

No. 12508

Supreme Court of Illinois

Cunningham.

vs.

Doran, et al.

71641  7

Jonathan Gannan
Plaintiff in error
vs
George A. Burt
and George Debra.
in plea in error

In the Supreme
Court

And the said Plaintiff in error
urges and says that there is man-
ifest error in the record proceedings
and in the rendition of the decree made
by the Court in this case Sept 19 1853.
Sustaining the admission of Burt & Debra
and assuming the facts as to them to be
correct & for a judgment of error
he shows the Court here the following
upon the record.

1. The Court erred in sustaining the
admission of said Burt and Debra
to the original and amended bills of the
Complainant
2. The Court ^{erred} in making a decree dis-
missing the Bills as to said George
A. Burt and George Debra
3. The Court should have entered a de-
cree in favor of the Plaintiff as prayed
in his original and amended bills a-
gainst said Burt & Debra.
4. The decree should have been for the
Plaintiff in error
5. Other errors

For which and other errors they pray
that said Court sustaining the validity of
the said Return & Deeds and admitting
his said Original and amended bills
as to them the referees and set
aside and wholly for nought returns
of which I know
for my

Defendants Briston and DeFord say that
in the record decried against them
is no error. Pray that as to them said
Defendants pray that the said decree may
be affirmed.

People for
said Depts

Be it remembered that heretofore, to wit, on the twenty second day of January A.D. 1852, there was filed in the office of the Clerk of the Circuit Court in and for the County of Peoria in the State of Illinois a Bill in Chancery, with exhibits thereto attached, also a precipe and security for costs, which as they remain on file in said clerk's office are in the words and figures following, to wit,

Bill -
To the Hon. William Kellogg Judge of the
1 10th Judicial District in the State of Illinois
in Chancery sitting.

Your Orator Jonathan J. Cunningham of the County of Huntingdon in the Commonwealth of Pennsylvania respectfully represents,

That on the seventh day of August A.D. 1838, John Doran (whom your orator prays, may be made a party defendant to this your orators bill of complaint) then being the owner in fee simple of the north west quarter of section thirty two in township eleven north in range seven east of the fourth principal meridian in the County of Peoria & State of Illinois, at the County of Peoria, executed a mortgage on said premises to one Stephen Lee, to secure to said Lee the payment of three promissory notes given to said Lee in payment for said land & signed by said Doran, dated the said seventh day of August A.D. 1838 & payable to said Stephen Lee or order, one for one hundred dollars with interest at the rate of twelve per cent per annum, eleven months after the date thereof, one for one hundred dollars with interest at the rate of twelve per cent payable two years after the date thereof and the remaining one for one hundred dollars payable three years after the date thereof, with interest at the rate of twelve per cent, which said three notes were also sealed by said John Doran, a copy of which mortgage is executed by said John Doran & of said three (sealed) promissory notes are hereto attached & made part of this bill, the original

mortgage will be exhibited by complainant & read in evidence on the hearing of this cause, but the said three notes never having been in complainant's possession, he cannot produce the same, but parole proof of the existence of said notes & of the contents thereof will be offered by complainant.

Your orator further represents that on the eighteenth day of August A.D. 1838 said mortgage was duly assigned by said Stephen Lee to one John Smith of the County of Peoria (whom your orator prays may be made a party defendant to this bill) as will more fully appear by the assignment on the back of said mortgage, reference thereto being had, a copy of which assignment is also hereto attached marked C. & made part of this bill of complaint.

And your orator further represents that said mortgage and the assignment thereon executed by said Stephen Lee to said John Smith, were duly filed for record in the Recorder's office in & for the County of Peoria, in the State of Illinois on the 26th day of August A.D. 1839 and duly recorded in the Records of said County in Book I pp 351.

And your orator further represents that said Stephen Lee has no interest in said land, nor in said notes or in said Mortgage executed to him to secure the same, said Lee having transferred all his interest ^{therein} to said John Smith.

And your orator further represents that on the 25th day of September A.D. 1841, said John Smith filed in the Circuit Court sitting as a Court in equity in & for the County of Peoria in the State of Illinois his certain bill in chancery, against said John Doran with the view & for the purpose of foreclosing said mortgage a copy of which bill is hereto attached & made part of this Bill of Complaint.

And your orator further represents that immediately after filing said bill for foreclosure of said mortgage in the office of the clerk of said Circuit Court William Mitchell then acting as clerk of said Court and as clerk of said Circuit issued a Subpoena in chancery to said John Doran to answer the

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matters and things contained in said bill in equity to fore-
close said mortgage so executed by said John Doran to said Stephen
Lee & by said Lee assigned to said John Smith, which said sub-
poena was delivered to the Sheriff of said County of Peoria & by
said Sheriff duly served returned into the office of said clerk
endorsed I have served the within summons on the within named
John Doran by delivering to him a true and perfect copy of the
same, this 24th day of September A.D. 1841 signed Christopher
Cor. Sheriff P. B. By William Orr Deputy Sheriff P. B.

And your orator further represents that afterwards
to wit at the October term A.D. 1841 of the Circuit Court of
Peoria County said cause coming on to be heard upon the bill
and exhibits of the said complainant ^{the Court} found that there was due
the said complainant in his mortgage security the sum of four
hundred and fifteen dollars, whereupon it was ordered and de-
creed by the Court that the said defendant the said John Doran
should pay the said complainant the said John Smith the
said sum of four hundred and fifteen dollars with the accruing
interest thereon within ten days after the rendition of said de-
cree; and in default of payment said defendant & all persons
claiming under him should be forever barred from all equity of re-
demption in & to said premises. And it was further ordered
that George T. Metcalf (then a resident of the County of Peoria)
be appointed a Commissioner to sell said premises, after having
first duly advertised the same, to the highest and best bidder
for cash & out of proceeds of said sale to pay the said complainant
the said sum of money so found to be due with the accruing
interest thereon & also the costs and charges of the said complainant
in that suit expended & return overplus if any to said defendant
as will more fully appear by the records and decree rendered
by the Court in said cause a copy of which decree is hereto at-
tached marked and made part of this bill & on the hearing
of this cause complainant will produce and read in evidence
the original decree rendered in this cause

And your orator further represents, that said decree remains in full force unpaid unsatisfied and unreversed & was duly recorded in Peoria County Records August 21, A.D. 1851.

And your orator further represents that on the day of July A.D. 1851 the said John Smith ^{duly} assigned said decree to your orator as will more fully appear by the assignment in writing duly signed by said John Smith hereto attached & made part of this bill of Complaint and notice of said assignment was duly entered on the records in said cause.

And your orator further states represents, that said George T. Metcalf since the rendition of said decree and since his appointment as Commissioner has removed out of the State of Illinois and has become a resident of the City of Washington in the District of Columbia, so that your orator cannot proceed to sell said premises until your honor may appoint some other competent person to act as Commissioner in that behalf.

And your orator further represents that said John Doran since the rendition of said decree as complainant is informed and verily believes has left the State of Illinois and gone to parts unknown.

And your orator further represents that said premises to wit the north west quarter of section thirty two in Township eleven north in range seven east was patented by the United States to one Jonathan Emmerson by patent dated the sixth day of October A.D. 1817, a copy of which patent is here to attached & made part of this bill of Complaint and complainant on the trial of this cause will produce said patent & offer the same in evidence. And your orator ^{further} represents that said patent was duly recorded in the Records of Madison County on the 9th day of July 1818.

And your orator further represents that on the 21st day of December A.D. 1817 said Jonathan Emmerson conveyed said premises to Joseph Hunt.

And your orator further represents that the

5 conveyance from Emmerson to said Hunt was written on the back of the patent executed to said Emmerson & has in part become obliterated but your orator charges that said conveyance so executed by said Emmerson to said Hunt was duly recorded in Madison County Records on the said 7th day of July A.D. 1818 & that a copy of said conveyance from Emmerson to said Hunt is hereto attached marked - & made part of this bill

And your orator further charges that on the said 7th day of July ^{A.D.} 1818, said premises then were situate in said County of Madison but that since said time the County of Peoria has been laid off and established.

And your orator further charges that on the fourth day of April 1836 said Joseph Hunt conveyed said premises to William Butler by deed of that date signed & sealed by said Hunt, & said deed was recorded in Peoria County Records on the 8th day of April A.D. 1851, a copy of which deed is hereto attached marked - & made part of this bill of complaint.

And your orator further states represents that on the thirtieth day of June A.D. 1854 said deed so executed by said Hunt to said William Butler, ^{was duly acknowledged by said Hunt} & said deed & said acknowledgment were duly recorded in Peoria County records on the 6th day of August A.D. 1851

And your orator further represents that on the 23 day of October A.D. 1837, said William Butler, duly conveyed said premises by deed in fee simple to James P. Harvey, which said deed ~~was~~ duly recorded in Peoria County Records on the 8th day of April A.D. 1851, a copy of which deed is also hereto attached & made part of this bill of complaint.

And your orator further represents that on the third day of February A.D. 1838, said James P. Harvey duly conveyed said premises to Stephen Lee a copy of which deed is hereto attached and made part of this bill of complaint & your orator charges that said deed from said Harvey to Lee was duly recorded in Peoria County records.

6 And your orator further charges, that on the seventh day of August, 1838, the said Stephen Lee by his deed of that date duly executed and delivered conveyed said premises to John Doran which deed was filed for record and recorded in Peoria County records on the 18th day of May A.D. 1839, a copy of which deed hereto attached & made part of this bill, will be offered in evidence on the hearing of this cause the original never having been in complainant's possession cannot be produced.

And your orator further represents that said John Smith then believing that the decree rendered in the Circuit Court as hereinbefore mentioned in his favor and against said John Doran, vested the fee simple in said premises in him the said Smith, sold & conveyed the same to Caleb North by deed dated March 13th A.D. 1845 executed by the said John Smith & Rachel Smith his wife and recorded in Peoria Records on the second day of December A.D. 1845, a copy of which deed hereto attached is made part of this bill & on the hearing of this cause complainant will produce & read in evidence the original deed.

And your orator further charges that on the tenth day of July A.D. 1845, said Caleb North by his deed of that date duly executed, conveyed said premises to John Boyner and said deed on the second day of December A.D. 1845 was duly filed for record and recorded in Peoria County Records a copy of which deed is hereto attached & made part of this bill of complaint and on the hearing of this cause complainant will produce and read in evidence the original thereof.

And your orator further represents, that on the third day of December A.D. 1850, said John Boyner and Rebecca D. Boyner his wife for a valuable consideration conveyed said premises by deed of that date duly executed to your orator, which said deed was duly recorded in Peoria County records on the 21st day of February A.D. 1851. A copy of which deed is hereto also attached and made part of this bill of complaint.

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and on the ~~other~~ hearing of this cause, complainant, will produce and read in evidence the original deed so executed to him by said John & Rebecca D. Bryner.

And your orator further represents that he was a bona fide purchaser of said premises that he purchased the same in good faith & supposed the fee simple of said premises was duly vested in him.

