

No. 14597

Supreme Court of Illinois

Doolittle

vs.

Maus

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION

No. 236

J. W. Middleton & Co., Stationers, 196 Lake St.

Doolittle

vs

Morris

Deputy

STATE OF ILLINOIS, SUPREME COURT,

Third Grand Division,

April Term, A. D. 1864.

MARY M. & I. B. DOOLITTLE, PLAINTIFFS IN ERROR,

vs.

WILLIAM DON MAUS, DEFENDANT IN ERROR.

ERROR TO TAZEWELL.

BRIEF OF DEFENDANT IN ERROR.

In this case it is alleged that improper testimony was erroneously received for the defendant, and that the execution offered in evidence, dated Nov. 12th, 1839, and which came to the hand of the sheriff of said county Nov. 15th, 1839 was improperly received; because no action appeared to have been taken by the sheriff upon it; but this is wholly immaterial, as a want of a return of a levy has been held not to vitiate. *Evans vs. Davis*, 3d B. Monroe R., 346; *McIntire vs. Durham*, 7 Iredell R., 152; and a defective return or no return at all is not fatal. *Phillips et al vs. Coffee*, 17 Ills., 157.

But it is insisted that the *pluries fi fa*, through which defendant claims title, has been fraudulently altered since it was first issued, and is otherwise so irregular and defective that it cannot be admitted in evidence; that the levy and return are defective, and that there is a variance between the execution and the deed, and judgment recited; yet it must be remembered that, if there is any variance, it is but a clerical mistake, and amendable; and a stranger to the record shall not be allowed collaterally to question it. *Russell vs. Kipp*, 5 John. R., 100; *Lorach vs. Worlbrough et al*, 2 Term R., 737; *Jackson vs. Walker*, 4 Wendall R., 464; and *Martin vs. Pratt*, 10 John. R., 381.

But it is insisted that the date of the execution has been altered from some other date to *September 7th*, 1846, though it is not pretended that the execution is not signed by the clerk, or under the seal of the court, or that it is otherwise defective; and the argument that this has been fraudulently done since it was issued, is principally owing to the fact that the date of the reception of the execution by the sheriff is *August 7th*, 1846, and the levy is dated *August 10th*, 1846, which is prior to the date of the execution. But to the purchaser it would be immaterial whether the execution was dated in September or August, as in either event the judgment was then in full force and a lien on the premises; and the absence of any motive to wrong in the matter, precludes the probability of any complicity in

it, on his part, and the fact that the sheriff who made the levy and sale and issued the certificate of purchase, also made the deed, would seem to indicate that the execution bore date when the certificate of purchase issued, *September 7th, 1846*, as he so recites therein, and in the deed executed. The probability therefore is that he committed the clerical mistake in dating his reception of the execution, and in dating his entry of the levy thereon; and that the sale was made and the return endorsed thereon *October 7, 1846*, shows that time abundantly elapsed between *September 7th, 1846*, and *October 7th, 1846*, to have advertized and sold under the law in due form; and there is this further fact that the execution, it seems, was returned to the clerk's office and duly filed by the same clerk as genuine, over his own signature, *February 16, 1849*, and has been upon the files from that date, and yet no complaint is had during the lifetime of the judgment debtor, *Irwin B. Doolittle*, the father of the present plaintiffs; and the sale and purchase under that execution was made in his lifetime, and by his own brother, *William B. Doolittle*, the uncle of plaintiffs, and at his (*W. B. Doolittle's*) death it was devised by him to complainants, viz., the one-fourth part of this same land in common with other parties, through one of whom, *Amaziah D. Doolittle*, the defendants claim. But irregularities of the officers do not affect the validity of a sale under execution. The purchaser depends upon the judgment, the levy and the deed. All other questions are between the parties to the judgment and the officer. *Wheaton vs. Sexton*, 4 *Wheaton's R.*, 503; *Doe vs. Heath*, 7 *Black's R.*, 154. Nor does a misrecital of the judgment in the deed vitiate or destroy the title. 10 *Johns. R.*, 381; *Jackson ex. dem. of Hill vs. Streeter*, 5 *Cow. R.*, 529.

But these parties are strangers to the record, and this court has held that irregularities do not avoid the sale, and that strangers may not interpose, collaterally, objections which can alone, as between the parties, be made in a direct proceeding by motion or writ of error. See *Swaggart vs. Horber*, 4 *Scam.*, 364; *Riggs vs. Cook*, 4 *Gill. R.*, 336; and 17 *Ill.*, page 156, where the whole case is in principle fully considered and decided. And it makes no difference in principle whether the misrecital is in the levy, the execution or the deed. See *Loomis vs. Riley*, 24 *Ills.*, page 309. The deed unmistakably refers to the execution read in evidence; and the authority of these cases is conclusive, as it is not pretended that any proceeding was ever made or had to reverse the judgment or set aside the execution, sale, or deed under which the defendant holds, and which was read in evidence; and until that is done, they, as the representatives of *Irwin B. Doolittle*, deceased, are estopped by law from collaterally objecting to it.

And indeed, the proceedings in partition at law in which they (complainants) are made parties, and in which this land is set forth as the property of *William B. Doolittle*, deceased, and as devised by him, the one-fourth to plaintiffs and one-fourth to *Amaziah D. Doolittle*, and the residue to other parties, and under which they (plaintiffs) had set apart to them as the devisee of said *William B. Doolittle* the one-fourth part of all his land, and in which proceeding this particular tract is represented under oath as having belonged to him, (*W. B. Doolittle*), and to be subject to his will, and in which proceeding it is then set apart to *Amaziah D. Doolittle*, under whom defendant holds, is of itself, until set aside, conclusive upon them, and they ought to be estopped from pretending against their admissions of record that it is not true.

The record shows the suit originally brought against *B. S. Ingalls*, who was the tenant of *Amaziah D. Doolittle*, and that after suit brought, *A. D.*

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Doolittle sold to the defendant, W. D. Maus, who was by agreement let in to defend as the landlord of Ingalls, representing all of the rights Doolittle had at the time suit was commenced, and thus he claims by deed of the owner in fee when suit was brought, and is entitled to avail himself of all his rights at law.

But an examination of the whole case, and an inspection of the papers produced, with a reference to the authorities above named, will fully sustain the position of the defendant, and I think satisfy the court that the law, as well as justice to the parties, requires that in this the judgment of the court below should be in all things affirmed.

B. S. PRETTYMAN,

Attorney for Defendant in Error.

16.

J O & W²³⁶ Doolittle
W D Doolittle

Brief of Dpts

Given May 7 1864
J. C. Doolittle

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But an examination of the whole case, and an inspection of the papers produced, with a reference to the authorities above named, will fully sustain the position of the defendant, and I think satisfy the court that the law, as well as justice to the parties, requires that in this the judgment of the court below should be in all things affirmed.

B. S. PRETTYMAN,

Attorney for Defendant in Error.

236 1341
J. B. & M. M. Doolittle

Mr. D. M. M.

Prof of Div

Given at New York, May 7, 1864
J. C. M. M.

Mary M. Doelittle & al. } In the Supreme Court =
 by Guardian - } 3^d Grand Division =
 vs. } April Term 1864 =
 William Don Maus } Error to Tazewell Co. Ct. =

Jonathan K. Cooper being duly sworn says on oath,
 that he is of counsel for said plffs in error in this Court
 and was also atty for plffs on the trial in the Circuit
 Court - that on said trial there was offered & read in
 evidence by de ft, against objection & exception taken at
 the time on the part of said plffs, a plain & fi. fa. ex-
 ecution purporting to have issued on the 7th of September
 1846, on a judgment entered in said Circuit Court
 of Tazewell County, Ills, at the September Term 1847,
 in favor of Robert McClenahan, vs. Kimball, Jern-
 ett & Co. against Oliver Lindley & Edwin B. Doel-
 itle, which execution affiant states bore evi-
 dent marks of erasure & alteration upon its
 face, and its admission in evidence was object-
 ed to specially on that ground, among others,
 when offered on said trial - Affiant further states
 that in his judgment the alteration referred
 to is material, and that it is of import-
 ance to the correct determination of the
 cause in this Court, that said writ be
 certified up by said Circuit Clerk to for exam-
 ination & inspection by your Honors on the hear-
 ing - And further affiant says not =

Subscribed & sworn to
 before me at Pl. 21. 1864.
 Seal and Ch.

