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William D. Murphy
vs

Ralph Lockwood

12874
1859

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STATE OF ILLINOIS, SUPREME COURT,

APRIL TERM, 1859.

RALPH LOCKWOOD }
 ads. } *Appeal from Marshall.*
WM. D. MURPHY. }

POINTS AND AUTHORITIES FOR APPELLEE.

BY W. B. SCATES,

Counsel for Appellee.

Filed May 19. 1859.
Leland
Clk.

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RALPH LOCKWOOD }
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Lockwood filed this bill 17th Oct., 1855, to compel Murphy to convey certain real estate to him, lying in Marshall county, Illinois.

The material allegations show, that he bought these lands of Murphy on the 5th April, 1851, for the sum of \$3,046.80, payable as follows:

Cash,	\$100.00
Note at four months,	806.80
Note at one year,	2,140.00

The payments made upon the land were as follows:

On 5th April, 1851,	\$100
On 8th August, 1851,	100
On 2d May, 1855,	100

Besides improvements to value of \$800 or more were made by Lockwood, his vendee and tenants.

They also paid taxes from date of purchase until bill filed, amounting to the sum of \$197.34.

Making an aggregate sum of \$1,100, and including \$133.28 for taxes paid since bill filed, makes \$1,233.28, which has been paid by Lockwood.

There was also \$125 paid for taxes of 1858, and taxes of this year charged to Lockwood, and neither of them in the record.

The whole amount due on the day this bill was filed, was as follows :

1 note, due four months 5th Aug., '51,	\$806.80
Credit,	100.00
Leaves,	\$706.80
Interest from due to 17th Oct., 1855, 4 yrs. 2 1-3 mos.,	
at 6 per cent.,	177.85
1 note, 1 year, due 5th April, '52, at 6 per cent.,	2,140.00
Interest to 17th Oct., 1855, at 6 per cent., being 3 yrs.	
6 1-3 months, is	452.96
	\$3,477.61
Cr. by cash, 2d May, 1855,	100.00
Bal. due at filing bill was	\$3,377.61

Lockwood tendered, before filing bill, a sum of upwards of \$3,600.
(See record, p. 58-9, Hubbard's testimony.)

When this last payment was made, on 2d or 3d May, 1855, only about 5 months before this bill was filed, Murphy agreed to extend the whole credit for a further period of two months, which extended credit expired on the 2d or 3d July, 1855.

(See receipt on page 66, Record.)

This agreement has no condition making the time of payment at the extended day of the essence of the contract and material, though Murphy's counsel in their arguments would fain have it so understood.

The foregoing are the facts of this case in a nut-shell, for all the proof about Lockwood's embarrassments, the judgments against him, and the proceedings in bankruptcy, are irrelevant, and throw no light upon the equitable rights of these parties, more than as tending to show that Lockwood's delay in making payments grew out of, or might have arisen from these pecuniary embarrassments.

This presents the case of complainant below, and will be discussed in the first point I shall present.

The second question I propose to notice, will arise out of the facts connected with Murphy's attempt to perform a mutual dependent condition, in order to entitle himself to rescind this agreement, by putting Lockwood in default, by a failure on his part to pay the remainder of the purchase money.

I.

First, then, as to the sufficiency of the performance, and offers of performance on Lockwood's part, to entitle him to a decree for a specific performance.

In order to get at this, we look at once to the intention of the parties, as set forth in their agreement.

The agreement is one in the ordinary form, which, after setting forth the sale and purchase, the price, times of payment, and description of the property, provides as follows:

"And on the payment of all the herein described amounts, as they become due and payable, the said Wm. D. Murphy and his wife agrees to make and execute a warrantee deed, with full covenants, free from all incumbrances—except the taxes of 1851—for all of the described land, to the said Ralph Lockwood, his heirs or assigns."

First. Now here are most clearly mutual dependent covenants, and upon which neither party could bring an action, without having first performed his part or offered to perform it.

Platt on Covenants, 86 to 90.

Walker vs. Harris, Austr. R. 245.

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"So, under a contract to purchase land, generally, good and sufficient titles must be delivered or tendered before the purchase money can be recovered."

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"So a covenant by the vendee to pay, and of the vendor to convey upon payment, are dependent covenants, and an action to compel pay-

ment, cannot be maintained without proof of a previous tender of a conveyance."

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Adams vs. Williams, 2 Watts & Sug., 227.

Breithaupt vs. Thurmond, 3 Rich. R. 316.

McCullough vs. Dawson, 1 Carter R. 413.

Second. The covenant being a mutual, dependent one, required, in order to be enforced or rescinded by Murphy, ^{the} without tendering such a deed as the contract called for, in the former case; and in the latter, a tender of such a deed, demanding payment of the balance of the purchase money, and in case of its refusal, to tender back the purchase money which had been paid by Lockwood.

In support of the necessity of tendering a deed in order to demand and become entitled to payment of the balance, I refer again to the authorities cited under the *first* head above.

But to entitle Murphy to rescind for non-performance in withholding payment upon demand and tender of performance by him, it is necessary to tender back the purchase money paid, and place Lockwood in the same condition as at and before the purchase.

The case of Johnson vs. Jackson, 27 Miss. R. 498, is upon all-fours with the case at bar, except there no improvements were made.

Irwin purchased of Healy & Whiting a tract of land, for which he paid part of the purchase money, executed his notes for the balance, took a bond for title, and took possession of the land.

The condition of the bond was substantially like this, and was as follows: "Now if the said H. & W., Trustees as aforesaid, shall, on the punctual payment of said notes, and all taxes legally assessed on said land, and the surrender to them of this instrument, convey or cause to be conveyed to the said J. E. P. Irwin, his heirs and assigns, the above-described premises, with warranty of title."

Irwin conveyed his interest to Jackson, for the benefit of Pryor, and afterwards delivered up the bond to the agent of Healy & Whiting.

Whiting undertook to sell the land to Johnson, who paid part of the purchase money and gave his notes for balance; he took with notice, but procured an assignment of the title bond to Irwin.

Jackson filed the bill for the use of Pryor, tendering balance of purchase money, and obtained a decree.

The ground assumed against the bill and decree was, that a failure to pay the notes for the whole of the purchase money at their maturity, gave the vendors a right to rescind the contract, and resume the ownership of the land.

The Court held the covenant to be a dependent one, and required an offer to convey; and that the vendors must also refund or offer to refund the purchase money advanced by the purchaser, and he must put the vendee *in statu quo*.

See also

Wadlington vs. Hill, 10 Smee. & Marsh. 560.

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The same principle is laid down and sanctioned in

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p. 30, cap. 17, sec. 20.

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Sugden substantially requires this of deposite-money.

1 Sugd. Vend. *306.

There was not only a total failure to tender a deed with full covenants, and for the land in Marshall county, which was the land purchased, and not land in Putnam county, as described in the deed tendered, and a total failure to return or offer to return the purchase money theretofore paid, but a total neglect to return or offer to return the negotiable notes given for the balance of the purchase-money, and to cancel the agreement and deliver it up, so as to put Lockwood *in statu quo*.

Third. Time was not of the essence of this agreement, and no subsequent agreement has been made modifying the agreement, or making time of the essence, either of the original agreement, or of an agreement for extended credit.

The agreement for the extended credit to 3d July, 1855, is contained in a receipt given for a payment of one hundred dollars on the purchase, as follows:

"Received, New York, May 3d, 1855, from Ralph Lockwood, Esq., one hundred dollars, on account of his contract, for the purchase of lands in Illinois, Town of Lyons, Putnam County; said contract bearing date April 5th, 1851, and described in deed of William D. Murphy and wife, (not yet delivered) to Ralph Lockwood; the delivery thereof being post-

poned in consequence of this payment until the third day of July next, when the balance of the purchase money is to be paid.

\$100.

WM. D. MURPHY."

It needs no argument or authority to show that this receipt does not make the time of the postponed payment material, and of the essence of this contract, even if it could be thus incorporated into the original agreement.

There is a very strong doubt implied in Sugden as above cited, whether a party can make time material by a subsequent notice to the end of rescinding the contract.

Where time is not made of the essence of the contract by the parties, whatever may be the doctrine of courts of law, courts of equity will decree a specific performance, unless there be very gross laches or very unreasonable delay.

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2 Story Eq. Jurisp. sec. 776-7.

Besides this, there was no long or vexatious delay after this credit expired, for the bill was filed within about three and a half months afterwards, and Murphy entertained a proposition to convey a house to him in Brooklyn in payment, a month or more after this extended credit expired.

The whole delay is shown to be or to have been the result of misfortune, and not of wilful default or negligence, because it was occasioned by pecuniary embarrassments, and derangement of Lockwood's business.

No criminal fault is shown to have brought this misfortune upon the defendant.

Although plaintiff's counsel indulge in a morbid proclivity to abuse him for it without any proof to justify their censure.

But so far from deserving censure for his misfortunes in business, Murphy himself seems to have shown great sympathy and indulgence in allowing the contract to stand open until Lockwood or his vendee could complete the payment.

It is very probable there would have been no controversy or difficulty about the performance, when Lockwood could have commanded the means, had not a rise in property induced others to apply to Murphy to purchase at an advance. Then and not until then, did he manifest any disposition to press Lockwood to the wall.

This brings me to the *second* point that I propose to discuss.

II.

The covenant was a mutual and dependant one, and required a tender of a deed, with covenants as specified in the agreement to be made to Lockwood, and a return of the purchase money before he could rescind.

Neither of these things were done.

First. I have already shown that in order to entitle himself to rescind the contract the law required a return, or an offer to return the purchase money paid by Lockwood on the purchase, and to place him in *statu quo*.

To do this, it was also necessary to pay him the value of the improvements made by him, or the balance after deducting the value of the rents, and deliver up, or offer to deliver up the contract of purchase, and the negotiable notes given for the balance of the purchase money, and all taxes and assessments levied upon the land and paid by Lockwood or his vendee and tenants.

The agreement for the purchase neither made time of the essence of the contract nor imposed any forfeiture for non-payment, or other breach of the agreement.

The law imposes no such forfeitures; it is a matter of special agreement, and when not provided for by the parties in the contract, the law requires the party wishing and having a right to rescind, to refund the money paid and return whatever other thing may have been received as a part of the consideration, or to secure the consideration as a condition upon which he can be allowed to rescind and abandon the bargain.

Equity requires justice to be done in such cases, by restoring the other party to the same condition as at the making of the contract, and when this is not in the power of a party, the law simply denies him a right to rescind. His only remedy will be, under such circumstances, a specific enforcement of the contract or damages for its breach.

Can any one pretend that Murphy would have a right to rescind this agreement with these notes in the hands of a *bona fide* assignee? If not, has he any more right to do so, while he retains them in his own hands? It is no answer to say Lockwood would have a right and a remedy to compel Murphy to deliver them up. He must place the other party *in statu quo* and not leave him to pursue his remedies to regain his rights and former condition.

I deem it unnecessary to elaborate this position further, believing it to be unanswerable.

Second. I have shown that the covenant in the agreement was a mutual dependent covenant, and each party must show an offer to perform, else he could not insist upon the enforcement of the contract or a right to rescind it.

Murphy was therefore bound to tender a proper deed according to the provisions of the agreement.

The following extracts will show all the material parts of the deed tendered, necessary to compare its provisions with those required by the agreement, namely:

"have bargained and sold, and by these presents, do grant and convey."

After describing the lands, they are located as follows:

"Lying and being in the town of Lyons, Putnam County, in the State of Illinois."

The following are the covenants, namely:

"And the said parties of the first part, do hereby covenant and agree with the said party of the second part, *that at the time of the delivery hereof*, the said parties of the first part are the lawful owners of the premises above granted, and seized thereof in fee simple absolute, and that they will warrant and defend the above granted premises, in the quiet and peaceable possession of the said party of the second part, his heirs and assigns forever."

I note, first, that these lands lie in *Putnam* County; the lands sold and described in the agreement, lie in *Marshall* County. So Murphy has never tendered a deed at all of the lands purchased.

Second, I note that the agreement provided for a deed with *full covenants*.

There are six covenants. *Full* covenants would require that each should be inserted in the deed, namely:

First. A covenant of seisin.

Second. That grantor has a good and perfect right to convey.

Third. That grantee shall quietly enjoy and possess it.

Fourth. That it is free from all incumbrances, leases, trusts, &c.

Fifth. Covenant for further assurances.

Sixth. The covenant of warranty.

Rawle on Covenants for Title, 28.

