

12403

No. _____

Supreme Court of Illinois

Chapin.

vs.

^R
Cust~~a~~tenius, et al.

Joseph Chapin } Appeal from Peoria —
 vs. } Ejectment —
 Humand et al. } Supreme Court, Northern Division, June
 Term 1854. —

And the said Appellant comes assays, that in the rendition of the judgment aforesaid, there was manifest error, in this, to wit, the judgment of the circuit court was against the ~~pt~~ appellant, whereas the said judgment should have been in favour of the Appellant. —

And for further errors the said Appellant assigns the following, to wit:

1. Said Circuit Court erred in permitting the plaintiffs, Leuteniers & his-
 wife to amend their declaration by making new plaintiffs. —
2. In permitting the pps. below to give in evidence the copy of a bond
 from Humand to the Appellant. —
3. In excluding the evidence offered by Appellant to show the certificate
 of redemption was issued by the Clerk, without authority. —
4. In giving the said instruction to the jury. —
5. In permitting pps. to withdraw their. proofs & take a verdict in fa-
 vour of the Humands only. —
6. In overruling the Appellant's motion for a new trial. —
7. In rendering a judgment for the Humands for costs, & in rendering
 no judgment against Leuteniers & his wife for the ~~Appellant's~~ Appellant's
 costs. —
8. ~~In permitting the certificate of redemption to be~~
 read in evidence. —

Wherefore, for the errors aforesaid, & for other errors in the record
 & proceedings aforesaid, said Appellant prays that the said judgment
 of the Circuit Court, may be wholly reversed, annulled
 & for nothing estimated, & he be restored to what he hath lost
 thereby. —

By his Atty. Peter Cooper.

In Nullo Est Erratum

Pruple for Deft

68
Joseph Chapin
vs
A. G. Cutten & Co.
Emers

Filed June 15. 1854.
S. Veland Clk.

Be it remembered that heretofore, to wit on the second day of March in the year of our Lord one thousand eight hundred and fifty two, there was filed in the office of the clerk of the Circuit Court of Peoria County in the State of Illinois a declaration & notice in ejectment and agreement of parties in the words and figures following, to wit:

Declaration =

In the Circuit Court of Peoria County,
March Term 1852.

Alfred S. Curtinuis,
John L. Griswold,

vs

Ejectment.

Hardin Davis.

Alfred S. Curtinuis & John L. Griswold plaintiffs in this suit complain of Hardin Davis defendant in this suit for that whereas on the 1st day of December A. D. 1851 at the county aforesaid said plaintiffs were possessed of the following described real estate, to wit: the South West quarter of section Eighteen (18) in Township Ten (10) North of Range Seven East of the fourth principal meridian in the County aforesaid the title to which they claim in fee, and the said plaintiff being so possessed thereof, the said defendant on the 2nd day of December A. D. 1851 entered into said premises and unlawfully withholds from the plaintiff the possession thereof to the damage of

the said Plaintiff one hundred dollars, and there-
fore they bring suit &c.

Purple & Sanger for Plffs

Notice -

H Hardin Davis

You are notified that on
the eighth day of the present term of the circuit
Court now in session in and for the County of Leon
or as soon thereafter as counsel can be heard, the
foregoing declaration in ejectment will be filed and
thereupon a rule will be entered requiring you to
appear and plead thereto within twenty days after
the entry of such rule, and that if you neglect so
to appear and plead, judgment by default will be
entered against you, and the plaintiffs will recover
possession of the premises described in said declaration.

Purple & Sanger

Attys for Plffs.

Agreement -

Alfred S. Custerius,
John L. Griswold,

Ejectment,

Declaration filed March 2, 1852.

vs
Hardin Davis,

By consent of parties it is agreed that the

declaration in this case was served on the defendant in due form of law this day, that said defendant at the time of service was in possession of the premises described in the declaration as the tenant of Joseph Chapin, that the said Joseph Chapin being the land lord of the said defendant be admitted as, and made defendant in this suit in the place and stead of the said Martin Davis and said Chapin admits himself to have been in the possession of said premises in said declaration described on the day of the date of the service of said declaration on the 2nd day of March A. D. 1852. Said defendant Chapin also consents that a rule may be entered against him in this cause requiring him to plead within twenty days from this date.

March 2, 1852.

Purple & Sanger for Plffs
Hooper for defr.

Proceedings at a Circuit Court begun and held at the Court House in the City of Peoria in and for the County of Peoria in the State of Illinois on the first Monday of March in the year of our Lord one thousand eight hundred and fifty two, it being the first day of said month, Present the Honorable William Kellogg, Judge of the tenth Judicial Circuit in the State of Illinois, Harmon S. Reynolds, States attorney, James L. Riggs, Sheriff and Jacob Gale, clerk. to wit:

Rule to plead -

Tuesday March 2nd A. D. 1852,

Alfred S. Cushman,

John L. Griswold,

vs

Ejectment.

Heardin Davis.

This day came the plaintiffs by Ruple & Sanger their attorneys and Joseph Chapin by Jonathan R. Cooper his attorney, and by consent of parties it is agreed that the declaration in this cause was served on the defendant in due form of law this day; that said defendant at the time of service was in possession of the premises described in the declaration as the tenant of Joseph Chapin, that the said Joseph Chapin being the landlord of the said defendant be admitted as and made defendant in this suit in the place and stead of the said Heardin Davis - and said Chapin admits himself to have been in the possession of the premises in ~~the~~ said declaration described on the day of the date of the service of said declaration on the 2nd day of March A. D. 1852, and with the consent of the said Joseph Chapin it is ordered that he plead to this action in twenty days.

And afterwards on the thirteenth day of March in the year last aforesaid the said Joseph Chapin filed his plea to said action in the words & figures following to wit

Plea = Alfred S. Custerius,
John L. Griswold, In the Circuit Court
vs Peoria County, Illinois,
Joseph Chapin. In Ejectment.

And the said Joseph Chapin by
Jonathan H. Cooper his attorney, comes & defends
the force & injury when &c, and says that he is not guilty
of the said supposed trespass and ejectment above laid
to his charge, or of any part thereof, in manner & form
as the said plaintiffs have complained thereof against
him; and of this he the said defendant puts himself
upon the country &c. Cooper for defr.
Peoria March 13th 1852.

Proceedings at a term of the Circuit Court begun and held
at the Court House in Peoria, in and for the county of Peoria,
in the State of Illinois on the third Monday of August
in the year of our Lord one thousand eight hundred and
fifty two, it being the sixteenth day of said month,
Present the Honorable William Kellogg, Judge of the tenth
Judicial Circuit in said State. James H. Rugg, Sheriff and
Jacob Gale, Clerk, to wit:

Saturday August 21st A. D. 1852.
Alfred S. Custerius, John L. Griswold,
vs Ejectment.
Joseph Chapin.

This day came the plaintiffs by A. H. Purple their

attorney, and entered a motion for the continuance of this cause to next term of court.

Proceedings at a term of the Circuit Court begun and held at the Court House, in Teona, in and for the county of Teona, in the State of Illinois on the second Monday of May in the year of our Lord one thousand eight hundred and fifty three, it being the ninth day of said month. Present the Honorable Anselm Peters Judge of the sixteenth Judicial Circuit in the State of Illinois, Leonard B. Cornwell, Sheriff, Elbridge G. Johnson, states attorney, and Jacob Gale, clerk, to wit:

Motion for
Leave to amend
Declaration

Monday May 16th A. D. 1853,
Alfred S. Curtinuis,
John L. Griewold,

vs
Defendant.

Joseph Chapin.

The plaintiffs by Purple & Langer their attorneys enter a motion for leave to amend their declaration in this cause by adding a new count making the heirs of Benjamin Freeman deceased plaintiffs in this suit for reasons on file.

And on the day and year last aforesaid the affidavit of N. H. Purple in support of said motion was filed in said cause in the words & figures following to wit:

Curtenius & Enisold vs Joseph Chapin
Ejectment.

Affid in support
of motion to amend

State of Illinois,
Tioria County, ss

W. H. Purple being sworn says
that a record of a Guardians sale made by the Guardian
of the heirs of Benjamin Freeman, deceased constitutes a
portion of the plaintiffs title in this cause, the plaintiffs having
as he is informed and believed purchased said land in
controversy under such sale and paid the full purchase
money therefor & received a deed in due form of law
under the sale supposing that all the proceedings were
regular. Affiant further states that to the best of his
knowledge and belief the entire equitable interest in said
land was at the commencement of this suit and still is in
the said plaintiffs. That at the time he affiant com-
menced this suit & filed the declaration he had not seen
the record of the proceedings of the Guardians sale -
said proceedings having been taken in Montgomery
County, Ills. Affiant further states that upon exam-
ination of said record he thinks there may be a technical
objection to the same being read as a portion of the evidence
of the plaintiffs legal title in this suit and further saith
not.

W. H. Purple

Sworn to before me
this 16th May 1853.
Jacob Gale, clerk.

Proceedings in the Circuit Court in and for the county of
Peoria, in the State of Illinois at a term thereof begun
and held at the Court House in Peoria on the third Monday in
the month of November in the year of our Lord one thousand
eight hundred and fifty three, it being the twenty first day
of said month, Present the Honorable Anselm Peters, Judge
of the sixteenth Judicial Circuit in the State of Illinois,
Elbridge S. Johnson, States attorney, Leonard C. Cornwell,
Sheriff and Jacob Gale, clerk, to wit:

Saturday November 26th A.D. 1853.

Leave to amend
Declaration

Alfred S. Curtin,
John L. Griswold,

Ejectment.

vs
Joseph Chapin,

This day came the plaintiffs by Norman H.
Purple their attorney, and on their motion leave is granted
to them to amend their declaration and to make new
parties plaintiffs in this suit, but as their costs to the present
time in this suit; Therefore it is considered that the
defendant have and recover of the plaintiffs his costs
and charges by him about his defense in this behalf
expended to this time in this suit and that he have execution
therefor.

