration but must have paid the purchase money before notice" 2 Story Eq. 1302.

A mortgage is a purchase pro tanto

James McKay

23

Rufus Tiffany & Co

The Court below dismissed the Bill with costs - and to reverse that decree the Complainant brings the cause here by appeal and assigns for errors.

1st. That the decree is wholly erroneous & should have been for him & for the correction of the mistake.

2^d. That the decree is erroneous in substance & in form and should have been for the appellant, wherefore he prays said decree may be reversed &c.

This cause appears to divide itself into 6th branches or questions for examination - to wit.

First. Was there an agreement between Hunt & McKay with the knowledge & consent of Bissitt for the Reservation to McKay of the Town lot in question.

Secondly. If so - Does it satisfactorily appear to the mind of the Court, that a mistake was made in describing the lot intended to be reserved in McKay's deed to Bissitt.

Thirdly. If so - Does it appear from the facts & circumstances that said agreement of reservation was founded upon a sufficient consideration: ~~or does~~

Fourthly. Or, Do the Tiffanys (who alone resist the decree) occupy such a position in this cause as to require that McKay should show any or what consideration he paid for the lot.

Fifthly - Are the Tiffanys or either of them bona fide purchasers for a valuable consideration fully paid before notice of McKay's Equity or mistake alleged.

Sixth. Does the Statute of Frauds & perjuries apply to such a case as this, or not.

These questions I conceive embrace substantially all the material points of the Defense set up by the Tiffanys who alone resist the Complainant's claim to the lot in question.

II ques:

There is conclusive evidence of the agreement to reserve the lot. Butten proves the agreement but they had at the time he drew the deed for them, a faint recollection of the description of the lot agreed upon - But it is shown Bissit lived upon part of the land & knew the lot to be lot 3 in Block 3, which ^{he} had agreed should be reserved to McKay. See Bissit Answer this Deposition: also Butten's Deposition.

Bissit's deposition is competent evidence, because a trustee with legal title is considered in Equity as having no interest.

see 2 Mad. Chy. 447-8. 3 P. W. 181.

Bissit's Answer is evidence against him & all who claim under him. 4 Bibb 231. 145. 4 Lit. 218. 1 Greenf. Ev. 178.

II. Point

The Mistake is proven first by the answer of Bissit, second by his deposition - third by the deed from McKay to Bissit when compared with the Map. because lot 3 in block one named & reserved in the deed is evidently a mistake as there is no such lot in that addition. Bissit states that he "knows there was a mistake made of one lot reserved in McKay's deed to me - the lot 3 in block 3 was intended to be reserved" instead of lot 3 blk 1. This is conclusive - The mistake is admitted & proved.

Consideration

III. Point.

Was the agreement for the Reservation founded upon sufficient Consideration? We say it was.

See: Bissit depo.
Butten -
Huganins -

At the time - McKay held the legal title, & Hunt held McKay's bond to convey it ^{all the land} to him or such other as he requested. McKay had already made deeds as Hunt had requested to divers persons for parts thereof - had acknowledged the Plat for Hunt, for McKay's addition to Littleport laid out by Hunt in McKay's name - McKay had thus incurred expenses, trouble & liabilities at Hunt's request all with the knowledge & consent of Bissit - & had loaned Hunt

any trouble,
prejudice, suff.
consideration.

1 Marsh: R. 538.
4 Mon: " 532.

Powell on law: 206.
207.

44 Mon: R. 532.

2 Marsh: .. 576.

from time to time. for which services Hunt agreed
McKay should have lot 3 in Block 3. and that
McKay should reserve the same with the lots already
conveyed - whenever the deed should be made
the lot was shown to Bisset as McKay lot. Bisset then
lying upon the land - the evidence & all the circumstances ^{to} show

Altho. the bill does not allege in words the payment of
a "valuable consideration," but it alleged that McKay
made "full payment" to Hunt for the lot - implies
a valuable consideration paid - but if that is deemed
not a sufficient averment; then we say, that the
"Answer of the defts (Tiffanys) denying that any valu-
able consideration was paid for said lot, comes in
aid of the bill, puts that fact in issue. by the
Replication. 2 Marsh: R. 490. 3 Marsh: R. 474.

Story, Eq. pl: 55. 36 & n (3.) 2 John C. R. 62-89.

Consideration

IV.