Here the grantor has studiously excluded the statute covenant even, arising upon the words "*grant, bargain, and sell.*"

Now the deed contains only the *first, second, and third* covenants. The *fourth, fifth, and sixth* are wholly omitted; and these are decidedly the most important and valuable of the covenants.

A deed with only such covenants could never be received as filling the covenant of the agreement for a deed with full covenants, even had it contained and conveyed the lands purchased. But when we come to *add* the two objections together, no Court can entertain for one moment the proposition that the terms of Murphy's covenant were fulfilled by such a deed.

This is one of those self-evident truths that need no argument to enforce. It is enough to state it.

III.

All that remains to be said, is to notice the appellant's positions and arguments.

I might dismiss this branch the subject by calling the attention of the Court to the fact, that all appellant's points are predicated upon the *assumption*, that somehow, or somehow else, time had become material and of the essence of this agreement.

This is wholly unsupported by the facts,—and that branch of their argument and authorities needs no further answer.

Again, his counsel proceed upon an assumption that defendants's pecuniary embarrassments are not a sufficient excuse for laches in the delay of payment up to May, 1855.

I know of no better or more satisfactory excuse. If an excuse for laches can only be received when it amounts to a performance, then all idea of excusing delay to rebut the charge of laches is at an end.

We do not pretend that this excuse would pay—or bar an action, or prevent Murphy from insisting at any time upon payment; but we do contend that it shows a reason for the delay, which excuses all fault for negligence.

He has shown himself, according to his pecuniary ability, eager, prompt and diligent. For Murphy was kind and indulgent to his embarrassments until May, 1855, when he began to urge payment; then Lockwood, by exertion, raised \$100, which Murphy received, and extended the credit

two months. Although disappointed in raising the money 5th of July, Lockwood still struggled energetically to enable himself to make payment. He offered other property in Brooklyn. That not proving acceptable as payment, he casts about and is enabled, by loan or otherwise, to raise the amount early in October, 1855. Now here was not four months delay after the money fell due. Surely no one can complain that this is gross negligence or vexatious delay.

Murphy has no right now to complain that he indulged Lockwood from August, 1851, and April, 1852, until May, 1855, owing to his embarrassments.

We are much his debtors for the indulgence; but we protest against his giving us this indulgence, and then to come here and insist that that very indulgence is evidence of our laches and abandonment of the contract.

The only delay shown, contrary to the will and consent of Murphy, is what took place from the 5th of July until the filing of this bill in Oct. following, some three and a half months only.

No case can be found where time was not made of the essence of the contract, where the court has refused specific performance, on account of such a delay as this.

There is no change in Murphy's circumstances shown to make it inequitable to render this decree.

Whereas, on the contrary, we show that Lockwood would be greatly damaged by withholding the title from him.

He paid Murphy, 5 April, '51,	\$100.00
" " " 8 Aug., "	100.00
" " " 5 May, '55,	100.00
" Made improvements, valued,	800.00
" Paid taxes to filing bill,	197.34
" " " since " "	258.00

Making an aggregate of	\$1,555.12
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which he has advanced on said lands. There were also \$125.00 taxes for the year 1858, paid by said Lockwood, and the taxes of 1859, charge against said land.—Neither of these in the record.

Believing the above views fully answer all the grounds assumed by appellant's counsel, and the positions and authorities show it impossible for appellant to succeed in resisting this decree.

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188

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In support of the necessity of tendering a deed in order to demand and become entitled to payment of the balance, I refer again to the authorities cited under the *first* head above.

But to entitle Murphy to rescind for non-performance in withholding payment upon demand and tender of performance by him, it is necessary to tender back the purchase money paid, and place Lockwood in the same condition as at and before the purchase.

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Third. Time was not of the essence of this agreement, and no subsequent agreement has been made modifying the agreement, or making time of the essence, either of the original agreement, or of an agreement for extended credit.

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Although plaintiff's counsel indulge in a morbid proclivity to abuse him for it without any proof to justify their censure.

But so far from deserving censure for his misfortunes in business, Murphy himself seems to have shown great sympathy and indulgence in allowing the contract to stand open until Lockwood or his vendee could complete the payment.

It is very probable there would have been no controversy or difficulty about the performance, when Lockwood could have commanded the means, had not a rise in property induced others to apply to Murphy to purchase at an advance. Then and not until then, did he manifest any disposition to press Lockwood to the wall.

This brings me to the *second* point that I propose to discuss.

II.

The covenant was a mutual and dependant one, and required a tender of a deed, with covenants as specified in the agreement to be made to Lockwood, and a return of the purchase money before he could rescind.

Neither of these things were done.

First. I have already shown that in order to entitle himself to rescind the contract the law required a return, or an offer to return the purchase money paid by Lockwood on the purchase, and to place him in *statu quo*.

To do this, it was also necessary to pay him the value of the improvements made by him, or the balance after deducting the value of the rents, and deliver up, or offer to deliver up the contract of purchase, and the negotiable notes given for the balance of the purchase money, and all taxes and assessments levied upon the land and paid by Lockwood or his vendee and tenants.

The agreement for the purchase neither made time of the essence of the contract nor imposed any forfeiture for non-payment, or other breach of the agreement.

The law imposes no such forfeitures; it is a matter of special agreement, and when not provided for by the parties in the contract, the law requires the party wishing and having a right to rescind, to refund the money paid and return whatever other thing may have been received as a part of the consideration, or to secure the consideration as a condition upon which he can be allowed to rescind and abandon the bargain.

Equity requires justice to be done in such cases, by restoring the other party to the same condition as at the making of the contract, and when this is not in the power of a party, the law simply denies him a right to rescind. His only remedy will be, under such circumstances, a specific enforcement of the contract or damages for its breach.

Can any one pretend that Murphy would have a right to rescind this agreement with these notes in the hands of a *bona fide* assignee? If not, has he any more right to do so, while he retains them in his own hands? It is no answer to say Lockwood would have a right and a remedy to compel Murphy to deliver them up. He must place the other party *in statu quo* and not leave him to pursue his remedies to regain his rights and former condition.

I deem it unnecessary to elaborate this position further, believing it to be unanswerable.

Second. I have shown that the covenant in the agreement was a mutual dependent covenant, and each party must show an offer to perform, else he could not insist upon the enforcement of the contract or a right to rescind it.

Murphy was therefore bound to tender a proper deed according to the provisions of the agreement.

The following extracts will show all the material parts of the deed tendered, necessary to compare its provisions with those required by the agreement, namely :

"have bargained and sold, and by these presents, do grant and convey."

After describing the lands, they are located as follows :

"Lying and being in the town of Lyons, Putnam County, in the State of Illinois."

The following are the covenants, namely :

"And the said parties of the first part, do hereby covenant and agree with the said party of the second part, *that at the time of the delivery hereof*, the said parties of the first part are the lawful owners of the premises above granted, and seized thereof in fee simple absolute, and that they will warrant and defend the above granted premises, in the quiet and peaceable possession of the said party of the second part, his heirs and assigns forever."

I note, first, that these lands lie in *Putnam County*; the lands sold and described in the agreement, lie in *Marshall County*. So Murphy has never tendered a deed at all of the lands purchased.

Second, I note that the agreement provided for a deed with *full covenants*.

There are six covenants. *Full covenants* would require that each should be inserted in the deed, namely :

First. A covenant of seisin.

Second. That grantor has a good and perfect right to convey.

Third. That grantee shall quietly enjoy and possess it.

Fourth. That it is free from all incumbrances, leases, trusts, &c.

Fifth. Covenant for further assurances.

Sixth. The covenant of warranty.

Rawle on Covenants for Title, 28.

Here the grantor has studiously excluded the statute covenant even, arising upon the words "*grant, bargain, and sell.*"

Now the deed contains only the *first, second, and third* covenants. The *fourth, fifth, and sixth* are wholly omitted; and these are decidedly the most important and valuable of the covenants.

A deed with only such covenants could never be received as filling the covenant of the agreement for a deed with full covenants, even had it contained and conveyed the lands purchased. But when we come to *add* the two objections together, no Court can entertain for one moment the proposition that the terms of Murphy's covenant were fulfilled by such a deed.

This is one of those self-evident truths that need no argument to enforce. It is enough to state it.

III.

All that remains to be said, is to notice the appellant's positions and arguments.

I might dismiss this branch the subject by calling the attention of the Court to the fact, that all appellant's points are predicated upon the *assumption*, that somehow, or somehow else, time had become material and of the essence of this agreement.

This is wholly unsupported by the facts,—and that branch of their argument and authorities needs no further answer.

Again, his counsel proceed upon an assumption that defendants's pecuniary embarrassments are not a sufficient excuse for laches in the delay of payment up to May, 1855.

I know of no better or more satisfactory excuse. If an excuse for laches can only be received when it amounts to a performance, then all idea of excusing delay to rebut the charge of laches is at an end.

We do not pretend that this excuse would pay—or bar an action, or prevent Murphy from insisting at any time upon payment; but we do contend that it shows a reason for the delay, which excuses all fault for negligence.

He has shown himself, according to his pecuniary ability, eager, prompt and diligent. For Murphy was kind and indulgent to his embarrassments until May, 1855, when he began to urge payment; then Lockwood, by exertion, raised \$100, which Murphy received, and extended the credit

two months. Although disappointed in raising the money 5th of July, Lockwood still struggled energetically to enable himself to make payment. He offered other property in Brooklyn. That not proving acceptable as payment, he casts about and is enabled, by loan or otherwise, to raise the amount early in October, 1855. Now here was not four months delay after the money fell due. Surely no one can complain that this is gross negligence or vexatious delay.

Murphy has no right now to complain that he indulged Lockwood from August, 1851, and April, 1852, until May, 1855, owing to his embarrassments.

We are much his debtors for the indulgence; but we protest against his giving us this indulgence, and then to come here and insist that that very indulgence is evidence of our laches and abandonment of the contract.

The only delay shown, contrary to the will and consent of Murphy, is what took place from the 5th of July until the filing of this bill in Oct. following, some three and a half months only.

No case can be found where time was not made of the essence of the contract, where the court has refused specific performance, on account of such a delay as this.

There is no change in Murphy's circumstances shown to make it inequitable to render this decree.

Whereas, on the contrary, we show that Lockwood would be greatly damaged by withholding the title from him.

He paid Murphy, 5 April, '51,	\$100.00
" " " 8 Aug., "	100.00
" " " 5 May, '55,	100.00
" Made improvements, valued,	800.00
" Paid taxes to filing bill,	197.34
" " " since " "	258.00

Making an aggregate of	\$1,555.12
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which he has advanced on said lands. There were also \$125.00 taxes for the year 1858, paid by said Lockwood, and the taxes of 1859, charge against said land.—Neither of these in the record.

Believing the above views fully answer all the grounds assumed by appellant's counsel, and the positions and authorities show it impossible for appellant to succeed in resisting this decree.

W. B. SCATES, for Appellee.

William L Murphy } Supreme Court
vs } State of Ill
Ralph Lockwood } Apr Term 1859

The questions presented in this case by the pleading and evidence are somewhat complicated but ^{those of most importance} may be stated thus in short ~~the~~ whether the complainant seeking a specific performance of the contract which he seeks to enforce has so conducted himself in performing the covenants & conditions of that obligation and has so far carried out the spirit & intention of the contract ^{& the parties} as to entitle him to the relief which he seeks, or whether on the other hand he has by delays, profligacies, and acts of bad faith, forfeited all right to Equitable relief, considering the contract one in which time is not regarded as material in a court of Equity.

Id Viewing the contract as one in which time is not necessarily material; and considering the lapse of time, & conduct of the parties with relation to each other, & the obligations assumed by them, by their contract, if all the ^{diligences} are not conceived to be of so vital importance as to place the complainant beyond the reach of Equitable relief; whether taking

these facts & circumstances into consideration the Court will decree a specific performance of the contract, where there has been a material change in the circumstances of the party, seeking the relief, so as to affect the rights, & remedies, of the defendant, who resist the application, and also where there has been a material advance in the value of the property to be conveyed.

2d. Whether time although not by the terms of the ^{contract} expressly made material becomes so from circumstances which subsequently occurred, such as the change in the circumstances of the party complainant; & in the value of the property; and by the subsequent arrangement of the parties fixing a time when the contract should be finally executed & completed; or in the alternative avoided if not then consummated.

4th Where time is not expressly made by the terms of the contract in its inception of the essence thereof and does not from the nature of the case become so or become so by subsequent arrangement & stipulation between the parties whether it may become so at the election of either of the parties upon notice to the other or demand upon the other at the stipulated time, where the party demanding performance is in a condition to perform on

his part & is entitled by the terms of the contract to require performance.