And on the said 26th day of November A.D. 1853 there was filed in
said cause an amended declaration in words & figures following, to wit:

Amended Narr.: Alfred G. Curtin, In the Circuit Court
John L. Griswold, of Peoria County,
vs In Ejectment.
Joseph Chapin.

And the said plaintiffs by leave of the court come and amend their declaration and make Benjamin S. Freeman, John Freeman, Edmund Freeman, James Freeman, Anna Freeman & Mary Freeman, minor children and only heirs of Benjamin Freeman, deceased & their Guardian Sarah S. Child late widow of the said Benjamin Freeman, deceased, also plaintiffs in this suit - the said plaintiffs claiming title under the said heirs of the said Benjamin Freeman, deceased.

And thereupon the said Benjamin S. Freeman & John Freeman in their proper persons and Edmund Freeman, James Freeman, Anna Freeman & Mary Freeman by their Guardian Sarah S. Child, plaintiffs in this suit complain of Joseph Chapin now defendant in this suit, for that whereas on the first day of December A. D. 1851. at the county aforesaid said plaintiffs were possessed of the following described real estate, to wit: the South West quarter of section Eighteen (18) in Township Ten (10) North of Range Seven (7) East of the fourth principal meridian in the county aforesaid, the title to which they claim in fee, and the said plaintiffs being so possessed thereof the said defendant on

the 1st day of December A. D. 1851. entered into
said premises and unlawfully withholds from the
plaintiffs the possession thereof, to the damage of the
said plaintiffs one hundred dollars and therefore they
bring suit &c. Purple & Sanger
Plffs Atty.

Proceedings in the Circuit Court in and for the county of
Teoria in the State of Illinois at a term thereof begun
and held at the Court House in Teoria on the third Monday
in the month of November in the year of our Lord one
thousand eight hundred and fifty three, it being the
twenty first day of said month. Present the Honorable
Anselm Peters, Judge of the sixteenth Judicial Circuit
in the State of Illinois, Ellbridge S. Johnson, states
attorney, Leonard B. Cornwell, sheriff and Jacob Gale,
clerk, to wit: The Honorable H. M. Wad, Judge of 10th Circuit, presiding.

Grand & verdict =

Tuesday December 6th A. D. 1853,
Alfred J. Curtin, John L. Griswold,
Benjamin S. Freeman, John Freeman &
Edmund Freeman, James Freeman, by their Guardian
Anna Freeman & Mary Freeman. Sarah S. Child,

vs
Joseph Chapin

Ejectment,

This day came the plaintiffs by Purple &
Sanger their attorneys and the defendant by Peters & Cooper his
attorneys and issue being joined, it is ordered by the court,

that a jury be empannelled to try said issue, where-
upon came a jury of twelve good and lawful men,
to wit: Joel Thurston, John Keller, Anderson Innes,
John Otto, Caleb B. Campbell, Jonathan Brassfield, George
Rambo, Milton Mc Cormick, James H. Schinckley,
Adam Tholl, George B. Parker and Martin Barlow,
who being duly chosen, tried and sworn, well and truly
to try the issue joined and a true verdict give according
to evidence, do say, we of the Jury do find the defen-
dant guilty of unlawfully withholding the possession
of the premises in the declaration mentioned, viz:
the following described real estate, to wit: the South
West quarter of section Eighteen (18) in Township
Ten (10) North of Range Seven (7) East of the fourth
Principal meridian, in the county of Tonia from the
plaintiffs Benjamin S. Freeman, John Freeman,
Edmund Freeman, James Freeman, Anna Freeman,
and Mary Freeman and that they have a fee simple
title thereto and do assess their damages at one cent,—
we do further find that as to the plaintiffs Alfred S.
Lusterius and John L. Griswold the defendant is not
guilty of the trespass and ejectment set forth in the
declaration, Whereupon the defendant entered a
motion for a new trial in this cause.

Motion for
new trial }

Indgment -

Wednesday December 7th A.D. 1853.

Alfred S. Curtin, John S. Grievold,
Benjamin S. Freeman, John Freeman,
& Edmund Freeman, James Freeman, } by their Guardians
Anna Freeman & Mary Freeman. } Sarah S. Child

v

Ejectment.

Joseph Chapin.

This day came on to be heard the motion of the defendant for a new trial in this cause, on consideration whereof, the court being fully advised in the premises overruled said motion: Therefore it is considered that the said Benjamin S. Freeman, John Freeman, Edmund Freeman, James Freeman, Anna Freeman and Mary Freeman have and recover of the said Joseph Chapin the possession of the said premises in the declaration mentioned, also one cent their damages by the jury assessed together with their costs and charges by them about their suit in this behalf expended, and that a writ of possession issue against the defendant on behalf of the said Benjamin S. Freeman, John Freeman, Edmund Freeman, James Freeman, Anna Freeman & Mary Freeman for said premises according to the statute in such case made and provided and an execution for said damages and costs. The defendant prayed an appeal in this cause to the Supreme Court of this state, which is allowed on his filing an appeal bond in the office of the clerk of this

Appeal -

Court in thirty days payable to the plaintiffs in the penal sum of two hundred dollars with Parley E. Hakesley as his surety and conditioned according to law.

And afterwards on the 9th day of December A.D. 1853 the defendant filed his appeal bond in said cause in the words & figures following, to wit.

Appeal Bond.

Know all Men by these presents that we Joseph Chapin as principal and Parley E. Hakesley as surety, are held and firmly bound to Alfred S. Curtiniss, John L. John Freeman, James Frengon and Freeman Grisold, Benjamin S. Freeman, & Mary Freeman in the full & just sum of two hundred dollars to the payment of which to the said Obligees, their executors, administrators & assigns, we bind ourselves, our heirs, executors and administrators, jointly & severally by these presents. In witness Whereof, we have hereunto set our hands & seals this ninth day of December in the year of our Lord one thousand eight hundred & fifty three.

The condition of this obligation is such that whereas, in a certain suit or action of assumpsit in the circuit Court of Teona County, wherein the said Obligees were plaintiffs & the said Chapin defendant, tried at the present (December) Term of said Court, in which a verdict & judgment was rendered against the said Chapin from which judgment, the said defendant has appealed to the Supreme Court of the State of Illinois,

Now therefore if the said Joseph Chapin shall
prosecute his said appeal with effect & shall pay what
ever judgments & costs shall be rendered or awarded by
said Supreme Court against him, then this obligation
shall be void otherwise to remain in full force & effect.

Joseph Chapin ESQ
J. E. Blakesley ESQ

And afterwards, to wit, on the 12th day of December A.D. 1853, the
defendant filed his Bill of Exceptions which is in words & figures following, to wit,

Bill of exceptions = A. S. Custerius, John L. Griswold,
Benjamin S. Freeman, John Freeman, Peoria Circuit Court,
James Freeman, Ann Freeman, & November 5, 1853.
Mary Freeman,

vs

Ejectment.

Joseph Chapin.

Be it remembered that on the 16th day of
May 1853 came the said plaintiffs A. S. Custerius &
John L. Griswold & enter their motion for leave to amend
their declaration herein by making Benjamin Freeman,
John Freeman, Edmund Freeman, James Freeman, Anna
Freeman & Mary Freeman heirs of Benjamin Freeman,
deceased, plaintiffs & alleging title in the said heirs to the
tract of land in the declaration mentioned and in support
of said motion read in evidence an affidavit of A. H.
Turple the attorney of the plaintiffs, in the words & figures

figures following to wit:

"Curtin v Griswold as Joseph Chapin,
Ejectment."

State of Illinois, ss.
Deoria County, ss. J. H. Purple being sworn says that a
record of a Guardians sale made by the Guardian of the heirs
of Benjamin Freeman, deceased constitutes a portion of the plain-
tiffs title in this cause, the plaintiffs having as he is informed
and believes purchased said land in controversy under such sale
and paid the full purchase money therefor and received a deed
in due form of law under the sale supposing that all the pro-
ceedings were regular, Affiant further states that to the best of his
knowledge and belief the entire equitable interest in said land
was at the commencement of this suit and still is in the said
plaintiffs, That at the time he affiant commenced this suit
& filed the declaration he had not seen the record of the pro-
ceedings of the Guardians sale in said proceedings having been
taken in Montgomery, Ills, Affiant further states that upon
examination of said record he thinks there may be a technical
objection to the same being read as a portion of the evidence
of the plaintiffs legal title in this suit and further saith not.
J. H. Purple

Sworn to before me this }
16th May 1853. }
"Jacob Gale, clerk." }

And afterwards to wit: on the 26th day of November 1853, came

again the said Plaintiffs Curtin & Griswold and exhibited to the court the amendment proposed to be made, which is in the words & figures, following to wit:

"Alfred S. Curtin,

John S. Griswold,

v

Joseph Chapin.

On the Circuit Court of Peoria County,
Ejectment.

And the said Plaintiffs by leave of ^{the} court come and amend their declaration and make Benjamin S. Freeman, John Freeman, Edmund Freeman, James Freeman, Anna Freeman & Mary Freeman - minor children and only heirs of Benjamin Freeman deceased & their Guardian Sarah S. Child, late widow of the said Benjamin Freeman, deceased, also plaintiffs in this suit - the said Plaintiffs claiming title under the said heirs of the said Benjamin Freeman, deceased.

And thereupon the said Benjamin S. Freeman & John Freeman in their proper persons and Edmund Freeman, James Freeman, Anna Freeman & Mary Freeman by their Guardian Sarah S. Child plaintiffs in this suit complain of Joseph Chapin now defendant in this suit, for that whereas on the first day of December A.D. 1851, at the county aforesaid said plaintiffs were possessed of the following described real estate, to wit: the South West quarter of section Eighteen (18) in township Ten (10) North of Range Seven (7) East of the fourth principal meridian in the county aforesaid, the title to which they claim in fee, and the said Plaintiffs being so possessed thereof the said defendants on the 1st day of December A.D. 1851,

entered into said promised and unlawfully withholds from the plaintiffs the possession thereof, to the damage of the said plaintiffs one hundred dollars and therefore they bring suit &c.

Purple & Sanger

Plffs Atty's."