But we can not discover upon what principal the defts
Tiffanys claim the right to enquire into the consideration
of that Reservation - we deny they have any such right.
and insist the only question material in this case, is,
was there a mistake made in the deed by reserving
a lot ^{supposed to be the one} ~~not~~ intended for that which was intended to be
reserved, by the parties. It is manifest that Hunt
himself directed Butler to reserve lot 3 in Block 1 and
was supposed by McKay to be ^{the} correct lot, which they had
agreed, before they went to Butler's house, should
be reserved by McKay. It is very clear, that Bisset did
not intend to sell nor the Tiffanys to buy, McKay's lot in that addi-
-tion - They by their deeds bought subject to McKay's claims.
with full knowledge that he was owner of a lot in that addition
to the town of Littleport. but upon discovering the mistake, R. Tiffany
agrees to make it right with McKay - & instead of doing so, he immediately

16 Paigd Chy. R. 350
in point in a case
like this.

2 John: Chy. 576.
to this point
in just a case
like this -

Hunt either
ignorantly or
fraudulently
described the
the lot 3 in Block
1 as the lot
agreed upon
to be reserved
McKay is entitled
to relief in either
case.

2 John: C. 576:7.

goes to work to defraud McKay by conveying his purchase to his son W. C. Tiffany, by a voluntary & fraudulent conveyance without any but a false & feigned consideration no part of which was ever paid or even alleged to be paid in this case.

In the case in 2 John C. R. 596 - The Chancellor says - "Suppose

" Mrs. Mann (a Trustee) had applied for relief on the ground

2 John C. R. 596.

" of Mistake (before her death) when she did not agree to sell the Dft. to buy the 50 acres which was included in his deed by Mistake:" could she not obtain relief: because the Dft.

" denies there was a Mistake - which denial is proved to be false,

" It would be a great defect in the Moral jurisdiction of

" the Court if there was no relief in such a case.

" The only question is does the proof satisfy the mind

" of the Court of the Mistake." The question of consideration

can not be made in this case - for it has nothing to do with

it - But if the Tiffanys seek to avoid the effect of the mistake by calling in question that of the consideration

they should prove the fact of no consideration. The title

was in McKay & it wanted no consideration to retain it

than other than the promise & request that he should

retain it then for his own use. To refuse now

to correct the mistake is a fraud on the part of the

Tiffanys - They would be getting a lot without paying

any thing for it & without buying it & agt. the intent of all

parties - if such is allowed - It would be strange sort of Equity.

We are taught to believe, that "Equity will make the agree-

(or reservation) " Conform to the intent of the parties when

" proved", (or admitted) or fairly implied from the nature,

" of the transaction", or circumstances. 1 Story Eq. jur. ss. 152. 153. 168.

1 Story E. j. ss. 152-3. 156-7.
154-5. 158.
4 x 162.

Equity will make the agreement conform to the intent of
 29. C. R. 576. { the parties - when proved, or when fairly inferred or implied
 1 S. E. Jan. 11 152-3. { from the nature of the transaction. 1 Story 8. j. 152.
 even agt. a purchaser with notice - .. 153.
 165-5168

2 Story 8. j. 1528. { So far as the answer of the Tiffany's are responsive to the charges
 1529. { in the bill agt. them of facts within their knowledge, it is evidence for
 them, but no other parts of the answer is evidence for them.
 Notice is charged & they admit it. 2 Story Eq. j. 1528. 1529.

4 Mon: 174. { But when the fact charged is not supposed to be within his
 4 Bibb 357. { knowledge - proof by one witness sufft. 4 Bibb 357.
 2 J. J. Mar. 139. { or even when denied not of his own knowlge: 2 J. J. Mar. 139.
 6 Mon: 23. { 4 Monroe 174

1 Bibb 290 { Neither a general denial of a special charge, nor the general
 traverse - is considered as any response or denial of particular
 charges or allegations in the bill. 1 Bibb 290.

Filed June 19. 1849.
 William M.

Jas. M. Coffey
 J. J. Coffey
 J. J. Coffey

V. Point -

A bona fide purchaser is one who has not only obtained the legal title, but also paid his money in full before notice. & provided.

1 Story Eq. jur. § 64. C.

2 ——— 1502.

1 Sumner R. 506.

2 ——— 487.