And your orator further represents that in the year A.D. 1848, in the month of June, one hundred and fifty one acres of ^{land} were sold by the Sheriff of Peoria County to one John Elling for the taxes of 1847, which said one hundred and fifty one acres so sold for taxes were redeemed from said sale by John Bryner & said Bryner also paid at that time to wit on the eighteenth day of June A.D. 1850, the taxes on said premises for the years A.D. 1848 & 1849 as will appear by a copy of the certificate of redemption hereto attached & made part of this bill.

And your orator further represents that your orator paid the taxes on said premises for the year A.D. 1850 as will more fully appear by a copy of the collectors receipt hereto attached and made part of this bill.

And your orator represents that on the twenty second day of July A.D. 1850, George C. Bestor, whom your orator prays may be made a party defendant hereto filed with the Recorder of Peoria County an instrument under seal purporting to be a deed executed by Joseph Hunt Jr. to one Alexander Kirsheet of the City of New York dated April nineteenth A.D. 1849 for the same premises.

And your orator further represents that the consideration paid said Hunt as appears by said deed was one dollar, but your orator charges that said Kirsheet did not pay anything whatever to said Joseph Hunt for said land & said land was then well worth eight hundred dollars. Your orator further represents that one Peter J. Hoos of the

City of New York who is now and for a number of years has been engaged in the trade & business of speculating in lands in the Military tract in the State of Illinois and in hunting up titles to the same for purposes of speculation therein ascertained by means of an abstract of most if not all the various titles to the lands in said Military tract, kept in the office of said Goes, that there was no title on record from said Joseph Hunt - J. to said William Butler & being acquainted with said Hunt proposed to Hunt to purchase his title to said premises and proposed to pay said Hunt therefore the sum of ten dollars, which sum said Hunt agreed to receive in full payment therefore and then and there by a quit claim deed pretended to conveyed said premises to Alexander Kirsheet. And your orator further charges that at the time of said sale from said Hunt to Goes and at the time said conveyance was executed to Kirsheet said Hunt distinctly informed said Goes that he did not know whether he had any title to said premises or not - that he had formerly owned two quarter sections of land in Illinois one of which he had conveyed to William Butler & the other he had not conveyed, and that if Goes would run the risk he would quit claim what title he had for ten dollars, and said Goes also knew that said Hunt then had no title in said premises & that said decree was still a valid lien on said premises. And your orator further charges that Goes was then an acting Commissioner of deeds and drew up the deed to Kirsheet & took the acknowledgment thereof himself.

And your orator further charges that said Kirsheet never had any interest in said premises except as above set forth, that Kirsheet never knew anything about the land nor about Hunt nor anything about said conveyance to him from Hunt until the same was presented to him by said Goes.

And your orator charges that Kirsheet has been

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heretofore assisting said Hoos in like operations, has been fully indemnified & paid for his trouble and had actual & constructive notice of the several facts and circumstances herein before alledged by your orator.

And your orator charges that said Peter L. Hoos some time in the fall of A.D. 1850 or spring of 1851 sold said pretended title to acquired by said Kirschel to George C. Bestor and James L. Riggs for a horse and buggy but when and upon what terms said sale was made your orator cannot say as no contract, bond, deed or other instrument has been recorded in the Records of Peoria County & that said Kirschel & said Hunt and said Peter L. Hoos have now no interest in said premises.

And your orator further states represents that said James L. Riggs afterwards to wit in July A.D. 1851 assigned his interest in the speculation to George C. Bestor & that said Riggs has now no interest in said title, nor in said premises nor in said speculation.

And your orator further represents that said James L. Riggs and said George C. Bestor both knew of the existence of the chain of title under which your orator holds & that they long before they purchased said pretended title of said Hoos had actual and constructive notice of the existence of the several deeds from the Patent down to your orator and of the mortgage from Doran to Lee & the assignment thereof to Smith & of his proceedings in foreclosing said mortgage & the rendition of the decree therein as hereinbefore mentioned & before the redemption of said premises from the said sale of taxes for the year A.D. 1847, by said ^{John} Boyner & before they acquired title through Kirschel, they both proposed to purchase the title of said Boyner.

And your orator further charges that said George C. Bestor acquired his title to said premises after most if not all the foregoing & above described deeds were placed upon the records of said Peoria County & had constructive

and actual notice of the same.

Your orator further represents that one George Debord is now in possession of said premises under pretence of having purchased the same of said George C. Bestor, but your orator charges that said George Debord had also actual & constructive notice of the existence of said proceeding in chancery of the rendition of the final decree therein and of the existence of the several beforementioned deeds before he purchased said premises, and that said Bestor, Kershell, Hoos & Debord have fraudulently combined and confederated to cheat & defraud complainant out of ^{his} said decree.

And your orator further charges that said George Debord has not paid for said land, that he is fully indemnified & bought on speculation.

And your orator further represents that he cannot more particularly state the claim of title set up by said George C. Bestor & said George Debord, as no bond deed article of agreement nor any other written evidence of their title has ever been filed in the Records office in the County of Peoria, except said deed from Joseph Hunt Jr to Alexander Kershell.

Your orator further represents, that one John Elting pretends to have some interest in said premises by virtue of a sale for taxes, but your orator avers that such title if any, is an illegal and invalid one for the reason that at the time of the sale for taxes under which said Elting claims there was no tax due on said premises & the proceedings were in other respects informal illegal and void.

And your orator further charges that he is now the sole owner of said decree and in equity said decree is a valid and subsisting lien on said premises and therefore prays your Honor to aid him in this behalf to revive said decree & the lien of the same on said premises.

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Your orator therefore prays that a writ of subpoena may issue to the said defendants, the said John Doran, John Smith, George C. Bestor, John Elling & Debord, that they may answer the several matters and things herein contained without oath, the oath of the said defendants being expressly waived.

Your orator further prays, that if in the progress of this cause it should appear that any other person or persons should have an interest in the premises, that your orator may have leave to amend his said bill of complaint, by making such person or persons parties hereto, that your orator may have leave on the final hearing of this cause may have said decree so rendered by the Court in favor of John Smith against said John Doran & by said Smith assigned to your orator revived, that some suitable person be appointed by the Court to execute said decree and sell said premises to the highest and best bidder for cash and that said Commissioner be decreed to sell the same after having first duly advertized the same and apply proceeds to the payment of the costs and charges of your orator in this behalf expended and to the payment of the amount due your orator on said decree, and that your orator may have such other and further relief as under all the circumstances equity and good conscience may require.

By Grove & McCoy
his Solicitor

State of Illinois,

Peoria County { Before me Jacob Gale, Clerk &c personally came Alexander McCoy and made solemn oath that John Doran one of the defendants in the above bill of complaint resides out of the State of Illinois & that service cannot be service upon said Doran as he verily believes.

Alex. McCoy

Sworn & subscribed before me this 22nd day of January A.D. 1852

Jacob Gale, Clerk

Exhibits =

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Know all men by these presents that I, John Doran of Peoria County and State of Illinois Yeoman in consideration of four hundred dollars paid by Stephen Lee of Hancock County and State aforesaid, Gentleman, the receipt whereof I do hereby acknowledge do hereby give grant sell and convey unto the said Stephen Lee unto the said Stephen Lee his heirs and assigns all my right title and interest in and to the north west quarter of section thirty two in township eleven, north range seven east of the fourth principal meridian. To have and to hold the aforegranted premises to the said Stephen Lee his heirs and assigns to their use and behoof forever. And I the said John Doran do hereby for myself and my heirs executors and administrators covenant with the said Stephen Lee & his heirs and assigns that I am lawfully seized in fee simple of the aforegranted premises, that they are free of all incumbrances, that I have good right to sell and convey the same to the said Stephen Lee. And I will and my heirs administrators & executors shall warrant and defend the said premises to the said Stephen Lee his heirs and assigns forever against the lawful claims and demands of all persons, claiming by through or under me. Provided nevertheless that if the said Doran his heirs executors administrators pay to the said Stephen Lee his heirs executors administrators and assigns the amount of three notes of hand, bearing even date with these presents according to the tenor thereof, then this deed shall be void otherwise it shall remain in full force. On witness whereof I the said John Doran have hereunto set my hand and seal this seventh day of August eighteen hundred and thirty eight.

John Doran *E. J. D.*

Signed sealed and delivered
in presence of us Richard Schold
James Oakrump

Peoria Co. State of Illinois August 7th 1838. Personally appeared before me the within named John Doran and acknowledged the within instrument to be his free act and deed. William P. Blanchard

"6"

13 I Stephen Lee hereby assign the within mortgage to John Smith
Sr. as witness. my hand and seal this 18th day of August 1838
Stephen Lee

State of Illinois } Records office
County of Peoria } I, Charles Kettelle, Recorder of sd. County
do certify the foregoing mortgage and assignment endorsed hereon
is this 26th day of August 1839 duly recorded in said office in
book I pp. 35. Given under my hand & private seal (no official
seal being yet provided) this 26 day of August 1839
Charles Kettelle Seal
R. P. Leo.

Copy of notes referred to in Bill

Peoria Co. Ill. August 7th 1838

Eleven months after date I promise to pay to Stephen Lee or order
|| one hundred dollars with twelve per cent interest for value received
\$ 100. Attest J. Dalrymple John Doran Seal

Peoria Co. Ill. August 7th 1838

Two years after date I promise to pay to Stephen Lee or order
|| one hundred dollars with twelve per cent interest for value
received.
\$ 100. Attest J. Dalrymple John Doran Seal

Peoria Co. Ill. August 7th 1838

Three years after date I promise to pay to Stephen Lee or order
|| one hundred dollars with twelve per cent interest for value received
\$ 100. Attest J. Dalrymple John Doran Seal

Filed September 25. 1841

William Mitchell & Co

To the Honorable Thomas Ford, Judge of the ninth
Judicial Circuit in the State of Illinois in chancery sitting,

John Smith Jr. of Peoria County State of Illinois
represents, that John Doran of said County and State and whom
your orator prays may be made defendant to this bill, being or
pretending to be seized in fee simple of a certain tract of land
situate in said County of Peoria and described as follows to wit:
the north west quarter of section thirty two in township eleven
north range seven east of the fourth principal meridian. And
your orator further represents that the said John Doran being indebted
Stephen Lee in the sum of three hundred dollars by virtue of
three promissory notes for one hundred dollars each with twelve
per cent interest thereon, bearing date on or about the seventh day
of August A.D. 1838 (which notes are hereby referred to and made
part of this bill) And your orator further shows that the said
John Doran in order to secure the payment of the said notes by
his deed duly executed and dated on or about the seventh day
of August A.D. 1838 conveyed the aforesaid premises in fee simple
to said Stephen Lee, but subject nevertheless to a condition of
defeasance on the payment of the amount due on the said
promissory notes according to the tenor and effect of said notes
as in and by said deed of mortgage a copy of which is herewith
filed and made part of this bill will more fully appear.