The defendant appeared & objected to the said motion to amend which motion being considered by the court the same is allowed upon said plaintiffs paying all the costs of this suit to this time & thereupon the said plaintiffs amended their declaration by filing the proposed & above recited amendment; to the decision of the court in allowing said motion the defendant excepted.

And afterwards at the same term of the court, to wit: on the sixth day of December 1853, the said cause came on to be heard & tried & the plaintiffs to maintain the issue on their part, offered & read in evidence a patent from the United States, in the words & figures following, to wit:

Patent =

"The United States of America,

Pre-emption & To all to whom these presents shall come,
Certificate of Greeting, Whereas Benjamin Freeman,
No. 13,991. Assignee of Joseph Chapin has deposited
in the General Land Office, of the United States, a certificate of the Register of the Land Office at Quincy, whereby it appears that full payment has been made by the said Joseph Chapin according to the provisions of the Act of Congress of the 4th of April, 1820, entitled "An act making further provision for the sale of the public lands" for the South West quarter of

Section Eighteen in Township Ten North of the base line, of Range Seven, East of the fourth Principal meridian in the district of lands subject to sale at Quincy, Illinois, containing one hundred and fifty five acres, and thirty two hundredths of an acre, according to the official plat of the survey of the said lands, returned to the General Land Office by the Surveyor General, which said tract has been purchased by the said Joseph Chapin: Now Know Ye, that the United States of America, in consideration of the premises, and in conformity with the several Acts of Congress, in such case made and provided, have given and granted and by these presents do give and grant, unto the said Benjamin Freeman and to his heirs, the said tract above described: To have and To hold the same, together with all the rights, privileges, immunities and appurtenances of whatsoever nature thereunto belonging, unto the said Benjamin Freeman and to his heirs and assigns forever.

In Testimony whereof I, James K. Polk, President of the United States of America have caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed. Given under my hand, at the City of Washington, the tenth day of June in the year of our Lord one thousand eight hundred and forty eight and of the Independence of the United States the seventy second.

By the President James K. Polk.

By J. R. Stephens Asst. Secy

J. K. Saughlin Recorder of the General Land Office

Recorded Vol. 33, Page 103.

The Plffs further to sustain their said issue offered & read in evidence the deposition of David B. Jackson taken in this cause, (which said deposition is in the words & figures following,

Deposition of }
David B. Jackson }
Olfred S. Lusterius,
John C. Griwold, On the Circuit Court of Leon County, Illinois,
vs Ejectment.
Joseph Chapin.

Deposition to be read as evidence in the above
entitled cause on the part of the said plaintiffs, taken at the
office of the clerk of the Circuit Court in Hillsboro, Montgomery
County, Illinois, on Monday the 15th day of August A. D. 1853,
between the hours of 9 o'clock in the ^{4th o'clock in the afternoon} forenoon of said day, before
Robert W. Davis clerk of the Circuit Court of said Montgomery
County, Illinois. David B. Jackson being produced and
sworn on the part of said plaintiffs for answer to the following
interrogatories, says as follows,

Question 1st by Plffs Atty

Were you acquainted with Benjamin Freeman
in his life time, if so is he dead or alive & if dead
what time did he die?

Answer 1st I knew Benjamin Freeman in his life time,
he is dead, he died on or about the 10th day of July A.D. 1841.

Question 2^d by same,

State whether the said Benjamin Freeman at the
time of his death left any children, and if so what were
their names and about their present ages, whether any of the

Said Children have since the death of said Benjamin Freeman died and if so which of them and when or about what time and which of said children are now living and the age of each.

Answer I^d. Benjamin Freeman at the time of his death left nine children, to wit: Benjamin S. Freeman, Exce Sarah Freeman, John Freeman, Alice Freeman, Edmund Freeman, James Freeman, Anna Freeman, Mary Freeman, Isaac Allerton Freeman, Benjamin S. Freeman was twenty six years old on or about the 29th of August A.D. 1853, Exce Sarah Freeman died 22^d August A.D. 1847. John Freeman was twenty one years old on or about the 14th January A.D. 1853. Alice Freeman died about four years ago in the State of Massachusetts as I am informed and was about 16 years old at her death. Edmund Freeman was nineteen years old on or about the 26th January A.D. 1853, James Freeman was seventeen years old on or about the 6th April A.D. 1853. Anna Freeman was fifteen years old on or about the 27th day of March A.D. 1853, Mary Freeman was fourteen years old on or about the 6th of June A.D. 1853, Isaac Allerton Freeman died on or about the ninth of April A.D. 1844. David B. Jackson

I do to and subscribed before me this 13th day of August A.D. 1853. Witness my hand and the seal of the circuit court of Montgomery County hereto affixed at Hillsboro the day and year above written.

E. J. J.

Robert W. Davis, Clerk.

The Telf next offered & read in evidence without objection a duly certified copy of a record of the Circuit Court of Montgomery County, Illinois, which is in the words & figures following, to wit:

Recd of Guardian's } "State of Illinois, } ss.
Deem for sale &c. } Montgomery County, }
D⁶

Readings before the Hon. Circuit Court
in and for said county held at the Court House in Hillsboro on
Wednesday the 8th day of November A.D. 1888, the Hon. Gustavus
Hoerner presiding and holding said Court,

Whereas heretofore, to wit: on the 2^d day of May A.D. 1828, Sarah S. Childs, Guardian of the minor heirs of Benjamin Freeman, dec^d comes and files in the office of the Clerk of said Court her bill or petition which said bill is in the words and figures following, to wit:

"State of Illinois, Of the June Term of the Montgomery
"Montgomery County, County Circuit Court A.D. 1828.

"Sarah L. Child, Guardian

"minor heirs Benj. Freeman deceased,

Ans

" Benjamin Freeman, John Freeman,

"Alice Freeman, Edmund Freeman,

"James Freeman, Anna Freeman

" Mary Freeman and all others interested.
"

To the Honorable the Presi-
ding Judge of the Circuit Court of the Second Judicial Circuit
for the County of Montgomery, in Chancery sitting -

" Your Oratrix humbly complaining sheweth unto
" Your Honor that she is the duly appointed and qualified
" Guardian of Benjamin Freeman, John Freeman, Alice Free-
" man, Edmund Freeman, James Freeman, Anna Freeman,
" & Mary Freeman, minor heirs of Benjamin Freeman,
" deceased and that said minor heirs own a large amount
" of real estate situated in different parts of the State of
" Illinois and that tax and assessments upon said land are
" very burthensome upon the estate, that a large portion of
" said land is timbered land and constantly liable to be
" trespassed upon - And Your Oratrix respectfully represents
" to your Honor that the interest of said minor heirs would be
" greatly enhanced by selling a portion of said lands and inves-
" ting the money by loaning the same at interest,

" Your Oratrix therefore prays your Honor to grant, order
" and decree a sale of the following described lands, to wit:
" The West half of the North West quarter of Sec. 12,
" Township 11. N. Range 24. East. E $\frac{1}{2}$ of the N. E. $\frac{1}{4}$
" of section 8. Township 7. N. Range 6. East. West $\frac{1}{2}$ of
" S. E. $\frac{1}{4}$ of section 34. Th E $\frac{1}{2}$ of the South East $\frac{1}{4}$ of
" Sec. 34. E $\frac{1}{2}$ N. E. quarter section 34, Township
" 9. N. R. 6. East. South West $\frac{1}{4}$ of section 18 Township
" 10. N. Range 7. East. East $\frac{1}{2}$ of the N. East $\frac{1}{4}$ section,
" 6 S. 10. N. Range 7. East situated in the counties of Peoria
" & Knox - that said lands may be sold on twelve months
" credit or on such other terms as in the opinion of the
" Honorable Court will best promote the interest of said minor

" heirs. And Your Oratrix further represents to your
" Honor that she is the widow of the said Benjamin Freeman
" dec^d, and as such holds her dower interest in said lands
" which she is ready to relinquish to the purchaser or purchasers
" of said lands, and further your Oratrix represents that she
" verily believes that the sale of said lands + the investment of
" the proceeds or interest will be of great benefit to the said
" minor heirs, and to this use + for this purpose your oratrix
" prays Your Honor to grant a sale of said lands and
" make such other and further order and decree in the premises
" as may seem fit and will best promote the interest of the
" said minors Sarah S. Child
by James Mc Davis her atty.

And Whereas heretofore to wit: on the 2^d day of May A.D.
1848, summons was issued out of the office of the clerk of
said Circuit Court directed to the Sheriff of said Montgomery
County which said process of summons is in the words and
figures following, to wit:

" State of Illinois, Montgomery County, ss.
" The People of the State of Illinois,
" To the Sheriff of Montgomery County, Greeting:
" We Command You to summon Benjamin S. Freeman, John
" Freeman, Alice Freeman, Edmund Freeman, James
" Freeman, Anna Freeman and Mary Freeman, if to be
" found in your County, personally to be and appear before the
" Circuit Court for the County of Montgomery aforesaid on the first

"day of the next term thereof to be holden at the Court House
"in Hillsboro on the first Monday in the month of June next to
"answer to a certain bill of complaint filed in our said
"Circuit Court on the Chancery side thereof against them by
"Sarah S. Child, Guardian of the minor heirs of Benjamin
"Freeman, dec^d, and have you then there this writ and
"make return thereon in what manner you have executed
"the same. Witness Hiram Rountree, clerk
"of said Court and seal thereof at Hillsboro,
"this 2nd day of May 1848.
"H. Rountree, clk.

Upon which said summons the officer executing the same,
made the following return, duly endorsed, to wit:

"Executed by reading the within to and delivering a true copy
"of the within summons to Benjamin S. Freeman, Alice
"Freeman, Edmunda Freeman, James Freeman, Anna Free-
"man and Mary Freeman this 16th day of May 1848,
"the other not found. Thos. Stundering Shff.

