

No. **12235**

# Supreme Court of Illinois

Smith, Jr.

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vs.

Dow, et al

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Pleas before the Hon<sup>ble</sup> Edwin S. Leland Judge  
of the Circuit Court of the North Judicial Circuit of the  
State of Illinois. at the October Term of Said Court.  
begun and held in and for the County of Bureau. at  
the Court House in Said County. On Tuesday the third  
day of October in the Year of Our Lord One thousand  
Eight hundred and fifty four.

Present Hon<sup>ble</sup> Edwin S. Leland Judge

Edward M. Fisher Clerk

Osmyr Smith Sheriff

Benjamin F. Rowe and  
James S. Fowler on behalf  
of themselves & the other  
creditors of the Estate of  
James Smith Sr. deceased.

vs  
James Smith Jr and  
Jane Smith administrators  
of the Estate of James Smith  
Sr. deceased.

This Cause coming on to be heard upon  
the pleadings & process, and it appearing to the  
Court, that the deed of Conveyance from James  
Smith Senior to James Smith Jr. was made & continued  
fraudulently, for the purpose of defrauding the Com-  
plainants & other Creditors of the Said James Smith Sr.

of their just and lawful debts. Which said conveyance is in the words & figures following. Viz.

This Indenture made this Twenty first day of December in the Year of Our Lord One Thousand Eight Hundred and fifty. Between James Smith and Jane his wife of the County of Bureau & State of Illinois parties of the first part. and James Smith Junior. of Lewis town. in the County of Fulton. in the State of Illinois. of the Second part. Witnesseth. That the said parties of the first part. for and in consideration of four Hundred Dollars lawful money of the U.S. 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 thereof has 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. and to his heirs and assigns forever. all the following described lot piece or parcel of land to wit. The South East Quarter of Section Number Eight (8) in Township Number Seventeen (17) North of Range No Seven (7) East. containing in all (60) One Hundred and Sixty acres. lying and being in the County of Bureau and State of Illinois. Also the South West quarter of the North West quarter of Section Number Twenty one (21) in Township No Eighteen (18) in Range No Seven (7) East. containing forty acres. all lying in the County of Bureau and State of Illinois. - Together with all and singular

the hereditaments and appurtenances thereunto belonging,  
or in anywise appertaining, 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 parties of the first part, either in  
law or equity, of in and to the above bargained premises  
with the hereditaments and appurtenances, To have and  
to hold the Said premises above bargained and de-  
scribed with the appurtenances unto the Said party of  
the Second part, his heirs and assigns forever. And  
the Said parties of the first part for themselves, their  
heirs executors and administrators do covenant, grant, bar-  
gain and agree, to and with the Said party of the Second  
part, his heirs and assigns, that at the time of the ex-  
ecuting and delivery of these presents are well seized of the  
premises above conveyed as of a good sure perfect, absolute  
and indefeasible estate of Inheritance in the law in fee  
simple and have 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 from all former and other grants, bargains, sales,  
liens, taxes assessments, and incumbrances of what kind and  
nature soever: and 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 to claim the whole  
or any part thereof the Said parties of the first part shall  
and will warrant and forever defend.

In testimony whereof the said parties of the first part.  
hereunto set their hand and seal, the day and year first  
above written.

Signed Sealed and Delivered

in presence of William McKee

James Smith

her  
Jane L. Smith  
mark

(Seal)

(Seal)

State of Illinois

Bureau County

W. L. Williams, McKee a Justice of the

Peace in and for said County in the State  
aforesaid do hereby Certify that James Smith who is personally  
known to me as the real person whose name is subscribed  
to the above deed appeared before me this day in person  
and acknowledged that he executed and delivered the  
said deed as his free and voluntary act for the uses and  
purposes therein set forth. And the said Jane Smith wife  
of the said James Smith having been by me examined  
separate and apart, and out of the hearing of her hus-  
band and the contents and meaning of the said deed  
having been by me made known and fully explained  
to her, acknowledged that she had freely and voluntarily  
executed the same, and relinquished her dower to the  
lands and tenements therein mentioned, without com-  
pulsion of her said husband, and that she does not  
wish to retract the same. Given under my hand and  
Seal, this Twenty first day of December in the year of our  
Lord One Thousand Eight Hundred and fifty.

William McKee J. C. (Seal)

and it also appearing that since the making of said  
Conveyance the said James Smith Senior has departed this  
life & that said James Smith has been appointed adminis-  
trator upon his estate and that the said James Smith  
deed seized of no other real estate other than that in said  
deed described & that the personal estate of the said deceased  
is entirely insufficient to pay the creditors of said estate  
It is Ordered adjudged & decreed. That as to the Com-  
plainants & the other creditors of said deceased. Said deed  
of Conveyance from said James Smith Sr to said James Smith  
junior. be and the same hereby is annulled. set aside  
& for nought esteemed. And it is further Ordered adjudged  
& decreed that the said James Smith. as Administrator or  
Successor in Office proceed by application to the County  
Court of Boone County to Obtain a licence or decree for  
the Sale of as much of the real estate in said deed descri-  
bed. as may be necessary for the payment of the debts of  
said deceased. in the same manner as though the said  
deceased had never made said deed of Conveyance to  
said James Smith jr. and if after the application to the  
payment of said debts first of all the other assets of said  
deceased. & second. Such portion of the proceeds of the Sale  
of said real estate. as may be necessary to pay all the  
debts of the deceased there shall remain a Surplus in  
money. That the said James Smith. as Administrator or  
her Successor in Office pay the same over to the said  
James Smith jr. and if any of said Real estate shall  
remain unsold after enough has been sold for the payment

of debts as aforesaid, as to that remaining unsold. The Said  
Deed of Conveyance from Said James Smith Sr to Said James  
Smith junior. Shall remain in full force & effect unaffected  
by this decree. It is also Ordered adjudged & decreed  
that The Complainants have and recover of the Said  
James Smith Jr. Their costs and charges by them in and  
about the prosecution of this suit appended. & that they  
have execution therefor. It is also further Ordered ad-  
judged & decreed. that in Case the Said execution for  
costs Shall be returned no property found. that Said  
James Smith as administrator or her Successor in office  
pay the Said costs in due course of administration.