Jonathan K. Cooper

Mary M. Doolittle & al. } Supreme Court
 by their guardian. } 3^d Grand Division
 vs. } April Term 1846
 William Don Maus } Error to ~~the~~ ^{the} Circuit Court

The said plffs in Error come & move the
 Court for an order upon George A. Harbor
 Clerk of the Circuit Court of the Circuit
 Court of Lawrence County Illinois, to pro-
 duce & certify up to ~~the court~~ the Clerk of this
 Court the original writ of Habeas Corpus. Execution
 offered & read in Court on the time of the above case &
 in said Circuit Court, said execution propo-
 sing to hear date September 7th A.D. 1846, and
 issued on a certain judgment in favor of Robert
 Brecken & al. vs. Oliver Sindley & Edwin B. Doolittle
 rendered ^{on the 30th day of} ~~at the~~ September ~~Term~~ 1839 ⁱⁿ said
 Circuit Court, and to be exhibited to this
 Court, for inspection, on the time herein
 and for reason for said Motion plffs
 refer to the affidavit of J. K. Cooper
 herewith filed =

Cooper & Harp
 attys for
 plffs in Error

²²⁶
Coolittle Val.
¹³⁴
us. =
Wm. H. H. H. H.

Motion off

Filed April 21. 1884
L. L. L.
Clark

McAllan

STATE OF ILLINOIS,
Tazewell County,

SS. The People of the State of Illinois,
TO THE SHERIFF OF SAID COUNTY, GREETING:

WE COMMAND YOU, that of the goods and chattels, lands and tenements of
Olive Lindsey and Irwin B. Dodette

in your county,

you make or cause to be made the sum of *One thousand and twenty-nine* Dol.

bars and thirty-three Cents, which, on the *30th* day of *Sept* 1879
Robert Brown, Charles L. Thomas and William Thomas
Survivors of Jas. L. Thomas for the use of Timberland Insurance Co
recovered in the Circuit Court of said county, against the said *Olive Lindsey and*
Irwin B. Dodette

with legal interest thereon from said date until paid; and also the further sum of *thirteen*

Dollars and *eighty-seven* Cents, which were adjudged to the said

Robert Brown and that use as appearing
by said Court, for *their* costs and charges in that behalf expended, whereof the said

Olive Lindsey and Irwin B. Dodette are

convicted, as appears to us of record; and that you have the said sum of money, and interest and costs at

the Clerk's office of our said Court, at Tremont, within ninety days from the date hereof to render

unto the said *Robert Brown and that use*
of said Timberland Insurance Co

And have you then there this writ.

Witness,

J. A. JONES, Clerk

of our said Court at Tremont this

day of

Sept

the seal of said Court

being hereunto affixed

L. A. Jones

Clerk

Robert Freeman
 Charles Morgan
 Paul Harrison
 James A. Harrison
 Wm. D. Harrison
 John Harrison
 James A. Harrison
 John Harrison

Thurs. \$1099. 33
 Cash \$11.13. 29. 1/2

262
 Ship cost \$445.00
 Price May 16. 1849
 Wm. D. Harrison
 Cash

7. October 1846
 1848

Come to hand August 7th 1846 at 10 A.M.
 R.W. Bugg Sheriff &c

Executed by Sheriff on J.B. Doolittle interest
 in Lots ^{40 60 50 125} 11, 12, 13, 14 B37 in Pekin Town Also
 10 1/2 NE 1/4 Lt 23 Town 25 N.R. 5 do 80 \$4.00
 16 1/4 NE 1/4 " 23 " " " " do 40 \$4.00
 24 1/4 fractional 22 " " " " " do 19 3/4 \$3.00
 NW 1/4 NE 1/4 7 " 25 " " 4 40 - 2.50 ✓
 all of NE 1/4 NW 1/4 16 " " " " 40 - 2.50 ✓
 " SE NW 1/4 16 " " " " 40 - 2.50 ✓
 " SW NE 1/4 16 " " " " 40 - 2.50 ✓
 " NE SW 1/4 16 " " " " 40 - 2.50 ✓
 " SE NE 1/4 16 " " " " 40 - 2.50 ✓
 " NW SE 1/4 16 " 24 " 5 40 3.00 ✓
 " Lot 4 Block 10 Pekin this 10 day August
 1846

R.W. Bugg Sheriff &c

Not made by the sale of the above described property
 fifteen hundred & eighty five dollars & even cents
 Noted Oct 7 1846 R.W. Bugg Sheriff &c

State of Illinois
Jesseville County

I George H Harlow Clerk of the
Circuit Court within and for said County, do
hereby certify that the annexed Fi Fa is the
original Fi Fa issued from the Clerk's Office of
said Court upon a return Judgment therein rendered
in a return cause wherein Robert Preston and
others are Plaintiff and Oliver Lindley and others
are Defendants. I further certify that the
annexed Fi Fa is the same and included is
and which makes a part of the Record and
is the same as the same as the same as the same
from this Court to the Supreme Court of the
State of Illinois.

I Witness whereof I have hereunto set
my hand and affixed the seal
of said Court at Pekin in said
County this 21st day of April 1864.
Geo H Harlow Clerk
By W W Cowen Deputy.



236 134

Deo little

Ms.

Chans

original execution

for inspection by court



Filed May 5, 1864

Leland O. M.

And in the Circuit Court of Tazewell
County, Illinois, and held at the City of Pekin
in said County, between the New James
Marriott Judge of the 1st Judicial Circuit
of the State of Illinois complainant of the
County of Tazewell, Tazewell, vs. on the 21st
day of January in the Spring Term of
said Court in the year of our Lord one
thousand eight hundred and six four.

M. J. ...
J. A. ...
William ...

State of Illinois
Tazewell County
And it is remembered that on the
second day of September in the year of
our Lord one thousand eight hundred and six
two in the Sept. Term A.D. 1862 of said
Court, came the said M. J. ...
J. A. ...
Wm. ...
in open Court the declaration in Exemption against
Benjamin ...

is writing to said Defendant and affiant of due
verie of a true copy of said declaration and notice
upon said Defendant which said declaration
notice and affiant are in the words and
figures following to wit

State of Illinois
County of Tazewell

On the 15th day of September in the year of our
Lord one thousand eight hundred
and sixty two:

May M Scottille and John B Scottille of Iowa
A Natural then Guardian Plaintiffs of John B Scottille
vs John B Scottille and John B Scottille of Iowa
Defendants. In and to the County of Tazewell
I Declare in fact, which is notified by notice and
copy of declaration according to the statute in a plea
of Exigent

For and where the said Plaintiffs on the
fourteenth day of August in the year of our Lord
one thousand eight hundred and sixty two
purchased of a certain tract of land with the
appurtenances situated in the Township of
the said County and named as follows and
described as follows to wit The South West Quarter
of the South East Quarter of section sixteen (16)
in Township four and North of Range five
West of the Chicago and North Western Meridian which
said premises the said Plaintiffs claim in fee

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simpld, and the said Plaintiff being so perjured
 thereof the said Defendant afterwards took on the
 sixteenth day of August of the year of our
 Lord one thousand eight hundred and sixty two,
 entered into the said premises and ejected the
 said Plaintiff therefrom and unjustly withheld
 from the said Plaintiff the possession thereof
 to the damage of said Plaintiff of One Thousand
 Dollars and thereon they bring suit etc.

Wm. D. Carter & Son

Attorneys for Plaintiff

To Benjamin D. Dugally the above named Defendant
 you are hereby notified that the declaration
 within inclosed copy whereof you are now herewith
 served, and to which copy this notice is subjoined,
 will be filed in the Circuit Court of Wayne County
 on the first day of September 1862 being the first
 day of the September term 1862 of the said Court
 that upon filing the said declaration will be entered
 requiring you to appear and plead to the said
 declaration within twenty days after the entry of
 such rule, and that if you neglect so to appear
 and plead, a judgment by default will be entered
 against you, and the Plaintiff will recover
 the sum of the premises specified in the said declaration
 Dated the nineteenth day of August A.D. 1862

Wm. D. Carter & Son
 Attorneys for Plaintiff

State of Illinois
 Sangamon County

William Gaucha being duly sworn according to law on oath states that he has duly served on Benjamin S. Sangamon a copy of a writ of habeas corpus issued by the Court of said County, and a copy of which is hereto annexed on the 20 day of August 1862.

Wm Gaucha

Subscribed and sworn to before me this 20 day of August 1862

Wm S. Parker, N. O.

(Endorsed)

This the 20 day of September 1862

Geo S. Harlow Clerk

And on the second day, to-wit Tuesday the second day of September in the September Term of said Court in the year last aforesaid the following proceedings were had in said Court in said entitled cause and to-wit of Record

Wm S. I. A. Sangamon
 Geo S. Harlow Clerk

Benedict S. Sangamon

And on the 20 day of

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September 18th came the Plaintiffs by their Attorneys and the Defendant having been duly notified of the pendency of the suit was duly present in Court.