4 Bibb R. 198. in point.

The Liffany, ^{of them} nor either are ~~not~~ purchasers bona fide for valuable consideration paid before notice of McKay claim: or equity. They are not therefore in any way injured. They do not ever in their answer that either of them ever paid one cent for all the town lots & lands conveyed to either of them, either before or since notice. Their answer is wholly defective & insufficient for that purpose. No defence without alleging & proving it: 1 Sumner R. 506

admission of Notice -

Whatever puts a party on enquiry is suff. notice - thus, notice of a lease is notice of its contents.

1 Story E. jur. § 399. 402. 406. 2.

[So notice of the deed & Plat is notice of their contents of each - and therefore notice of the mistake at the time of their negotiation. Bissit admits notice - & proves notice on R.P. before & after the sale to him & before he voluntarily conveyed to his son. W.C.T. -]

1 J.J. Marsh: R. 215.

2 ——— 66. 367.

3 ——— 69. 192.

4 Monroe - 187.

7 ——— 294.

But they admit in their answer that after Rufus J. conveyed to his son W.C.T. Mr. McKay told Rufus that in virtue of an agreement between him & Hunt it was understood & agreed lot 3. in Block 3. should be reserved to McKay in the deed to Bissit, as his McKay's own property.

"But Rufus has no recollection or belief that McKay ever requested him to execute a quit claim deed to him for the lot." Here is denial of a fact charged agt. his knowledge.

such answer is an admission of the truth of the fact, charged. 1 J.J. Marsh: R. 215. 3 J.J. Marsh: 69. 192. 2 ——— 66. 367. 7 Monroe 294. 3 Monroe R. 187.

When the answer confesses the fact, it need not be proved. When he admits the fact, but insists upon a distinct fact in avoidance thereof he must prove the latter fact in defence. 2 John: Chy. R. 62. 89. Thus they admit mistake & notice & prove that R.P. is a bona fide purchaser.

VI. Point:

1 Day C. C. 139.
2 John Chy. 601.

a few general questions -

[12008-48]

The Statute of Treasures and Perjuries does not apply in such a case as this - It has nothing to do with question at issue here at all. See 1 Day Cases in Error 139. 2 John: Chy. R. 601. in point.

Hunt is not a necessary party. 3 Sum: R. 315. to 319. 6 Mon: 316. 2 J.C.R. 632. 503.

A fact denied upon information & belief & not of his own knowledge one witness suff. to prove the charge true. So the answer & depo: of Bissit is conclusive as to the mistake & agreed. 4 Mon: 174; 4 Bibb 357. 3 ——— 187. 6 ——— 22

James M. Ray
Appellant & Complt
vs.

Rufus Tiffany & Wm C Tiffany
et al

Appellus & Defts

Supreme Court

Appeal from decr of
State Circuit Court

Defts Tiffany Answer

1st Don't know of their own
knowledge & are not in-
formed except from
hearsay & bill of complaint

The Bill alleges

1st That on 13th Sept 1842 Complt became
bound to and Issd H Foster as surety
for Burligh Hunt in the sum of \$800.
conditioning to convey certain land &c

2^d Admits the conveyance
but believes it was not
for the consideration of
one hundred dollars &
know nothing of the
purpose of the convey-
ance except from hear-
say & bill of complaint

2nd That on the 20th Nov 1842 Hunt procured
Wm Bissett to convey to Complainant 80
acres of land to indemnify Complt for
becoming surety on Foster bond, "for
and in consideration of one hundred
dollars as expressed in said deed"

(No other purpose or object is pre-
tended or claimed in the bill. See dis-
crepancy in Bissett's testimony and
answer on this point)

Recorded May 4th 1843

3^d Know nothing of the
execution of such a
bond & are not informed
except from hearsay
& in bill of complaint

3^d That on 25th Nov 1842 Complt be-
came executed to Burligh Hunt a bond of
deforcance conditioning to convey said
land to whoever Hunt should direct,
if Hunt should save him harmless on
the Foster bond (There is no other condition)

There is no allegation that this

bond was executed with the knowledge
or assent of said Bissett, & it was
executed five days after the death of M^cKay
& was in fraud of Bissetts rights so far
as appears from bill of complaint

4th Admitted, if any
such existed.

4th May 27th 1843 Forster Bond was
Cancelled -

5th Admits that a part
but not the whole was
so platted, but whether
at instance of Hunt
and Bissett they do
not know.