5th Whether the complainant is entitled to any relief at all; and if any, to what extent. And as to whether laches to any extent will be tolerated will ~~be to be determined~~ depend upon the facts & circumstances surrounding each particular case; for each case must be decided upon its own peculiar merits. The Court will examine the contract to see what the parties have there expressed, but it will not be limited to mere expressions it will examine every circumstance, every incident, pertaining to the entire transaction. It will investigate the matter & try the ^{consequence of the} parties & ~~their~~ ^{the} case presented by every word, & act, & motive, & design, for the purpose of ascertaining not only the intention of the parties but the real merits of the cause. It will weigh the cause as in a balance and will require not only that the parties observe the forms, but the substance of what the contract & the nature of the case requires. The Court has a discretion, which is not bound or limited by what the parties have expressed; but what they really have in good faith intended. Yet it is not an arbitrary unlimited discretion but a reasonable, legal discretion; which while it regards

what the parties have intended. It requires those intentions to be carried out with diligence and honesty of purpose.

The complainant while tacitly admitting in his bill that he has been guilty of ^{great} delay in paying the purchase money undertakes to excuse himself upon the grounds that shortly after making the contract he became embarrassed in his circumstances and could not conveniently make payment thereof as it became due & that the defendant knowing these facts did not insist upon prompt payment but permitted him to make payments from time to time as he conveniently could. That he paid \$100 in hand on delivery of the contract, \$100. on the 5th of August ¹⁸⁵¹ when the 1stst installment of \$806.80 became due, and \$100. on the 3rd of May 1853, which were receipted to him as payments & to be credited on his notes. It will be remembered that the ~~purchase~~ ^{deferred payments} ~~thereof~~ amounted to \$3046.80 - of which amount \$806.80 became due on the 5th of August 1851 & \$2140. on the 5th of April 1852 that the notes were taken without security and without any provision for interest. The witness Hubbard in his deposition testifies that when this contract was entered into Lockwood was pecuniarily responsible, that

he was out after April 1851 doing a large business; was worth over \$10,000; that he became insolvent some time between April 1851 & April 1855. Murphy admits in his answer that he Lockwood became hopelessly insolvent, but does not state the time when. The certified Transcript of the judgments exhibited in the answer shows, that in 1853 & 1854, judgments to the amount of over \$14,000. were recovered in N.Y. against him. The record of his examination as a judgment debtor before the City Judge of the City of Brooklyn shows that he had placed all his property out of his hands, & beyond the reach of his creditors in 1854, and that the property ^{described} in the contract had been assigned, & transferred, to William B Green; & the assignment ^{to Green} exhibited shows that he ^{Lockwood} had transferred it for \$200. The notes, & protests attached, show that he suffered the notes given for the purchase money to be protested for nonpayment on the 8th of April 1852. The Depositions of Lewis & Murphy filed in the cause show that he was poor & unable to pay the purchase money on the 2^d of May 1855, & on the 5th of July 1855. ^{as he admitted in the presence of the witnesses} And the witness Hubbard testifies that the judgments obtained against him in N.Y. still existed against him after the filing of the bill or at the time of taking the

Deposition. So that taking all of these facts & circumstances into consideration it is evident that he, after the making of the contract, became insolvent; or that, he fraudulently placed his property out of the reach of his creditors to delay the collection of the purchase money in this case, as well as his other debts; and it matters but little which horn of the dilemma he hangs upon, for neither are in his hands a sword, or shield,

But the Circumstances would seem to indicate ~~that he intended to defraud his creditors~~ ~~the latter~~ ^{for} he alleges in his bill that the lands transferred to Green had arisen in value \$4000. and the testimony of Fleming taken on the hearing shows that they had arisen in value near \$5000. whereas he had transferred them to Green for \$200. as the transaction shows, & Green had retransferred them to Lockwood for a nominal sum. Again it appears that up to the 5th of July 1855 the complainant admits that he is poor - unable to get any money to make payment of the purchase money and that judgments exist against him (which cannot be collected) till after the commencement of this suit; but by some inexplicable turn he on the 8th of October is able to get the money to make full payment & become the absolute owner in fee of this property which is worth \$8000. and that he is able to keep the

Money on hand: all this time ready to be paid over as the Court may direct. How does it come that he so opportunely discovers at this juncture the means of raising so readily this money, when he a few days before was entirely insolvent, & could not pay any of the many debts existing against him?

How does it come that his energies are so quickened at this particular time?

Is it that such a revolution has so suddenly & favourably taken place in his affairs that he is relieved of his embarrassments & unfavourable to these anxious desires which he professes in his bill, to fulfil his contract, ^{wee} & such a clog upon those honest intentions with which he has been characterised throughout this whole transaction? or is it the prospect of certain gain? ^{the gain of the} the sum of \$5000 ~~to be~~ acquired without a struggle without a risk by means of a contract, by which he could not have been prejudiced by a turn of fortune or a change of circumstances, a contract with a party, who ^{it is who} alone is bound by ~~it~~ could not hold him responsible had a reverse taken place, in the tide of affairs by which he would have to rely upon the personal responsibility of the complainant, for redress, upon the contract ^{is it this} that has quickened this new born zeal, & honesty of purpose, and created

these anxious desire to fulfil the obligations of this contract? Or is it that some friend influenced by the same motives & designs has been induced to furnish the means, & divide the proceeds of this grand speculation?

What are we to believe would have been the result if this property had on the 8th of October 1850 been worth \$1000 or even the amount of the purchase money? Certainly we should have been deprived of this exhibition of good faith, that integrity & honor which is so glaringly portrayed in his petition to the Court, would have reposed itself unheard of in his conscientious bosom, and the community, the world, would have been deprived of the lesson & the example. The complainant would have reposed himself complacently with unsullied conscience behind his poverty as he had done before safe & secure: and ^{would} have defied the defendant, the law, & the courts of justice; and we should never have heard of this case. The defendant could have retained the land, it is true, but this would have been all; with this he must have been content.

This contract was made by the defendant with the confident expectation that he would get the purchase money when due by the terms of the contract. This is evidenced from the facts,

that the complainant was then wealthy
& pecuniarily responsible, & undoubtedly prompt,
as he must be, to do a large business in the
city of New York; as the evidence shows he
was then doing; and from the fact that the
defendant took his personal obligations
without security, & without providing for interest,
or penalty, or forfeiture, in case of default
in the performance of the contract. His obligations
were for no doubt when given but they after-
wards became worthless. This ^{then} was certainly a
material change in the circumstances of the
party claiming relief here, which is recognized
by the courts as a ground of Equitable relief,
not for the complainant as claimed by him as
an excuse for the delay, but it is in the hands
of the other party, a Sword, or a Shield, which
he may use as occasion requires.

But it is claimed as an excuse for the
delay on part of the complainant that the
defendant suffered & permitted it. And it is
true he ^{gave a great deal of} indulgence, but it seems he
demanded his money on the 5th of
August 1851, and it was not paid, but default
was made. The money was again demanded
on the 5th of April 1852 when the whole of
purchase money became due, & default was
again made, in payment, & the notes were
on the 8th of that month protested for non

payment. He demanded payment of the money
& tendered a deed on the 2d of ^{May} ~~April~~ 1858, four
years & one month after the making of the contract,
and default was again made, & the contract
declared at an end. The time was then extended
till the next day, when the money was to be paid,
& the deed delivered, or the contract formally
rescinded; ~~On~~ the 3d of April he again makes
default. but pay \$100. and by plaintive
words & deceptions promises ~~the~~ time he gets
the defendant to defer the time of payment,
& tender of the deed, & rescission of the contract,
till the 3d of July, ^{next} ensuing, when it was clearly
understood by the parties that the contract
was to be finally consummated or in case of
default was to be rescinded. On the 3d of July
he fails to appear, & makes default again,
and does not even condescend to render an
excuse; on the 5th of the same month the
money was again demanded, & refused, & the
defendant formally declares the contract
at an end, & causes an affidavit of the
witnesses to the transaction, to be spread on
the records of the county, where the lands
lie, showing the rescission, for the purpose
evidently of removing an apparent cloud
which was hanging over his title so he might
again sell the lands, as is claimed in the bill.

he was attempting to do, when the bill was filed.

Now it is submitted whether after all this delay; after all these defaults; where the party asking affirmative relief who is the only party guilty of gross laches & unnecessary, & vexatious delays, who is the only party in whose actions & motives can be deserved unconscionable & unwarrantable designs. ^{And} where nothing is elicited in the whole case, which indicates any act, intent, or design, on the part of the defendant, but a purity of purpose & an anxious desire to carry out the provisions of the contract in its spirit & intention, it is to be determined as Equitable, and just, & right, that a decree shall be sustained which grants the relief prayed for in the bill. It certainly will furnish a remarkable precedent; A Strange Head of Equity. — Are all these defaults to go for nothing? Are Honesty, Fair dealing and Diligence to weigh nothing? Is the party who has sown nothing; who has reaped nothing to reap his rewards in a plentiful harvest; And the party who has been faithful, & diligent, & honest, to be stripped of all; And all this is to be called Equity!

Murphy had failed to declare the contract void, & had kept it alive, & nursed & fostered it

& encouraged the complainant in his pretended misfortunes; he had practiced & exemplified in his character towards the complainant the part of the Good Samaritan. He had practiced in his conduct in this transaction all the graces which adorn the Honest Man ^{he had exercised} Faith Hope & Charity. and he had forbore with the complainant till forbearance had ceased to be a virtue. And with the prospect in view of a gain of \$5000. by rescinding the contract as he might have done at any time after default in payment of the purchase money; he on the 2^d of May 1855 - after he had avoided the contract again renewed it; till the next day & then renewed it again even longer than the complainant requested, till the 3^d of July, & then forbore two more days before he finally declared the contract void. And yet the complainant charges him with Fraud and unordinate desire to take undue advantages of him, & of the contract, on account of the sudden rise in the value of the property & to cheat him out of his rights. While he is guilty of as many latches & as much fraud as he lays at the door of the defendant.

There is undoubtedly a reason why the defendant did not attempt to enforce the contract sooner. It is evident that a suit

would have been unavailing, either to enforce the contract, or to recover damages for a noncompliance with it; and so far as the evidence shows it would still be unavailing, and that it has been for years, & now is, entirely optional with the complainant, whether he will carry out the contract, or the requirements of the decree, if sustained. For certainly there is no evidence that he has recovered from his embarrassments.

Then as to the second proposition whether the change of the circumstances of the complainant by which the rights & remedies of the other party, under by virtue of the contract become impaired; and also the great change in the value of the property sold, renders time material, it seems to be established by many of the authorities referred to in this case; that in either case time becomes material, & that laches will not be tolerated. And in the first case put where there is a material change in circumstances, so as to impair the rights of the parties & destroy the remedies which they contracted for; why should not time be rendered material, and why should not a party whose rights & remedies have been impaired be absolved from the contract. In this case, as in all others, the owner of an estate sells it for the purpose of bettering his

condition, and converting ^{estate} ~~the~~ into cash or securities
which will bring the cash, or other estate, ^{or some valuable thing}. He may want to use the
obligations which he received for the purchase
money for the purpose of raising means to purchase
again, or may wish to convert them into cash, or
transfer them for other property, and if they become
worthless he should have that which he gave
for them or the money when he contracted for
the payment thereof ^{to him}. It certainly would be
inequitable to compel him to keep them ^{obligations} beyond
the time when they were to be paid, when they
are worthless to him, without his express assent
thereto, there certainly could be no implied
assent. Men usually expect to get
their money when they contract for it and they
make their arrangements & calculations accord-
-ingly, in applying the purchase money to
whatever purpose they intended, and it would
be ruinous if they can have neither the
money they have contracted for, nor the
estate they have sold, nor the security which
they contracted for on the sale, and that
a court of Equity will hold them to the
contract, & enforce it against their will,
at any future time within what is termed a
reasonable time. But it is apprehended that
courts of Equity of late years have never deemed
specific performance of these contracts where

there have been delays, & the contract has not been strictly complied with unless the parties have proceeded in the purchase after the time stipulated for the consummation of the contract has expired, or where both parties have stood by, & suffered the time to elapse without objection, or where the delay has been unavoidable from the occurrence of events unforeseen events, not within the control of the parties, or where the parties (or one of them by the agent or permission of the other) has in accordance with the provisions of the contract, or in furtherance thereof so dealt with the property contracted to be sold, or with the subject matter of the contract, that they are not in statu quo, & cannot be so placed by refusing to decree specific performance. And when courts have decreed specific performance in such cases, they have required the party to show some reasonable excuse for the delay, and that he has acted with an honesty of purpose, and sought no advantages of the other party by such laches & delays. In this case then it seems there is no diligence shown, on the part of the complainant but unreasonable, & vexatious delay, & the Appellant has from time to time insisted upon compliance with the contract, & has not willingly submitted to & acquiesced

in the latches; he has not resorted to the court of justice to enforce the contract, nor yet to rescind it, but he has done all that reason & justice & Equity would require of him, to carry the contract into effect, He has been indulgent & lenient, & forbearing; while he has seen a steady advance in the value of the property from day to day, & from year, to year, and while his prospects of getting his purchase money was every day growing more hopeless; while he has been faithful to his promises, he has been honest in his intentions. And while he has failed in nothing which justice & Equity could require of him, the party seeking relief has failed in every thing: and yet it is assumed that all these things are to weigh nothing. The latches are to go for nothing; The defaults are to be overlooked; The acts of bad faith, of the complainant, & the uprightness, & honesty, of the defendant Murphy, are to be disregarded & lost sight of, for the reason that Murphy on the 3d day of April 1855, induced by the intrigues & faithless promises of Lockwood was willing (after he had waited for his purchase money over four years, ~~was~~ & had declared the contract void) to renew his promises, that he would renew the contract, & carry it into effect, on condition that the complainant

would on the 3d of July fulfill it.