Your orator further represents that the said Stephen Lee
on the eighteenth day of August A.D. 1838 assigned to your
orator his interest in the said mortgage (a copy of which assign-
ment is herewith filed and made a part of this bill) and also
that the said Lee endorsed and transferred to your orator the said
promissory notes to secure the payment of which the said mortgage
was given.

Your further represents that neither the said
sum of three hundred dollars nor any part thereof was paid
to your orator at the time limited in that behalf, whereby the
legal estate in said premises became vested in your orator re-
deemable nevertheless in equity on payment of the principal

and interest due and to become due thereon, that the said sum of three hundred dollars principal and a large arrear of interest thereon being due he applied to the said John Doran and requested him to pay the same to your orator, which he has hitherto wholly neglected and refused to do.

15 Your orator therefore prays that the writ of subpoena may issue against the said John Doran that that may be compelled to answer all and singular the premises, that an account may be taken of what is due your orator for his principal and interest on said mortgage and that said mortgaged premises may be sold and the proceeds thereof applied to the satisfaction of said principal and interest and your orator may have other & further relief in the premises as equity and good conscience may require

Powell & Bryan

John Smith Jr.

Sol. for Compt.

John Smith } Circuit Court Peoria County
vs } October Term A. D. 1841
John Doran } In Chancery

And now at this day comes the said complainant by his solicitors Powell & Bryan, and the said defendant having been three times solemnly called came not, but made default, and the said cause coming on to be heard upon the bill and exhibits of the complainant, and it appearing to the Court that the said defendant has been duly summoned, according to law, and that the said defendant had been duly ruled by said complainant to file his answer to said bill, on the third day of said term had failed to appear and answer the complainant's bill, it is ordered by the Court that the said bill be taken for confessed. It is further ordered by the Court that an account be taken of what is due to the complainant upon his said mortgage security for his principal and interest and it appearing to the Court that the sum of four hundred and fifteen dollars is now due to the complainant upon his said mortgage security. It is ordered

and decreed by the Court that the defendant pay to the complainant the said sum of money & the accruing interest thereon within ten days from the last day of this term and in the event of the default of the said defendant in making said payment that the said defendant and all persons claiming under or from him be forever barred & foreclosed of & from all equity of redemption in & to said mortgaged premises to wit: the north west quarter of section thirty two in township eleven north range seven east of the fourth principal meridian. It is further ordered by the Court that George T. Metcalfe be appointed a Commissioner to sell said premises and that upon default being made in payment of said sum as aforesaid, said Commissioner be authorized and required to sell the said premises by public sale at the door of the Court house in said County to the highest & best bidder for cash after having given at least twenty days previous notice of the time & place of said sale and the terms thereof with a description of said premises by advertisement in a newspaper printed in said County, and that out of the proceeds of said sale said Commissioner pay to the said complainant the said sum of money & the accruing interest thereon and also the costs & charges by him about his suit in this behalf expended and the balance if any to the said defendant and that said Commissioner make report of his proceedings in the premises at the next term of this Court ensuing said sale. It is further ordered by the Court that upon the sale of said premises as aforesaid the said defendant be required to deliver to the purchaser thereof all the evidences of title to said premises in his custody or power

Thomas Ford

Filed in the Recorder's office for Record & Recorded August 21st 1851 & Recorded in Book 7 pages 236 & 237
Jacob Gale R. P. Leo

Copy of Assignment from Smith to Cunningham.

Smith } Decree in Peoria County Circuit Court
as } entered October Term A.D. 1841. in Chancery
Doran }

17 For value received I hereby sell & transfer to Jonathan
J. Cunningham of Huntington County in the Commonwealth of
Pennsylvania the above decree and all my right title interest and
estate therein legal & equitable & to the land therein described,
said decree being for the foreclosure of a mortgage on north west
quarter of section thirty two in township eleven north range
seven east of the fourth principal meridian for the sum of four
hundred & fifteen dollars against said John Doran, dated
July 29, 1851.
John Smith Seal
Attest Aaron D. Wychoff

James Monroe, President of the United States of America,
To all to whom these presents shall come greeting. Know Ye
that in pursuance of the Acts of Congress appropriating and
granting land to the late Army of the United States passed on
and since the sixth day of May 1812 Jonathan Emerson hav-
ing deposited in the general land office a warrant in his favor
numbered 2300 there is granted unto the said Jonathan Em-
merson late a private in Northrop's company of the thirty
seventh Regt. infantry a certain tract of land containing one hund-
red and sixty acres, being the north west quarter of section thirty
two of township eleven north in range seven east in the tract
appropriated by the acts aforesaid for military purposes in the
Territory of Illinois. To have and to hold the said quarter section
land with the appurtenances thereof unto the said Jonathan Em-
merson and to his heirs and assigns forever. In testimony whereof
I have caused these letters to be made Patent and the seal of
the General land office to be hereunto affixed. Given under my
hand at the City of Washington this sixth day of October

in the year of our Lord one thousand eight hundred and
seventeen and of the independance of the United States of America
the forty second

James Monroe Seal

By the President - Josiah Meigs Commissioner of the
General Land Office, } For and in consideration of the
sum of one hundred dollars current money to me in hand paid
by Joseph Hunt - junr of the City of New York the receipt whereof
is hereby acknowledged I do bargain sell assign transfer and set
over to the said Joseph Hunt Jr. his heirs and assigns forever
all my right title interest claim and demand to the within
Patent for the tract of land therein mentioned with the appurtenan-
ces thereof. In witness whereof I have hereunto set my hand and
seal this twenty first day of December one thousand eight hundred
and

Jonathan Emerson seal

In presence of Joseph Hunt. }

City of New York ss. I, William Keese a Master in Chancery
of the said City do hereby certify that on the 28th day of April
A D 1818 before me personally appeared Joseph Hunt of the City
of New York Grocer a subscribing witness to the foregoing assign-
ment known to me and made oath that he saw Jonathan Em-
merson known to him to be the same person named and describ-
ed in the within Letters patent duly executed and acknowledge
the said assignment as his voluntary act and deed, I allow it
to be recorded.

William Keese

Master in Chancery

Recorded July 9th 1818

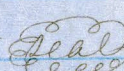
State of Illinois I, William Brown, Clerk of the Circuit
Madison County, } Court, and by law Recorder of deeds within
and for said County of Madison do certify that the foregoing
exemplification is a true and correct copy of a patent and
deed as the same is now of Record in my office in Book E
page 53. In witness whereof I have hereunto signed my name
and affixed the seal of said Court at Edwardsville this 23^d
day of April A D. 1851.

Wm S. Brown

Clerk Madison Circuit Court

19

Be it Remembered that I, Joseph Hunt of the City of New York, for and in consideration of the sum of one hundred dollars lawful money of the United States to me in hand well and truly paid by William Butler of said City at or before the enacting and delivery of these presents the receipt whereof is hereby acknowledged, have for me my executors and administrators granted bargained sold assigned and set over and by these presents do grant bargain sell assign and set over unto the said William Butler, his executors, administrators and assigns all that certain tract of land containing one hundred and sixty acres being the north west quarter of section thirty two of township eleven north in Range seven east in the tract appropriated (by acts of Congress) for military bounties in the (then) Territory (now) State of Illinois, together with all and the tenements messuages hereditaments and premises thereunto^{belonging} or in anywise appertaining and also all my estate right title interest claim property and demand, of in or to the same, either by force virtue or means of the letters Patent hereto annexed or otherwise howsoever. In witness whereof I have hereto set my hand and seal this fourth day of April one thousand eight hundred and thirty six

Jos. Hunt 

Sealed & delivered in presence of {

State of New York

New York City & County {

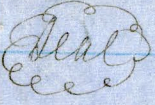
Be it Remembered that on this thirtieth day of June in the year one thousand eight hundred and fifty one before me the subscriber a Commissioner of deeds in and for the City of New York duly appointed and commissioned by the Governor of the State of Illinois with authority to take the acknowledgments and proof of deeds and other instruments of writing under seal to be read and recorded in said State of Illinois and to administer oaths take and certify depositions personally came Joseph Hunt to me personally known to be the individual described in and who executed the within deed and acknowledged that he did execute the

said deed on the fourth day of April in the year one thousand eight hundred and thirty six for the uses and purposes therein mentioned. Given under my hand and official seal at the City of New York the day and year above written

Seal
cc

Joseph L. Lawrence
Commissioner for the State
of Illinois New York

Know all men by these presents, that I, William Butler of Cass County in the State of Illinois, in consideration of the sum of one hundred dollars to me paid by James P. Harvey the receipt of which is hereby acknowledged, have granted bargained sold assigned & set over and by these presents do grant bargain sell assign and set over unto the said James P. Harvey, his heirs and assigns all that certain tract of land containing one hundred & sixty acres being the north west quarter of section thirty two of township eleven north in range seven east in the tract appropriated (by acts of Congress) for military bounties in the (then territory (now) State of Illinois, together with all the tenements messuages, hereditaments thereunto belonging or in anywise appertaining, and also all my estate right title interest claim properly & demand of & in or to the same either by virtue of letters patent or otherwise. In testimony whereof I have hereunto set my hand and seal this 23rd day of October A.D. 1837. Wm Butler 
State of Illinois

Cass County } Personally came before me John W. Pratt,
Clerk of the County Commissioners Court for the County of Cass
on this thirtieth day of October A.D. 1837 William Butler, who
is known to me to be the identical person who executed the above
deed and acknowledged that he executed said deed for the purposes
therein expressed. In testimony whereof I have hereunto subscribed
 my name and affixed the seal of office this thirtieth day of
October A.D. 1837 John W. Pratt Clk.

Filed April 8th 1851. Recorded in Vol page 467
Jacob Gale, R.P. Co.

21

This Indenture made and entered into this third day of February in the year of our Lord one thousand eight hundred and thirty eight between James P. Harvey of the County of Cass and State of Illinois of the first part and Stephen Lee of the County of Hancock and State of Illinois of the second part, witnesseth, that the said James P. Harvey party of the first part for and in consideration of the sum of one hundred dollars in hand paid, the receipt whereof is hereby acknowledged does hereby grant bargain sell assign and set over unto the said party of the second part his heirs and assigns forever the following described piece or parcel of land containing one hundred and sixty acres, situated lying and being in the County of Peoria and State of Illinois and known and designated as being the north west quarter of section thirty two of township eleven north in range seven east in the tract appropriated (by acts of Congress) for military bounties in the (then) territory (now) State of Illinois, and also all my estate, right title, interest, claim property & demand of and in or to the same, either by virtue of letter patent or otherwise. Together with all and singular the appurtenances thereunto belonging or in any wise appertaining. To have and to hold the above described premises unto the said party of the second part his heirs and assigns forever. And the said party of the first part to the aforesaid premises doth forever quit claim. In witness whereof the said party of the first part hath hereunto set his hand and affixed his seal the day and year first above written.