And whereas heretofore to wit: on the said 8th day of
November A. D. 1848, the following order was made in said
Circuit Court, to wit:

"Sarah S. Child, Guardian of the minor heirs

"of B. Freeman, dec^d Compl^r.

vs In Chancery

Benjamin Freeman & others,

"Heirs of said B. Freeman, dec^d, Defts
" (In motion of said Com-
"plainant by her attorney C. H. Rice, Esq^r, is appointed Guardian
"ad litem, for the several infant defendants in the above
"entitled suit named

(N. B.  This cause stands thus on the record
to wit: "1st Cause at top of page, Sarah S. Child, adm^r of
"Benj. Freeman, dec^d Compt^r
" vs 3 Chancery
"Benjamin Glane, Benjamin Freeman
" & others, Defts.
" 2^d Cause being the one above mentioned,
"The same Guardian (as above.)
" vs In Chancery,
"Benjamin Freeman vs. (as above)

And whereas heretofore to wit: on the said 8th day of Novem-
ber A. D. 1828, the following order or decree of said Circuit
Court was entered of record which said order or decree is in
the words and figures following, to wit:

"Sarah S. Child Guardian of the minor heirs of
"Benjamin Freeman, deceased, Complainant.
" vs Rice in Chancery to sell lands
"Benjamin Freeman, John Freeman, Alice Freeman,
"Edmund Freeman, James Freeman, Anna Freeman.
"and Mary Freeman, Defendants.

This day came the said

"Complainant by her solicitors and the said defendants being
"solemnly called came not, and it appearing to the satisfaction
"of the Court that said several defendants above named have
"been duly and personally served with process in the above entitled
"suit as required by the statute, and that said several infant
"defendants by E. B. Rice Esq. appointed Guardian ad litem
"for said several infant defendants now here answer to said
"Complainants said above bill of complaint herein against them,
"And after hearing and considering the allegations in said bill
"contained together with the proof adduced on the part of said
"Complainant and the answer of said infant defendants by their
"said Guardian, and the Masters report in favor of decree
"as prayed for, It is ordered, adjudged and decreed by the
"Court that said Complainant do sell or cause to be sold at Teona,
"in the County of Teona, on the 3rd day of February next or as
"soon thereafter as may be, said Complainants having first
"given six weeks previous notice of the time, place and terms of
"said sale by causing a notice thereof to be published in some
"newspaper printed in said County of Teona for six weeks and also
"by causing written or printed notices thereof to be set up in four
"of the most public places in the County of Montgomery for
"four weeks previous to said sale, said sale to be at public vendue
"and on a credit of six and twelve months, the lands and
"premises in said Complainants bill described and which are
"situated have one tract in said County of Teona and are
"described as follows, to wit: the W¹/₂ of the N.W.¹/₄ of Section
"Twelve in Township Eleven North and Range Four East.

"E² of the N. E. $\frac{1}{4}$ of Section Eight Township Seven North
"Range Six East, W². S. E. q^r. Sec. 34 - E². S. E. $\frac{1}{4}$.
"Sec. 34. E². N. E. $\frac{1}{4}$. Sec. 34. Township Nine North
"Range 6 East, S. W². Sec. 18. Township Ten North Range 7
"East and E² of the N. E. $\frac{1}{4}$. Sec 6, Township ten North
"and Range Seven East. - The purchaser or purchasers of
"said lands or any part thereof giving bond with approved security
"for the payment of the purchase money and also a mortgage on the
"promises as additional security for the payment of the purchase
"money of the same - And it is further ordered and decreed
"by the court that previous to effecting the sales of said lands
"above named said Complainant do execute bond with good
"and sufficient security in the office of the Probate Justice
"of the Peace of the County of Montgomery, to be approved by
"said Probate Justice in the sum of fifteen hundred dollars,
"Conditioned for the faithful accounting for the proceeds of the said
"sales of said lands in like manner as other moneys belonging to
"said minors. And it shall be the duty of said complainant
"to loan out at interest and account for the proceeds of the sales
"of said real estate in like manner as other moneys belonging
"to minor orphans, said complainant having first paid the
"costs of sales and of the above entitled suit out of the proceeds
"of said sales. And it is further ordered, adjudged and
"decreed by the court that said complainant on effecting said
"sales of said real estate do make, acknowledge and deliver to the
"purchaser or purchasers of said lands good and sufficient deed
"or deeds of conveyance for the land sold which deed or deeds of

"conveyance for the lands sold which ~~did or does~~ of conveyance
"shall pass to and vest in the purchaser or purchasers thereof all
"the right, title and estate which said infant defendants at the
"time of said sale may have in and to the premises sold -
"upon the condition that said complainant shall report her pro-
"ceedings to this court at some subsequent term thereof as soon
"after said sales as may be and said report be approved by
"the court. And it is further ordered by the court that
"said Complainant do pay the costs of the above entitled suit
"out of the proceeds of said sales, and further do make a full
"report of her proceedings herein to this court at some subsequent
"term thereof.

And whereas heretofore to wit: on the 9th day of said November
A. D. 1848, E. G. Rice Esqr. Guardian ad litem for the infant
defendants mentioned in the foregoing entitled suit presented his an-
swer which said answer is in the words and figures following, to wit:

"Sarah S. Child, Guardian of the
"minor heirs of Benjamin Freeman, decd.
"as 3 Nov. Term 1848,
"Benjamin Freeman, John Freeman
"Alice Freeman, Edmund Freeman,
"James Freeman, Anna Freeman & Mary Freeman.

E. G. Rice Guardian
"ad litem for John Freeman, Alice Freeman, Edmund Freeman,
"James Freeman, Anna Freeman & Mary Freeman reports that he has
"examined the papers in the above entitled cause and finds that said

"has been made on all the parties, and that the proceedings are
"legal and that he knows no cause on the part of said minor heirs
"why decree should not be granted).

E. V. Rice.

(The filing of the above answer purports to have been done on
the 9th of November A.D. 1848, as aforesaid though there is
obviously the figure 8 made first & the 9 made directly over
it, thus (9).)

And whereas heretofore to wit on the 13th day of November
A.D. 1848, the following affidavit was made a part of the record
in the foregoing entitled suit, (the Hon. Circuit Court aforesaid
having adjourned until Court in course -) to wit:

Keleboro Ill. November 9. 1848.

"I, David B. Jackson of Keleboro & State of Illinois being
"duly sworn do testify & say that it is my belief that it would
"be for the interest of the minor heirs of Benjamin Freeman,
"deceased that all the lands lying in Peoria & Knox Counties
"of this state & which are named in an application now
"made the Hon^{or} Circuit Court of Montgomery County by
"the administrators of the estate of Benjamin Freeman, deceased,
"should be sold as they are all suffering loss by trespassers
"& the most of them were sold by said Freeman during his
"life & have been forfeited by reason of non payment of the
"purchase money, David B. Jackson.

"Sworn to and subscribed before me this 13th day
"of Nov, 1848, Hiram Rountree, Clerk "

And whereas heretofore to wit: on the 25th day of November A. D. 1828, the following letter was made part of the record in the foregoing entitled suit, to wit:

" Bellville Mo, 21. 1828,

" James M. Davis, Esq^r.

" Dear Sir,

" On regard to Mr^s Childs application to sell land as Guardian I intended to hear evidence during Court or in case the same was not produced to refer the matter to Master, I have probably omitted to minute the latter order in the hurry of the last evening's business, had the case been re-called I would have made it. The Master may hear proof and report and if a sale is reported as advisable an order may be entered by the clerk as in the former application as near as circumstances may permit. I rec^d Your letter but on yesterday, My respects to Mr^s Rountree and other friends

" Yours Very Sincerely
" Gustavus Koerner

And whereas heretofore to wit: on the said 25th day of November A. D. 1828, the said Master made the following report which was made part of the record in the foregoing entitled suit - which said report is in the words and figures following, to wit:

" State of Illinois Montgomery County, ss.
" Circuit Court November Term 1828,

" Sarah I, Child Guardian of the
" minor heirs of Benjamin Freeman, dec^d
" vs J. Rice in Chancery to sell land
" Benjamin Freeman, John Freeman, &
" the other heirs of Benjamin Freeman, dec^d
"

" In the above entitled
" suit the Master in Chancery having heard the proofs of said
" Complainant in support of her application to sell the lands
" described in her bill of complaint in the above entitled suit
" and being satisfied from the proof adduced that it would be
" to the interest of the infant defendants to sell the said lands
" and loan the money at interest, do most respectfully
" reports to the court - which is respectfully submitted to
" the court. Miram Rountree,
" Master in Chancery.

And further at the June Term A. D. 1849, the following order
was entered of record in the foregoing entitled suit said suit
being on docket. For report of said Complainant in the words
following to wit:

" " Sarah I, Child Guardian of the minor
" heirs of Benjamin Freeman, dec^d
" vs J. In Chancery.
" Benjamin Freeman et al.
"

" This day came the said Com-
" plainant by her attorney and on his motion it is ordered that the foregoing
" entitled suit be continued until next term."

And on the said next term of said court being the November Term A. D. 1849. of said Court on the 2^d day of said term being the 6th day of November A. D. 1849, the complainant in the foregoing entitled cause offered her report & whereupon the following order was made by the court to wit:

" Sarah S. Child, Guardian,

" vs E. Rice in Chancery, report of Guardian.

" Benjamin Freeman & others.

" This day comes the said complainant and offers the following report of her proceedings herein under a decree of this court made at its November Term A. D. 1848, to wit:

" State of Illinois, Montgomery County, ss.