This would indeed be a reasonable position and might entitle the complainant to Equitable relief, if he had fulfilled his promises, & undertakings, ^{as he then agreed to do} And there would have been a waiver of all the objections to the decree, if he had then paid the purchase money; but instead thereof, it adds another default; another act of bad faith to the sum of all of these, of which, he was before guilty. It detracts from his rights, instead of adding to his Equities; but not only this he adds afterwards to his previous laches, for he does not attempt to apologize for his default, nor attempt to comply with the terms of his contract, ^{as then renewed}, till over three months after the time then stipulated had elapsed. Now when we consider the sum of all these delinquencies, and take into consideration the fact that the Complainant Lockwood was hopelessly insolvent during all this time and still is so, and that there has been such a material change in the value of the property, if a Court of Equity will exercise that extraordinary discretion in decreeing a specific performance of this contract; it would be difficult to present the case in which it would not

enforce the contract, when one is shown to exist
between the parties. Where will the case be found
by which any discretion is left to the court
wherein it will not use its powers; not that
reasonable legal discretion recognized by the
authorities under the head of Equity, but
arbitrary unlimited discretion which seeks
to know nothing of the case, further than that the
parties have entered into the contract & that
it exists. . . Mr Story says "Courts of Equity
will not interfere to decree a specific performance
except in cases where it would be strictly
Equitable to make such a decree. There is
no pretense to say, that it is the doctrine of Courts
of Equity to carry into specific execution
every contract, in every case, where that
is found to be the legal intention ^{effect} of the contract
between the parties. If in any case, the parties
have so dealt with each other in relation to the
subject matter of a contract, ~~that the~~
object of one party is defeated, while
the other party is at liberty to do as he
pleases in relation to that very object.
Or if, in fact the character & condition
of the property to which the contract is
attached have been so altered; that the
terms & restrictions of it are no longer
applicable to the existing state of things

in such cases Courts of Equity will not grant any relief, but will leave the parties to their remedy at law. And again he remarks "Upon grounds still stronger Courts of Equity will not proceed to decree a specific performance when the contract is founded in fraud, imposition, mistake, undue advantage, or gross misapprehension; or where from a change of circumstances, or otherwise, it would be unconscionable to enforce it." 2d Storges Eq Jurisprudence pages 67 & 68

He lays down the rule that to entitle the plaintiff to a specific performance he must show that he has been in no default, in not having performed his agreement & that he has taken all proper steps towards the performance on his own part. If he is guilty of gross laches, or if he applies for relief after a long lapse of time unexplained by equitable circumstances his bill will be dismissed page 100

He remarks page 60 "In truth the exercise of this whole branch of Equity Jurisprudence respecting the rescission & specific performance of contracts is not a matter of right in either party but a matter of discretion, not indeed of arbitrary, or capricious discretion

dependant on the mere pleasure of the judge,
but of that sound & reasonable discretion,
which governs itself as far as it may by general
rules & principles; but at the same time which
withholds or grants relief according to the
circumstances of each particular case
when these rules & principles will not
furnish any exact measure of justice
between the parties)).

He also lays down the rule at page 95 that "it
requires a much less strength of case on
the part of the defendant to resist a bill to
perform a contract than it does on the
part of the plaintiff, to maintain a bill to
enforce a specific performance" and that
the court will not decree a specific perform-
ance when it would be iniquitable under
all the circumstances so to do, but will
leave the parties to their remedy at law
see pages 95 & 96 ibid

Now without considering the defenses
presented in this case, that the parties have
by express stipulation after the making of
the written contract (on the 3^d of May 1853)
made time of the essence of this contract
and that it has been forfeited by the
complainant Lockwood & has been
rescinded by Murphy (on the 5th of July

1855] And applying these Equitable rules & principles to this case under all the circumstances & incidences attending the whole transaction how this complainant can be entitled to any Equitable relief. How a man who has done no just act who has evinced no good intention who has been derelict in every essential which would entitle him to any consideration in a court of Equity can reap such plentiful harvest at the expense of this defendant who has been faithful, & honest, & just, in every act, & deed, & intention; who has been diligent & faithful in every thing. If it be so. Then, that this decree is to be sustained under such circumstances there is no hope for the man who has been so unfortunate as to have entered into such contracts; for it matters not what may be his necessities or what his fate may be if he should be disappointed in the fulfillment of the contract, he can have no relief, unless he shall stipulate expressly for a forfeiture of the contract, unless strictly complied with.

But then it matters but little whether the court shall consider the delinquencies of the complainant of sufficient importance to warrant them in refusing his prayer.

or not, as by the arrangement of the parties
on the 3d of May 1855 time became of the
essence of the contract, so that no discussion
was left to the Court to enforce the contract,
if not complied with on the 3d of July 1855.
The parties on the 3d of May fixed upon a
reasonable time for its performance, as the
ultimatum to which they were to go in extending
the time. It was expressly understood & determin-
ed by the parties at the time, that the contract
should end & be forfeited on the 3d of July if
not then complied with. The deed had been
tendered on the 2d of May & the contract declared
at an end, but on the 3d of May there was
by agreement of the parties a resuscitation
of the contract, a renewal of the obligation
of the parties on condition that the purchase
money should be paid on the 3d of July, there
was no provision extending the time longer,
but it was clearly understood that it would
not be longer extended. And it was as
clearly & expressly agreed that the deed was
then to be tendered & the contract avoided
if payment was not made. Both parties
assented to this arrangement. as is shown by
the evidence of Lewis & Murphy, as well
as the receipt given for the money, on
the 3d of May. Nor by the conversation of

the parties the transaction between them on the 2d & 3d of May as well as by the words of the receipt the intention of the parties is clearly evinced, that it was a mere extension of the time for the rescission of the contract, if default was made in payment of the purchase money ^{it was to be ended}. It is not essential that the parties express in so many words their intention, but if it can be ascertained from a view of the whole transaction, what was the real intention of the parties it is sufficient. On the 5th of July the deed was again tendered after default in payment, & the contract declared void this transaction assists in ascertaining the intention of the parties as to what they had intended on the 3d of May.

This was the first opportunity, Cumplly had to demand the money & tender the deed, & he done so, & formally declared the contract at an end. Lackwood made no objection he never then thought of denying the right to rescind the contract. This was all an after thought. If then this view of the case is correct this disposes of the whole case as parties have a right to make time of the expense of the contract & when so done a court of Equity have no discretion to relieve the

party in default is clearly recognized by courts of Equity, as a rule without exception or qualifications.

But then this contract cannot now be enforced whether time was of the essence of the contract or not, as the act of demanding performance on the 5th of July, & tendering the deed, the default of Lockwood, & avoiding the contract, by Murphy, placed the complainant Lockwood beyond the reach of Equitable relief.

Mr Story says, Story's Eq Jurisprudence page 107 referring to 6 Revan R 124 "Even when time is of the essence of the contract it may be waived by proceeding in the purchase after the time has elapsed; and if it was not originally made by the parties of the essence of the contract yet it may become so by notice if the other party is guilty of ^{improper} ~~delays~~ delays in completing the purchase."

In 10 Comenck vs Mitchell 4 Sandf. Sup. Ct. 374 it is said that in an agreement for the sale of land time is always material when either party chooses that it shall be so each has a right to demand performance on the stipulated day & if the other party is then unwilling or unable to perform, may actually elect to rescind the contract

and by such election he is wholly
freed from its obligations and a court
of Equity cannot afterwards decree a
specific performance thereof. And the
same principle is recognized in *Boyle et al*
vs *Sease et al* 4 Deam 264 & 265 and
Bannister vs *Read et al*, 1 Gilm 99 And various
authorities referred to in this case.

It would be indeed strange doctrine that
a man who has made a contract for his
purchase money cannot have it at the
stipulated time, or void the contract
and it would be still more strange if
after he has spent four or five years in
attempting to get his money, and in
attempting in good faith to carry his
contract into effect & utterly fails; &
where the circumstances of the case are
such that he cannot enforce the contract
at all; where he has lost all remedy upon
the contract, as it was made, that he
can neither be allowed to have his
money, nor his property, but that the
courts of justice will place him his
fortune, & his property, at the disposal

of the other contracting party, & place him
at the mercy of his antagonist against
whom he can have no remedy, no relief.

The poor man, or the man who is involved
in pecuniary embarrassment, who is forced
to sell his estate which is all that he has,
to better his condition, ~~are~~ the men who
will feel most keenly the injustice & hardship
of such a rule; such law, such Equity is
but a trap to ensnare the honest, upright
man, who deals with his neighbour in good
faith, expecting to get his ^{purchase} money when he
contracts for it, while it is a shield to
protect the knave who seeks nothing
but advantage & speculation. The
establishment of such a rule, would let
loose upon the unsuspecting owners of estates
the unscrupulous designing herd of
speculators ^{breeds complainant} who swarm the country to
deal without mercy & speculate without
responsibility upon the rights of honest
men. I take this case as it is presented by
the evidence where the party seeking specific
performance is a speculator in wild lands,
and is engaged in a large business East
probably in reckless indiscreet speculation.

of various kinds; he is ostensibly a man of large means, & has an extensive credit, has the reputation of being prompt in his business transactions; he can purchase lands upon a credit to ten times or twenty times the amount of his real means, a reckless ambitious spirit of speculation leads him to extend his credit as far as he can, in the purchase of these wild lands which has for some years been the most fruitful source of speculation; he gives his personal obligations without any security without interest, & without penalty, or forfeiture, in case of default in payment; the parties of whom he purchases have, sold him their whole estate, and all their means, all they are worth is secured by his obligations merely, they in good faith, on the strength of his promises to pay the purchase money, enter into obligations, ^{themselves} which they expect to meet & discharge, with the purchase money when due which they are to receive; but when the day of payment arrives they cannot get their money; their obligations must be met, or inevitable ruin must follow them

The obligations which they hold for their lands which they have sold, are worthless, the man who owns them is insolvent, their estate, sold is tied up by the contract of sale: they apply to the purchaser for their money, & he refuses payment; they urge the matter from month to month, & from year to year, but with no better success. It is useless to attempt to enforce the contract by law as a suit would be unavailing. They meet with an opportunity to sell their lands again & turn them into cash; and for the purpose of removing a cloud which is hanging over the title they formally declare, the contract void, and when they suppose, the contract is at an end, and all obstructions, are removed, ~~and~~ after the lapse of months they are met with a bill in chancery for specific performance, charging them with fraud and an inordinate desire to cheat & swindle the purchaser, & speculate upon his rights. Upon his means, now these are some of the features of this case as it is presented.

And if all these Equitable defenses interposed in this case are to be disregarded

and if the party seeking specific performance
is to have relief, under all the circumstances
surrounding this case, then there is but
little use to interpose a defence, and
hereafter there will be but little inducement
for purchasers of estate, to observe the terms
& covenants of their contracts, or to act
with an honesty of purpose.