James P. Harvey (Seal)

Deborah Harvey (Seal)

Signed sealed and delivered

in presence of

R. J. Harvey

Wm H. Nelms

5

State of Illinois } I William H. Nelms, an acting Justice
 of said County } of the Peace of said County, do certify that
 James P. Harvey and Deborah his wife, whose signatures ap-
 pear to the foregoing deed of conveyance, and who are personally
 known to me, to be the identical persons who signed the same
 this day appeared before me and severally acknowledged that they
 had signed sealed and delivered the same as their free act and
 deed for the use and purposes therein expressed. And Deborah
 Harvey wife of the said James P. Harvey having been by me
 made acquainted with the contents of said deed and being by
 examined separate and apart from her husband, acknowledg-
 ed that she had executed the same and relinquished her dower
 to the premises therein conveyed voluntarily freely and without
 compulsion of her said husband. Given under my hand and
 the seal of office at Beardstown third day of February in the
 year of our Lord one thousand eight hundred and thirty eight.

William H. Nelms J.P.

Note the interlineation "assign & set over acres and the blotting
 of the warranty were made previous to signing.

W. H. Nelms.

Filed April 8th 1851. Recorded in G. page 468
 Jacob Gale

Know all men by these presents that I, Stephen Lee of Han-
 cock County and State of Illinois, Gentleman, in consideration
 of four hundred dollars to me paid by John Doran of Peoria
 County in sd State, Yeoman, the receipt whereof I do hereby
 acknowledge, do hereby give grant, sell and convey unto the
 said John Doran his heirs and assigns all my right title and
 interest in and to the north west quarter of section thirty two
 in township eleven north range seven east of the fourth prin-
 cipal meridian. To have and to hold the aforegranted premises
 to the said John Doran his heirs and assigns to his and their
 use and behoof forever. And I the said Stephen Lee do hereby

for myself and my heirs executors and administrators covenant with the said John Doran his heirs and assigns, that I am lawfully seized in fee simple of the aforegranted premises, that they are free of all incumbrances that I have good right to sell and convey the same to the said John Doran, and that I and my heirs executors and administrators will warrant and defend the same premises to the said John Doran his heirs and assigns forever against the lawful claims and demands of all persons claiming by through or under me. In witness whereof I the said Stephen Lee who am sole and unmarried have hereunto set my hand and seal this seventh day of August in the year of our Lord eighteen hundred and thirty eight.

Signed sealed and delivered in
presence of us James Dalrymple {
Richard Scholes

Stephen Lee ELP

State of Illinois,

Peoria County { August 7th 1838. Personally appeared before me a Justice of the Peace in and for said County the within named Stephen Lee who is identically known to me to be the same person whose signature appears to the foregoing deed of conveyance and acknowledged it to be his free act and deed. Given under my hand seal this 7th day of August 1838

William P. Blanchard
Justice of the Peace

This Indenture made this 13th March, in the year of our Lord one thousand eight hundred & forty five (1845) by and between John Smith Sr. and Rachel his wife of the County of Peoria and State of Illinois of the first part and Caleb North of the same County and State aforesaid of the second part witnesseth that the said John Smith Sr. and Rachel his wife for and in consideration of the sum of three hundred dollars (\$300) To him in hand paid by Caleb North the receipt whereof they do hereby acknowledge have granted, bargained, sold released and

conveyed and do by these presents give grant, bargain, sell, release convey & confirm unto the said Caleb North and his heirs & assigns forever all that tract and parcel of land situate lying and being in the County of Peoria and State of Illinois described as follows viz: The north west quarter of section (32) thirty two in Township (11) eleven north of the base line and range (7) seven east of the (4) fourth principal meridian. To have and to hold the aforescribed premises with all and singular the privileges and appurtenances thereunto belonging or in anywise appertaining unto the said Caleb North, his heirs and assigns forever, and the said John Smith and Rachel his wife for themselves, their heirs executors and administrators covenant and promise to and with the said Caleb North his heirs and assigns, that they are the lawful owners of the premises aforesaid, that they have good right and lawful authority to sell and convey the same in manner aforesaid and that they will well and truly warrant and forever defend the premises herein and hereby granted unto the said Caleb North and to his heirs and assigns, against the lawful claims and demands of all and every person whomsoever. In testimony whereof the said John Smith and Rachel his wife party of the first part have hereunto set their hands & seals the day and date above written.

John Smith Jr. *Seal*
Rachel Smith *Seal*

Signed sealed & dtd. in presence of
J. Smith, John C. Wolever

State of Illinois

Peoria County

{ This day personally appeared before Therry good Smith a Justice of the Peace in and for said County John Smith Jr. and Rachel his wife, both known to me to be the identical persons who signed and sealed the within deed and acknowledged that they executed the same for the uses and purposes therein expressed. I having examined the said Rachel separate and apart from her husband and explained the nature of the same to her she acknowledged her signature to be voluntary without fear or coercion of her said husband, and that

she freely relinquished her right of dower. Given under my hand and seal this 13th March A.D. one thousand eight hundred and forty five.

Therrygood Smith J.P. Seal

25

State of Illinois }
County of Peoria { Recorder's Office, I, Charles Kettelle
Recorder of said County hereby certify the within & foregoing
deed is duly recorded in said office in book A page 57 on this
2nd day of December A.D. 1845

Charles Kettelle R. P. Co.

This Indenture made this fourth day of July A.D. one thousand eight hundred and forty five by and between Caleb North of the County of Peoria and the State of Illinois of the first part and John Boyner of the County of Juniata and State of Pennsylvania of the second part Witnesseth that the said Caleb North for and in consideration of the sum of four hundred dollars to him in hand paid by John Boyner Sr. the receipt whereof he doth hereby acknowledge have given granted bargained sold released and conveyed and by these presents given grant bargain sell release convey and confirm unto the said John Boyner and his heirs and assigns all that tract of land situated lying and being in the County of Peoria and State of Illinois described as follows viz: the north west quarter of section thirty two (32) in township eleven north of the base line and range seven (7) east of the fourth principal meridian. To have and to hold the aforescribed premises with all and singular the privileges and appurtenances thereto belonging or in anywise appertaining unto the said John Boyner his heirs and assigns forever. And the said Caleb North for himself, his heirs executors and administrators doth covenant and promise to and with the said John Boyner his heirs and assigns that he is the lawful owner of the premises aforesaid, that he has good right and lawful authority to sell and convey the same in manner aforesaid and that he will well and truly warrant and forever defend the premises herein and hereby

granted unto the said John Bryner and to his heirs and assigns, against the lawful claims and demands of all and every person whomsoever. In Testimony whereof the said Caleb North has hereunto set his hand and seal the day and date above written.

Signed sealed and delivered
in presence of William Fawls }
Rachel Landis

State of Pennsylvania

Junata County ss { I, William Fawls, a Justice of the Peace for the County aforesaid do certify that Caleb North, whose name appears to the foregoing deed of conveyance and who is personally known to me to be the identical person who executed the same did acknowledge that he executed the above deed freely and voluntarily for the uses and purposes therein contained given under my hand and seal this 10th July 1845

William Fawls J.P.

State of Illinois

Peoria County { This day personally appeared before the undersigned one of the Justices of the Peace in and for said County Caleb North who is personally known to me to be the person, whose name is subscribed to the foregoing deed as having executed the same, ^{and acknowledged that he had executed the same} on the fourth day of July A.D. 1845 for the uses and purposes therein expressed. Witness my hand and seal at the County aforesaid this 17. day of January A.D. 1852.

J. A. McCoy Seal J.P.

State of Illinois

County of Peoria { Records office
I, Charles Kettelle, Recorder of said County hereby certify the within deed is duly record in said office in Book Q page 58 on this 2^d day of December A.D. 1845

Charles Kettelle R. P. Co

27

This Indenture made this third day of December in the year of our Lord one thousand eight hundred and fifty between John Bryner and Rebecca D. Bryner his wife of the City and County of Peoria and State of Illinois of the first part and Jonathan J. Cunningham of the County of Mifflin and State of Pennsylvania of the second part Witnesseth that the said party of the first part for and in consideration of the sum of five hundred dollars lawfull money of the United States of America to him in hand paid by the said party of the second part at or before the enscaling and delivery of these presents, the receipt whereof is hereby acknowledged have remised released sold and forever quit claimed by these presents do remise release^{sell} and forever quit claim unto the said party of the second part and to his heirs and assigns forever. All the following described tract of land, known as the north west quarter of section numbered thirty two (32) township eleven, north range seven east of the fourth principal meridian, the same being in the County of Peoria and State of Illinois. To have and to hold the above described premises, with all the privileges and appurtenances thereunto belonging to him the party of the second part his heirs and assigns forever. In witness whereof the said party of the first have hereunto set their hands and seals the day day and year first above written.

John Bryner (Seal)
Rebecca D. Bryner (Seal)

Signed sealed & delivered
in presence of J. A. McCoy }
Jas. Morrison, John Balsbach }

State of Illinois.

Peoria County ss { J. A. McCoy, Justice of the Peace in & for said County do certify, that on this day personally appeared before me John Bryner, whose name appears subscribed to the foregoing deed of conveyance as having executed the same and who is personally known to me to be the real person who and in whose name the acknowledged is proposed to be made and acknowledged the execution thereof as his voluntary act and deed for the uses and purposes therein expressed. Given under my

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hand and seal of office at Peoria this third day of December
A.D. 1850.

J. A. McCoy Esq. J. P.

Missouri County ss. Personally appeared before me the subscriber
a Justice of the Peace in and for said County Rebecca D. Bryner
wife of John Bryner, and doth acknowledge the within indenture
to be her voluntary act and deed declared that she signed the
same without any coercion or compulsion from her said husband
being separate and apart from her said husband. Witness my hand
and seal this twentieth day of December A.D. 1850

John Morrison Esq.

Missouri County ss. I, Thomas F. McCoy Prothonotary of the
Court of Common Pleas of Missouri County do certify that John
Morrison Esq. before whom the acknowledgment of the foregoing
indenture was taken, was at the time the same was taken an acting
Justice of the peace in and for said County duly commissioned
and sworn and whose acts as such are entitled to full faith and
credit and that the signature thereto attached purporting to be
his is in the handwriting of said Justice and genuine. In testi-
mony whereof I have hereunto set my hand and affixed the seal
of my office at Lewisport the 11th day of January A.D. 1851

T. F. McCoy Proth.

Filed February 21st 1851. Recorded in V. page 268.

L. M. Mills for Jacob Gale R.P.C.

Copy of tax receipt & certificate of Redemption.