"  Circuit Court Nov. Term 1848,

" Sarah S. Child, Guardian &c.,

" vs  Benjamin Freeman &c.,

" Pursuant to a decree had in the above entitled cause at the said term of said court the undersigned Guardian having advertised the lands in said decree named & described as directed by said decree, I did on the 28. day of April 1849, at the door of the court house in the City of Leoria offer for sale & sell at Public auction the following described lands & to the person & at the prices named they respectively being the highest and best bidders therefor, viz:

" W ¹ / ₂ . N. W. 12. T. 11. N. 4. E.	" Hunt & Shick 80 acres . 50 --	" 40.00
" E ¹ / ₂ . N. E. 8. - 7. - 6	" James Stewart 80 - 1.30 --	" 104.00
" S. W. 18 - 10. - 7	" Lusterius & Gnewold 155 - 1.05 --	" 163.00

" N^o 2. S. E. 34. - 9. - 6. - B. H. Freeman 79 ³⁷/₁₀₀ acres - 1.75 -- 138. 89
 " S^o 2. S. E. 34. - 9. - 6. - Ayliff Shepard 79 ³⁷/₁₀₀ - 2.00 -- 238. 11
 " E^o 2. N. E. 34 - 9. 6 - Nelson Shepard 80 - 4.72 -- 368. 72
 " \$1052.80

" and I did further in pursuance of said decree make & execute deeds
 " for the same & take mortgages which are left in the Records Office
 " at Leonis for record. Hillsboro September 18. 1849

" Sarah S. Child
 " Guardian of the minor
 " heirs of B. Freeman, decd.

J. Robert W. Davis, Clerk of the Circuit Court within and
 for said County do hereby certify that the foregoing (or so much
 thereof as purports to be such,) is a true and perfect copy of
 the record in the foregoing entitled cause.



Witness my hand and the seal of said Court,
 hereto affixed done at Hillsboro in said County,
 this 11th day of September A. D. 1852.

Robert W. Davis
 Clerk Cir. Court.

The Plaintiffs next read in evidence a deed from Sarah S.
 Child Guardian of the heirs of said Benjamin Freeman, deceased
 to the plaintiffs Leutenius & Griwold, and it being admitted by
 the defendant that he was in possession of the locus in quo
 at the time of the service on him of the declaration in this
 case, the Plaintiffs rested their case.

The defendant to maintain the issue on his part offered & read in evidence a record of a judgment for taxes in the Peoria Circuit Court, which is in the words & figures following, to wit:

Judgment for taxes - At a Circuit Court begun and held at the Court House in the Town of Peoria, in and for the County of Peoria and State of Illinois on Monday the twenty sixth day of May in the year of our Lord one thousand eight hundred and forty five, Present the Honorable John Dean Caton, Associate Justice of the Supreme Court of the State of Illinois, assigned to perform the duties of Judge of the Ninth Judicial Circuit.

Monday May 26th A.D. 1845

State of Illinois, ss

Peoria County, ss

Whereas Smith Frye Collector of said County returned to the Circuit Court of said County on the twentieth day of January A.D. 1845, the following tracts and parts of tracts of land as having been assessed for taxes by the assessor of said County of Peoria for the year 1844, and has also returned that the taxes thereon remained due and unpaid on the day of the date of the said Collectors return and that the respective owner or owners have no goods and chattels within his County on which the said Collector can levy for the taxes, interest and costs due and unpaid on the following described lands, situated in the County of Peoria and State of Illinois, to wit:

Description			Acres	Tax		Costs
"	"	10 N. 7 E	"	3	"	"
S W	18	"	15-5- $\frac{3}{4}$	3	26	4.0
"	"	"	"	"	"	"

And whereas due notice has been given of the intended application for a judgment against said lands and no owner hath appeared to make defense or show cause why judgment should not be entered against said lands for the taxes, interests and costs due and unpaid thereon for the year herein set forth. Therefore it is considered by the court that judgment be and is hereby entered against the aforesaid tracts and parts of tracts of land in the name of the State of Illinois for the sum annexed to each parcel or tract of land being the amount of taxes and costs due severally thereon, and it is ordered by the court that the said several tracts of land or so much thereof as shall be sufficient of each of them to satisfy the amount of taxes and costs annexed to them severally, be sold as the law directs."

Tax sale Precept - He near read in evidence the process or precept issued upon said judgment, with the endorsement & return of the Sheriff thereon, which are in the words and figures following, to wit:
 "The People of the State of Illinois To the Sheriff of Peoria County, Greeting:
 Monday May 26th 1875,
 State of Illinois)
 Peoria County)
 Whereas Smith Frye Collector of said county re-
 turned to the Circuit Court of said county on the twentieth day of Janu-

any A. D. 1875, the following tracts and parts of tracts of land as having been assessed for taxes by the assessor of the said County of Peoria for the year 1874, and has also returned that the taxes thereon remained due and unpaid, on the day of the date of the said collector's return, and that the respective owner or owners have no goods and chattels, within his county on which the said collector can levy for the taxes, interest and costs due and unpaid on the following described lands, situated in the County of Peoria and State of Illinois, to wit:

Description				Acre	Tax		Cost
					\$	cts	cts
"	"	10. N. 7 E.	"	"	"	"	"
SW	18	— —	155 $\frac{3}{4}$	3	26	40	
"	"	— —	"	"	"	"	"

And whereas due notice has been given of the intended application for a judgment against said lands, and no owner hath appeared to make defense or show cause why judgment should not be entered against said lands for the taxes, interest and costs due and unpaid thereon for the year herein set forth. Therefore it is considered by the court that judgment be and is hereby entered against the aforesaid tracts and parts of tracts of land in the name of the State of Illinois for the sum assessed to each parcel or tract of land, being the amount of taxes and costs due severally thereon, and it is ordered by the court that the said several tracts of land or so much thereof as shall

be sufficient of each of them to satisfy the amount of taxes and costs annexed to them severally, be sold as the law directs.

Saturday June 7th 1845,

This day came Charles Ballance and entered a motion that the judgment heretofore entered during the present term of this court against so much of Bigelow and Underhill's addition to Peoria as is situated on the South West quarter of section nine of Township Eight North of Range Eight East of the fourth principal meridian, be set aside and that said Ballance be permitted to show cause why judgment should not be entered against said premises. On consideration whereof the court overruled the said motion, whereupon the said Charles Ballance claimed an appeal to the Supreme Court of the State of Illinois on the judgment of the court overruling his said motion, which was allowed on condition that the said Ballance file an appeal bond conditioned according to law in the penal sum of three hundred dollars in the office of the clerk of this court on or before the hour of ten o'clock in the forenoon of Monday next, with Francis Boris or Henry Schnelly as surety.

State of Illinois, ss. I, Jacob Hale, clerk of the Circuit Court within and for the said county of Peoria do hereby certify that the foregoing is a true and perfect copy of a judgment and order of the said court made at the May term thereof A.D. 1845,

and of all proceedings had at said term of said Court on or concerning the list of delinquent lands for the taxes of the year 1824. lying in said Peoria County.

In Witness whereof, I have hereunto set my hand and the seal of said Court at Peoria, this seventh day of June A. D. 1825,

Jacob Gale, clerk.



Return on Precept

State of Illinois, ss.
County of Peoria, ss. By Virtue of the foregoing process I did with the assistance of the clerk of the County Commissioners Court of said County, by his deputy attend at the Court House in the Town of Peoria in said County on the ninth day of June A. D. 1825, at the hour of ten o'clock A. M. and between that time and three o'clock P. M. of that day proceeded to sell each lot or parcel of land described in the foregoing list at public auction, commencing with the first lot therein described and sold all the lots & tracts (except those on which the taxes were paid to me before sale,) to the W. D. N. E. q. r. of Section 32. of Township 7 North 6 East inclusive, and afterwards to wit: at 3 o'clock P. M. adjourned the sale to 10 o'clock A. M. of the 10th day of June instant; and on June 10th at 10 o'clock A. M. proceeded to sell in like manner the lands described in said list from E. hf N. E. 2. of 8. North 6 East and sold to the J. R. N. W. 2. of Township 10 North 8 East inclusive, and afterwards at 3 o'clock of the last mentioned day adjourned the sale to

10 o'clock A.M. of 11th day of June instant; and on the 11th day of June A. D. 1845 at 10 o'clock A. M. proceeded to sell in like manner the remainder of the lands described in said list to the end of Bigelow & Undershill's addition to Peoria, (excepting also such lots of said addition as are situated on the South West quarter of section Nine of Township 8. N. 8. E.) and afterwards at 3 o'clock P. M. of the last mentioned day adjourned the sale to 10 o'clock A. M. of the 12th day of June instant; and on the 12th day of June A. D. 1845, at 10 o'clock A. M. proceeded to sell in like manner the lands described in said list from Weston, Toris & Saville's addition to Peoria and sold to the end of said list inclusive. The lands in the above list were so sold in the order the same are therein described by offering the whole tract or lot of land for the amount of taxes and costs due thereon and striking them off severally to the person or persons who would pay the amount due on each tract of land or town lot for the least number of acres or the least quantity thereof. The said Clerk kept a Register of said sales in which was entered each lot or parcel of land exposed to sale by me as aforesaid, the name of the purchaser, his place of residence, and the quantity of land sold. Dated June 20th A. D. 1845. Smith Frye Sheriff.

Deft. next read in evidence a deed from the sheriff of ^{County} Peoria to the deft. which deed is in the words and figures following, to wit:

Sherriff's Deed.
for tax - 1854

"I know all Men by these presents that whereas at the May Term 1855 of the Circuit Court of Peoria County a Judgment was obtained in said court in favor of the State of Illinois against the South West quarter of section No. Eighteen (18) of Township Ten (10) North in Range Seven (7) East situated in Peoria County in the State of Illinois, for the sum of three dollars and sixty six cents being the amount of taxes, interest and cost assessed upon the said tract of land for the year 1854 and whereas on the tenth day of June 1855. Smith Frye then Sheriff of the County aforesaid by virtue of a precept issued out of the Circuit Court of the County aforesaid dated the seventh day of June 1855, and to him directed, did expose to public sale at the door of the Court house in the County aforesaid in conformity with all the requisitions of the Statute in such case made and provided the tract of land above described for the satisfaction of the judgment so rendered as aforesaid and whereas at the time and place aforesaid Joseph Chapin of the County of Peoria and State of Illinois having offered to pay the aforesaid sum of three dollars and sixty six cents for one hundred and fifty five and three fourths acres being the whole of said Quarter section, which was the least quantity bid for the said tract of land was stricken off to him at that price. Now therefore I, James L. Riggs, Sheriff of said County of Peoria and successor in office of said Smith Frye, Sheriff as aforesaid for and in consideration of the sum of

Three dollars and sixty six cents to him in hand paid by the said Joseph Chapin at the time of the aforesaid sale, and by virtue of the statute in such case made and provided, have granted, bargained and sold and by these presents do grant, bargain and sell unto the said Joseph Chapin, his heirs and assigns, the South West quarter of Section No. Eighteen of Township Ten North in Range Seven East, situated in the County of Peoria in the State of Illinois, To have and To hold unto him the said Joseph Chapin, his heirs and assigns forever, subject however to all the rights of redemption provided by law. In Witness whereof, I, James L. Riggs, Sheriff as aforesaid by virtue of the authority aforesaid, have herunto subscribed my name and affixed my seal, this 21st day of March 1851.