5th While title to the 80^{as} was in M^cKay
it was platted at instance & direction
of Hunt & Bissett as M^cKay's addi-
tion to the Town of Little Port. and
was recorded May 20th 1844

6th Admitted

6th That on the 24th May 1844 M^cKay
reconveyed the 80^{as} to W^m Bissett excep-
ting Lots 2 & 12 in Block 7 and Lot
3 in Block 1 and an square acre
lying in the N.E. corner of the
N.E. 1/4 of said Sec

7th Admits it was
so conveyed and
for a valuable con-
sideration, as appears
from the deed and alleged
in the bill.

7th That on 26th June 1844 Bissett con-
veyed same land with like reserva-
tions to Rufus Tiffany "in considera-
tion of the sum of \$2700. as alleged
in said deed." and that deed was
acknowledged & recorded.

8th Admits it was so
conveyed & for a valu-

8th That on 1st July 1844 for alleged
consideration of \$5200. Rufus Tiffany
conveyed the same land to William

able consideration,
as appears from
said deed.

to Tiffany and with the like reser-
vations, and that this deed was
duly acknowledged & recorded.

9th Defts have no knowl-
edge but believe it
is not true that such
a purchase was made
for a good or valu-
able consideration
paid & with knowledge
& assent of Bissell.

9th "That between 1st & 24th May"
(No year is stated, nor whether it
was before or after the conveyance
to Tiffany) "M^c Kay bot from
Hunt & paid for," (but how, or in
what way, or whether it was a good
or valuable, or legal consideration
is not alleged,) "Lot 3 in Block
3, not Block 1 as reserved, in
said M^c Kay's Addition & that he
so purchased with knowledge
& assent of Bissell" (Bissell swears
he had no knowledge of the trans-
action except from their sub-
sequent statements. See his deposition
Answer)

10th Admits that no
Lot is numbered in
said Block as Lot 3,
but avers there was
originally as appears
from original map
& refers to it

10th That in deed from M^c Kay to
Bissell the reservation of Lot 3
in Block one was a mistake
& should have been Lot 3 in
Block 3. That there is no such
lot platting as there in Block one

11th Fully & positively
denies; but alleges that
said Lot and the one
on the opposite corner

11th Alleges that Rufus Tiffany
had actual notice of M^c Kay's
interest in Lot 3 in Block 3 and
that it was intended to be reserved

being representing to him in the conveyance to him prior to his purchase as the most valuable chase, & to such conveyance of the tract, and he being unacquainted with the land, and the lots as designated on the plat, he expressly enquired if these were among the lots to be reserved and was told they were not

12th During fully & positively

12th That W. C. Tiffany had like actual notice of the intention to reserve Lot 3 in Block 3, and also of the mistake in the former conveyances before sale & conveyance to him

13th The answer claims & prays benefit and advantage of the following defects in the bill, and of its insufficiency to entitle the complainant to relief, and asks to have the same benefit thereof as if the defects had demurred to the bill for such causes

1st That the bill does not show that Hunt ever owned the Lot in question, or that he had any interest, or what interest if any in the premises in question.

2^d Nor that he ever had any interest therein.

3^d Nor that he had any authority as agent to sell the same.

4th Nor that Russell was a party to the sale

5th Nor that any sufficient consideration

was paid or agreed to be paid therefor.

6th Nor in what year the alleged purchase was made.

7th Nor whether Contract was verbal or written.

8th Nor do they such a Contract in writing was ever made, And if it was a parol contract then

They insist upon the Statute of frauds as a bar thereto.

14th Alleges that if Complainant ever had any interest in the lot or equitable claim thereof he has relinquished and released the same by settlement with Hunt.

Story Eq. Pl. § 257-261.

2 John 582, 596

11
Superior Canal

James M. Gray
Apprentice

W.
Proprietor Tiffany &

Wm. C. Tiffany & Co.

Apprentice

Abstract furnished
by Apprentices

Wm. C. Tiffany & Co.
for Apprentices

Filed June 28, 1849.
S. Ireland Clerk.

James McKay - appellant } Supreme Court

vs

Rufus Tiffany &
William Tiffany & all appellees

Apprent from Secs of Lake Co.

ANSWER of R. & W. C. Tiffany

don't know & are not informed
except by hearsay & bill of the
charge alleged -

They admit this charge with
qualifying part, by saying they do
not know except from hearsay
& reports, bill that such convey-
ance was made to insure
McKay as security -

They say they don't know &
not informed save by the
bill & that any such bond
was executed.