State of Illinois,

Peoria County { June 18th 1850. I Charles Kettelle, Clerk
of said Court do hereby certify that John Bryner has this day
paid me the sum of nine dollars of fifty cents for redemption
money due on the W. side N.W. quarter of section 32 in town-
ship eleven north of range seven east 151 acres of which were
sold to John Elling Jr. by the Sheriff of said County in June
A.D. 1848 for the tax interest and cost due thereon for the
year 1847. Also the sum of five ¹⁰⁰/₁₀₀ dollars taxes and

interest due thereon for the year 1848 and the further sum of
6.01/100 dollars tax and interest due thereon for the year 1849

Redemption 9.50

Tax 1848 & int. 5.42

Tax 1849 & " 6.01

Vertificate 25
21.28

Charles Kettelle Clerk

By Lorin G. Pratt, Deputy

30

State of Illinois, County Treasurer's office, Peoria
County of Peoria } April 8th 1851. Received of S. J. Cunningham
the sum of three dollars and sixty three cents being in full for
State, County, town and all other taxes levied for the year 1850, on
the following described real estate to wit:

Description	Acres	Lot	Block	in what town	equl. val.	Tax & cost
NW 32, 11 & 12 E	160				3.36	3.63

Ralph Hamlin
Co. Treasurer

Preceps. Jonathan S. Cunningham
vs
John Doran
John Smith
George L. Bestor
George Debord
John Elting
In Peoria Co. Circuit Court
March Term A.D. 1852
In Chancery
Issue subpoenas for above named
defendants in above entitled cause returnable according to
law.
Jacob Gale Esq.
Clerk & c.
Grove & McCoy
Sol^s for Compl.

Security for
costs -

Jonathan J. Cunningham
vs
John Doran et als

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

I do hereby enter myself security for costs in this cause,
and acknowledge myself bound to pay, or cause to be paid, all costs
which may accrue in this action, either to the opposite party or to any
of the officers of this Court in pursuance of the laws of this state.
Dated at Peoria this twenty first day of January A.D. 1852

Henry Grove

Approved. Jacob Gale.

Whereupon the clerk of said circuit
Court for Peoria County issued a summons in said cause directed to the
Sheriff of Peoria County to execute, which is in the words & figures following, to wit:

Summons -

The People of the State of Illinois

To the Sheriff of Peoria County, Greeting

We command you to summon John Doran, John Smith, George C.
Bestor, George Debord and John Elting, if they may be found in
your County, to appear before our Circuit Court on the first day of
the term thereof to be held at Peoria, within and for the said County
of Peoria on the first Monday of March next, then and there in
our said Court to answer the matters and things in a certain bill
of complaint contained, exhibited against them in our said Court
on the chancery side thereof by Jonathan J. Cunningham, and
make return of this writ, with an endorsement of the time and
manner of serving the same on or before the first day of the term
of the said Court to be held as aforesaid. Witness Jacob Gale,
Clerk of our said Court and the seal thereof, at Peoria,
this 22nd day of January, in the year of our Lord one
thousand eight hundred and fifty two.

Jacob Gale, Clerk

which Summons was returned to said Clerk's office with the following
endorsement by said Sheriff by his deputy, to wit:

Return on
summons

32

State of Illinois } Served on the within named John Smith
Peoria County } George L. Bestor, Geo. Debord and John Elting
by reading and giving them each a copy of this writ February 12th
1852 } James L. Riggs Shff.
By D. O. Irons Cpty.

John Doran not in my County.

And afterwards, to wit, on the fifth day of February A.D. 1852
there was filed in said cause a demurrer in the words and
figures following, to wit.

Demurrer -

Jonathan I. Cunningham

vs

John Doran John Smith
George L. Bestor, George Debord
& John Elting

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

And the said defendants George L.
Bestor & George Debord come and say, that the said complainant's
bill and the matters and things therein contained, are not sufficient
in manner & form as therein stated for said complainant to have
and maintain his said bill against the said defendants. Wherefore
they the said defendants Bestor & Debord do demur to the said bill
and all the matters and things therein contained, and pray the
judgment of the said Court, whether they shall make any further
answer to said complainant's bill & that they may be dismissed
with their costs &c.

Purple & Tanager

Solicitors for said defts

And afterwards to wit, on the sixteenth day of September A.D. 1853
there was filed in said cause a demurrer in the words and figures following,
to wit.

Demurrer -

Jonathan I. Cunningham

vs

John Doran & others

In Circuit Court, Peoria County
In Chancery

And the said defendants, Bestor, Debord come and

say that the said complainants amended bill and the matters and thing therein contained in manner & form as therein stated and set forth are not sufficient for said complainant to have & maintain his said Bill against the said defendants, wherefore they do demur to the said amended bill & all the matters & things therein stated and insists that the same is uncertain & insufficient, and contains no matter necessary or proper to be answered unto by these defendants & this they are ready to verify, wherefore they pray to be dismissed with their costs &c

Purple & Langer for said Defendants.

The only amendment is "And that said Bestor Kersheet Hoos & Debord have fraudulently combined and confederated to cheat and defraud complainant out of the said decree,"

And afterwards on the 17th day of September A.D. 1853 there was filed in said cause a certificate of publication of notice therein, in the words & figures following, to wit:

State of Illinois }
 Peoria County }
 In the Circuit Court March Term A.D. 1852
 Jonathan L. Cunningham Complainant vs
 John Doran, John Smith, George L. Bestor, George Deboard, and
 John Eling, defendants. In Chancery. Notice is hereby given
 to John Doran, that a suit is now pending in the Circuit Court in
 and for the County of Peoria, in the State of Illinois, on the Chancery
 side thereof, in favor of the above named complainant and against
 the above named defendants, that summons therein has been duly is-
 sued returnable to the next term of said Court to be held at Peoria,
 within and for the said County of Peoria on the first Monday of March
 next. Now unless you the said John Doran shall be and appear before
 said Court on the first day of the next term thereof, to be held as afore-
 said, on the first Monday of March next, and plead answer and orde-
 mur to said complainants bill, the matters and things therein con-
 tained will be taken for confessed against you and a decree
 entered according to the prayer thereof. Witness Jacob Gale Clerk
 of said Court this twenty second day of January A.D. 1852

Jacob Gale, Clerk

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Grove & M^cBay sol^r for Camp't.

[Attached]

I do hereby certify that the annexed notice was published for four weeks successively in the Peoria Republican, a weekly newspaper published in Peoria Illinois, and that the first publication was made on the 30th day of January A.D. 1852

June 13, 1853

T. J. Pickett

Publisher

Proceedings in Chancery, before the Circuit Court at a term thereof, 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 Monday the twelfth day of September in the year of our Lord, one thousand eight hundred and fifty three. The Honorable Onslow Peters, Judge of the sixteenth Judicial Circuit in the State of Illinois presiding.

Saturday September 17th A.D. 1853.

Jonathan I. Cunningham

vs

John Doran, John Smith
George C. Bestor
George Debord, John Elting

To revive decree

This day this cause came on to be heard upon the demurrer of the said George C. Bestor & George Debord to the complainant's amended bill, and the same was argued by counsel, and the Court being now sufficiently advised in the premises doth order and decree, that the said defendant's demurrer be sustained, and the said complainant saying nothing farther in favor of his said bill, it is ordered adjudged and decreed, that the said complainant's bill as to the said George C. Bestor & George Debord be and the same is hereby dismissed and that said defendants have and recover of the said complainant

their costs by them expended in this suit and that they have execution therefor.]

Saturday September 24th A.D. 1853

Dece

Jonathan I. Cunningham

vs

To revive decree

John Doran, John Smith,
George L. Bestor
George Debord, John Elting

This day this cause came on to be heard, and it appearing to the Court that the defendants, John Smith, George L. Bestor, George Debord and John Elting, had been duly summoned by the Sheriff in this cause and that a summons has been duly issued for said John Doran and returned by the Sheriff of Peoria County not found as to said Doran. And it further appearing to the Court that said John Doran is not a resident of the State of Illinois and was not a resident of this State at the commencement of this suit and that said complainant had given due notice to said John Doran of the pendency of this cause and of the filing of the complainant's bill of complaint in this Court by publication of notice in the Peoria Republican a weekly newspaper printed in the City and County of Peoria in the State of Illinois and of general circulation therein, and being also the nearest newspaper, for four successive weeks the first of which notices were published on the thirtieth day of January A.D. 1852, being more than sixty days before the commencement of the present term of this Court, and the Court having seen and inspected said notice, and the proof of the publication thereof, find the same in all respects correct and in conformity to the Statute in such cases made and provided. And the said John Doran, John Smith and John Elting, having been three times solemnly called came not, but made default, and the bill of the said complainant and the matters and things therein contained and set forth as to the said John Doran, John Smith

and John Elting are taken as true and confessed. And the Court having heard the bill of the said Complainant and the proofs, allegations and exhibits of the said complainant and being fully advised in the premises do find the several matters and things contained and set forth in said bill of Complaint in all respects true. And the Court do further find that on the sixth day of October A.D. 1817 the Government of the United States of America by patent of that date conveyed to Jonathan Emmerson the said north west quarter of section thirty two in township eleven north in range seven east of the fourth principal meridian in the County of Peoria and State of Illinois, and that said Emmerson on the twenty first day of December A.D. 1817, conveyed said premises to Joseph Hunt and that said patent and said conveyance from said Emmerson to said Hunt were duly recorded in the Records of Madison County on the seventh day of July A.D. 1818. And the Court do further find that on the fourth day of April A.D. 1836 said Joseph Hunt conveyed said premises to William Butler. And the Court do further find that on the twenty third day of October A.D. 1837 said William Butler conveyed said premises by deed in fee simple to James P. Hervey, and that said James P. Hervey, on the third day of February A.D. 1838, by deed of that date conveyed said premises to Stephen Lee. And the Court do further find that on the seventh day of August A.D. 1838, said Stephen Lee by deed of that date conveyed said premises to John Doran and that said deed for said premises from said Lee to said Doran was recorded in Peoria County Records on the 18th day of May A.D. 1839. And the Court do further find that said John Doran then and there being the owner in fee simple of said north west quarter of section number thirty two in township eleven north in range seven east in the County of Peoria and State of Illinois on the seventh day of August A.D. 1838, executed in due form of law a mortgage on said premises to secure to said Stephen Lee the sum of three hundred dollars the same being the purchase money on said premises and sold by said Lee to said

Doran. And the Court do further find that on the 18th day of August A.D. 1838, said Stephen Lee duly assigned said mortgage and said indebtedness of said Doran to the defendant John Smith. And the Court do further find that said mortgage so executed by said Doran to said Lee to secure the purchase money on said premises and the assignment thereof from said Lee to said Smith were duly recorded in the Records of Peoria County on the 26th day of August A.D. 1839. And the Court do further find, that on the 25th day of September A.D. 1841, that said John Smith filed in the Circuit Court of Peoria County, on the Chancery side thereof his certain bill of foreclosure on said mortgage against said John Doran and that said John Doran was duly summoned in said cause by the Sheriff of Peoria and that said Court then and there having full and complete jurisdiction of the parties and the subject matter in difference between them afterwards, and while said cause was duly pending in said Court at and during the October term of said Court in the year A.D. 1841 rendered the following decree in said cause to wit: "John Smith Jr. vs. John Doran - Circuit Court of Peoria County - October Term A.D. 1841 - foreclosure of mortgage - In Chancery. And now at this day comes the said complainant by his solicitors Powell & Bryan and the said defendant having been three times solemnly called came not but made default, and the said cause coming on to be heard upon the and exhibits of the complainant and it appearing to the Court that the said defendant had been duly summoned according to law, and that the said defendant had been ruled by said complainant to file his answer to said bill on the ninth day of said term had failed to appear and answer the complainant's bill. It is ordered by the Court that the said bill be taken for confessed. It is further ordered by the Court that an account be taken of what is due to the complainant upon his said mortgage security for his principal and interest, and it appearing to the Court that the sum of four hundred and fifteen dollars is now due to the complainant upon his said mortgage security. It is ordered and decreed that the by