James L. Riggs Sheriff.

State of Illinois,

Peoria County,

It is known that on the day of the date hereof, personally appeared before me Jacob Gale, clerk of the Circuit Court within and for said county, James L. Riggs, personally known to me to be the real person whose name appears subscribed to the foregoing deed of conveyance as having executed the same in the capacity of Sheriff of said County and acknowledged the execution thereof to be his free act and deed for the uses and purposes therein expressed. In Witness whereof, I have herunto set my hand and seal of said Court at

J L R

Peoria, this twenty first day of March A.D. 1851.
Jacob Gale, Clerk.

The defendant here setted his defence,

To all of this evidence, in relation to defendants tax title the plaintiffs objected and excepted to the opinion of the court in admitting the same -

The plaintiffs then offered to read in evidence the copy of a bond of Benjamin Freeman to the deft, in the words & figures following, to wit:

Copy of Bond of
Freeman to Chapin

"Know all Men by these presents, that Benjamin Freeman of Boston in the State of Massachusetts for and in consideration of the sum of one hundred and eighty six dollars for which a note has been executed payable in one year from the date of this instrument, have bargained and sold unto Joseph Chapin of Peoria County and State of Illinois the following described tract of land, to wit: the S. W. quarter of section 12 16. in Township 10. North of the base line of Range 1. East of the 4th Principal meridian, Now provided the said Joseph Chapin shall pay or cause to be paid unto the said Benjamin Freeman as Peoria Illinois, the above sum at the time above mentioned, If the said Benjamin Freeman hereby bind myself to convey all my right, title and interest in the above described tract land subject to the equity subsisting between me and the United States to him the said Joseph Chapin his heirs or assigns, If however the said Joseph Chapin shall not punctually pay the said sum mentioned above at the time and place named, then the said Benjamin Freeman, reserves to himself the right to ratify or confirm this sale or not, Sealed and delivered this sixth day of November A. D. 1840. Benjamin Freeman, Seal

Bill in Chancery = In connexion with this bond Pleffs also read in evidence
a bill in Chancery in which the Mother + guardian of
said heirs was complainant + the said Chapin was
defendant and the answer of defendant to said bill is
the answer of defendant + the decree of the circuit court
of Teona County in the same case

To the Honorable John Dean Eaton, Judge
of the ninth Judicial Circuit in the State of
Illinois at the term of the Circuit Court to be
begun and holden at Teona, in and for the
County of Teona, State aforesaid, on the
twenty ninth day of May anno
Domini 1843 - In Chancery sitting.

Respectfully sheweth unto Your Honor the complainants
Sarah S. Freeman, widow of Benjamin Freeman, late of
Montgomery County, State of Illinois, deceased, intestate and
Benjamin S. Freeman, Eddy S. Freeman, John Freeman,
Alice Freeman, Edmund Freeman, Anna Freeman, Mary
Freeman, Isaac A. Freeman + James Freeman minors under
the age of twenty one years by their next friend Jacob Dale, -
that Benjamin Freeman late of Montgomery County in the
State of Illinois, departed this life intestate on or about the
thirteenth day of July A. D. 1841. leaving the complainants Ben-
jamin S. Freeman, Eddy S. Freeman, John Freeman, Alice
Freeman, Edmund Freeman, Anna Freeman, Mary Freeman
Isaac A. Freeman, + James Freeman his only children and

Heirs at law, that on or about the tenth day of March A. D. 1842, the Complainant Sarah P. Freeman was duly appointed by the Probate Justice of the ^{Peace of the} said County of Montgomery, administration ^{of the estate} of the said Benjamin Freeman, deceased and took upon herself that trust by taking oath and giving bond as the law directs.

That the said Benjamin Freeman deceased in his life time and on or about the sixth day of November A. D. 1840, made an agreement with one Joseph Chapin of Ponia County in the State of Illinois whom the complainants pray may be made party defendant to this bill for the sale and conveyance to the said defendant of the following described tract of land, to wit: the South West quarter of section No. Eighteen in Township No. Ten North of base line, of Range No. Seven East of the 4th principal meridian, situated in the county of Ponia, State of Illinois, in consideration of the sum of one hundred and eighty six dollars, to be paid by the said Joseph Chapin in one year from the time of said agreement, which agreement was in writing under the hand and seal of the said Benjamin Freeman, and as follows, to wit:

"I know all Men by these presents that I Benjamin Freeman of Boston in the State of Massachusetts for and in consideration of the sum of one hundred and eighty six dollars for which a note has been executed payable in one year from the date of this instrument have bargained and sold unto Joseph Chapin of Ponia County and State of Illinois, the following described tract of land, to wit: the S. W.

Quarter of Section No 18 in Township 10 North of the
base line of range 7 East of the 11th principal meridian.

Now provided the said Joseph Chapin shall pay
or cause to be paid unto the said Benjamin Freeman at Bond,
Illinois, the above sum at the time above mentioned, & the
said Benjamin Freeman hereby bind myself to convey all
my right, title and interest in the above described land
subject to the equity subsisting between me and the
United States to him the said Joseph Chapin his heirs
or assigns — If however the said Joseph Chapin shall
not punctually pay the said sum above mentioned above at
the time and place named then the said Benjamin Freeman
reserves to himself the right to ratify or confirm this sale or
not, sealed and delivered this sixth day of November A.D.
1840. Benjamin Freeman *Sealed*

And the complainants further show that the aforesaid tract
of land was entered and purchased of the United States by
the said Benjamin Freeman in his life time and previous
to making of said agreement at the United States Land
Office at Quincy in the State of Illinois for the sum of two
hundred dollars and a duplicate receipt received for the said
purchase money whereby the title to said land became vested
in the said Benjamin Freeman and a patent for the same
has or will issue for the land from the United States in his
name, and by the decease of the said Benjamin Freeman
as aforesaid the title to said tract of land has become vested
in the complainants, subject to the equity of the said defendant.

Created by said agreement.

The said Complainants further show, that the said Joseph Chapin has never paid the said sum of one hundred and eighty six dollars nor any part thereof to the said Benjamin Freeman in his life time, nor to either of the complainants since his decease, and further that on account of the minority of those of the complainants, who are the children and heirs of the said Benjamin Freeman, deceased, they are unable to make a valid and sufficient deed of conveyance of said tract of land to the defendant on the payment of the said sum of money and cannot therefore without the aid of this Court comply with the conditions of the said agreement by their said ancestor stipulated to be done and performed in consideration of the payment of the said sum of money = In consideration whereof and forasmuch as the complainants can only have adequate relief in the premises in a Court of Chancery where matters of this nature are properly cognizable and relievable.

May it please Your Honor to grant the usual writ of Subpoena issuing out of this Court under the seal thereof directed to the said Joseph Chapin compelling him to answer the matters aforesaid, and by a decree of this Court to authorize and empower the complainant Sarah S. Freeman to make, execute, acknowledge and deliver a deed of said tract of land to the said defendant according to the true intent and meaning of said agreement on the payment by said defendant to the complainant Sarah S. Freeman as administratrix as

aforesaid, the said sum of one hundred and eighty six dollars and interest thereon from the time when due by the terms of said agreement, and that the said defendant may be decreed by this court to pay the said sum of money and interest as aforesaid to the said complainant Sarah S. Freeman or her agent by some early day to be specified by the court, and that on the non payment of the said sum at the time so specified by the defendant in manner aforesaid, that then said agreement be by decree of this Court declared void and of no effect, and may it please Your Honor to grant such other and further relief in the premises as to Your Honor may seem meet and the circumstances of the case require.

Sarah S. Freeman

by her Solicitor Jacob Gale.

By Benjamin S. Freeman, Anna Freeman,
Ezey S. Freeman, Mary Freeman,
John Freeman, Isaac A. Freeman,
Alice Freeman, James Freeman.
Edmund Freeman.

By their near friend Jacob Gale."

Answer in Chancery. The answer of Joseph Chapin to the bill of complaint exhibited against him in the Circuit Court of Poria County, State of Illinois, by Sarah S. Freeman, Benjamin S. Freeman, Ezey S. Freeman, John Freeman, Alice Freeman, Edmund Freeman, Anna Freeman, Mary Freeman,

Isaac H. Freeman and James Freeman,
Complainants.

This defendant for answer unto so much of said bill as he is advised it is necessary for him to answer unto, says, that he admits the decease of Benjamin Freeman as stated in the bill and that the said Sarah S. Freeman is his widow and has become the administratrix of his estate as stated in said bill, and that the other complainants are the heirs and only children of said Benjamin Freeman, deceased = This defendant further says that the said Benjamin Freeman deceased, in his lifetime and on or about the sixth day of November A. D. 1840, did enter into an agreement in writing under his hand and seal for the conveyance of the tract of land mentioned in said bill to this defendant and that said agreement is correctly set forth in said bill = This defendant further admits and contends that the said Benjamin Freeman, deceased, was at the time of his decease the owner in fee of said land as stated in said bill and that upon his decease the title to the same has become vested in the complainants. This defendant further admits that he has never paid to the said Benjamin Freeman or to the complainants the said sum of one hundred and eighty six dollars or any part thereof, but avers, that he has always been ready and willing to do so and still is ready and willing to pay the said sum to the complainants, whenever they are able to comply with the agreement of the said Benjamin Freeman, deceased, and convey

to this defendant the said tract of land as they in equity and justice ought according to said agreement set forth in their said bill.