It is ~~there~~ claimed as a ground of
Equitable relief, that the Complainant
has paid the taxes upon these lands for
several years; But as to this we have
to say that the Taxes were paid by him
one year, & probably it may be inferred
that it was intended by the evidence of
William B Green to be established that he
paid the Taxes for Lockwood for several years.
which evidence is not very conclusive
upon this point. But however this may
be it is not very material, as there
is no evidence showing, or tending to
show, that they were paid by authority,
of the defendant Murphy or with his
knowledge, or agent, nor does the contract
require Lockwood to pay them. And
Murphy in his answer expressly denies

+ the payment by his agent or direction
This was therefore a mere voluntary
payment for which he is not entitled to
any equitable consideration nor yet
is he entitled to any relief and cannot
recover the money thus paid much less
have the relief here sought; the ~~fact~~ ^{doctrine}
is clearly established by the authorities
referred to in this case ^{concerning} ~~of~~ voluntary payments
& part performance of contracts. All
the motive that can be ascribed for such
acts are to get some advantage of the
adverse party by making the payment of
these taxes, and in taking possession of these
lands & making improvements thereon
as the complainant alleges in his bill
he has done. Moreover these improvements
if any were made & these acts of ownership
were in direct violation of the contract
and an infringement of the rights of the
defendant Murphy and detract from
the right of Lockwood to Equitable relief
instead of strengthening his claims to
relief. The acts of the party then must
be in accordance with the contract
& referable exclusively thereto & not

in violation thereof as the party
can have no relief see the doctrine
laid down in *Hough* Eq Jurisprudence
2d pages 82-83-84+85.

And as to the doctrine contended for
that these voluntary payments affords
no grounds of relief see *Myman v Town-
worth* 3 Barbour 869 *Abell v Hough* 4 Davis
305 *Fleetwood v The City of N. Y.* 1 Sandford
Sup Ct 475 *Calwell v Peden* 3 Watt 327
Elliott v Stout 10 Peters (U.S.) 137 *Wilson
v Ray* 10 A & E 82

Where then any acts are done in pursuance
of the provisions of the contract or by
the procument or agent of the defendant
it seems the court may order an account thereof
to be taken & award an allowance
thereof though the bill ask for no
such relief according to the doctrine
in 2 *Hough* Eq Jurisprudence pages ~~from~~ from
117 to 147 inclusive. And yet it seems to be
doubtful whether such relief can be granted
for there is none such prayed for and there
is a remedy at law. ^{where probably there is in this case} However the defendant
confesses the right of the complainant
to have the relief and probably it is just

& Equitable that where a party has received
a benefit under the contract & in pursuance
of its provisions and it is rescinded or
performance cannot be enforced against him
that he should make the party conferring
the benefit whole as courts of Equity
will allow compensation not ^{for} forfeiture
where relief can be granted

John B. Jones

Wm Murphy

Ralph Lockwood

Appellants written
argument

By S. L. Richmond

As my time expired before I had an opportunity of commenting upon the points made by Judge Pease, I desire briefly to notice them in writing.

Murphy was not required to surrender to Lockwood the notes until they should be paid, and if he had done so that ~~they~~ fact would have been evidence of their payment, it was ^{therefore} necessary for Murphy for his own ^{to keep for a time} protection, ~~but~~ I deny that Murphy by "his own throwing" had placed himself in a position where he either could not or would not "surrender" them, for the truth is that Lockwood filed a bill for conveyance in August 1855 which was afterwards dismissed by him and Murphy having repaid his answer on oath to that bill and sent the same to his attorney pending that suit did not feel as though he had a right to deliver them. Indeed, at the interview the 2^d or 3^d of May the proof shows that Murphy told Lockwood that

he had the notes and that if he (Lockwood) was prepared to pay them he could have them

Again all that Murphy was required to do was to perform or offer to perform his part of the contract and it is no part of the contract that he should give up the notes until they were paid or that he would refund the payments made, and Lockwood cannot be injured by Murphy refusing to offer back the money because he has always held the notes, and if the Court had decreed that the bill be dismissed, it could have also required that he refund the money (if the law is so) and that he surrender the notes, this is said in reply to Lockwood's 1st point

In reply to the ^{3rd} 2nd point I say that even admit that the contract was in force on the 5th day of July 1855 and that Murphy never offered to perform it, yet he did offer to perform it on that day and Lockwood then said that he was then involunt and could not pay

And this certainly means Murphy
Pieris, Lockwood positively agreed
that he would pay the balance before
the 5th of July.

As to the 4th point I reply
that Murphy did not treat with
Lockwood as late as August, or at
any time after July 5th 1855 about
the contract, I know, that
Flinnig indulges in some
very general statements, about
what Murphy may have said
to him. But the whole of the
conversation between Murphy and
Lockwood, when the talk was had
about the house and lot in Brook-
lyn, is given by one of Murphy's
witnesses, whose deposition is in
the record, and by it, the fact is
clearly shown, that Murphy told
Lockwood, that the old contract
was "dead", and that he would not
talk with him about it, if he ~~was~~ ^{beside}.
One of these same witnesses of Murphy,
gives a different version of the interview
between Flinnig and Murphy ~~that~~ ^{from}.
Flinnig does, in fact Flinnig is expressly
contradicted by Murphy's witness.

As to the 5th and 6th points
I have to say that it is ~~unwise~~ to
idle say that Murphy was not
injured by the lack of Lockwood
to be kept out of his money for three
years and a half without ever attempting
to pay ~~him~~ until the 3^d of May
1885 And take the chance upon
the rise of the land, and then
when the circumstances which
surrounded the parties were ~~made~~
materially altered and the ~~land~~
land had increased in value three fold
was about as effectual an injury
I think as Lockwood could have
perpetrated upon Murphy in this
case

In reply to the 8th point, I say
that even if the ~~dud~~^{tentured} was not
sufficient. Murphys proof shows
that Lockwood on the 2^d of May
read the dud over and, ~~dud~~ made
no objections, ~~it~~ and the proof also shows
that the same dud was again
tentured on the 5th day of May
And this, I deem a full and complete
answer to this point

One suggestion and I am done
It will appear from all the cases
& presumptions which decide the points
that the law is, that if the party
lies by for any considerable time
he must render some good excuse
for his delay or a Court of Equity
will not interfere but leave the
points to their remedy at law if they
have any, now what excuse does
Lockwood ^{give} for his delay of three
years and a half after the last
payment became due? None whatever
but the fact that he became embarrassed
that he was insolvent, Is that any
excuse whatever I don't see why a
man might not as well plead to
suit upon a promissory note that
he is not able to pay as set it up
in this case.

S. L. Richmond

88-81
Wm J Murphy

of
Ralph Lockwood

Argument by
J. Burns and
S. R. Church

Filed April 30. 1859
L. Leland
Clerk

WILLIAM D MURPHY, }
vs.
RALPH LOCKWOOD. }

This is a Bill in Chancery for specific performance, filed by Lockwood vs. Murphy, in the Marshall Circuit Court, on the 17th day of October, 1855.

2 The Bill charges that Murphy and Lockwood, on the 5th day of April, 1851, entered into a written, sealed agreement for the sale by Murphy to Lockwood of certain real
2,3 real estate in Marshall County, Illinois, and sets out a copy of the agreement.

2,3 The agreement shows that the sale was for eight hundred acres of land, which is
2,3 described therein, that Lockwood paid down \$100, and agreed to pay \$806 80 in four
2,3 months, and \$2,140 in one year from the date of the agreement; that for the last two sums
2,3 of money Lockwood gave his notes to Murphy, and that upon the payment of all that
2,3 should be due upon the contract Murphy and his wife should make and execute to Lock-
2,3 wood their warranty deed, with full covenants, except as against the taxes of the year 1851.

That the contract was executed by Murphy and Lockwood only, and that at the
4 time of the purchase Lockwood contracted to pay the full value of the land.

4 That soon after the making of the contract Lockwood became embarrassed in his pecuniary affairs, and could not *conveniently* make payment according to the terms of the contract, and that Murphy did not exact prompt payment.

5 The Bill further charges that on the 8th of August, 1851, Lockwood paid Murphy \$100 on the contract, and that Murphy endorsed the same on the note due at that time.

5 That on the 3d day of May, 1855, Lockwood paid the further sum of \$100 on the contract, and that he had paid all the taxes assessed upon the land, since the making the
6 contract, which in the aggregate amounted to about \$100.

6 That since the making of the contract Lockwood had entered upon and taken possession of the land and made improvements thereon to the value of \$800.

6 That Murphy still holds the said notes; that he had never delivered, or offered to deliver, to Lockwood a deed for the land, according to the contract, and that the parties to the contract, nor either of them, had ever in any manner rescinded the same.

7 That on the 8th day of October, 1855, Lockwood tendered to Murphy \$3,617.50, being the entire sum of money, of principal and interest, due upon the said notes.

7 That Murphy in order to cheat and defraud Lockwood out of what he had paid on
the contract, and out of the money he had paid for the taxes assessed on said land, and out
8 of his improvements made thereon, refused to receive the money tendered and make a deed for the land; that a deed was then demanded; that the land had, within a year previous to
9 the filing the bill increased in value four thousand dollars, which the bill charges was the reason why Murphy would not convey; that but for the pecuniary embarrassments of Lockwood he would have paid the notes, and insists that time is not of the essence of the contract.

10 The Bill waives an answer under oath and prays that Murphy may be compelled to specifically perform the contract.

13 The answer of Murphy admits the making the contract as charged in the bill; the
13 payment of the \$100 down, and making and delivering to him of the notes for the balance
13 of the purchase money.

14 It denies that Lockwood contracted to pay all the land was worth when the contract
was made, but admits the pecuniary embarrassments of Lockwood, and insists that he was
14 bankrupt and refers to, and makes exhibits of transcripts of judgments rendered against
15 him in New York City, and to an examination of Lockwood under his oath, before the
city court of Brooklyn, New York, as an insolvent debtor, which took place in October,
15 1854, at which examination Lockwood admitted under oath, that he had no interest in any
lands in the State of Illinois.

16 The answer admits the payment of the \$100 on the 8th of August, 1851, and the
like sum on the 3d day of May, 1855.

17 The answer charges that on the 2d day of May, 1855, Murphy tendered to Lockwood
17 a full covenant warranty deed for the land, as required by the contract, at his office, 107
17 South street, New York city, executed by himself and wife, and duly acknowledged, and
17 then demanded immediate payment from Lockwood, of all that was due upon the con-
18 tract, and exhibits and makes a copy of said deed a part of the answer, that Lockwood
18 made no objections to the deed or acknowledgment, but refused to receive the same and pay
18 the balance of the purchase money, but requested time until the next day to get the money;
18 that the next day Lockwood called upon Murphy, and informed Murphy that he could not
18 get the money, but offered to pay then \$100, on the contract, if Murphy would postpone the
19 payment of the balance of the money, until the 3d day of July, 1855; that Murphy assented
19 to the offer and received the \$100 and that all the purchase money was due, and unpaid, on
19 the 1st day of July, 1855, except the said \$200.

20 That on the 5th day of July, 1855, Murphy again tendered to Lockwood said deed,
31 a copy of which was attached to the answer, as an exhibit, and made a part thereof; and
20 again demanded payment from him, of the balance of the purchase money; that Lockwood
20 refused to pay the same, that Murphy then had the notes ready to be delivered to Lock-
20-21 wood, that Lockwood then said that he was poor, and could not get the money, and that he
was entirely insolvent.

21 That thereupon, Murphy caused the affidavit of Orlando B. Lewis, (a copy of which
33-6 was attached to the answer, and made a part thereof) of the tender of the deed, and demands
21 of payment of the purchase money, to be recorded in the office of the recorder, of Marshal
21 County, Illinois, to show that default had been made by Lockwood, and that the contract
21 was rescinded, that Murphy received the \$100 in the month of May, previous, upon the
21 ground, and consideration, only, that prompt payment should be made, of the balance of the
21 money, and that he never, in any other manner extended the time of payment.

22 That Lockwood had never paid any taxes on the land, but that since the making the
22 contract, other persons had paid them, although Murphy had always looked after them, with
22 a view of paying them, that Lockwood had never entered upon the lands or made any
23 improvements thereon, that Murphy still held the notes, which were negotiable.

23 The answer denies that the contract is still in force, and binding on Murphy, but
23 insists that the defaults and vexatious delays of payment of the purchase money released
23 him from performing the same.

24 It denies the tender of money, and demand of a deed on the 8th of October, 1855. It

24 denies that he ever intended to defraud or cheat Lockwood, or that he had even refused a
24 deed, and refused to receive the purchase money, or that he had threatened to sell the land.