"the Court that the defendant pay to the complainant the said
"sum of money & the accruing interest thereon within ten days from
"the last day of this term and in the event of the default of the
"said defendant in making said payment, that the said defendant
"and all persons claiming under or from him be forever barred & fore-
"closed of and from all equity of redemption in and to said mort-
"gaged premises to wit: the north west quarter of section thirty two
"in township eleven north range seven east of the fourth principal
"meridian. It is further ordered by the Court that George Melcalfe
"be appointed a commissioner to sell said premises and that upon
"default being made in payment of said sum as aforesaid, said
"commissioner be authorized and required to sell the said prem-
"ises by public sale at the door of the Court house in said County
"to the highest and best bidder for cash, after having given at least
"twenty days previous notice of the time & place of said sale and the
"terms thereof, with a description of said premises by advertisement
"in a newspaper printed in said County and that out of the pro-
"ceeds of said sale said commissioner pay to the said complainant
"the said sum of money & the accruing interest thereon and also the
"costs and charges by him about his suit in this behalf expended,
"and the balance if any to the said defendant and that commission-
"er make report of his proceedings in the premises, at the next term
"of this Court, ensuing said sale. It is further ordered by the
"Court that upon the sale of said premises as aforesaid the said de-
"fendant be required to deliver to the purchaser thereof all the
"evidences of title to said premises in his custody or power
"Thomas Ford"

And the Court do further find that said decree is rendered in
said Court in favor of said John Smith and against said John
Doran still remains in full force and effect and remains unpaid
and that there is now due from said Doran on said decree the
sum of Seven hundred and five dollars and eighty cents and the
sum of — costs on said decree. And the Court do further find
that said John Smith before the commencement of this suit and

since the rendition of said decree to wit: on the day of July 19 1851, duly assigned said decree to the complainant and that said Smith has now no interest in said decree and that said decree now belongs to and is the property of the complainant. And the court do further find, that said George T. Metcalfe since the rendition of said decree has removed from the County of Peoria and that it is necessary that some other person should be appointed as commissioner to sell said real estate in said decree described, On consideration of the premises the court do direct order adjudge and decree, that said decree so rendered by the Circuit Court, sitting as a Court of Chancery in and for the County of Peoria and State of Illinois at the October term of said Court in the year of our Lord 1853, in favor of said John Smith and against said John Doran and by said Smith assigned to the complainant be and the same is hereby revived in full force in favor of the complainant and against said defendant Doran. And the court do further order adjudge and decree that said John Doran within twenty days from and after the rendition of this decree pay to the complainant the amount now due being the sum of seven hundred and five dollars and eighty cents, with the accruing interest thereon, the same being the amount now due and unpaid on said original hereinbefore recited decree. And in case said John Doran should fail to pay the complainant the amount found to be due on said decree, within twenty days from the rendition of this decree, that George L. Blakeley be and he is hereby appointed a special commissioner to sell at public vendue (at the front door of the Court house in Peoria County after having given public notice of the time place and conditions of such sale with a correct description of the premises, in the same manner as Sheriffs in this State are required to give on the sale of real estate on execution) the north west quarter of said section number thirty two in township number eleven north (11 north) of range number Seven east of the fourth principal meridian in the County of Peoria and State of Illinois to the highest and best bidder for cash, and that upon such sale said Commissioner execute to

the purchaser at said sale a certificate of purchase and that at the expiration of the time limited & provided by the laws of this state said Commissioner execute to said purchaser a deed for said premises in due form of law. And it is further ordered adjudged and decreed by the Court that upon such sale and conveyance the purchaser of said premises shall be vested with the fee simple thereof, and shall be entitled to and hold said premises in fee simple the same as they were held by said John Doran at the time he executed said mortgage to secure the purchase money of said Lee. And it is further ordered adjudged and decreed by the Court that upon such conveyance said John Doran and all other persons claiming or to claim under through or by said John Doran shall be forever barred from all equity of redemption in and to said premises. And it is further ordered that said Doran pay the costs of this proceeding to be taxed. It is further ordered that said Commissioner out of the proceeds of said sale pay to the complainant the amount due him on his decree, and that after paying the costs of this proceeding the said Commissioner pay the remainder to said Doran.

Proceedings in Chancery, before the Circuit Court at a term thereof 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 Monday the twenty first day of November in the year of our Lord, one thousand eight hundred and fifty three. The honorable Orslow Peters Judge of the sixteenth Judicial Circuit in the State of Illinois, presiding to wit:

Saturday November 26th A.D. 1853

Pulsifer	Jonathan L. Cunningham	} To revive decree
Motion =	as John Doran & others	

This day came Sidney Pulsifer by Merriman his solicitor and entered a motion for a rule upon the solicitors and parties in said cause, to return to the files of this

Court the depositions of Gerrit Smith, Ebenezer Montague and John
L. Passman

And afterwards on the 29th day of November A.D. 1853 affidavit
was filed in said cause in the words and figures following, to wit:

affidavit - John Doran & others

vs } In matter of the motion to file
George L. Bester & others } certain depositions.

State of Illinois
Peoria County { ss N. H. Purple & Henry Grove, being duly
sworn say that the depositions taken in this cause were taken by
agreement of parties by their counsel upon interrogatories, that said
interrogatories were never filed in this Court, and that after the same
were taken the parties by their counsel aforesaid, agreed that the same
should be suppressed and should not be filed in this Court and that
they never have been in any manner filed in Court or delivered to
the clerk of this Court for that purpose as they are informed and believe
& that they never have constituted any part of the records or files of
this Court. Affiants further state that the said Sidney Pulsifer who
makes this application is not a party to nor in any respect interested
in the above suit, and that the matters in controversy in said suit
had no connexion with or bearing upon the suit in said Pulsifer's
affidavit mentioned, that affiant Grove & his partner ^{M^oBoy} were the only
counsel for complainants & affiant Purple & his partner Sanger the
only counsel for the defendants in this cause, and that said suit
was finally disposed of at the last term of this Court.

N. H. Purple

H. Grove

Subscribed & sworn to before me this 29th day November A.D.
1853
Jacob Gale, Clerk.

And afterwards on the ninth day of February A.D. 1854 the Report of the Master in Chancery of Peoria County was filed in said cause in the words and figures following, to wit:

Masters
Report -

State of Illinois,
Peoria County. } In the Circuit Court of Peoria County

Jonathan I. Cunningham

vs

John Doran and others

In Chancery

I, George L. Blakeley Master in Chancery of this Court and Special Commissioner in this cause appointed & directed by the decree of the Circuit Court of Peoria County rendered in this cause at the September term of this Court for the year 1853 to sell the north west quarter of section number thirty two in township number eleven north of the base line in range number seven east of the fourth principal meridian in the County of Peoria and State of Illinois pursuant to the terms and directions in said decree set forth respectfully report to the Court. That default having been made in the payment of the money mentioned in said decree within the time therein limited, on the fourteenth day of December A.D. 1853 at the hour of twelve o'clock M. of said day at the front door of the Court house in Peoria in the County of Peoria and State of Illinois I offered said premises in said decree mentioned and described for sale at public vendue to the highest and best bidder for cash after having first given twenty days previous notice of the time place and terms of said sale by posting up written or notices thereof in four of the most public places in said County of Peoria which said four several notices contained a correct description of the premises to be sold the time place and terms of said sale, all of which will appear from said several notices a true copy of which is hereto attached and made part of this report. And Jonathan I. Cunningham having bid at said sale holden at the time and place in said notices mentioned the sum of

Seven hundred and forty seven dollars and ninety one cents for said premises and he being the highest and best bidder therefor and that being the highest and best bid for said north west quarter of section number thirty two in township number eleven north of range seven east of the fourth principal meridian in the County of Peoria and State of Illinois I then and there openly and publicly struck off and sold to said Jonathan I. Cunningham the said premises in said decree and notices described at and for said sum of seven hundred and forty seven dollars and ninety one cents and executed and delivered to him a certificate of purchase for the same and filed a duplicate of said certificate in the office of the Recorder of Peoria County in the State of Illinois in due form of law, and in making such sale and executing said certificate I did in all respects comply with and perform and observe all the requisitions of said decree and of the Statutes in such case made and provided, and all the costs in said cause have been duly paid to me. All of which is respectfully submitted

G. L. Blakeley

Peoria Dec. 17, 1853

Master in Chancery

[Attached]

Chancery Sale

Jonathan I. Cunningham

vs

John Doran & others

{ By virtue of a decree of the Circuit Court of Peoria County and State of Illinois made against John Doran at the October Term A.D. 1841 and a decree of revival in said cause at the September term 1853 of said Court, I shall offer for sale to the highest and best bidder for cash at the front door of the Court house in the City of Peoria on the fourteenth day of December A.D. 1853 at the hour of 12 o'clock M. of said day the north west quarter of section number thirty two (32) in township number eleven north of Range number seven (7) east

of the fourth principal meridian in the County of Peoria and State of Illinois, and on such sale shall execute to the purchaser or purchasers thereof a certificate or certificates of purchase according to law.
Dated at Peoria November 23rd 1853. Geo L. Blakeley
Special Commissioner

Proceedings in Chancery before the Circuit Court at a term thereof 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 Monday the twenty third day of January in the year of our Lord one thousand eight hundred and fifty four. The Honorable Ouslow Peters, Judge of the sixteenth Judicial Circuit in the State of Illinois presiding to wit:

Wednesday February 8th A.D. 1854

final order. Jonathan I. Cunningham

vs

To revive decree &c

John Doran, John Smith
& John Etting impleaded with
George W. Bestor & George Gebord

Now at this term came again the complainant by his solicitors and filed herein the report of the sale, made by the Master in chancery of this Court and special Commissioner duly appointed by a decree of this Court made at a former term of this Court to sell the north west quarter of section number thirty two in township eleven north of the base line in range number seven east of the fourth principal meridian in the County of Peoria and State of Illinois being the same premises in said bill and decree mentioned. And the Court having seen and carefully inspected said Report do find that the Master in making such sale has in all respects complied with and performed all the directions and conditions in said decree mentioned and prescribed. And the Court do further find that the Master in making said sale has in all respects complied with all the

requisitions of the Statutes of the State of Illinois in such cases made and provided, and the Court being fully advised in the premises do order adjudge and decree that said sale and said report be and they are hereby in all respects approved and confirmed And it is further ordered adjudged directed and decreed by the Court that in case said premises should not be redeemed from said sale in the time limited by law, that the Master in Chancery of this Court or his successor in office execute to said purchaser or his assigns a good and sufficient deed of said premises which deed when so executed shall vest the fee simple of said premises in said purchaser or his assigns as the case may be.