And afterwards, to-wit on Wednesday the twentieth day of September in the September term of said Court in the year last aforesaid the following further proceedings were had in said Court in said entitled cause and entered of Record to-wit.

Mary M. Soolittle & Son vs
Doblett by Jane A. Haind their Guardian. Ex parte

Benjamin S. Soolittle.

And came the parties by their Attorneys and by agreement it was ordered that the Defendant herein be substituted as Defendant herein.

And on the second day to-wit the twentieth day of September in the year last aforesaid came the said Defendant N. Don Maud by Messrs. John Maud his Attorneys and filed in the Court Office of said Court his Plea in answer to which is in the words and figures following to-wit.

State of Illinois ss. Circuit Court
In and for said County. September term 1862

William S. Main

at

Mary M. Doolittle & David B. Doolittle
Doolittle by their Guardian
Jesse A. Mason.

And the said Judge said
by John W. Main his Attorney, came and defended
the force and injury whereof and says he is not
guilty of the said supposed Ejectment above
laid to his charge, or any part thereof in manner
and form as the said Plaintiffs have above
charged complained against him, and of this he
the said Defendant puts himself upon the Country to
try.

(Endorsed)

Filed Sept 17, 1862 Geo H. Harlow Clerk.

And afterwards found on Monday the Ninth day of Feb-
ruary in the February Term of said Court in the year
A.D. 1863 the following, further proceedings were
had in said Court in said entitled cause and
entered of Record. To-wit

Mary M. Doolittle & David B. Doolittle
Doolittle by their Guardian
Jesse A. Mason

W. S. Main

Ejectment

And could the parties by

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their Attorneys and upon agreement their cause is
to be tried in vacation without Jury.

And afterwards, to wit, on Tuesday the Twentieth day of
September in the September Term of said Court in the year
last aforesaid the following further proceedings were had
in said Court in said entitled cause between of Record.

Mary M Doolittle & John B
Doolittle, by James A Mason
their Guardians

William Dow Maus

Esquire

And on this day came and
were the Plaintiffs by their Attorney, Parker & Shaw
as the said Defendant by his Attorney, and a Jury
being waived by consent their cause is tried by the Court
and the Court having heard the allegations and proofs
of parties and arguments of counsel thereon is of
opinion that the Defendant is guilty of unlawfully
withholding the possession of the premises in the declara-
tion mentioned to wit, The North West Quarter of
the South East Quarter of section 16 in Township 22
North of Range 5 West of the 3^d principal meridian
in Sangamon County State of Illinois. It is therefore
ordered and adjudged by the Court that a writ of possession
be awarded the Plaintiffs and that they have and
receive of the said Defendant the said and damages
then about their suit when heard and execution and therefore

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And afterwards took on Friday the Twenty fifth day of
September in the September Term of said Court in the
year last aforesaid the following facts proceedings
were had in said Court in and entitled to same
and entered of Record. to wit.

Mary W. & John B. Doolittle, by
att of John B. Doolittle their Guardian } In Ejusdem
William Dowd Ward

And came the defendant
by his Attorney and entered his motion to vacate the
judgment heretofore entered in this cause and for
a new trial under the Statute which makes this
allowed

And afterwards, to wit on Saturday the Sixth day of February in the Fifth Term of said Court in the year 1864 the following further proceedings were had in said Court in and entitled come and return of Record, to wit.

M^{rs} D B Loolittle by
J A Mason their Guardian } Ejectment
Williamson Mason

And came the Plaintiff
by Parker Cooper their Attorney, and now came
also the said Defendant by Cuz I Galtman Esq
his Attorney, and issue being joined thereupon came
a day of good and lawful record, to wit, J M
Wells. Jonathan Dotter. William Prester. James
Larrimond. John Trayer. E M Harris. Joseph
Landes. J D Morris. Myron Corey. Henry Bunker
Elijah Vargeat John Hanson who were duly
elected tried and now met and truly do by
the issue joined, and after hearing the evidence
and arguments of counsel and receiving instructions
from the Court, retired to consider of their verdict
and after a short absence returned into Court
with the following verdict, to wit: "We the Jury find
the Defendant not guilty of unlawfully withholding
from the permission of the Plaintiff the real estate
and premises in the Plaintiff's declaration mentioned
And therefore came and adjudged for the

Grant that the Defendant be discharged from this
suit and go hence without day, and that he
recover of said Plaintiff his costs by him in this
behalf expended and that he have execution therefor.

And on Monday the Ninth day of February in the
Seventh year of said Court in the year last
aforesaid the following further proceedings were
had in said Court in said entitled cause
and entered of Record there.

Wm. J. Coolidge }
J. A. Harris } Guardian of the Person
v
William Don Ward.

Now came the Plaintiff
by his Attorney, and after the motion for a
trial herein under the common Law
another Court having heard said motion
and being fully advised in the premises
overruled said motion.

The exceptions taken in the trial of the above
 cause and allowed by the Court are in the
 words and figures following to wit:

Be it remembered that on the coming on of
 this case for trial the Plaintiff to maintain the
 claim on their part offered and read in evidence
 to the Jury a patent for the land in controversy
 from the State of Illinois to Dr. J. A. Doolittle
 in words and figures following to wit:

Patent

Joseph Duncan
 Governor of the State of Illinois
 To all to whom these Presents shall come Greeting
 Whereas it appears from a return made to the
 auditor of Public accounts by Thomas L. Wilson Esq.
 Commissioner and Agent for the inhabitants of
 Jayneville County that in pursuance of the several
 Acts of the General Assembly of the State of Illinois
 authorizing the sale of Section numbered Sixteen
 of such land as may be granted in lieu thereof
 for the use of Schools the said Commissioner did
 on the eleventh day of December eighteen hundred
 and thirty seven sell to Dr. J. A. Doolittle of the
 County of Jayneville and State of Illinois a
 certain lot of land lying in the County aforesaid
 being part of Section numbered Sixteen granted by
 the United States to the State of Illinois for the
 use of the inhabitants of Jayneville County

four North range number Five West of the third principal meridian for the use of School Lands as designated on the map of the said section as made by the Trustees of School Lands within the said Township as the North West Quarter of the South East Quarter of section sixteen Township twenty four North Range Five West of the third principal meridian containing forty acre survey and that the said Drvin B Doolittle had paid to the School Commissioners Ten dollars and cents per acre for the said Lot of land the price at which the same sold

In consideration whereof the State of Illinois does hereby grant bargain sell and convey to the said Drvin B Doolittle the lot of land aforesaid with the appurtenances thereof

Do have unto hold the same unto the said Drvin B Doolittle and to his heirs and assigns forever with simple as a new perfect and absolute estate

In testimony whereof I have caused these Letters to be made Patent and the Great Seal of State to be hereunto affixed Given under my hand at Vandalia the twenty fourth day of April 1838

By the Governor. Joseph Duncan
A. D. Field Secretary of State

Tested and
Lori Davis Auditor P. A.

Plaintiff then called William B Parker who being duly sworn testified as follows. I knew James B Doolittle the grantee named in said Patent. He is not now living, he died some ten or eleven years ago, he left two children, and no more, their names are James A Doolittle and Mary M Doolittle the Plaintiffs in this suit. They are both still minors.

It was then admitted by the Defendant that at the time of service of the declaration and notice herein said — Dugall was in possession of the land mentioned in said declaration as tenant of Amariah D Doolittle and of said Defendant and that at the request of Deft his name had since been substituted as Defendant in place of said Dugall. Plaintiff then here rested their case.

Defendants then to maintain the issue on his part offered and read first to the jury from the Records of the Circuit Court of said Dugall County a judgment rendered on the 30th day of September A.D. 1839 in favor of Robert Brecken. Huslia Thomas, Charles S Thomas survivors of James S Atkins for the use of Reuben Jewett & vs Oliver Spauldy and James B Doolittle in words and figures following, to wit.

Robt Bredin, Hushai Thomas,
Charles S Thomas, Survivors of
James S. Keith for the use of
Kimball Jewett & Co

Appraiser

Oliver Sydney Davis & Doolittle

This day came the parties
by their Attorneys and the Defendants enter a plea of
non assumpsit which issue being joined. By consent
the same is tried by the Court, and the Court having
heard the proofs and allegations of the parties is of
opinion that the Defendants did promise in manner
and form as declared against them and assessed
the Plaintiffs damages to the sum of One Thousand
and ninety nine Dollars and thirty three cents.

It is therefore considered by the Court that the
Plaintiffs receive of the Defendants their damages
assessed in said assumpsit, assessed and likewise
their costs and charged by them about their suit
in their behalf expended and that they have
execution therefor.