Joseph Chapin.

Subscribed & sworn to before me
this 29th May 1843.

William Mitchell, clk. "

Deceit in Chancery Proceedings in Chancery before the Circuit Court begun and held at the Court House in the Town of Peoria within and for the County of Peoria & State of Illinois on Monday the 29th day of May in the year of our Lord one thousand eight hundred and forty three. Present the Hon^{ble} Richard Mc. Young associate Justice of the Supreme Court of the said State of Illinois, by exchange with the Hon^{ble} John D. Caton associate Justice of the said Supreme Court assigned to perform the duties of Judge of the Ninth Judicial Circuit.

Saturday June 3rd 1843

Sarah S. Freeman, Benjamin S. Freeman,

Ezra^S Freeman, John Freeman,

Oliver Freeman, Edmund Freeman,

Anna Freeman, Mary Freeman,

Isaac A. Freeman, James Freeman,

As For leave to convey real estate.

Joseph Chapin.

This day this Cause came on to be heard on the complainants bill, and the answer of the said Joseph Chapin, and the Court having considered the same and the proofs and

allegations of the parties and being fully advised in the premises, do order, adjudge and decree that the said Joseph Chapin do pay to the complainant Sarah D. Freeman as administratrix of the estate of Benjamin Freeman, deceased the sum of one hundred and ninety six dollars in twenty days after the last day of this term of this court, that on payment of the said sum having so been made the said Sarah D. Freeman be and she hereby is authorized and required to make, execute, acknowledge and deliver to the said Joseph Chapin a sufficient deed of conveyance of the South West quarter of section N^o. Eighteen in Township Ten North of the base line of Range Seven East of the 4th principal meridian situated in the county of Peoria in the State of Illinois; It is further ordered that each party pay one half of the costs of this suit."

And as preliminary to the reading of said copy theffs read to the court an affidavit of Norman H. Purple stating the loss of said bond or its delivery to defendants counsel, which said affidavit is in the words & figures following,

"State of Illinois,

Peoria County. I N. H. Purple being duly sworn says that he had in his possession the original bond a copy of which is set out in the petition of Sarah D. Freeman and others as Joseph Chapin now shewn to the court about two months since as he now believes that about that time he delivered the same to J. H. Cooper, Esq. counsel for the defendant, that he has a distinct recollection that he had the same in his possession and is very confident that he

Affid of N. H. Purple

delivered the same to Mr Cooper, but will not state this positively, he has searched among all his papers where the same would be likely to be & cannot find said bond & if the same was not delivered to said Cooper he believes that the same is lost. That he gave said Cooper notice to produce the same on the trial of this cause on the 17th May 1853 as by notice hereto attached.

Dec. 6th 1853.

St. L. Purple"

And thereupon deft. by his counsel objected to the reading of said copy in evidence, but the Court over-ruled said objection and allowed said copy to be read.

The Plff then called one Parley Blakesley as a witness who testified that the defendant was in possession of the locus in quo as early as the year 1835 or 1836 & continued in possession until the year 1841, that he had built a very poor log cabin thereon, in which he resided & enclosed with a rail fence a garden spot of about one acre, that early in March 1841. he left the premises & removed to another part of the County several miles distant, that he sold off, at the time of his removal, the rails in the fence around the said garden & every thing on the premises except the house & wholly abandoned that; that the house & premises continued empty & abandoned till about the year 1847, when one man entered & lived in it a part of the year. That in 1849. the house again having become vacant one Harlan having been burnt out in the place where he lived, moved into the house & occupied it for some months - that in 1850. the said deft. put a tenant in possession of the premises & in 1851. the

defendant moved upon the premises, claiming to go in under his tax title & has ever since continued in possession thereof. The defendant then called William Chapman who testified to substantially the same facts as the witness Blakesley - & the deft again ruled his ~~defence~~ defence.

The Plffs then stating that they had unintentionally omitted one piece of testimony & asked leave to introduce it & offered the following certificate in the words & figures following, to wit:

Redemption
Certificate

State of Illinois, Peoria County, Clerk's Office, County Court,
Peoria January 10th 1852, I, Charles Kettler, clerk of said court, do hereby certify, that George Peter agent for heirs of B. Freeman has this day paid me the sum of Seven dollars and thirty two cents for redemption money due on the South West quarter of section Eighteen in Township Ten North of Range Seven East; 155 $\frac{1}{2}$ acres of which were sold to Joseph Chapman by the Sheriff of said county in June A.D. 1845 for the tax, interest and cost due thereon for the year 1844. Also the sum of five $\frac{66}{100}$ dollars taxes and interest due thereon for the year 1850

Redemption \$7.32 Charles Kettler, Clerk."

Tax 1845 5.66

Certificate 25

\$13.23

So the introduction of this evidence the deft. objected, but the Court admitted the evidence & the deft excepted to the decision.

The ^{Defendant} Deft. then offered to prove affirmatively that said

Certificate of redemption was issued by the clerk without the filing in the office of said clerk of any evidence or papers sufficient in law to authorize or justify the granting of the same, to which said motion of said deft, the court over-ruled and refused to allow said evidence to be introduced, to which order of said court in refusing said evidence the deft. by his counsel then & there excepted.

This was all the evidence in the case.

The court instructed the jury that from all the evidence in the case, the Heirs of Freeman had shown a title in themselves & if they believed the evidence given, said heirs were entitled to a verdict, to the giving of which instruction the defendant excepted. The Plffs. then asked leave of the court to withdraw the record of the Montgomery Circuit Court above mentioned & the deed of the said Guardian - & take a verdict in favor of the said Freemans - to the granting of which leave the deft objected - but the court granted the leave & the deft. excepted to the decision.

The Jury returned a verdict against the deft as follows, "We of the jury do find the defendant guilty of unlawfully withholding the possession of the premises in the declaration mentioned, viz; the following described real estate, to wit; the South West quarter of section Eighteen (18) in Township Ten (10) North of Range Seven (7) East of the fourth Principal Meridian in the county of Peoria, from the Plaintiffs

Benjamin S. Freeman, John Freeman, Edmund Freeman, James Freeman, Anna Freeman and Mary Freeman and that they have a fee simple title thereto and do assess their damages at one cent, we do further find that as to the plaintiffs Alfred S. Curtin and John L. Griswold the defendant is not guilty of the trespass and ejectment set forth in the declaration. The defendant moved the court for a new trial but not under the statute for the reasons following, to wit:

"The Court erred—

Reasons for
new trial

1. In admitting improper testimony on the part of plaintiffs
2. In permitting the plaintiffs to withdraw from the consideration of the jury the evidence of title in Curtin & Griswold =
3. In excluding the title set up by defendant =
4. Because the instruction of the court to the jury was against law.
5. Because the verdict of the jury was against law & evidence, "

The court overruled the motion & the defendant excepted to the decision and prayed that this bill of exceptions may be signed & sealed & made part of the record in this cause, which is done.

H. H. Head Seal

State of Illinois
Peoria County I Jacob Gale clerk of the Circuit
Court within and for the county of Peoria in the State
of Illinois do hereby that the foregoing is a full and
correct transcript of the Record and proceedings in a certain
cause in Ejectment in the Circuit Court aforesaid wherein
Alfred G. Custerius, John L. Griswold, Benjamin S. Freeman,
John Freeman, Edmund Freeman, James Freeman, Anna
Freeman and Mary Freeman are plaintiffs and Joseph Chapin
is defendant as the same remain of Record and on file
in my office - In witness whereof I hereto set my
hand and affix the seal of said Court
at my office in Peoria this first day
of June A.D. 1854 -
Jacob Gale. clerk.

Clerk's fees: for transcript Eject. Trial \$12.50 paid by deft.
Jacob Gale. clerk

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Joseph Chapin

A. G. Cuttens is recd.

Recd

68

12403

Filed June 14. 1854.
Leland C. W.

1854

Repaired

Joseph Chapin }
vs. } Appeal from Peoria
Curtis & Giddard }

Points made by S. H. Cooper for appellant

1. The Amendment of the declaration herein was irregular & should not have been allowed:

The court has no discretion to permit amendments not conformable to law: This made new parties in fact a new suit. is therefore an anomaly in proceedings at law, and unless specially authorized by the provisions of Chap. 36 - of our Revised Statutes, or by the law upon this subject as it stood before, cannot be sustained:

1. Under the old law pertaining to trials in ejectment the plaintiff could amend, by extending his demise - or by laying a new demise from the same lessor. Whether a new demise from a new lessor was ever allowable may well be doubted. 5. Mo. 121. 442. - 6. 289 Little 5. 308. W. C. C. R. 4. 199: But no ^{new} demise could be laid after suit brought. The Plaintiff must rely on his title as when he first sues. The rule is the same under the statute: Adams on Eject. 203-4. Rev. Stat. 205. S. B. 3 & 7. Ill. R. 11. 547^{13. 251}. The reason assigned is that it would introduce a new cause of action & make a new suit. The practice contended for here wholly assails the rule & the reason of it: A. sues. finds his title defective. Instead of getting a new conveyance, which cannot avail him in that suit, he makes his grantor Co-plaintiff. This does indirectly what he cannot do directly:

2. At common law no change in the plaintiff or record could be made. Tho' Nominal for some purposes he was still the ^{actual} party before the court & is treated. The death of the lessor in no way affected the progress of the suit: Adams on Eject. 288-289-304 note 1 - 28 Cam. 251. Under the statute the plaintiff takes the place of the deceased ^{his lessor} ~~as plaintiff~~ his lessor. becomes the actual

Plff and cannot be changed, except in ^{any} ~~case~~ substitution of his legal representatives, ^{in case of death - nor can} ~~or other~~ other plaintiffs. He added, without affecting the identity of the suit, and disturbing the harmony of proceedings in action at law =

3. A new deft cannot be substituted for another with^{out} the consent of the Plff. Ill. Rep. 13. 716 cases cited. This is in effect the substitution of new plffs for those already on the record & should be governed by the same rule. The former is disallowed because it may prejudice the plff. The latter may be equally & more prejudicial to the deft =

4. By S. 9. of the Statute several parties may be plffs. jointly in one count & separately in others. Now Constat they must not all join in commencing the suit. S. 5 provides that the suit shall be commenced by service of the declaration &c. S. 10 points out the mode of bringing in the deft to answer. Here is a new declaration & new parties. Can the deft be called upon to answer except in the mode provided in the law?