State of Illinois,
Pioria County } I, Jacob Gale clerk of the Circuit Court in and
for the County of Pioria in the State of Illinois do hereby certify,
that the foregoing is a full, correct and complete transcript
from the records of all the proceedings in the Circuit Court aforesaid
in a certain cause in Chancery wherein Jonathan S. Cunningham
was complainant and John Doran, John Smith, George L. Bester,
George Selord and John Ealting defendants and of the papers on file
in said cause, as the same are of Record and on file in my office.

In witness whereof I hereto set my hand and
affix the seal of said Circuit Court at
my office in Pioria this twenty second
day of January A.D. 1856.

Jacob Gale, Clerk.

Fee for transcript \$15.50 paid by complainant
Jacob Gale

Jonathan I Cunningham }
v2 } In the Supreme
John Doran & others } Court. January
Term A.D. 1856

Error to Peoria

We do hereby enter ourselves security for costs in the above cause and acknowledge ourselves bound to pay or cause to be paid all cost which may accrue to the opposite party or to any of the officers of this Court in pursuance of the laws of this State. Dated this 26th day of February A.D. 1856.

Henry Thoms Test
Jonathan I Cunningham Test

By W. H. Thoms his Attorney in fact

I Abner M. McCoy on my oath say that the above named John Doran is not a resident of the State of Illinois as I am informed and believe.

A. M. McCoy

Sworn to & Subscribed before
me March 11 1856 W. H. Thoms Notary Public

The Clerk of the Supreme Court will please give this certificate for deposit to Peoria County for the use of the said John & McCoy Peoria

John & McCoy
Attorneys for

Peoria in Error

29. 35
Jonathan J. Cunningham
or
John Doran & others.
Copy Record

Filed March 4 1856

L. Leland Clerk
By J. B. Rice Deputy

STATE OF ILLINOIS, SUPREME COURT.
To JUNE TERM, 1856.

Error to Peoria.

JONATHAN J. CUNNINGHAM *vs.* JOHN DORAN, JOHN SMITH, GEORGE C. BRESTOR, GEORGE DEBORD, and JOHN ELTING.

In the Circuit Court of Peoria Co., March Term, 1852—In Chancery.

ABSTRACT OF THE RECORD.

This was a bill in chancery filed in the Peoria Circuit Court, March Term, 1852, by complainant against defendants.

The bill alleges that, on the 7th day of August, A. D. 1838, John Doran, being the owner in fee simple of N. W. 32, 11 N., 7 E., in Peoria county, executed a mortgage on said tract of land to one Stephen Lee, to secure the payment of \$300 in one, two, and three years, which notes were given to Lee in payment for said tract of land. The mortgage was duly assigned by Lee to John Smith, on the 18th of August, 1838, and the assignment and mortgage were both recorded in Peoria county on the 26th day of August, 1839.

That Lee has no interest in the land or notes, but has transferred the same.

That, on the 25th December, 1841, Smith filed his bill in chancery in the Peoria Circuit Court to foreclose the mortgage. Due service of the summons was made on Doran, and, at the October Term, 1841, a decree was rendered against him for \$415. If not paid in ten days, land to be sold. The decree appointed George T. Metcalf (then of Peoria) a commissioner to sell, which decree remains in full force and unpaid.

That, on the — day of July, 1851, Smith, the complainant in that case, assigned said decree in writing to John J. Cunningham, the complainant in this case, which said assignment was duly entered on the record.

That, after the rendition of said decree, Metcalf, the commissioner, removed out of the state and still is a resident of the city of Washington, D. C., so that complainant cannot proceed to enforce his decree.

That Doran has left the state.

That the land, N. W. 32, 11 N., 7 E., was patented to Jonathan Emmerson, Oct. 6th, 1817.

On the 21st Dec., 1817, Emmerson conveyed to Joseph Hunt, on the back of the patent, and the patent and conveyance were both recorded in Madison county, July 7, 1818, the land then being in that county.

April 4, 1836, Hunt conveyed to William Butler by deed, which was recorded in Peoria county April 8th, 1851. This deed was acknowledged 30th June, 1851, and re-recorded 6th August, 1851, in Peoria county.

Butler conveyed, 23d Oct., 1837, to James P. Harvey—recorded April 8th, 1851.

Harvey conveyed, Feb. 3, 1838, to Stephen Lee, and Lee conveyed to John Doran, August 7, 1838. The two last deeds were recorded 18th May, 1839.

John Smith, supposing the decree vested a title in him, sold and conveyed to Caleb North March 13, 1845. Recorded 2d Dec., 1845.

North conveyed to John Bryner by deed 10th July, 1845; recorded 2d Feb., 1845.

Bryner and wife conveyed to complainant 3d Dec., 1850; recorded 21st July, 1851.

Bill further states, that complainant was a *bona fide* purchaser, in good faith, and supposed he had the fee simple.

That in June, 1848, one acre of the land was sold for taxes to John Elting, and redeemed by John Bryner 18th June, 1850, who paid taxes for the years 1848 and 1849. Complainant paid the taxes for 1850.

Said bill further presents, that on the 22d day of July, A. D. 1850, George C. Bester, one of the aforesaid Defendants, filed, in the Recorder's office of Peoria county, an instrument under seal, purporting to be a deed executed by the aforesaid Joseph Hunt, Jr., to Alexander Kursheet, of the city of New York, dated 19th April 1849, for the same premises. That consideration paid to said Hunt was (as appears by said deed) one dollar: That said Kursheet did not pay any thing at all for said land to said Hunt, and that said land was then worth eight hundred dollars: That one Peter L. Hoes, of the city of New York, who is and had been a land speculator and engaged in hunting up titles in the Military Tract in State of Illinois, ascertained by means of abstract of titles in said tract, kept in his office for said purpose, that there was no title on record from said Hunt to said Butler. He therefore proposed to purchase said land from said Hunt, and pay him therefor the sum of ten dollars, which sum Hunt agreed to accept, and pretended to convey the land to the aforesaid Kursheet: That at the time of the conveyance and sale to Hoes, Hunt distinctly informed Hoes that he did not know that he had any title to said land: That he formerly owned two quarter sections of land in Illinois, one of which he had conveyed to William Butler, and the other he had not conveyed: That if Hoes would run the risk, he would quitclaim his interest for ten dollars: That said Hoes then knew that said Hunt then had no title in said premises, and that said decree was a valid and subsisting lien on the same; and further, that Hoes was then an acting commissioner of deeds, and drew up the deed to Kursheet, and took the acknowledgment thereof: That Kursheet never had any interest in the premises, except as before stated: That he never knew anything about the land, nor Hunt, nor the conveyance from Hunt, until the same was presented to him by Hoes: That Kursheet has heretofore been assisting Hoes in like operations, and has been fully paid for his trouble, and had actual and constructive notice of the several facts and circumstances hereinbefore alleged.

Bill further charges that, in the fall of 1850, or in the spring of 1851, Hoes sold said titles, so acquired by Kursheet, to George C. Bester and James L. Riggs for a horse and buggy, but when and upon what terms said sale was made complainant was not informed, as no deed, or agreement, or contract, or bond, or other instrument appears on record in Peoria county, and that said Hunt, Kursheet, and Peter L. Hoes have now no interest in the premises: That Riggs, in July, 1851, assigned his interest to said Bester, and has now no interest in the same: That said Bester and Riggs both knew of the title under which complainant holds: That long

before they purchased said pretended title of Hoes, they had actual and constructive notice of the existence of the several deeds from the patent down to complainant, of the mortgage from Doran to Lee, of the assignment thereof to Smith, of the proceedings in foreclosure, and the rendition of the decree before mentioned: That in June, 1848, 150 acres of said land was sold by Sheriff of Peoria county to John Elting for the taxes of 1847: That on the 18th of June, 1850, John Bryner, who had conveyed said land to complainant by deed of Dec. 3d, 1850—recorded in Peoria county 21st Feb., 1851—redeemed said land, and at same time paid the taxes for the years 1848 and 1849; and that before said redemption by said Bryner, and before said Bestor and Riggs had said title through Kursheet, both proposed to purchase said title of said Bryner: That said Bestor acquired his title to said premises after most of the deeds conveying the same to complainant were placed on record of Peoria county, and had actual and constructive notice of the same.

Bill further presents, that George Debord is now in possession of said premises under pretense of purchase from said Bestor, but charges that Debord also had actual and constructive notice of said proceeding in Chancery, rendition of final decree therein, and of the existence of the several deeds conveying said premises to complainant; and that said Bestor, Hoes, Kursheet, and Debord have fraudulently combined and confederated to cheat and defraud said complainant of his said decree: That said Debord has not paid for said land, but bought the same on speculation, and is indemnified, and that John Elting still claims an interest in the premises. Complainant cannot further state the claim of title set up by Bestor and Debord, as no written evidence of their title has ever been filed, except said deed from Hunt to Kursheet; but charges that he is sole owner of the said decree, and in equity said decree is a valid and subsisting lien on said premises, and therefore prays the Court to aid him in this behalf to revive said decree and the lien of the same on the premises, and that, for said purpose, a writ of subpoena may be directed to the said Doran, Smith, Bestor, Elting, and Debord, that they may answer all things therein contained; that said decree may be so revived, and some suitable person be appointed to sell said premises and apply proceeds to payment of amount due on said decree, and costs and expenses of complainant in that behalf expended, and grant such other relief as equity and good conscience may require.

To the aforementioned bill, on the 16th day of September, A. D. 1853, the said defendants, Bestor and Debord, filed a demurrer, upon which the Court ordered that the demurrer be sustained, and that complainant's bill as to them be demurred, &c. *dismissed*

And afterwards, to wit: 24th Sept., 1853, "the Court do find, *inter alia*," that there is due on said decree the sum of \$705.80, and order same decree to be revived in favor of said complainant; and unless said Doran pay the above sum with costs, and within twenty days from rendition of said revival, that George Blakely be appointed a special commissioner to sell the same; and said Doran making default therein, the said premises were sold, as appears by report of said commissioner, approved by said Court to complainant for the sum of \$747.91, on the 14th day of December, A. D. 1853, and gave him a certificate for the same.

as

Others

Abstract

And afterwards to wit: 24th Sept., 1803, "the Court do find, order, will as to them be answered."

enough other relief, as gravity and food conscience may redress.

Jonathan I. Cunningham } In Supreme Court.
 vs
 John Doran John Smith
 Geo. C. Briston Geo. Hobard
 John Elting }

Argument

This Bill was filed to revive a decree against John Doran which was entered upon the foreclosure of a Mortgage made by him to Stephen Lee & by said Lee assigned to John Smith; which decree was rendered in October A.D. 1841.