Defendant then next offered in evidence and
execution issued on said judgment and dated
November 12th 1839 in words and figure as follows

The People of the State of Illinois
To the Sheriff of Jayawab County. Greeting
We command you that of the goods and chattels

lands and tenements of Oliver Lindley and Irwin
 B Doolittle late of your County now came to be
 made the sum of One Thousand and ninety nine
 dollars and thirty three cents, which Robert Bradley
 Huskai Thomas and Charles Thomas survivors of
 James S Atkins use of Hagiball, Jewett & Co lately
 in our Circuit Court of Jaymes County have recovered
 against said Lindley & Doolittle for their damages
 with legal interest thereon from the 30th day of
 September in the year of our Lord one thousand eight
 hundred and thirty nine until paid, also eight
 dollars and sixty eight ³/₄ cents which were adjudged
 to said Hagiball Jewett & Co in our said Court
 for costs and charges about their suit, in that
 behalf expended whereof the said Lindley & Doolittle
 are convicted, as appeared from of Record, and that
 you have that money at the Clerk's Office of our said
 Court at Crescent ninety days after the date
 hereof to render the said Bradley & Thomas use of
 said Hagiball Jewett & Co damages interest and costs
 as aforesaid, and have you then show this writ.

Exat

Witness John A Jones Clerk of our said
 Court at Crescent this 12th day of
 November A.D 1839

John A Jones Clerk

Encland

Came to hand Nov 15th 1839 at 10 o'clock PM

W A Jimmy Shiff J. C

In the reading of which the Jury Plaintiff objected on the ground that no action appeared to have ever been taken thereon. but the Court overruled the objection and permitted said execution to be read to the Jury and Plaintiff by their counsel then and there excepted.

Defendant next offered in evidence a Plurion Fi Fa execution purporting to have been issued upon said judgment on the 7th of September A.D. 1846 together with the endorsement of receipt of the Sheriff. To and return thereon, which said execution and endorsements thereon are in words and figures as follows.

State of Illinois }
Sagewell County }

The People of the State of Illinois
To the Sheriff of said County Greeting

We command you that of the goods and chattels lands and tenements of Oliver Lindsey and Maria A. Coolidge in your County you make or cause to be made the sum of One Thousand and ninety nine Dollars and thirty three cents, which on the 30th day of Sept 1839 Robt Breder. Chas S Thomas and Michael Thomas survivor of Jas S. Patton for the use of Kinball Jones do recover in the Circuit Court of said County against the said Oliver Lindsey and Maria A. Coolidge with legal interest thereon from

17

said date moneys paid and also the further sum of
 Thirteen dollars and eight seven cents which was
 adjudged to the said Robert Brecken and others and
 as aforesaid by said Court for their costs and charges
 in that behalf expended among the said Oliver
 Lindley and Irwin B. Doolittle and convicted as
 appeared and of record, and that you have the said
 sum of money and interest and costs at the Clerk's
 Office of our said Court at Trenton within ninety
 days from the date hereof to render unto the said
 Robert Brecken and others one of said Robert
 Garrett & and share you then then this writ

Prob

Witness John A. Jones Clerk of our said
 Court at Trenton this 7th day of September
 1846 the seal of said Court being hereunto
 affixed
 J. A. Jones Clerk

(Endorsements)

Came to hand August 7th 1846 at 10 AM
 N. H. Briggs, Shff J. C.

Executed by levying on J. B. Doolittle, witness in Lof

11. 12. 13. 14	13 37	in Pekin Town also							
N 1/2 NE 1/4	Sec 23	Town 25 N. R. 5	do	80	9	2.00			
SE 1/4 NE 1/4	" 23	" " " "	"	40	14.00				
SW 1/4 fractional	22	" " " "	"	19 3/4	3.00				
NE 1/4 NE 1/4	7	" 25 " 14	"	40	2.00				
all of NE 1/4 NW 1/4	16	" " " "	"	40	2.00				
" SE NW 1/4	16	" " " "	"	40	2.50				
" SW NE 1/4	16	" " " "	"	40	2.00				

18 w of NE SW 1/4 Sec 16 Town 25 N. R 4 40 2.00
 " SE NE 1/4 " 16 " " " " 40 2.50
 " NW SE 1/4 " " " 24 " 5 40 3.00

Lot 4th Block 10 Pickin this 10 day August 1826

R. N. Briggs Sheriff J. C.

Made by the sale of the above described property Fifteen
 Hundred and eighty five Dollars execution returned
 October 7. 1826

R. N. Briggs Shff J. C.

Filed July 16. 1849

J. A. Jones Secy.

To the reading of which is evidence the Plaintiff
 objected for the following reasons. first that said execution
 had upon its face palpable marks of alteration
 2nd Because of discrepancy between the date of
 issue of said execution its receipt by the Sheriff and
 the date of Levy as endorsed thereon and manifest
 inconsistency in said dates. 3rd For insufficiency
 of said return. which objections upon inspection
 of said paper by the Court were overruled. and
 said execution and endorsement admitted in
 evidence to the Jury. At which decision of said
 Court in overruling said objections and permitting
 said execution and endorsement thereon to be
 read to the Jury. said Offs by them committed
 then and then excepted

Defendant then next offered in evidence to the
 Jury deed made by Robert N. Briggs and Sheriff

said County to William Doolittle in words and figures as follows.

Sheriff } No. 10549
 To } Recorded 19th May 1881.
 Wm. B. Doolittle }

Whereas Robert Arden, Charles D. Thomas, Sturges, Survivors of J. S. Atkins for the use of Kinber's Grant do did at the September Term A.D. 1839 of the Circuit Court of Jay County in the State of Illinois receive a judgment against John Lindley and John B. Doolittle for the sum of One Hundred and ninety nine ³⁷/₁₀₀ Dollars and cents of suit upon which judgment an execution was issued dated on the seventh day of September A.D. 1846 directed to Robert W. Briggs Sheriff of Jay County aforesaid to execute, and by virtue of said execution the said Sheriff levied upon the lands hereinafter described, and the same were struck off and sold to William B. Doolittle, he being the highest and best bidder therefor and the time and place of the sale thereof having been duly advertised according to law.

And therefore Now all by this deed that Robert W. Briggs as Sheriff of said County of Jay in consideration of the premises now granted, bargained and sold and do hereby convey unto the said William B. Doolittle his heirs and assigns the following described tract or tracts of

land all in Jaynes County adjacent lands Lots eleven, twelve, thirteen and fourteen in Block thirty seven in Pekin, also Lot four in Block ten in Pekin, and also the West half of the North East quarter of section twenty three, also the South East quarter of the North East quarter of section twenty three and the South West fractional quarter of section twenty two all in township twenty five North Range five West, and also the following tracts of land in township twenty five North Range four West, South North West quarter of the North East quarter of section seven (7). Also the North East quarter of the North West quarter of section sixteen, also the South East quarter of the North West quarter of section sixteen, also the South West quarter of the North East quarter of section sixteen, also the North East quarter of the South West quarter of section sixteen, also the South East quarter of the North East quarter of section sixteen, and also the North West quarter of the South East quarter of section sixteen in Township twenty four (4) North Range five West. To Have and to Hold the said described premises with all the appurtenances thereto belonging to the said William A. Doolittle his heirs and assigns forever. Witness my hand and seal the sixth day of March in the year one thousand eight hundred and forty nine.

J. H. Tupper Notary Public

State of Illinois }
 Saywell County } ss

I, J. A. Jones Clerk of the Circuit Court in and for said County do hereby certify that R. H. Briggs whose signature is subscribed to the foregoing deed of conveyance this 6th day of March A. D. 1849 personally appeared before me and acknowledged that in his late capacity of Sheriff he had executed the same for the uses and purposes therein expressed.

Done at
 Saywell

Witness my hand and official seal at
 Tremont the day and year last above
 written

J. A. Jones Clerk

To the making of which both the Dory Plaintiffs by their counsel objected, but the Court overruled the objection, and permitted said deed to be read to the Dory, and Plaintiffs then and there excepted. Next defendant offered and read in evidence against objection and exception by Plaintiffs, a Will of William B. Doolittle in words and signified as follows:

August Term 1854.