21 It admits that the land ever since the making the contract had steadily increased in
24 value, and charges that Murphy well knew the same when he tendered the deed to Lock-
25 wood, and demanded payment of the money, and charges that Murphy had repeatedly no-
25 tified Lockwood that the contract was rescinded, that he did so May 2d, and July 5th,
25 1855, by reason of Lockwood not complying with the terms thereof, and of Murphy's
25 offers so to do, and insists that there had been on part of Lockwood unreasonable and
25 vexatious delays of payment, and offers to refund to Lockwood all the money he had paid
26 on the contract, and all the taxes he had paid on the lands, if any, and to bring into court
26 the notes, and surrender up the same to Lockwood, and insists that Murphy had been greatly
26 injured by reason of the non-payment of the purchase money when due, and charges that
37-9 Lockwood suffered the notes to be protested, and exhibits the protests.

40 Lockwood files his general replication to the answer, Feb'y 13, 1856.

43, 44 The proofs of Lockwood show the making the contract, and the terms thereof as set
forth in the bill and admitted in the answer.

44 That by a written assignment dated July 22d, 1852, under seal, in consideration of
45 Two Hundred Dollars, Lockwood assigned, or undertook to assign, all his interest in the
45 land to William B. Green. That Wm. B. Green paid the taxes on the land for the year
45, 47 1851, except one quarter-section of the same, which was paid by Joseph Van Buskirk.
48, 49 That for the year 1852, the taxes were paid upon one section of the land, by Wm. B.
49 Green, that the taxes upon one quarter-section of the land for the same year, was paid by
Murphy, by James Powell, his agent, and that on the 9th of April, 1853, Wm. B. Green
50 paid the amount, \$7.80, back to said Powell, and that William B. Green paid the taxes
51-3 upon all the land for the year 1853, and also for the year 1854, and that the taxes upon all
53-5 the land for the year 1855 was paid by Ralph Lockwood.

58 John W. Hubbard testified, that on the 8th October, 1855, Lockwood, at the office of
59 Murphy, 107 South street, New York, tendered to Murphy over \$3,600, over \$3,500 of
59 which was gold, and the balance in bills; that the tender was made on a land contract
59 made between the parties for land in Illinois; that he did not know where the lands were,
59 except that they were in Illinois; that Murphy refused to receive the money as tendered,
59 but insisted that the contract was at an end, and had been since the 3d of July, 1855, which
59 Lockwood denied, and claimed that the contract was in full force.

60 That at, and after April 1851, Lockwood was responsible and doing a large business;
60 that between 1851 and the 5th of July, 1855, his circumstances were altered; that there
60 were judgments recovered against him, and that there were still (11th September, 1856)
judgments against him.

61 Wm. B. Green testified that after the assignment of the interest of Lockwood in the
61 land was made to him, he relinquished his interest in the lands to Lockwood, and that he
61 had often paid Lockwood's taxes, on his lands in Marshal county, as his agent.

62 The testimony of S. L. Fleming was taken orally in court, and he testified that he
62 saw Murphy at his office in August, 1855, that Murphy told him that the 3d or 5th of July
62 previous, he demanded of Lockwood payment for the land; that Lockwood told him
62 (Murphy) that he was poor, and had no money to pay at that time; that between the time

63 he had demanded the money, and the time of the conversation between Murphy and
63 Fleming, Lockwood had been to Murphy and told him that he had a house in Brooklyn
62 which he would like to trade to him (Murphy) on the land contract, that he (Murphy) said
63 he did not take it on account of the price, or the title, witness did not remember which;
63 that Murphy said he considered the contract rescinded and at an end, and had notified
64 Lockwood to that effect the July previous; that there were two young men in Murphy's
64 office at the time of the witness' conversation with Murphy, and that they heard a part of
64 the conversation; that their names were Murphy and Lewis; that he (Fleming) knew the
64 three prairie quarters of the land, and had a general knowledge of the balance; that in
64 1851 he thought the land might have been worth from \$3 to \$5 per acre; that about one-
64 half the land was barrens, which was not worth much at that time; that in 1855 the same
64, 65 lands were worth ten dollars per acre on an average, that there was a gradual rise in the
value of the land, from April 5th, 1851, to 5th April, 1855.

163 The suit having been heard at the January Term, A. D. 1858, but not determined
163 until the January Term, A. D. 1859, at which latter term, after the court had made a de-
163 cision, but before the signing of the decree, the complainant against the protest of the
163 defendant, Murphy, called Wm. B. Green to the stand, as a witness, who testified that
163 though he was not positive, yet his impression was, that when the case was heard, he tes-
163 tified that Lockwood was in possession of the lands, and had made valuable improvements
thereon, as stated in the Bill.

68 Orando B. Lewis testified that on the 2d May, 1855, an interview took place at
68 Murphy's office, in New York, between Murphy and Lockwood; that Murphy tendered to
68 Lockwood a deed for the lands; the deed being attached to the deposition of Orando B
176 Lewis as exhibit,— "A. E. F. Corey"—that Lockwood read it, and made no objections to
68 it, but stated that he had no money to take it up with, but that he would call the next day
68 and see what could be done; that Murphy replied to Lockwood that he had no desire to
68 take advantage of him, but the contract was dead long ago, that he would give him until
68 the next Saturday to take the deed, or the contract would be forfeited. That the next day
68 Lockwood returned to Murphy's office, and told Murphy that he was poor and unable to
69 take the deed; that at Murphy's orders Lockwood's account was shown him; that Lock-
69 wood then stated that he would pay then \$100, on account of the contract, if Murphy would
69 extend the contract four weeks; that Murphy agreed to extend till the 3d of July then next,
69 which was done, and the one hundred dollars paid, and a receipt given therefor; that
70 Murphy, at said interview, demanded payment of the balance of the purchase money.

71 That on the 5th day of July 1855, another interview took place between Murphy
72 and Lockwood at 107 South street, New York; that at the orders of Murphy, he (Lewis)
72 again tendered to Lockwood the deed offered to him on the 2d day of May, 1855; that
72 Lockwood replied that he could not take it, that he had no money to take it up with; that
72 there were no notes offered, or demanded, by either Lockwood or Murphy on the 2d or 3d
of May, or the 5th of July, 1855.

73 That on the 6th of August 1855, Lockwood again called at Murphy's office, and said
73 he had a house in Brooklyn that would suit Murphy; that Murphy replied that the contract
73 affair was out of his hands; that he had had it cancelled from the records in Illinois; that he
73 had sent the affidavit of Mr. Lewis there, to the purport of Lockwood's non-fulfillment of

73 the contract, and that he would not now treat with him on that contract, as it was dead.

73 That on the 8th October, 1855, Lockwood and one Hubbard said to Murphy that he
73 had a tender to make him for the Illinois lands; that Lockwood then had with him a bag,
73 which Lockwood said contained \$3500, which he tendered to Murphy; that Murphy told
73 Lockwood that he had no contract pending with him, and had not had any since the 5th of
74 July, 1855; that Lockwood then demanded his notes; that Murphy replied that he had
74 made affidavit to produce them in court, and for that reason could not surrender them then,
74 but that after he had produced them in court he would give them up to Lockwood; that he
74 had no intention to use them, but his purpose was merely to produce them in court; that
77 Murphy did not admit in the presence of the witness (Orando B. Lewis) and S. L. Flem-
77 ing, on or about the 15th September, 1855, that Lockwood had offered to pay for the land
77 by a house and lot in Brooklyn, nor that he (Murphy) went with Lockwood and examined
77 the property, nor that he would have taken the property if he had been satisfied with its
value.

79 Samuel B. Murphy another witness for Murphy, testified that an interview between
79 Murphy and Lockwood took place on the 2d day of May, 1855, at the office of Murphy,
79 107, South street, New York; that Murphy then tendered a deed to Lockwood for the land;
80 that Lockwood stated that he could not take it up for want of means but would call the next
80 day and see what could be done; that Murphy told him that he did not wish to take advan-
80 tage of the contract, and would give him until the next Saturday to take the deed, or the
81 contract would be forfeited; that when Murphy tendered the deed he asked Lockwood for
81 the purchase money, and that the deed tendered is the same deed referred to by Lewis in
81 his deposition.

82 That an interview took place between Murphy and Lockwood, on the 6th of
82 August following, that Lockwood asked Murphy to take a house and lot in Brooklyn, in
82 payment for the lands. that Murphy told Lockwood it was useless for him to make any
83 further offer on the old contract, as he considered it dead, but if he had any new proposi-
83 tion to make, he would listen to it.

83 That no notes were offered in presence of the witness, but that on the 2d May,
83 when the deed was tendered, Murphy told Lockwood that he had the notes in a pocket
83 book, and that he could have them if he was prepared to take them up, that Lockwood said
83 nothing about the notes, as witness recollects.

87 The witness further stated that he is a nephew of William D. Murphy, the defend-
ant in the court below.

88 Murphy then put in evidence the three notes given for the purchase money for the
88 land, amounting in all to \$2916,80, together with the protests of the same, and each of
89, 90 them, by Gardner Spring, a Notary of New York.

91 Murphy then put in evidence the affidavit of Orando B. Lewis, of the non-fulfill-
92 ment of the contract by Lockwood.

By the record of the examination of Lockwood before John Greenwood, City Judge
of the City of Brooklyn, in the year 1854, as an insolvent debtor, at the suit of Joseph H.
136 Shephard and Nathan Hollister vs. said Lockwood, it appears that Lockwood admitted that
136 he had had within the two years then last past, some interest in wild land in Marshall
136 County, Illinois, that he had had a deed for the same, and that it had stood in his name,

136 that he did not know where his deed was, and that he had long since sold out his interest
in the same.

140 And when during said examination he was asked whether he had had, within the
140 then last two years, any interest in any other property in the State of Illinois, he stated that
he had not, to his knowledge.

169 By the final decree the court required that Murphy, within sixty days from the
169 adjournment of the Circuit Court of Marshall County, execute and deliver to Lockwood, a
169 warranty deed, for the land described in the bill, with covenants against all encumbrances,
169 except the taxes of the year 1851, and with release of dower by the wife of the said Mur-
170 phy, provided Lockwood paid or tendered to Murphy the sum of three thousand six hun-
170 dred and seventeen dollars and fifty cents, within the said sixty days, and appointed a
170 Commissioner to make such deed, in case Murphy should make default in making the
same.

172 Upon the filing of which decree, the defendant, Murphy, entered his motion to set
172 aside the decree and to grant a new trial, which was overruled by the court, whereupon
172 Murphy prayed an appeal, which was granted, upon his entering into bond in the penal
172 sum of one thousand dollars, with Washington E. Cook as surety, within thirty days.

The errors assigned are as follows:

1st. The court erred in decreeing a specific performance of the contract
referred to in the bill.

2d. The court ought to have rendered a decree dismissing the bill.

188
Murphy vs Lockwood
abstract

Filed Apr. 19, 1859,
L. Keland Clerk

188

"A Record of the Orders Decrees and proceedings of Hon Circuit Court of Marshall County in the State of Illinois. Begun & holden at the City of Lacon in & for said County on Monday the fifteenth day of October in the year of our Lord one Thousand eight hundred and fifty five. Present. The Hon. Judge E. Hollister Judge of ninth Judicial Circuit of the State of Illinois. In Chancery sitting. Greenberry L. Fort Clerk of said Court and James S. C. Boal his Deputy. Abram Gardner Sheriff and Wm H. L. Wallace. State Attorney"

Be it remembered that on the 17th day of October A.D. 1855 Ralph Lockwood complainant filed his bill of Complaint in said Circuit Court against William D. Murphy defendant for Specific performance which bill of Complaint is in words and figures as follows to wit:

Complainants
Be it

"In the Circuit Court of Marshall County. October Term A. D. 1855."

"To the Hon. Judge of the said Court in Chancery sitting. Humbly complaining sheweth unto your honor your Orator Ralph Lockwood formerly of the City of Brooklyn and State of

Bill continued New York - now of the County of Marshall
aforesaid that on the fifth day of April A. D.
1851 at the said City of New York He made
a written contract under seal with one Will-
iam D. Murphy of the said city of New York
for the purchase by him your Orator of
the said Murphy of certain Real Estate in said
contract described; which said contract is in
substance as follows.