The Bill is an anomaly—There is nothing in the Definitions in the Chancery book by which its Christian name can be ascertained

The Complaint is that in 1838 Doran was the Owner in fee of the N.W. 32.11.7 in Poina County that he made a Mortgage on said Land to Lee; Lee assigned it to John Smith Smith foreclosed the Mortgage, obtained a decree of Sale & George S. Mitcalfe was appointed Commissioner to make the Sale, that Mitcalfe had moved out of the State, so that the Complaint could not enforce the decree

that the land was Patented to Emerson, who conveyed to Hunt on the back of the Patent, that both were recorded in Madison County in which the land was

then Situated on the 7th July 1818.

Hunt conveyed to Butler in 1836 which
conveyance was recorded Apr 8th 1851. Butler
conveyed to Hony in 1837 - Hony to Lee
in 1838 and Lee to Moran Aug. 7. 1838.

In 1845. Smith supposing the decree vested
a title in him sold the land to one North
North conveyed to Byner some year and
Byner to the Complainant Dec. 3. 1850

In 1849. Hunt again conveyed the
land to one Kurshut, and Reston caused the
deed to be recorded July 22. 1850

That Kurshut afterwards sold
to Reston & that Elbord is in possession under
a contract with Reston. That Reston Elbord
Kurshut & others all had notice of Complainant's
rights before conveyance from Hunt to Kurshut
and that all are conspiring some how
against the Compt.

The Prayer is that the decree may be
revised and made a lien on the premises
and some person appointed to sell the
land and for General Relief.

Reston and Elbord demurred to the
bill and the demurrer was sustained & bill
dismissed as to them, and Complainant took
a decree by default against the other defendants.

There is no relief whatever as to the Bill as
against Bister or Hibord

I have never been able to comprehend
the design and object of this Bill

By the Complainants own Statement
the legal title to the lands was, and
still is in John Doran

Doran gave a Mortgage on the
land, this was foreclosed, a decree
obtained which now belongs to Court
and is as he says a lien on the land.

What legal or Equitable right has he
to file a Bill against Bister and Hibord?
Or in fact against any body else?

Suppose Bister and Hibord have a
fraudulent void title to the lands?

What Right has he to complain of
it, the lands does not belong to him
and for aught he knows Doran or some
one else may pay the Decree and
satisfy his lien. He has no interest
or claim whatever in the title to the
land - And there was no need of
any revival of the Decree. If the Com-
missioner appointed to sell neglected
to act the Court had full power
to appoint another, who could succeed
under the Original Decree - Bister
& Hibord having acquired their interest
Subsequent & Subject to the Decree

if the Allegations of the bill are true
Heads with full knowledge of all
the Complainants Rights and of the
Original Conveyance by Hunt to Butler
in 1836.

If then the Complainant should
ever acquire the Legal title to the
land, (if his bill is true) all he had
to do is to bring an action of Ejectment
and Recover his lands. Until that
time arrives he has no call to trouble
himself about the question as to
when it is vested — or how many
fraudulent or forged titles exist
upon it.

If the Complainant desires the
decree reversing the decree Reversed
We do not object, Boston and
Libbards have no interest in that
question, But the decree sustain-
ing the decree & dismissing
the bill as to them is unquestionably
correct.

J. P. Purple

Jonathan J. Livingston

John ^W Gorou
10th

Argument

Purple

Filed May 6 1854

L. Leland
Clerk

STATE OF ILLINOIS,

Supreme Court,

{ ss.

The People of the State of Illinois,

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

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the circuit court of Peoria county, before the Judge thereof, between Jonathan J. Cunningham

plaintiff, and John Doran, John Smith & John Elting
impleaded with George C. Bestor & George Debord

defendants it is said manifest error hath intervened, to the injury of the aforesaid Cunningham

as we are informed by his complaint, and we being willing that error, should be corrected if any there be in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint, aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the county of La Salle, on the second Monday in June — next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law;

WITNESS, the Hon. Walter B. Scates Chief Justice
SAMUEL H. TREAT
of our said Court, and the Seal thereof, at Ottawa, this 4th day of March
in the Year of Our Lord One Thousand Eight Hundred and Fifty-six

Leland Clerk of the Supreme Court.

By J. B. Price Deputy

Jonathan J. Cunningham

vs
John Doran & others

Writ of Error



Filed March 2, 1856.

L. Leland Clerk.

By J. B. Rice Dep.

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

TO THE SHERIFF OF THE COUNTY OF

La Salle

GREETING:

BECAUSE, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of *La Salle* county, before the Judge thereof, between *Ira Heston Complainant* and *Joseph Reynolds, Isaac R. Hitt, Willis M. Hitt and Mary Hitt*

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

Complainant

as we are informed by *his* complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; THEREFORE, WE COMMAND YOU, that by good and lawful men of your county, you give notice to the said *Joseph Reynolds, Isaac R. Hitt, Willis M. Hitt and Mary Hitt*

that *they* be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, ~~on the~~ *just Tuesday after the* Monday in *April* next, to hear the records and proceedings aforesaid, and the errors assigned, if *they* shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *Joseph Reynolds, Isaac R. Hitt, Willis M. Hitt and Mary Hitt* notice, together with this writ.

WITNESS, The Hon. ~~WALTER B. SCATES~~, Chief Justice of our said Court, and the Seal thereof at Ottawa, this *23rd* day of *March* in the Year of Our Lord One Thousand Eight Hundred and Fifty-*eight*.

L. Leland
Clerk of the Supreme Court.
by J. D. Rice Deputy

3 2
Ira Hartson

vs
Joseph Reynolds, Isaac
R. Hill, Willis M. Hill
and Mary Hill

Sci Ce

Served & ready this writ
to Isaac R. Hill and
Willis M. Hill this
6th day of April 1858,
Joseph Reynolds and
Mary Hill not found
in this County

Fees - D. W. 110

30 miles 150

\$ 2.60

E. Waterman & Co
Attorneys

Filed April 10, 1858

L. Leland
Clerk



Johnathan J Cunningham

vs.

John Moran
And others

This file in Peoria County
Circuit Court and does
render there

In Chancery.

I Johnathan J Cunningham
have desiring to take said cause to the Supreme Court
of the State of Illinois do hereby authorize and empower
Henry Thow or Alexander McCoy to execute in my name
and for me any bond for costs or any other bond or instrumen
ment in their judgment necessary or proper to cause
a writ of error to issue from said Supreme Court or to
prosecute said cause to a final or successful issue
in any court or place whatever
Dated at Perryville this J. S. Cunningham
30th day of November 1855.

Sign the above & date it

J⁵⁵ J. Lumpham

Filed March 4. 1856
L. Seland Clk.

STATE OF ILLINOIS, SUPREME COURT
THIRD GRAND DIVISION, ss.—Jonathan J. Cunningham, vs. John Doran, John Smith and John Elting, impleaded with Geo. C. Bestor and George Debord.—Error to Peoria.

It appearing by affidavit on file in the Clerk's office of the Supreme Court in and for the division and state aforesaid, in the above-entitled cause, that John Doran, one of the above-named defendants, is a non-resident of the State of Illinois, and without the reach of the process of this court; and a writ of error having been duly sued out in the above entitled cause, and a scire facias having been issued therefrom, returnable on the second Monday in June A. D. 1857, to a term of the supreme court then to be holden at the court-house in Ottawa as is by law required; Now you, the said defendant, whose non-residence appears as above, are hereby notified that you be and appear before the Justices of our said Supreme Court, at the next term of said court, to be holden at Ottawa, in said state, on the second Monday in June next, to hear the records and proceedings and the errors assigned, if you shall see fit, and further to do and receive what said court shall order in this behalf.

Dated this 4th day of July, A. D. 1856.

Attest: J. LELAND, Clerk,
By J. B. Rice, Deputy

July 11

George & McCarty

[12508-35]

We, T. J. PICKETT, and C. W. WAITE, publishers of the '*Peoria Weekly Republican*,' a weekly newspaper, printed and published in the city and county of Peoria, and State of Illinois, do hereby certify that the annexed notice was published in said paper for four consecutive weeks, the first insertion being on the 11 day of *July* 1856 and the last on the 29 day of *August* 1856
Witness our hands this *Twenty Eighth* day of *October* 1856

Pickett & Waite

Fees \$ *5.62*

Received payment;

Pickett & Waite
Per Boston

Funningham
vs
Doran et al.
Publication of Notice

Filed Nov. 10, 1856,
L. Leland
Clerk

Notice

STATE OF ILLINOIS,

Supreme Court,

ss.

The People of the State of Illinois,

To the Sheriff of the County of Peoria — Greeting:

BECAUSE in the record and proceedings, and also in the rendition of the judgment of a plea which was in the circuit court of Peoria county, before the Judge thereof, between Jonathan J. Cunningham Plaintiff & John Smith, John Doran, John Elting George C. Bestor and George Debord

defendants it is said that manifest error hath intervened, to the injury of the said Cunningham

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

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

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

L. Leland

Clerk of the Supreme Court.
By J. B. Rice Deputy

Cunningham
vs
Doran et al
Seize Facias

Served on John Elting, George
L. Dexter and George Debourd by
by reciding to them this 21st
September 4th 1856

David D. Irons Sheriff
By A. R. Kidwell Deputy

3 services 1.50
25 Miles 1.25
Ret 1.00

\$2.75

John Doran and John Smith are not found
in my County

D. D. Irons Sheriff
By A. R. Kidwell Deputy
Filed April 21. 1857
L. L. Leland

STATE OF ILLINOIS
Supreme Court
BECOME in the
County of Cook

James Cunningham
vs
George Debourd
et al
Seize Facias
Doran et al
Dexter et al
Elting et al
Irons Sheriff
Kidwell Deputy
Filed April 21. 1857
L. L. Leland

James Cunningham
vs
George Debourd
et al
Doran et al
Dexter et al
Elting et al
Irons Sheriff
Kidwell Deputy
Filed April 21. 1857
L. L. Leland

James Cunningham
vs
George Debourd
et al
Doran et al
Dexter et al
Elting et al
Irons Sheriff
Kidwell Deputy
Filed April 21. 1857
L. L. Leland

Jonathan Cunningham } In the Supreme
22 } Court April
John Doran & al } Term 1847

Error to Prior

Plaintiffs Brief

Gore & McLeay & Steward for Pffs

The only question in this case
is whether the Bill charges such
notice to Kershut, Hoes, Bestor &
Doran of the Deed from Hunt to
Butter dated April 4, 1836, as will bind them
Hunt conveyed to

1st to Butter April 4, 1836

2^d to Kershut April 19, 1849

~~For~~ List Was Kershut & those
claiming under him "Subsequent
purchasers without notice". A Demurrer
was filed to the Bill, & of course all
the allegations are admitted to be true

For the solution of these questions
we refer to Dart on Vendors
Pages 401, 2 & 3, & Notes

Gore & McLeay &

Steward for
Pffs in Error

29

John J Cunningham
112

John Doran & al

PPPs Brief

Grove & McCleary &
Adm Wead

for PPPs in Error

Filed May 1st 1867

L. Ireland

Clerk

Jonathan P. Cunningham
vs
John Loran & others

1857

29

12508

1857