In the matter of the Probate of the
 Will of William B. Doolittle deceased

The last Will of Wm B Doolittle having been presented and
 James Gibson and Edmund Jones returned before me

said Will having duly found the same. It is
therefore ordered by the Court that said Will be
approved and Recorded. Teste

In the name of God Amen. I William D
Doolittle of sound mind memory and understand-
ing and still in apparant good health yet
conscious of the uncertainty of life in order that
at my decease my worldly goods may be dis-
tributed among my relations in such manner
as I myself now living would conduce the
most in promoting the intent of my legatus
hereby make and declare this my last and only
Will and Testament

In the first place I devise that my debts
should be paid according to the proper priority
established by the laws of the State of Illinois
In the second place I devise and so will
that the residue of my estate real personal
and mixed be divided into four equal parts
or shares to wit. To Mary Maria Doolittle and
Dorinda Doolittle infant children of my deceased
brother Dorinda A Doolittle. I devise and bequeath
one fourth of my estate of every kind and de-
scription whatsoever with the expressed condition
and stipulation that if either of them shall
die before he or she shall have arrived at his
or her majority then and in that event said
one fourth part of my said Estate shall go to

the survivor of said two children but if at the time of my decease neither of said two children shall be living then I devise and promise that one fourth of said estate shall become the property of my brother Amaziah Doolittle George H Doolittle and of the children of my brother Raulph S Doolittle under the same conditions limitations and restriction as the remaining three fourths of my estate hereinafter devised to them and attended with

In the third place I do hereby devise and bequeath unto my brother Amaziah D Doolittle the one fourth of my estate and to my brother George H Doolittle the one fourth of my estate and to the children of my brother Raulph S Doolittle the one fourth of my Estate and I do further declare that inasmuch as it is my fixed will and determination that my estate shall go for the benefit of the devised persons and to their lawful wives and legitimate children and to no other persons whatever I request and will that if either of said devised shall depart this life before me leaving neither lawful wife nor child the portion of the decedent shall be divided among the remaining devised ~~the~~ ^{or} their widows and children according to true intent and meaning of this will it being born in mind however and I have again explained so and declare that the children of the said Amos A Doolittle shall take by survivorship from

each other, and that the children of the said
 Rawley & Doolittle shall likewise take by survivor-
 ship from each other the provision herein
 not to deprive said children either of the
 said Trust or Rawley of their share of any
 lapsed legacy. And I do further mis- and
 declare that Rawley & Doolittle my brother
 shall have the uncontrolled and absolute
 management and disposal of all such part
 of my estate his said children at my decease
 shall become entitled to until the youngest of
 said children shall become of full age, and to
 use said means at his discretion without having
 to account to any person or persons or Court or
 Court whatsoever as to his application thereof.
 But if the said Rawley & Doolittle shall die
 before my decease then I desire that said
 means or funds may be controlled by the
 legally appointed Guardian of said infant children
 as is justified and required by law. But if the said
 Rawley & Doolittle shall be in full life and said
 children shall be deceased then I request said
 property to my brother Amos for the use of said
 Rawley. the said Rawley having the use
 and control of the same, and I do hereby for the
 purpose of having this my will carried out
 according to its true intent. Witness my hand
 at Jacksonburg. Eng the 20th October 1841
 In testimony whereof I have hereunto set my

done on the Fifteenth day of November in the year
of our Lord eighteen hundred and fifty one

H. A. Doolittle

The above will was signed by the Testator
in our presence and in the presence of
each other at the request of said Testator

Edward Jones. Sam Gibson
State of Illinois of
Jagwell County

I, Edward Jones & Samuel Gibson
being duly sworn according to law, depose and
say, that William A Doolittle, decedent, executed
the within will and Testament in their presence
that in their opinion at the time he was of
sound mind, memory and understanding, that
at his request, they subscribed their names as
Witnesses to his signature, in his presence and
in the presence of each other

Subscribed and sworn to
before me this 27th July
1854

Sam Gibson
Edward Jones

Geo Gridley clerk

Next Defendant offered and read in evidence against
objection by Plaintiffs a decreed Commissioner Report
and decreed approving the same in Parkersburg
in said Circuit Court at the October Term thereof 1855.
in words and figures following, to wit

State of Illinois }
 Jayville County } Of the October Term of the Jayville
 Circuit in the year of our Lord one thousand
 eight hundred and fifty five.

Amaziah D Doolittle, George W Doolittle
 Rawley S Doolittle and Martha Doolittle
 and Mary Doolittle minor children of
 the said Rawley S Doolittle

vs
 Jesse A Mason, Guardian of Drury A Doolittle
 and Mary M Doolittle minor heirs of Drury B
 Doolittle deceased, the said Mary M Drury
 A Doolittle minor heir ad aforesaid, Ann M
 Mason, wife of the said Jesse A Mason formerly
 the wife of Drury A Doolittle deceased
 Middleton Jackberry executor of the last Will
 and Testament of William A Doolittle deceased
 and Joseph S McIntyre.

This day
 came the Petitioners by their Solicitor McIntyre, and
 it appearing to the Court that all the defendants
 have been duly served with process, and it further
 appearing that Mary M Doolittle and Drury A
 Doolittle are minors and the Court having ap-
 pointed Wm B Parker Esq Guardian ad litem
 for said minors and he having filed his answer
 saying that he knew of no reason why the prayer
 of said Petitioners should not be granted. And it

Beauvoir

further appearing to the Court that Wm B Doolittle deceased, in his lifetime made his last Will and Testament bearing date Nov 15th 1831 Willing and bequeathing all his estate both personal real and mixed after the payment of his debts as follows to wit:

To Drvin B and Mary M Doolittle children of Drvin A Doolittle deceased one fourth part and to Amasa B Doolittle one fourth part, To George W Doolittle one fourth part, To the children of Nancy S Doolittle to wit Martha Doolittle one fourth part to be held by them, to be used and controlled by the said Nancy S until youngest of said children shall arrive at the age of majority and that Middleton Jackson was nominated and appointed Executor of said last Will and Testament, and that said William B Doolittle departed this life on about the 20th day of August 1834, and that he made Probate of the same at the August Term of the Jaycee County Court A.D 1834 and took out Letters testamentary thereon, and that the said William A Doolittle died seized in fee simple of the following described real estate situated in Jaycee County Ill. to wit: The East half of the South East quarter of section twenty four North of the Base line Range four West of the third principal Meridian

The South West quarter of section twenty eight Township Twenty four North of the Base line Range

five West of the third principal

The South West quarter of section twenty one Township Twenty four North of the base line Range five West of the third principal meridian

The West half of the North East quarter of section twenty one Township Twenty four North of the base line Range five West of the third principal meridian

The North West quarter of section twenty eight Township Twenty four North of the base line Range five West of the third principal meridian

The South East quarter of section sixteen Township Twenty four North of the base line Range five West of the third principal meridian

The West end third of Lot twelve in Block no thirty seven of the original Town of Pekin now part of the City of Pekin

And the undivided one half of the North East quarter of section twenty eight Township Twenty four North of the base line Range five West of the third principal meridian which he held as tenant in common with the heirs of Dr. J. A. Doolittle deceased.

And Middleton Jackson having filed his answer to said Petition and admitted the fact that there is sufficient amount of personal property in his hands to pay all debts against said Estate.

And if further appearing to the Court that Dr. J. A. Doolittle and Mary M. Doolittle are entitled under said Will as Legatees of the said Deceased of one undivided one fourth part of said said Estate.

A Doolittle is entitled to one fourth part. That George W Doolittle is entitled to one fourth part and that May and Martha Doolittle children of Rawley S Doolittle is entitled to one fourth part And that Ann M Haron wife of James A Haron formerly widow of Drwin A Doolittle deceased is entitled to serve as the Widow of said Drwin A Doolittle deceased in the undivided one half of the North East quarter of section twenty eight Township twenty four North of the Band line Range five West of the third principal Meridian

The premises being answered It is ordered adjudged and decreed by the Court that David Mark, James R Gabcock and William Stauber be appointed Commissioners to make Partition of the Real Estate above described and set off one fourth part of the East half of the South East quarter of section twenty nine. The South West quarter of the North West quarter of section twenty eight. The South West quarter and the West half of the North East quarter of section twenty one. The South East quarter of section sixteen all in Township twenty four North of the Band line Range five West of the 3^d principal Meridian. Also the West one third of Lot No twelve in Block No thirty seven in the original Town of Pekin. and the undivided one half of the North East quarter of section twenty eight Township twenty four Range five West of the third principal Meridian subject to

the claim of Donor of Anna M. Hasen in said undivided part to Mary M. Doolittle and Maria D. Doolittle minor heirs of John B. Doolittle deceased to be held, as tenants in common, one fourth part.

To Amaziah D. Doolittle one fourth part of said real estate to be held in severalty by him.

George W. Doolittle one fourth part to be held in severalty by him.

To Martha Doolittle and Mary Doolittle minor children of Rawley S. Doolittle to be held as tenants in common one fourth part.