5. S. 14. authorizes the deft to call on the atty of the plff for his authority to sue in his name, only before plea filed. This Amendment is after plea & the cause at issue. No new plea is called for or required. By its terms the statute precludes the deft from the right to know the authority by which the new plffs are brought in: Hence, the inference. That the Amendment is not contemplated by the Statute =

2 The record & deed showing title in Cutenius & Guiswold should not have been withdrawn =

1. Because being introduced without objection, neither party could except. And being the act of the jls jps they were estopped from denying its effect or recalling it from the consideration of the jury =

2. Being in, title was thus shown in Cutenius & Guiswold, and the defence being shaped accordingly, the evidence closed, the dft was entitled to the benefit to be derived from that state of the proof. And in this case, it might materially affect the rights of the dft to withdraw this evidence & throw back the title in the Heirs of Freeman =

3. The Certificate of Redemption was improperly admitted in evidence - Because -

1. Plffs were not in a situation to attack, in this way, the title of dft. it not appearing that all taxes on the land were paid: R. E. S. 260. §. 43: 11 Ells. 429: 12. 411 =

2. It was not evidence under the demise laid in the declaration. The demise is laid sec. 1/51. The date of Redemption is Jan. 10/52: The plff must show title in himself at the date of his demise. Rev. Stat. 205 §. 7 = & books passim: Now the two years from the sale having elapsed & deed passed - the title was in Chapin at date in declaration & mentioned & the Certificate of Redemption did not show it descended at that date: 11 Ells. 547 =

3. There was no proof of the authority of the Clerk to grant it & dft offered to prove the contrary: Where a Statute points out the mode in which a thing is to be done, the authority

must appear & be strictly pursued. 1 Bibb 214:

This is especially true where the act is ministerial: ~~nothing~~
~~it is not~~ 2: Here the statute is peremptory. The clerk
must take & file the proof. R. E. S. 257-8. S. S. 39. 40: It is not
enough that the clerk be satisfied. The statute is not merely di-
rectory but his law in the case. The basis of his right to
act at all. Should he allow the redemption without the proof
his act would be void & the certificate granted a nullity.

4. The filing of the proof ~~implies~~ ^{denotes} its preservation. If to be kept
it must be for some purpose. One of these purposes we take to
be, is to lay the foundation for introducing the certificate granted
upon it. ^{in evidence} Another, and perhaps more material one is. that it
may enable the purchaser at the sale redeemed from to know
his rights in the premises. Before the end of the two years
~~the~~ no title passes & any body may redeem. R. E. S. 25
S. 38. after that time the title vests in the purchaser & only
certain classes of persons can redeem. If then redemption is
attempted, the holder of the title is not bound by the mere entry of the
clerk on the sale book. but may look at the proof on
file to ascertain the right of the party to redeem. If he finds
no such proof there he ought not to be bound by the redemp-
tion. but should be allowed to treat it as a nullity: at
least he should know that such proof as the law requires has been
made: Otherwise he is not adequately protected:

In Lane vs. Sharp 38 Cal. 575. Redemption by minors under
the act of Feb. 19/27 (see R. E. S. 208) was attempted to be set up. The
court say "If any such redemption was ever made it should
"have been proved by the records in the Auditor's office, that he:
"ing the best evidence of which the nature of the case would
"admit:" That law & the one under consideration are alike,
except as to the kind of proof to be exhibited. which does not af-
fect the present question. So here the proof made & filed with
the clerk should have been adduced to support the certificate

That the certificate is only evidence that the money was paid. Don't avoid the necessity of exhibiting or leaning with the clerk the requisite proof. As we might a capias if we without affidavit, provided the proof to support it be afterwards made in the course of the suit.

4. The redemption is made by an agent. No authority is shown from the infants or any one representing them. And where can they act by agent or atty? Sav. Lib. 16.458. Am. read. Ca. 1.106-7.

Carterius & Guisard claimed the property issued for it in their own right & the presumption that the act was done by them. So of any other writ or process requiring an affidavit to support it.

5. The redemption should be for the use of the persons entitled to the privilege. 18 C. C. S. 257-260. S. S. 43+39. Carterius & Guisard are the Equitable Owners. If valid the redemption will come to their use. Can they redeem Under cover of the infants?

6. Infancy is a personal privilege. Not assignable. Only the infant himself or those who represent his estate or claim by descent can set it up. Prinies in blood & not prinies in estate, may avail themselves of it. 8 Met. Rep. 196-203 13 Mass. 236-18. H. 73: Whittingham's Case 8 C. C. R. 42. Bae. Abi. Infancy & age. I. 6.

7. Now is the rule different under the statute. This redemption is made under S. 39 of the act Feb. 26/39. No part of this section favors the right of assignees of the infant to redeem unless it be the last clause but one. And here the terms "heirs & assigns" denote the interest or estate restored, rather than the persons who may redeem. This the grammatical sense requires. Again the language in other parts of the section restricts the right to the person laboring under the disability. Besides, the term owner in

the concluding Clause is in the present tense, and this owner is restored to the estate he had at the time of sale.

9. The privilege is given to the infant of recapitulation. For his protection: If others can avail themselves of it, it is not for his but their benefit: 1 N. H. Rep. 73.

10. To extend the privilege tends to embarrass tax sales & the collection of the revenue & so is against the policy of the law. If the first assignee may redeem, so may the next &c. to the end of the term. And the purchaser can't tell what to rely on.

If. For reasons above mentioned, the instruction given was erroneous. If the record shewing title in Cartwright's heirs is not properly withdrawn. The certificate of redemption improperly given in evidence. Or the redemption itself invalid. Then title was not shown in the Heirs of Freeman. In the first case in no event. And in neither of the latter, ^{unless} the tax title set up by dependant has been otherwise successfully impeached.

It is said this tax title is bad on its face:

1. Because the return of the collector was made at an improper time.

The report is to be made to the circuit court, at the first term in the year. This is directory, to prevent delay. It means that the report be returned in time for judgment at the first term. It can be of no consequence that it is dated or filed at a day previous to the term. Nor that no court was in session when so made out & filed. It is now the less, on that account, made to the court, & at its first term, if other: were properly made & addressed. The report itself is not given. We have but the recital in the judgment. And this imports

at most that the report was dated or filed with the clerk at the time named - By Secs 27+28 of the law - R.E.S. 253. The clerk is authorized to receive & file the collector's report, as also the copy of the notice =

But 2. It is claimed to be essential that the return shall show that the notice required by law has already, ~~been~~ at its date, been given for the full time - This it is conceived is not so - R.E.S. 252 & 25-12 Ills. 414 = It is only requisite that the court, on rendering judgment, shall then know that due notice has been given. The evidence of this, is the copy of the advertisement & certificate of the printer, to be also filed by the collector with the clerk - This notice, the record shows, was given - the court therefore had jurisdiction to render the judgment, and the question cannot now be raised - 12 Ills. 173. 413-14 =

3. The writ portafes is to be set at the head of the docket, portafial on the first day of the term. The sheriff must then have some time before to make it out. That he shall when so made out, date or then file it with the clerk, can make no difference unless some one is thereby ^{shown} ~~shown~~ of some right or subjected to additional burdens. Which will be the case contended - It now seems certainly appears that the report was even filed ~~of the report~~ on the 20th of January. It may then have been ~~nothing~~ more than ^{that} ~~it~~ then bore date =

2. It is objected that the name of the owner is not given - This is unnecessary - 5 Gil. 482. 12 Ills. 412 =

3. That the amount of tax is uncertain - That \$ is no language & means nothing = On this head we say -

1. Cases just like this have been before this court several times & allowed to pass - see 12 Ills. 410 = 13. 713. 717 &c. &c. And this is the common practice =

2. Former revenue laws use this $\$$ mark. It is therefore adopted into the language & its meaning fixed. R. E. S. 213. 14:
3. The use of figures in giving the amount of tax & costs is expressly authorized. R. E. S. 253 S. 33. This makes them for that purpose part of the language & they are to be read & interpreted by the help of the marks & signs in common use to define their meaning:
3. In *Boston v. Blakely* 13 Ill. 714. the court say - "part" means part - "from" - "ft" feet. because they are abbreviations well understood & not likely to mislead = R. E. S. of Universal Use in the language of figures, connected with money - is well understood & not likely to mislead:
- But without this mark there is enough to make the sense plain. The column is headed "tax". The tax is collectable only in money. The judgment must be for dollars & cents. The figures used are divided by a line, leaving one on the left & two on the right. Now uniform usage marks the figure on the left, cut off either by a line or dot, as denoting dollars & those on the right as denoting cents. And this is the rule clearly adopted by the court in 12 Ill. 357 cited by 2 pts. It is only where there is nothing to indicate what the figures mean that the court will disregard them.

4. That the amount of costs is uncertain. As to this we say -

1. It is immaterial in this action. It doesn't affect the jurisdiction of the court, rendering the judgment & can't arise collaterally = 12 Ill. 414 = 13. 723 =
2. That is certain which can be rendered so. as applied to this matter of costs in 13 Ill. 724: Here 40 cents is the legal amount of costs in ordinary cases. The court will not presume them to have been increased. These figures authorized

headed "costs" should be therefore taken to mean some cents.
Besides, in the precept which is a ^{copy} of the judgment the
letters "cts," denoting cents, are set over these figures in the
cost column. And the same is true of the tax column in
the precept. This explains the meaning, if that be needed.
And the court will look into one part of the record to ex-
plain another. Best for Mr. Blakeley 13 Ills. 710 =

5. The objections made are all technical &avor of "sticking in the
hawk". The court will not be astute to sustain
them =

Cooper. for self =

Chapin vs. Burton instals

Brief =

Cooper =