They admit this charge then
also admit saying add. &c.
& they say they have the plot in
their possession & make it
part of their answer -

They admit this charge then

[12005-72]

They admit this & say said Bissett
for a valuable consideration sold
& conveyed said land with said
reservations as aforesaid.

But they do not admit
for price any thing for same

The Bill alleges. That on 13 Sept. 1842 McKay signed a
personal bond of \$800. as surety for Hunt to Foster condition
ed if Hunt & McKay would execute a good &
suff. deed &c. for certain land named to said
Foster upon payment of \$800. (\$799. being that day pd)
Then said bond was to be void &c. (Exhibit A.)

That said Hunt to insure McKay & save him
harmless against said bond on the 20. Nov. 1842
procured (suppl.) Bissett to convey to McKay the
N^W 1/4 Sec. 28. T. 45. R. R. 12. E. adjoining the Town
of Littlefork in Lake Co. which deed was absolute
on its face = McKay giving to Hunt a bond to

convey said land to said Hunt his heirs or assigns
at request of said Hunt or to such other person as Hunt should nomi-
nate & appoint, if said Hunt should save him McKay
harmless against said bond to Foster (Ex B & C.)

In May 1843 Hunt & McKay bond to Foster was
discharged & land taken by Hunt. In May 1844 Hunt in
the name of McKay with Bissett, Kearsage &
assent had a part of the land laid out into town lots
and called it McKay addition to Littlefork the plat then
of was ^{filed} 18 May & Recorded 30 May 1844.

McKay 24 May 1844 at Hunt's request by deed conveyed
the said land back to Bissett, excepting & reserving Lots 2,
& 12. in BLK 7 and Lot 3 in BLK 1 and one square
acre lying in the N.E. corner of said tract in McKay
add. to the Town of Littlefork which deed was filed & recorded
27. May 1844

On 26 June 1844 Bissett conveyed said land with life tenure
R. J.
-ations as aforesaid to, for an alleged consideration
of \$3700.

They admit this is true & say that R
Tiffany for a valuable consideration
sold and conveyed to W. C. T. excepting &
reserving as afd.

They don't know & are not informed
except by bill & believe it not true that
said McKay for a valuable consideration
paid to Hunt or any other person
bought from said Hunt Lot 3 in Bk 3

2. Nor does it appear that any conveyance of sd. lot was executed by Hunt to McKay.

3. Nor that Hunt ever owned the lot.

4. Nor even had any interest therein.

5. Nor had any right or authority to sell it.

6. Nor that Bissett was party to sd. contract.

7. Nor consideration paid or agreed to be paid

8. Nor in what upon the purchase was.

9. Nor whether contract was verbal or written

10. Nor do they believe any valuable consideration was ever paid to Hunt for it.

11. Nor was any written contract made and rely on the statute of frauds as a bar - all which matters they claim & hope to receive the same benefit as if they discovered for said causes

13. They insist R. Tiffany is a bona fide purchaser without notice for a valuable consideration.

They do not allege they ever paid any thing. And the proof shows they had not paid for it when the dispositions were taken.

2. Story S. 1502.

1. Story S. 64. C.

1 Sumner R. 506.

2 Sumner R. 487

On the 1 July 1844 Rufus Tiffany for an alleged consideration of \$5,200. conveyed said land to his son W. C. Tiffany, with the reservation as aforesaid

That prior to McKay's deed to Bissett it is charged that McKay bought & paid Hunt for lot 3 in Bk 3. in said add. And not lot 3 in Bk 1 as

alleged. And that in said deed to Bissett Lot 3 in Bk 1 was erroneously & by mistake reserved, instead of Lot 3 in Block 3, as was intended to be reserved, for there was no such

lot as 3 in Bk 1 in said addition, and

the intention was to reserve lot 3 in Bk 3, and was not aware of the mistake in said description till after said land was conveyed to R. Tiffany as aforesaid

R. Tiffany & son are severally charged with notice of this mistake before their purchases were completed & before and after the same were severally made.

The Bill prays for the correction of the error aforesaid

The Bill makes Hunt the Tiffanys & others parties. No one claims any interest in lot 3 in Bk 3. both depts. Tiffanys & McKay Compt. except witness Wm. Quinn who says he was interested in R. Tiffany's purchase, but had divided & took his share elsewhere & is now interested as to costs &c.