That said Commission make Partition of said Real Estate if Partition can be made without making waste of the Estate and intent of said Legatee and if not susceptible of division to make report of the same of the same to the next Term of this Court, and if division is made to make report of the proceedings to the next Term of this Court, and that the cost and expense be paid of the Estate of William B. Doolittle.

Report of Commission To April Term of the Circuit Court of Jay County State of Illinois A.D. 1856

Amaziah D. Doolittle, George W. Doolittle }
 Rawley S. Doolittle and Martha Doolittle }
 and Mary Doolittle minor children of }
 the said Rawley S. Doolittle }

Drum A Doolittle & Mary M Doolittle
 minor children of Drum A Doolittle deceased
 and Jew A Mason their Guardian Ann M Mason
 wife of the said Jew A Mason formerly
 widow of the said Drum A Doolittle deceased
 Middleton Jackson Esquire Executor of the last Will
 and Testament of M^{rs} B Doolittle deceased

And the
 undersigned the Commissioners appointed by the Circuit
 Court of Jay County Illinois at the October
 Term of said Court in the year of our Lord one
 thousand eight hundred and fifty five & more.
 Partition of the following described Real Estate to wit
 The East half of the South East quarter of section
 Twenty nine (29) The South West quarter and the
 North West quarter of section Twenty eight (28) The
 South West quarter and the West half of the North
 East quarter of section twenty one (21) The South
 East quarter of section sixteen all in Township
 Twenty four North of Base line Range five West
 of the Third Principal Meridian. And the West
 one third of Lot No twelve in Block No thirty
 seven of the original Town of Pekin now a part
 of the City of Pekin owned and held by William
 A Doolittle deceased in severalty and in fee
 simple Also the undivided half of the
 North East Quarter of section Twenty eight (28)
 Township Twenty four North of the Base line
 Range five West of the Third Principal Meridian

which he held as tenant in common with the heirs of Dr. Wm. A. Doolittle deceased.

And it being ordered and decreed by the Court that Amasaiah Doolittle is entitled to one fourth of the estate of the said William A. Doolittle deceased to be held in severalty by him. To George W. Doolittle one fourth part to be held by him in severalty. To Martha Doolittle and Mary Doolittle minor children of Joseph Doolittle one fourth part to be held as tenants in common by them. To Dr. Wm. A. Doolittle and Mary W. Doolittle heirs of Dr. Wm. A. Doolittle deceased one fourth part to be held as tenants in common by them.

And the said commissioners appointed as aforesaid, to-wit: David Mark, Jas. R. Bulcock and William Stenberg having been duly sworn according to law, and having made examination of the said premises found that the said premises could be made Partition of without injury to said estate of Legatee, make and Report the following Division of said Real Estate, to-wit: Of the North East Quarter of section Twenty eight Township Twenty four North Range five West of the third principal Meridian the portion of said real estate held as tenants in common by said Vestator and the heirs of Dr. Wm. A. Doolittle deceased, they apportioned to the said heirs of the said Dr. Wm. A. Doolittle and set ap-

East half of the North East quarter of said section twenty eight to the said heirs to be held as tenant in common by them subject to the right of Power held by Ann M Hason formerly wife of Drury A Doolittle deceased.

Also, the said Mary M and Drury A Doolittle heirs of the said Drury A Doolittle deceased from the Estate of Wm B Doolittle deceased The West half of the North East quarter of section twenty eight eighty acres. The East half of the North West quarter of section twenty eight eighty acres, and the East half of the North West one fourth of the North West one fourth of section twenty eight twenty acres, all in Township twenty four North Range five West of the third principal Meridian.

To Martha and Mary Doolittle minor children of Drury A Doolittle the South West quarter of section twenty eight one hundred and sixty acres and the South West one fourth of the North West quarter of section twenty eight forty acres all in Township twenty four North Range five West of the third principal Meridian to be held by them as tenants in common.

To Amariah D Doolittle the South East quarter of section sixteen one hundred and sixty acres, the West half of the North East quarter of section twenty one eighty acres all in Township twenty four North Range five West of the third principal Meridian also the West one third of Lot No. 22 in

Block no thirty seven (37) in the original town of
Pekin lots held by him in severally

To George W Doolittle the South West quarter
of section twenty one and hundred and sixty acre
The East half of the South East quarter of section
Twenty nine eighty acre and West one half of the
North West one fourth of the North West quarter of
section twenty eight twenty acre all in Township
Twenty four North Range five West of the third principal
meridian lots held by him in severally

Given under our hands and seals the 25th day
of October in the year of our Lord one thousand
eight hundred and fifty five

H Stanberry Seal
James R Babcock Seal
David Mark Seal

And the said motion having been heard by the
Court and no one opposing it the said Report
and the sale therein reported is hereby affirmed
and confirmed.

Defendant then next appeared and read in evidence
to the Jury a deed from Amasa D Doolittle wife
to said Defendant in words of figure following to wit

A.D. Doolittle mfe. No. 25999

To
Wm Don WardRecorded February 22^d 1864

This Indenture made and entered into the twenty fifth day of August in the year four
 Six and thousand eight hundred and sixty two (1862) between
 Amariah D Doolittle and Sara Doolittle mfe. of said
 Amariah of the first part and William D Ward
 of the second part. Witnesseth That the said party of
 the first part, for and in consideration of the sum
 of Three thousand Dollars paid by the said party of
 the second part the receipt of which is hereby acknowledged,
 have granted, bargained, sold and conveyed
 and confirmed, and do by these presents Grant
 Bargain and Sell unto the said party of the second
 part his heirs and assigns that certain tract
 or parcel of land situated in the County of
 Waukegan and State of Illinois and more
 and describe as The South East Quarter
 Section sixteen (16) in Township twenty four
 (24) North Range five (5) West of the third
 Principal meridian containing one hundred and
 sixty acres more or less subject to a Mortgage
 now a lien on said premises held by Ira
 Davenport of Buch. New York premises to be
 given by the 1st of March next, of said premises
 together with all and singular the hereditaments
 and appurtenances thereto belonging or in
 anywise appertaining. To Have and to Hold

the said premium as above described with the appurtenances unto the said party of the second part his heirs and assigns forever. And the said party of the first part, for himself and his executors and administrators does hereby covenant to and with the said party of the second part his heirs and assigns, that he is well seized of the premium above conveyed, as of a good and indefeasible estate in fee simple and has good right thereto and convey the same in manner and form as aforesaid, that the said premium and free from all incumbrances except as above mentioned, and that the above bargain premium, is the quiet and peaceable possession of the said party of the second part his heirs and assigns, against the claim of all persons whomsoever, he will forever warrant and defend.

In testimony whereof the said Amosiah D. Doolittle and Sara Doolittle have hereunto set their hands and seals the day and year first above written.

A. D. Doolittle

Sara X Doolittle

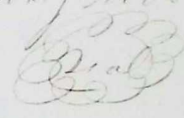
[Signature]
[Signature]

State of Illinois
 Cass County

I, Henry J. Spunkhoff a Justice of the Peace for said County do certify that the

do appeared before me Amosiah D. Corbitt where
 name appeared signed to the foregoing deed of conveyance
 and who is personally known to me to be the identical
 person whose name is subscribed to said Deed and
 having executed the same and acknowledged that he
 had executed the same as his voluntary act and deed
 for the uses and purposes therein expressed.

And Sarah Corbitt wife of said Amosiah D. Corbitt
 having been by me made acquainted with the contents
 of said Deed, and being by me examined separately and
 apart from her husband acknowledged that she had
 executed the same, and relinquished her Dower to the
 premises conveyed voluntarily, freely and without any
 compulsion of her said husband, and that she has
 no desire to retract the same.

Given under my hand and seal this Twenty
 sixth day of August eighteen hundred and sixty two
 Henry D. Spoonhoff J. P. 

Defendant then called William B. Parker who testified
 that William B. Corbitt died about 10 years ago at
 Pekin Ill., and that Defendant rested his case.

Plaintiffs then called Samuel T. Bailey who
 testified that he was the Attorney of said Robert
 Briden, et al, who obtained the Judgment and is
 evidence for said Plaintiffs. That said James B.
 Corbitt deceased offered to pay said Plaintiffs
 10 cents on the dollar for said Judgment provided
 the Plaintiffs would take the note of J. B. Corbitt.

and assign said judgment to William B. Doolittle that the arrangement was made, and the judgment assigned to said William B. Doolittle, who gave his note to Witness for the Plaintiff, in said judgment for the amount of said 10 per cent proposed by said Drury to be paid, and that said note was paid in the rents of a house occupied by Witness, and which house belonged to William B. Doolittle & also the heir of Benjamin Doolittle dec'd. and that Mrs. B. Drury B. Amagill Doolittle with other children were heirs of said Benjamin Doolittle dec'd. To all of which evidence of Samuel P. Bailey offered by Plaintiff the Defendant by his counsel then and there objected because the testimony was immaterial and irrelevant and for other reasons, and the Court overruled the objection and admitted the testimony.