Articles of Agreement made and entered into
this fifth day of April A. D. 1851 between Will-
iam D. Murphy of the City County and State
of New York party of the first part and Hal-
ph Lockwood of the City of Brooklyn, County
of Kings and State aforesaid party of the
Second part. Witnesseth that the said party
of the first part for and in consideration
of one hundred dollars to him in hand paid
the Receipt whereof is hereby acknowledged
have contracted and agreed to sell to the
said party of the second part, all those cer-
tain pieces or parcels of land situate and
lying in Marshall County in the State of
Illinois. Bounded and described as follows
to wit. South East quarter of section Seven
also the East half of the North East quar-
ter of Section Nineteen also the West half
of the North West quarter of Section Twenty

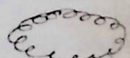
also the North West quarter of section Thirty
 one. also the West half of section Thirty
 continued three Township Thirty North and Range
 one West of the third principal meridian be-
 "ing in all Eight hundred acres of land for
 the sum of three thousand and forty six doll-
 ars and Eighty cents. The Balance Twenty
 nine hundred and forty six dollars and Eigh-
 "ty cents is to be paid as follows Eight hun-
 "dred and Six dollars and Eighty cents to be
 to be paid within four months from the
 date hereof and twenty one hundred and
 forty dollars (which notes are given for
 the said amount) is to be paid within one
 year from the date hereof. and on the pay-
 "ment of all of the herein described amount
 as they become due and payable the said
 William D. Murphy and his wife agree
 to make and execute a Warranty deed
 with full covenants free from all incum-
 brances except taxes of 1851 for all of the
 above described land to the said Ralph
 Lockwood his heirs or assigns.

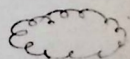
Witness Present

S. C. Murphy

Wm D. Murphy

Ralph Lockwood





Which said Contract so signed and Executed by the parties was then and there on
 the day of the date thereof duly delivered

to the said Ralph Lockwood and which said Contract was filed with and Recorded in the office of the Recorder of the said County of Marshall on the 3rd day of October A. D. 1852. And your Orator will produce & prove the same upon the hearing of this cause. And your Orator charges that at the time of the execution of said Contract he paid the said Murphy the sum of One hundred Dollars towards the same and gave his notes to said Murphy for the residue as stated and agreed upon in said Contract. And your Orator further charges that at the time of said purchase he contracted to pay the full value of said land and in fact a high price for the same.

And your Orator further charges that shortly after the making of said contract he became embarrassed in his pecuniary affairs and could not conveniently make prompt payment according to the terms and conditions of said Contract. and the said Murphy knowing that he had sold the land at a high price did not demand or exact punctual payment according to the terms of the contract, but permitted your Orator to pay a portion of the said notes from time to time as he conveniently

could do. — and so on the 8th day of Augu.
"st A. D. 1851 your Orator paid also the
further sum of One hundred dollars on
the said contract towards said land for
which the said Murphy gave him a rece.
"ipt in substance as follows.

"Received New York August 8. 1851
on account of States due this day which is
to be endorsed on said note as part pay-
"ment thereof
\$100. W^m D. Murphy "

And which your Orator charges was endov-
"sided on said note due the said 8th August 1851
given for ^{said} land in said Contract described.
And your Orator further charges that on the
third day of May A. D. 1855. your Orator
paid the said Murphy One hundred doll-
"ars more upon the said contract which
was accepted and received by said Mur-
"phy and agreed to be by him credited on
said notes. thereby distinctly admitting that
the said contract remained in full force
and unrescinded by the parties or either of them.

And your Orator further charges that
since the making of said Contract he your
Orator has paid all the taxes assessed upon
the whole of said land which in the ag-

6
Bill continued "regate has amounted to the sum of about one hundred dollars or more. —

And your Orator further Charges that since the making of said Contract he has entered upon said lands and taken possession of the same and made and caused to be made large and valuable improvements on the same — to the amount in value of at least Eight hundred dollars And your Orator further Charges that the said Murphy still holds the said promissory notes so by him given for the purchase money of said land (or has negotiated the same) the same being negotiable notes and never has delivered or offered to deliver the same to your Orator — and your Orator gives notice to said Murphy to produce said notes upon the hearing of this cause. And your Orator further Charges that the said Murphy never has delivered nor offered to ^{deliver to} your Orator a good and sufficient Warranty deed for said premises as stipulated in said contract. And your Orator further Charges that the said Contract between the said parties never has been legally or otherwise rescinded by said parties or Either of them. But that the same still remained in full force

7
and effect and wholly unrepeatd and in
no wise annulled; and that it would be wh.
olly unjust and inequitable that the same
should not be specifically performed.

And your Orator further Charges that on
the 8th day of October last, your Orator being
desirous as he always had been of fulfilling
said contract and paying said money (to
his great surprise having heard that said
Murphy had manifested some intention to
sell said lands again to some other person
or persons;) tendered and offered to pay to
the said Murphy the sum of three thous.
and six hundred Seventeen $\frac{5}{100}$ Dollars
in Gold & silver the same being the full
and entire sum of principal and interest
due the said Murphy upon the said notes
hereinbefore mentioned, and he still is
ready and willing and offers to pay the
same in such manner as this Court may
direct - But your Orator Charges that
the said Murphy, intending to Cheat and
defraud your Orator in the premises out of
the said land and out of the moneys so
paid by him to the said Murphy, and
out of the value of the improvements made
and the taxes aforesaid by your Orator afores.
said paid on the said land then and there

refused and still does refuse to receive the said money for said lands and to make a deed to your Orator for the same according to the terms of said Contract although at the time of such tender by your Orator such deed was duly demanded. — But on the contrary he the said Murphy now against all equity and good conscience threatens to sell and convey said land to some other person or persons. Still holding your Orators notes for the purchase money of the same. And your orator further charges that within a short period of time the said land has increased greatly in value so that the same is now worth at least four thousand dollars more than the same was one year ago, and that the sudden rise in the value of said property is the main reason why the said Murphy came to the sudden conclusion to treat the said Contract forfeited and at an end. But your Orator charges that the said Murphy never at any time before said tender was made by him ever gave your Orator notice that he designed or intended to treat said contract as void set aside or rescinded by reason of your Orators failing to comply literally with the terms and conditions thereof.

9
And your Creator charges that but for his pecuniary embarrassments aforesaid he would long since have paid said money so due and owing on said Contract. and submits that since the making of the same and since the recognition of the same there has been no unreasonable wilful or vexatious delay by your Creator in paying or offering to pay said money so due as aforesaid. He submits also that time is not made material nor of the essence of said contract. and that in justice and equity the same ought to be specifically performed by said Murphy.

Your Creator charges that the acts and doings of said Murphy in the premises are contrary to Equity and good conscience and tend to the manifest wrong, injury and oppression of your Creator in the premises.

For as much then as your Creator is remediless in the premises in a Court of law and can only have redress in a Court of Chancery. He prays that the said William D. Murphy may be made defendant to this bill. that he may answer the same and each particular charge and allegation thereof (But not upon oath the oath of the said Defendant being hereby

expressly waived / that an injunction may be issued enjoining and restraining the said defendant from selling or in any manner interfering with or encumbering said lands until the further Order of this Court in the premises - That upon the final hearing of this cause a decree may be made requiring & compelling said defendant specifically to perform said Contract by making and executing to your Orator a deed in fee simple of said lands therein described according to the terms and conditions of said contract and that your Orator may have such other and further relief as to Justice and equity appertain. - He prays also for the usual process against the said defendant & He will pray &c."

Ramsey & Fleming
Purple & Pratt
for Compt.

"Ralph Lockwood
vs
William D. Murphy } In the Circuit Court
of Marshall County.
In Chancery

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

19
shall accrue in this action either to the app^o
"osite party or to any of the Officers of this
Court in pursuance of the laws of this State
Dated this 17th Oct 1855"

Elias Ramsey"

And on the day and year last aforesaid to wit on the seventeenth day
of October A.D. 1855, the same being one of the days of the Term aforesaid
and the Court being then judicially sitting the following order was
made and entered of Record to wit:

Appearance entered

"Ralph Lockwood } Bill for Specific performance
vs } Be it
William D. Murphy } remembered that this comes the defendant
in person and enters herein his appearance
and the complainant comes also by Richmond & Burns his
attorneys."

A Record of the orders judgments Decrees and Proceedings of the
Honorable Circuit Court of Marshall County in the State of
Illinois began and holden at the Court House in the City
of Lacon in and for said County on Tuesday the fifteenth day
of February A.D. 1856, in pursuance of an order entered at the
last Term of this Court

Present the Hon. Madison E. Hollister Judge of said Judicial

Circuit Court of the State of Illinois Wm H. L. Wallace States
attorney for said Circuit, Greenberry L. Fort clerk of the said
Circuit Court of Marshall county and by James St. C. Boal Deputy
and Abraham Gardner Sheriff of said County and by H. L.
Corane Deputy"

Be it remembered that on the Seventh day of February A.D. 1856,
the same being one of the days of the Term last aforesaid and the
Court being then judicially sitting an order was made and entered
of Record in said Court to wit:

Rule to answer

"Ralph Lockwood	} Bill for specific performance	Be it remembered
vs		
William D. Murphy	} that this day it is ordered that the defendant be ruled and required to answer the complainant's Bill by or before Saturday morning?	

And on the Eleventh day of February A.D. 1856, the Defendant filed
his answer in said cause in said Court, which answer is
in words and figures as follows to wit:

"State of Illinois

Defendants
Answer

Marshall County and circuit court thereof
to the February Term 1856

The answer of William D. Murphy the defendant to the bill of complaint of Ralph Lockwood the complainant.

This defendant now and at all times hereafter saving and reserving all manner of benefit & advantage of exceptions to the many errors & insufficiencies in the complainants bill of complaint contained for answer thereto. or to so much thereof as this defendant is advised it is necessary for him to make answer unto. He answers and says that he did on or about the fifth day of April A. D. 1851 enter into an agreement in writing under seal with complainant as is set forth in complainants Bill. which agreement was delivered to the complainant and that on or before the delivery thereof he received one hundred dollars from complainant as is set forth in said agreement and also received the promissory notes of complainant for the ballance of the purchase money for the land in said agreement described. That there were then and there three notes executed by complainant & delivered to this defendant one of which was payable in four months from the

-ed "A" and which are made a part here of
 And defendant charges that on or about the
 12th day of October A.D. 1854 at Brooklyn in
 the County of Kings in the State of New York
 the complainant was examined under oath
 as a Judgment Debtor before Judge Greenwood
 Judge of the City Court of said City of Brook-
 -lin touching the disposition of his property
 for two years previous to that time and that
 complainant then and there did depose and
 say on his oath that he had had property
 in Marshall County Illinois in his own na-
 -me supposed to amount to about one thous-
 -and acres of land which he had before the
 time of said examination conveyed by Deed
 to one William Hubbard and then to a fur-
 -ther question to wit "what other property did
 you own or have you an interest in (if any)
 in the State of Illinois within the last two
 years except that which you have before
 testified about" said complt did answer
 and say upon his oath aforesaid "Not any to
 my knowledge" And Defendant charges
 that the land referred by said complainant
 in his said examination as having been con-
 -veyed and deeded by him to said Hubbard
 were other and difrent lands that those
 mentioned in said agreement, and that said

Answer

complainant did then & there deny upon his oath aforesaid that he had any interest in any lands in the State of Illinois, and in the lands described in complainant's bill of complaint. This defendant charges that on the 8th day of August A.D. 1851, the sum of Eight hundred and six and $\frac{5}{100}$ dollars became due on said agreement and admits that he did receive at that time one hundred dollars on the same and gave to complainant his receipt for the same in substance as is alleged in complainant's bill. But charges that he did so under the solemn promise and assurance of complainant that he would pay the balance of said payment within a few days thereafter to Defendant upon which promise of complainant defendant confidently then and there relied. Defendant admits that said one hundred dollars were endorsed on said note, ^{one} the said 8th day of August. Defendant admits that on the first day of May A.D. 1855, the complainant paid defendant one hundred dollars more upon said contract. But denies that he defendant thereby admitted that that said contract was in full force. But Defendant charges that for a long time prior to said first day of May A.D. 1855 he de

- fendant had lost all hope and confidence in the complainant paying him the balance of the money due on said contract, and that the defendant had for a long time therefore looked upon said contract as being null void and of no binding force and effect either in law or equity and had so repeatedly notified and informed the complainant. And this defendant further answering says that on or about the first day of May A.D. 1855 & prior to his receiving said last mentioned one hundred dollars he wishing to have the matter of said contract finally and definitely settled in some way, and still being willing (although not bound so to do) to convey to complainant the land mentioned in said contract, and fulfill to the letter, the said contract, made executed (together with his defendant's wife) and tendered & offered to complainant at the office of defendant one hundred and seven South Street New York a deed of conveyance for the land described in said contract, which deed was in all respects just such a deed as is described in said contract, and there and there demand of the complainant immediate payment of the balance of the