The depts. Tiffany's further say they don't know & are not informed except by bill statements made in their presence, since the aforesaid tracts of land were conveyed to the dept. H.C.S. that in the deed of McKay to Bissett, "Lot. 3 in Blk. 1," was by mistake therein reserved instead of lot 3. in Blk. 3, as in that behalf alleged.

The Exhibits referred to in bill and answer were read in evidence. The Plffs then read in evidence the depositions of his witnesses, who testify substantially as follows.

Wm Bissett
deposition

Mr Bissett states that Hunt bought & paid Knapp for the land & it was conveyed by Knapp to him Bissett to secure him for money lent and work done for Hunt by him & that he conveyed the land to McKay in Nov 1842 at Hunt's request to secure McKay for money lent Hunt and for signing Hunt's bond to Foster, & that McKay gave title bond back to Hunt to recover said land to Hunt or any other person Hunt should direct.

"I know (say by) there was a mistake made of one lot reserved in McKay's deed to me. I did not know of the mistake till 2 days after I conveyed the land to A. Tiffany" with the like reservations. The one intended to be reserved was lot 3. in Blk 3. The deed reserved lot 3. in Blk 1. when there was no such lot as lot 3. in Blk one"

I pointed out lot 3 in Blk. 3, to R. Tiffany as McKays ~~lot~~ ^{lot} ~~3~~ ²
I & Hunt sold & conveyed the land to him & R. Tiffany
Then said it was the best lot in the add. was reserved to
McKay. I am positive of that. as soon as he found out there
was such a mistake he told R. Tiffany of it. he said he would
make it all right with McKay. and he afterwards offered
to give lot 2, in Block 3, with a frame house upon it to McKay
for lot 3, in Block 3, in the presence of William C. Tiffany (his son &
aunt) he made me the offer if I would clear him of McKay.
This offer was made in the presence of J. Bridge -

He says he has no interest in the deed other than his liability
on his debt to D. J. Hunt & I sold to R. Tiffany who paid me the first
payment \$1700. still unpaid. last I heard of it.

H. Butler Esqr. proves he wrote the deed from McKay to Bissell at
his house in Libertyville. That McKay and Hunt had no map
or plat with them at the time. That he was requested in
drawing the deed to make certain reservations. That both
Hunt & McKay was in doubt as to the description of the lot Hunt
had disposed of to McKay which they wished to reserve to
McKay. finally Hunt said he believed it was lot 3 in Blk
one. and it was so reserved that he afterwards saw Hunt
after the sale to R. Tiffany, who said they had made a mis-
take in reserving McKays lot. The reservation was made
from recollection only. That before the deed was executed
had at different times told me he owed McKay borrowed money
There were other lots reserved by the deed which I then understood by the parties had
been previously conveyed by McKay to other persons at Hunts request.

That he understood the parties that although the deed was
made by McKay to Bissell it was in fact Hunts land & held
by Bissell in trust for him

Defts witness. Hiram Huguenin. When deposition was read subject to all legal
exceptions to his competency who swears he has only
a general recollection of the matter. and has no distinct
recollection of any particular circumstances attending

Bipitts deposition is competent evidence, because a Trustee with legal title is considered in Equity as having no interest.

See Mad. ch. 447-8 — 3 P. M. - 181

Bipitts answer is evidence against him and all who claim under him

4 Rich. 231. 195 — 4 Lit. 218.

1 humb. to S. 178.

II. Point

Chancellor Hunt says the
only question is, does the
proof satisfy the mind
of the court of the mistake
2. Lohr C. 596.
Same to Paige C. 350.

"The Mistake is proven first by the answer of Bipitt, second by his deposition - third by the deed from McKay to Bipitt when compared with the map - because lot 3. in Block one named & reserved in the deed is evidently a mistake as there is no such lot in that addition -

Bipitt states that he "knows" there was a mistake made of one lot reserved in McKay deed to me - the lot 3 in Block 3 was intended to be reserved "instead of lot 3. Block 1."

"This is conclusive. The mistake is admitted & proven"

Consideration

III. Point

See: Bipitts depo.

"Butlers"
"Haguenins"

Murphy's. Doubt

prejudice sugg.
consideration.

1. Marsh. R. 538

4 Mon. " 532

Sound on cor 206

207

4 Mon. R. 532

2 Marsh 596

"Was the agreement for the reservation founded upon sufficient consideration?"