Then was all the evidence in the case Plaintiff then asked the following instruction to the Jury

Instruction Lost.

And thereupon the Jury retired and returned into Court a verdict for said as follows. "To the Jury find the Defendant not guilty of unlawful withholding from the possession of the Plaintiff the real estate and premises in the Plaintiff's declaration mentioned."

And the Court said Plaintiff's entire motion
for new trial is made upon following, to-wit:

State of Illinois } 1st District Court
Wayne County } February Term 1864

May McDorlitt et al }
v } Motion for new trial
William J. Maud }

And the Plaintiff came
and moved the Court for a new trial in this
cause and assigns the following grounds

- I. The Court admitted improper evidence as the
part of the Defendant
- II. The Court erred in excluding evidence
offered by the Plaintiff
- III. The verdict of the Jury is against law
and evidence
- IV. Other reasons

Wm B Parker et al

Attys for Deffs

Endorsed

Filed July 9th 1864

Geo H Harlow Clerk

Which said motion was overruled by the Court
and judgment rendered by the Court in favor
of Deft upon said verdict. To which ruling
of said Court in refusing said motion for

new trial and rendering judgment on said
verdict Plaintiff by their counsel then & there
excepted and pray that their their Bill of
exceptions may be signed sealed and made of
record by the Court which is done
(Signed) James Harriott Esq.

State of Illinois }
 Jayward County }

I George A. Harlow Clerk
 of the Circuit Court within and for said County
 do hereby certify the foregoing to be a full, true
 and complete Transcript of all the proceedings
 had in said Court in a certain cause therein
 wherein M. M. J. B. Dorrill & J. A. Mason
 the Guardian and Plaintiffs and Hilson
 & Ward and Defendants, as the same
 appear of Record and on file in said Court
 and now in my custody. I do further
 certify that the Instructions in the case
 of Plaintiffs and me as Defendants referred
 to in the foregoing Bill of Exceptions are
 correct and cannot be improved.

In testimony whereof I have hereunto
 set my hand and affixed the
 seal of said Court at my Office
 in Pekin in said County this 25th
 day of March A.D. 1864.

George A. Harlow Clerk
 J. W. H. Howard Deputy



Mary M. Doolittle } Error to Yazoo County:
 John B. Doolittle } Supreme Court
 by Jesse A. Nason, Guardian } 3^d Grand Division
 vs. ~~Plffs in Error~~ } April Term 1864
 William Don Ham }
~~Def in Error~~

And now come the
 said plaintiffs in error, by their said Guardian,
 and say that in the record, proceedings & judgment
 of the said Circuit Court in this cause,
 manifest error hath intervened to their pre-
 judice in this -

1st Said Court Erred in permitting improper
 evidence to be read to the jury on the part
 of said defendant:

2nd = The permitting in evidence of said pluries fi. fa.
~~and with the endorsement or return thereon, and of all~~
 the subsequent documentary proofs offered by
 said defendant was erroneous:

3^d Said Court Erred in overruling motion of plffs
 for new trial:

4th = Said Court Erred in rendering judgment for
 defendant on said verdict:

Wherefore and for other good & sufficient rea-
 sons appearing in said Record said plaintiffs in
 error pray that the judgment of said Circuit Court
 herein may be set aside, reversed, and wholly for-
 naught esteemed:

Coopers & Means
 for plffs in error

and the said William Don Mous
expressed in her affidavit, come and say
that in the above proceedings and judgments
of the said Circuit Court in said Cause there
is no error. and the said Record and Judgment
should by the Court be in all things
confirmed.

W. D. Mous
per Petitioner
His Atty

236 134

Many M. Doolittle
State is

W. Doolittle

Record

Filed Apr. 21. 1864.
Melan
Ch.

SUPREME COURT OF ILLINOIS:

THIRD GRAND DIVISION.

April Term, A. D. 1864.

MARY M. AND IRWIN B. DOOLITTLE,
By their Guardian,
vs.
WILLIAM DON MAUS.

PLAINTIFF'S BRIEF.

I.

The execution of Nov. 12, '39, was improperly admitted for def't. It was never returned by the Sheriff, and is not shown to have found its way back to the clerk's office in any way. The absence of *filing* by the clerk presumes the contrary. The same is also indicated by the form of the execution, of later later date, given in evidence by def't. This latter, though called a *pluries* in the record, is, *in form*, a first execution. Except as laying the foundation for the issue of another execution *after the year*, this former execution had no value, and if never returned to the clerk's office, it was not good for that purpose. While it remained out a new execution could not properly issue without an order of court, or upon an affidavit filed showing its loss, and that the judgment, or some part of, it was still unsatisfied,

Ordinarily it is the return of the officer on the execution issued that governs both clerk and pl'ff as to the subsequent steps in the collection of judgments. The clerk cannot issue an execution on his own motion, and till such return is made the "pl'ffs hands are tied" as to all ordinary remedies. *Wickliff v. Robinson*, 18 Ills. 145; *Co. Ct. Calhoun Co. v. Buck*, 27 Ills. 444.

II.

The execution set out in the record, as dated Sept. 7, '46, should not have been allowed in evidence.

1st. Because issued more than a year and day from date of judgment and without due authority, for reasons named under first head.

2d. Because *void*, for material alteration apparent on its face. The writ itself being now before the court for inspection, it is only necessary to ask attention to the *date*, in which the alteration is alleged to have been made. That this alteration is *material* seems to us clear, as it concerns the very life of the writ. A date is essential. The writ must be executed *within a given time from its date*, or it ceases to have any vitality whatever—is dead, and cannot be renewed or made valid for any purpose. The alteration then being of a material part, required satisfactory explanation, otherwise the writ itself was made *void* by it, and could not be read in evidence. *Walters v. Short*, 5 Gilm. R. 252; *Hodges v. Gilman*, 20 Ills. 437; *Montag v. Linn*, 23 Ills. 551. And it was competent to make this objection to the writ even when offered collaterally. *Durham v. Heaton*, 28 Ills. 264; *Douglas v. Whiting*, *ibid.* 362.

III.

As the execution stands, the *levy* endorsed upon it is incongruous and void, and plffs' objections to it should have prevailed. This *levy* purports to have been made nearly a month *before* the writ issued. True, the date of the *levy*, and also the time when the Sheriff received the writ may prove that the present apparent date of the execution is not its true date. But does it lie with the *deft* to set this up? And if true, does it help the matter? How does it then appear what is the true date of the execution, and whether it was *in life* when the *levy* was made? Moreover, the Sheriff's deed read in evidence by *deft*, made pursuant to this *levy* and sale, recites an execution issued on the 7th September, 1846, a circumstance which may account for the alteration of the date of this writ.

IV.

For reasons already given the Sheriff's deed to William B. Doolittle, and all the subsequent documentary evidence read to the jury by *deft*, were improperly admitted. As they all depend on this execution, *levy* and sale for the title, they passed.

COOPER & MOSS,
Attys for Plff in Error.

236 134

Filed May 5, 1864
S. Leland Orr

1864

[illegible]

SUPREME COURT OF ILLINOIS:

THIRD GRAND DIVISION.

April Term, A. D. 1864.

MARY M. and IRWIN B. DOOLITTLE by JESSE A. NASON, their Guardian, <i>vs.</i> WILLIAM DON MAUS, Def't in Error.	}	Error to Tazewell Circuit Court.
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Abstract of Record.

- 2-3 Ejectment for NW SE 16, 24 N 5 W, Tazewell co., Ills. Declaration
filed and rule taken Sept. 2, 1862, against Benjamin S. Ingalls.
Sept. 7th, W. Don Maus substituted as defendant by agreement, and
6 plea filed.
- 7 Trial by court at Sept. Term, 1862, verdict for pl'ff.
- 8 New trial under the statute granted to def't.
- 9 Trial by Court and Jury at Feb. Term, 1864, verdict for def't.
- 10 Motion by pl't'ff. for new trial. Overruled, and judgment for def't.
- 11 Bill of Exceptions filed Feb. 9, '64, shows that pl'ffs to maintain the
issues on their part offered and read in evidence 1st patent, dated April
11-12 24, 1838, for said NW SE 16, from State of Illinois to Irwin B.
Doolittle.
- 13 Wm. B. Parker being then called by pl'ffs said, I knew Irwin B. Doolittle, said patentee. He died 11 or 12 years ago, and left two children and no more; one named Irwin B. Doolittle, the other Mary M. Doolittle, who are pl'ffs in this suit and both minors.