And now Comes the Said defendant James Smith  
Junior and prays an appeal herein to the Supreme  
Court. which is allowed upon the Said Smith entering into  
bond in the Penal sum of Two hundred dollars with the  
condition required by law in Such Cases with Isaac  
Smith as Security within ninety days next hereafter

### Copy of appeal Bond

Wherein all men by these presents that  
we James Smith Jr. and Isaac Smith Senr.  
of the County of Bureau and State of Illinois  
are held and firmly bound unto Benjamin H.  
Dove and James S. Fowler in the penal sum  
of Two Hundred dollars. current 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 Severally  
and firmly by these presents. Witness our hands  
and Seals. This 16<sup>th</sup> day of December A.D. 1854.

The Content of the above Obligation  
is Such that whereas the Said Benjamin F. Dove, and  
James S. Fowler did on the 13<sup>th</sup> day of October A.D.  
1854. in the Circuit Court in and for the County and  
State aforesaid Recover a Certain order or decree  
in Chancery against the Said James Smith Jr. of which  
the following is a copy to wit. It is ordered, adjudged  
and decreed that as to the Complainants and the other  
creditors of Said Deceased Said deed of Conveyance  
from Said James Smith Senr to James Smith Jr. be and  
the Same hereby is annulled. Set aside and for nought  
estimated. and it is further ordered adjudged and decreed  
that the Said James Smith as administrator or her  
Successor in office proceed by application to the County  
Court of Bureau County to obtain a licence or decree  
for the Sale of as much of the real estate on Said deed  
described as may be necessary for the payment of the  
debts of the Said deceased. in the same manner as though  
the Said deceased had never made Said deed of Con-  
veyance to Said James Smith Jr. and if after the applica-  
tion to the payment of Said Debts first of all the other  
assets of Said Deceased. & Second. of such portion of  
the proceeds of the Sale of Said Real estate as may be  
necessary to pay all the debts of the deceased. There

Shall remain a Surplus in money. That the Said  
Jane Smith as administratrix or her Successor in office  
pay the Same over to the Said James Smith Jr. and if  
any of Said Real estate shall remain unsold after  
enough has been Sold for the payment of debts as aforesaid  
as to that Remaining unsold the Said deed of Conveyance  
from Said James Smith Sr. to the Said James Smith Jr.  
shall Remain in full force and effect, unaffected  
by this decree. It is Ordered adjudged and decreed that  
the Complainants have and recover of the Said James  
Smith Jr. Their Costs and Charges by them in and about  
the prosecution of this Suit expended and that They  
have Execution Therefor. It is also further Ordered  
adjudged and decreed that in Case the Said Execution  
for Costs shall be returned no property found that Said  
Jane Smith as administratrix or her Successor in office  
pay the Said Costs in due Course of administration -

And the Said James Smith Jr. has prayed for and  
Obtained an appeal to the Supreme Court of Said State.

Now if the Said James Smith Jr. shall prosecute  
his Said appeal with effect and shall moreover pay  
the amount of the Judgment, Costs Interest and damages  
rendered against him in Case the Said Judgment shall  
be affirmed in the Said Supreme Court. Then the above  
Obligation shall be void. Otherwise to remain in  
full force and virtue

Taken and approved before  
me at my office in Princeton this 16<sup>th</sup>  
day of December A.D. 1854.  
Edw. Fisher Clerk

James Smith (Seal)

Isaac Smith (Seal)

State of Illinois }  
Bureau County ss } I Edward M. Fisher clerk  
of the Circuit Court in and for  
Said County in the State aforesaid do hereby certify that  
the foregoing is a true copy of the decree & appeal  
Bond in the foregoing entitled Cause as of record  
and on file in my office.

Witness my hand and the Seal of  
Said Court at Princeton this 7<sup>th</sup> day of  
June in the Year of Our Lord One  
Thousand Eight Hundred and fifty five  
Edward M. Fisher  
Clerk

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Jas. Smith Jr. infd, or  
vs

B. F. Dow et al.

Recd

Filed June 14. 1855.  
L. Leland Clk.



James Smith impleaded vs  
Dow & Fowler

Now comes the Plaintiff in error  
and says that in the record and  
proceedings aforesaid, there is  
manifest error in this to wit.

- 1<sup>st</sup> That the Circuit Court decided  
erroneously in awarding a decree  
against the plaintiff in error on  
the Pleadings & Proofs.
- 2<sup>d</sup> That the Circuit Court erred  
in not dismissing on final hearing  
the bill of the said Dow & Fowler
- 3<sup>d</sup> That said Judgment & Decree  
was for Defts in error when it  
should have been for the Plffs  
in error.

Wherefore the said  
plaintiff in error pray that the  
said Judgment & Decree may  
be reversed, and ~~that~~<sup>he</sup> in all  
things restored to ~~their~~<sup>his</sup> rights.

William T. Peters  
Atty for Plffs  
in error

James Smith & a

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Dow & Fowler

Apportionment of errors

Filed June 30. 1855.

L. C. C. C. C.

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James Smith Jr.

by

B. F. Dow et al.

1855

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