"We say it was

At the time, McKay held the legal title, and Hunt held McKay bound to convey it, (all the land to him) or such other as he requested McKay had already made deeds as Hunt had requested to divers persons for parts thereof - had acknowledged the plat for Hunt, for McKay's addition to Littlefort laid out by Hunt in McKay name. McKay had thus incurred expenses, trouble & liabilities at Hunt's request all with the knowledge & consent of Bipitt and had loaned Hunt from time to time. For which services Hunt agreed McKay should have lot 3. in Block 3. and that McKay should reserve the same with the lots already conveyed. Whenever the deed should be made the lot was shown to Bipitt as McKay's lot - Bipitt then living upon the land - the evidence & all the circumstances show it. ~~At~~

Attho. the bill does not allege in words the payment of a "valuable consideration" but it alleged that McKay made "full payment" to Hunt for the lot. & implies a valuable consideration paid. but if this is deemed not a sufficient averment. then we say that the "answer of the depts (Tiffanys) denying that any valuable consideration was paid for said lot, comes in aid of the bill. puts that fact in issue. by the Replication

2. Marsh R. 490. 3. Marsh R. 474.

Story Eq. pl. 8. 36 & w (3) 2. John C. R. 62-89.

Consideration.

IV.

6 Paige Chy. R. 350. in point in a case within

2 John. Chy. 596. to this point in just a case like this -

{ But we can not discover upon what principal the depts. Tiffanys claim the right to enquire into the consideration of that Reservation. We deny they have any such right. and insist that the material the only question, in this case, is, was there a mistake made in the deed by reserving a lot supposed to be the one intended for that which was intended to be reserved by the parties.

Hunt either ignorantly or fraudulently described the lot

3 in block 1 as the lot agreed upon to be reserved

McKay is entitled to relief in either case 2 Johns C. 596-7.

{ It is manifest that Hunt himself directed Butler to reserve lot 3. in block 1. and was supposed by McKay to be the correct lot, which they had agreed, before they went to Butler's house, should be reserved by McKay. It is very clear that Tiffanys did not intend to sell, nor the Tiffanys to buy. McKay's lot in that addition, they by their deeds bought subject to McKay's claim. With full knowledge that he was owner of a lot in that addition to the town of Littleport but upon discovering the mistake, B. Tiffany agrees to make it right with McKay instead of doing so he immediately goes to work to defraud McKay by conveying his purchase to his son W. B. Tiffany, by a voluntary and fraudulent conveyance without any except a false and signed consideration no part of which was ever paid, or even alleged to have been paid in this answer.

In the case in 2. John C. R. 596. The chancery says, "Suppose Mrs. Mann (a Trustee) had applied for relief on the ground of mistake (before her death) when she did not agree to sell

and the depts. to buy the 50 acres which was included in his deed by mistake: "could she not obtain relief because the depts. "denies" there was a mistake - which denial is proved to be false. It would be a great defect in the moral jurisdiction of the court if there was "no relief in such case.

"The only question is, does the proof satisfy the mind of the court "of the mistake". The question of consideration can not be made in this case - for it has nothing to do with it. "But if the Tiffanys seek to avoid the effect of the mistake by calling in question that of the consideration they should prove the fact of no consideration. The title was in McKay and it wanted no consideration to retain it than other than the promise & request that he should retain it for his own use. To refuse now to correct the mistake is a fraud on the part of the Tiffanys - they would be getting a lot without paying any thing for it & without buying it & agt. the intent of all parties, if such is allowed. It would be strange sort of Equity.

2 John C.R. 597-98

1 Story Eq. § 152.3.156-7
15-4-5-158
162

"We are taught to believe that, "Equity will make the agreement (or reservation) "conform to the intent of the parties when proved (or admitted) "or fairly implied from the nature of the "transaction" or circumstances. 1 Story Eq. § 15-2153, 16

V. Point

A bona fide purchaser is one who has not only obtained the legal title, but also paid his money in notice & good faith

1 Story Eq. § 64. C.

2 Summers R 506

1 Summers R 506

2 Bibb, R. 487

4 Bibb, R. 198

The Tiffanys nor either of them are purchasers bona fide for valuable consideration paid before notice of McKay's claim, or equity. They are not therefore in any way injured. They do not aver in their plea that either of them ever paid one cent for all the tower lots & lands conveyed to either of them either before or since notice. Their answer is wholly defective & insufficient for that purpose. No defence without alleging & proving it. 1 Summers R 506.

Filed June 19, 1849
J. C. R.