It was admitted by def't that when the declaration and notice were served said Ingalls was in possession of the land in question as tenant of def't, Maus and Amaziah D. Doolittle, and that by request of def't his name has since been substituted in place of Ingalls. Plffs here rested.

- 14 Defendant, to maintain the issues on his part, offered and read in evidence—

1st. Record of judgment rendered in said court Sept. 30, '39, in favor of Robert Breden, Hushai Thomas and Charles L. Thomas, survivors, &c., vs. Oliver Lindley and Irwin B. Doolittle, for \$1099 33 and costs.

- 15 2d. An execution on said judgment, dated Nov. 12, '39. Endorsed, came to hand Nov. 15, '39, at 1 P. M. W. A. Tinney, Sheriff T. C. To the reading of which plffs objected, no action appearing to have been taken upon it. Overruled and exception taken.

- 17 3d. A *pluries fi fa* on said judgment purporting to be dated Sept. 7, '46. Endorsed, "Came to hand August 7, '46, at 10 A. M. R. W. Briggs, Sheriff T. C."

- 18 "Executed by levying on I. B. Doolittle's interest in lots also all of NW $\frac{1}{4}$ SE $\frac{1}{4}$ 16, town 24 N, R 5 W, 40, \$2.50, this 10th day of August, 1846." R. W. Briggs, Sheriff T. C." "Made by the sale of the above described property, \$1585, and execution returned Oct. 7, '46. R. W. Briggs, Sheriff T. C." Filed Feb. 16, '49. To the reading of which in evidence plffs objected.

1st. Because of alteration apparent on the face of said execution.

2d. For discrepancy and inconsistency in dates of issue, receipt by sheriff and levy.

3d. For insufficiency of the return.

Objections overruled and execution and endorsement admitted, and plffs excepted.

- 19-20 4th. Deft next offered a deed from R. W. Briggs, Sheriff, to Wm. B. Doolittle, dated March 6, '49, for said NW SE 16, and other lands purporting to be made under a sale on execution issued Sept. 7, '46, out of said Circuit Court, on a judgment for \$1097.37 rendered at the Sept. Term, 1839, of said court, in favor of Robert Breden, Charles S. Thomas, Hushai, survivors of J. S. Atkins, use Kimball, Jewett & Co. vs. Oliver Lindley and Irwin B. Doolittle. Reading of same objected to by plffs. Objection overruled and exception by plffs.

- 22-25 Deft next read in evidence to the jury against objection and exception by plff.

1st. The will of Wm: B. Doolittle, proved July 27, '54, devising his estate in 4 equal undivided parts as follows, viz: To said children of Irwin B. Doolittle, dec'd, $\frac{1}{4}$ part; to Amaziah D. Doolittle $\frac{1}{4}$ part; to George W. Doolittle $\frac{1}{4}$ part; and to the children of Rawley D. Doolittle $\frac{1}{4}$ part.

26-30 2nd. Certain proceedings in Partition at the October Term, 1855, of 30-35 said court, in which the premises in dispute are set off to Amaziah Doolittle.

35-37 3d. Deed dated Aug. 25, '62, from Amaziah Doolittle and wife to William D. Maus for said premises in dispute.

37 Deft next called Wm. B. Parker, who testified that Wm. B. Doolittle died about 10 years ago at Pekin. Defts then rested.

Plffs called Samuel P. Bailey, who testified, I was Att'y of Robert Brenden et als, in whose favor said Judgment was rendered. Irwin B. Doolittle offered to pay 10 cents on the dollar for said judgment if plffs 38 would take Wm. B. Doolittle's note and assign to him the judgment, which was done, and the note paid by rents of a house occupied by witness, which belonged to Irwin B. Doolittle, Wm. B. Doolittle and als., the heirs of Benjamin Doolittle, dec'd.

This was all the evidence.

Instructions asked by plaintiff are lost.

Verdict of jury for deft.

Motion for new trial.

1st. Because of improper evidence admitted for deft.

2d. Exclusion of proper evidence offered by plff.

3d. The verdict is against the law and evidence.

Motion overruled and plffs except.

ASSIGNMENT OF ERRORS.

1st. Improper evidence admitted for deft.

2d. Error in allowing *pluries fi. fa.* and all subsequent documentary proofs offered by deft to be read to the jury.

3d. In overruling motion for new trial.

4th. In rendering judgment for deft.

COOPER & MOSS,
For Plffs in Error.

- 4th. In rendering judgment for debt.
- 3d. In overruling motion for new trial.
- offered by debt to be read to the jury.
- 2d. Error in allowing expenses &c. &c. and all subsequent documents by party.
- 1st. Improper evidence admitted for debt.

ASSIGNMENT OF ERRORS

- Motion overruled and bill excepted.
- 3d. The verdict is against the law and evidence.
- 2d. Exclusion of proper evidence offered by bill.
- 1st. Admission of improper evidence admitted for debt.
- Motion for new trial.
- Verdict of jury for debt.
- Instructions asked by plaintiff were lost.
- This was all the evidence.

Defendant Doonick's dec'd.
presented to the court the following evidence which was read and the same being by leave of the court admitted by witness which was done under Mr. J. Doonick's name and read to him the judgment which Doonick offered to pay 10 cents on the dollar for said judgment. It was then as up in whose favor said judgment was rendered. Twin D. Doonick called Samuel K. Bolton, who testified I was wife of Robert Bolton about 10 years ago at Boston. Doonick then testified.
3d. Debt was called Wm. B. Bolton who testified that Wm. B. Doonick William D. Bolton for said premises in dispute.
3d-3d 3d. Debt called Wm. B. Bolton American Doonick and wife to Doonick.

Doonick's & wife
3d-3d wife came in which the plaintiff in dispute was set off to American Doonick's & wife. Certain proceedings in England at the October Term 1825 of

Doonick's & wife
B. Doonick's dec'd. & wife's estate was set off to American Doonick's & wife in which the plaintiff in dispute was set off to American Doonick's & wife. The will of Wm. B. Doonick, proved by the court setting his

236 134
Doonick's
Mans
Doonick's

Filed April 26. 1864
L. Seland
Clk.

SUPREME COURT OF ILLINOIS:

THIRD GRAND DIVISION.

April Term, A. D. 1864.

MARY M. and IRWIN B. DOOLITTLE by }
JESSE A. NASON, their Guardian, } Error to Tazewell Circuit
vs. } Court.
WILLIAM DON MAUS, Def't in Error. }

Abstract of Record.

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- 10 Motion by plt'ff. for new trial. Overruled, and judgment for def't.
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11-12 24, 1838, for said NW SE 16, from State of Illinois to Irwin B. Doolittle.
- 13 Wm. B. Parker being then called by pl'ffs said, I knew Irwin B. Doolittle, said patentee. He died 11 or 12 years ago, and left two children and no more; one named Irwin B. Doolittle, the other Mary M. Doolittle, who are pl'ffs in this suit and both minors.

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3d. For insufficiency of the return.

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- 22-25 Deft next read in evidence to the jury against objection and exception by plff.

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35-37 3d, Deed dated Aug. 25, '62, from Amaziah Doolittle and wife to William D. Maus for said premises in dispute.

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Plffs called Samuel P. Bailey, who testified, I was Att'y of Robert Breden et als, in whose favor said Judgment was rendered. Irwin B. Doolittle offered to pay 10 cents on the dollar for said judgment if plffs would take Wm. B. Doolittle's note and assign to him the judgment, which was done, and the note paid by rents of a house occupied by witness, which belonged to Irwin B. Doolittle, Wm. B. Doolittle and als., the heirs of Benjamin Doolittle, dec'd.

This was all the evidence.

Instructions asked by plaintiff are lost.

Verdict of jury for deft.

Motion for new trial.

1st. Because of improper evidence admitted for deft.

2d. Exclusion of proper evidence offered by plff.

3d. The verdict is against the law and evidence.

Motion overruled and plffs except.

ASSIGNMENT OF ERRORS.

1st. Improper evidence admitted for deft.

2d. Error in allowing *pluries fi. fa.* and all subsequent documentary proofs offered by deft to be read to the jury.

3d. In overruling motion for new trial.

4th. In rendering judgment for deft.

COOPER & MOSS,
For Plffs in Error.

Revolittles
vs.
Hans
Abstract

14597

Filed Apr. 26. 1864.
L. Leland
Clk.

1. The will of Wm. B. Doehlig, pro-
2. 1832 and case in which the business in dispute was set off to American
3. 1832 and case in which the business in dispute was set off to American
4. 1832 and case in which the business in dispute was set off to American

Doehlig.
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