20
18
Answer

money due on said contract which deed was duly acknowledged and certified and a copy of which is hereto attached marked "B" and made a part hereof the original of which the defendant will produce in Court on the trial of this cause if required. Defendant charges that complainant made no objections to said deed nor any part thereof nor to the certificate thereto attached. But stated that he had no money to pay the amount then due and unpaid on said contract to the defendant and requested the defendant to allow him until the following day at noon to procure the money and take the said deed. That complainant the following day came to the said office of defendant before noon and informed defendant that he complainant could not get the money necessary to take up said deed and pay the balance due on said contract, but that he would pay defendant then one hundred dollars on account of said contract if defendant would postpone the final delivery of said deed and the payment of the balance of said money due on said contract until the third day of July A. D. 1855 to which proposition of the complainant the defend-

18
-dant assented and gave to complainant
a receipt for said One Hundred dollars
(which the complainant then and there
paid to him) in the words following to wit
"Received New York May the third one
thousand Eight hundred and fifty five
from Ralph Lockwood Esq one hundred
dollars on account of his contract for the
purchase of lands in Illinois. town of
Lyons Putnam County. said contract bear-
-ing date April 3^d one thousand Eight hun-
-dred and fifty one and described in Deed
of William D. Murphy and wife (not yet
delivered) to Ralph Lockwood the delivery
thereof being postponed in consequence of
this payment until the third day of July
next when the balance of the purchase
money is to be paid

\$100.~

Signed W. D. Murphy"

The original of which was delivered to the com-
plainant on the day of said payment of the
one hundred dollars mentioned in said rece-
-ipt. This defendant charges that on said
third day of July A. D. 1855 all of the purch-
-ase money mentioned in said contract was
due and unpaid except two hundred dollars
to wit. the said one hundred dollars paid

Answer

August 8th 1851 and the said one hundred dollars paid on said third day of May 1855 Defendant charges that afterwards on or about the 3^d day of July A. D. 1855 he again offered and tendered said Seed marked "B" to the complainant and demanded the payment of the ballance due on said contract and that the complainant then absolutely refused to pay said ballance or any part thereof to complainant although the same had been due for more than three years and although this defendant then and there had the notes aforesaid of the defendant so made and delivered to defendant as aforesaid ready to be delivered up to complainant and cancelled. This defendant further answering says that afterwards on the 5th day of July A. D. 1855 he again offered and tendered to complainant the said seed marked "B" and then & there again demanded of and from complainant the payment of the ballance of the purchase money due on said contract and that complainant again then & there refused to receive said Seed and pay the money so then & there due and unpaid on said contract to defendant, and that complainant then said that he was poor and

20
unable to get the money and complainant then and on other occasions represented to defendant that from large and disastrous speculations in real in Brooklyn New York the complainant had become and was wholly insolvent. Defendant charges that on said last mentioned refusal of complainant to receive said deed & pay the balance of said money due on said contract this defendant caused an affidavit made by Orlando B. Lewis and properly sworn to and attested to be filed for record in the office of the recorder of Marshall County Illinois which affidavit is hereto attached marked "C" and is made a part hereof.

This defendant says that he recd. the last mentioned one hundred dollars only upon the ground that the balance of the money due on said contract should be paid promptly on the 3^d day of July A.D. 1855 and upon no other consideration whatsoever and denies most positively that he even directly or indirectly extended the time of payment of ^{any of} the money mentioned in said contract except as is herein before stated.

Defendant denies that complainant has paid any taxes on said land. he admits that he authorized the complainant to pay

Answer

the taxes thereon for the year 1851. but that he has never paid them. Defendant says that he paid the taxes on all the lands mentioned in said contract for one of the years since the year 1851 that the taxes for the other years since the making of said contract have been paid by other persons besides the complainant or defendant. but that the defendant has for each year since the year 1851 caused enquiry to be made of the proper officer for the taxes on said lands and has always learned that they had been paid by other persons except for the year when defendant paid the said taxes himself Defendant does not know what the taxes on said lands assessed since said contract was made amounts to. But defendant denies that he ever authorized complainant to pay any taxes on said lands except for the year 1851. and even if complainant had paid them this defendant is not responsible to complainant therefor. Defendant denies that complainant has entered upon said lands or that he complainant has made any improvements whatever thereon, and even if he had done so defendant never authorized complainant so to do. But that any such act of complainant would be a palpable violation of said contract,

This defendant admits that he still holds the notes of the complainant that they are negotiable that he has never tried to negotiate them and believes that if he had so tried he never could have done so.

This defendant states that he has offered and tendered a good and sufficient Warranty Deed as stipulated in said contract to complainant as is hereinbefore stated. But that he always accompanied said offer and tender with a demand for the payment of the balance of the purchase money due on said contract and charges that the complainant has uniformly refused such deed and pay said payment to complainant. Defendant denies that said contract is still in force and binding on him but insists that by reason of the complainant's notorious delay of the payment of the money due on the same the defendant was long since fully discharged from all liability to convey said lands therein mentioned to complainant and especially so by reason of the many offers and tenders of a conveyance by defendant to complainant and demands of the payment of the money due on said contract by defendant of complainant and of the refusals of complainant to receive such conveyance and pay the money due defendant and that now it would be inequitable and unjust to require this defendant to convey any of said lands to

complainant. This defendant further answers and says that complainant did not on the 8th day of October last. or at any other time whatsoever tender to defendant the sum of three thousand six hundred seventeen $\$3170$ dollars in payment for said lands or any other sum of money whatever. Defendant denies that he ever has or that he now intends to cheat or defraud the complainant in any way or manner whatsoever Defendant denies that he either now or at any other time refused to execute and deliver a deed for said lands to complainant and to receive from him the purchase money therefor. Defendant denies that he lately has threatened to sell the lands mentioned in said agreement but insists that he has a lawful right to sell the same he being the owner thereof in fee simple and neither complainants nor any other person having any legal or equitable title thereto.

Defendant admits that said lands have steadily ever since said written contract was made increased in value and that he defendant was made aware of such increase in their value when he offered and tendered to complainant a deed for said lands and demanded the payment of him of the balance of the purchase money as hereinbefore

mentioned but defendant has no opinion of the present value of said lands.

Defendant denies that there has been any sudden rise in the value of said lands or that he has arrived at any sudden conclusion to treat said contract forfeited and at an end but charges that he came to that conclusion ^{long ago}.

Defendant charges that complainant seems to have come to the sudden conclusion to get the land of the defendant and cheat & defraud defendant out of his pay therefor if he can. This defendant charges that he has repeatedly notified the complainant that said contract was forfeited rescinded and at an end. that he so notified said complainant, on or about the 2^d day of May 1855, & on or about the 3^d day of July 1855 and also on or about the 5th day of July 1855 and also on divers other and different times, for the reason that complainant had failed to comply with said contract on his part.

This defendant insists that there has been on part of the complainant, an unreasonable and vexatious delay of the payment of the money due on said contract, that he does not know whether, had it not been for the pecuniary embarrassments of complainant he would have paid said money or not but

Answer

defendant believes he would not have paid said money under any circumstances.

Defendant also insists that he is not responsible for the pecuniary embarrassments of complainant nor ought he to be injured in consequence thereof. And ^{this} defendant hereby offers to refund and pay over to the complainant all the money that defendant has received on account of said contract and also all taxes that complainant has paid on said lands by authority of complainant if he has paid any and also to bring into Court all the notes he holds of the Complainant given in pursuance of said contract and have the same cancelled or delivered up to the complainant as this court may direct.

Defendant charges that in consequence of the vexatious and wilful delays of complainant in complying on his part with the terms and conditions of said contract he has been greatly injured that he has been deprived of the use of the money due on said contract and notes that complainant suffered and allowed said notes to be protested as will more fully appear by reference to the copies of the said notes and protests thereon here to attached marked "C" will more fully appear. And this defendant insists that

27

time is of the essence of ^{the} said contract and that the terms & conditions of the same require that complainant should pay all the purchase money for said land within one year from the date of said bond and after said bond was broken by complainant the was no longer binding on this defendant All of which matters and things this defendant is ready to aver maintain and prove as this court shall direct and defendant prays to be discharged with his reasonable cost most unjustly expended."

William D. Murphy
By G. L. Richmond
his Solicitor"

Exhibits with
Answer

The Clerk of the City and County of New York.
will please search in his office as follows

For Transcripts of {
Decrees in Chancery { Court
Judgments from the late and present Supreme
Judgments from Superior Court
Judgments from the Court of Common Pleas
Judgments from other Counties

Also for Transcripts from the Marine and Justice Courts
Also for Surrogate's Decrees and forfeited Recognizances

against the following persons;

Ralph Lockwood from 1 Jan'y 1848

Supreme

1853 Sept 5th Ralph Lockwood ads Standford.
Lockwood \$6,745.00 Hay & McEntire

Kings Co. Supreme

" 9 Same ads Jasper H. Thurston & James
H. Peterson \$1,946.62 Geo. Cattin.

" 29 Same ads Same \$401.37 Geo Cattin

Albany Co Supreme

Oct 5 Ralph Lockwood & John Mc. Cantin
ads Nathan T. Higbie \$233.16 P. Caggen

N. Y. Supreme

" 15 Ralph Lockwood Emp^{ly} & ads Thomas
Otis, LeRoy & David Smith \$1,070.73 Hawley
& Glover

Brooklyn City Court

" 26 Ralph Lockwood ads Joseph H. Shepard
& Nathan Holister \$2,592.63 Lewis &
Brown

Supreme

1853 Oct 27 Ralph Lockwood ads James L.
Morgan & Henry L. Weller and
George Gregory \$476.64 vs Taggard
& Pinckney

Brooklyn City Court

" " 28 Ralph Lockwood & William H.
Seely ads John Butler & Oliver R
Butter \$558.11 C. J. & C. Lowrey

Kings Co Supreme

1852 Jan 11 Ralph Lockwood and William
H. Seely ads John Butler and
Oliver R. Butler \$556.12 C. J. &
C. Lowrey.

1853 Oct. 29

Brooklyn City Court.

1854 Feb 28

Ralph Lockwood ads The New York
& Tugerties White Lead Company
\$94.31 Smith & Woodward

1853 Oct. 12

1854 Feb 28

Ralph Lockwood, Charles T. Weig-
and & Warner Reman ads The
New York & Tugerties White Lead
Company \$57.46 Smith and Wood-
wards.

Supreme

1854 December 18 Ralph Lockwood and William
H. Soley ad. Andrew M. Morgan
and John Lee Smith Agt. b. o. Elias
P. Rosenberg.

Stone other found

October 10th 1855



R. B. Connally
Clerk

Signed and Sealed

in presence of

Horatio P. Carr

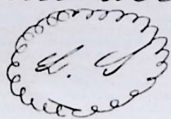
State of New York

City & County of New York ss.

On this 10th day of

October A.D. 1855

before me personally came James Stack to me
personally known who acknowledged that he
subscribed the above search. that he subscri-
bed the same by virtue of an authority from
the said Richard B. Connally Clerk of the
City & County of New York and that the same is
true according to the records kept in the office
of the County Clerk



Horatio P. Carr

Notary Public

Copy

This Indenture, made the Fifth day of April in the year one thousand eight hundred and fifty two Between William S. Murphy of the City of New York of the first part and Ann Letitia Murphy his wife, and Ralph Lockwood of New York City of the second part Witnesseth. That the said parties of the first part, in consideration of the sum of Three Thousand and Seventy Nine ⁰⁰/₁₀₀ Dollars to them duly paid before the delivery hereof, "have bargained and sold, and by these presents do grant and convey" to the said party of the second part his heirs and assigns for ever. All the West half of the North West quarter of Section Twenty and the East half of the North East quarter of Section Nineteen, and the North West quarter of section Thirty one of Township Thirty North and range one West of the Third principal Meridian; Containing Three hundred and Twenty ⁴⁰/₁₀₀ Acres be the same more or less. and all the South East $\frac{1}{4}$ section seven of Township Thirty and range one West of the Third principal Meridian, Containing One hundred and sixty acres be the same more or less. "lying and being in the town of Lyons, Putnam County in the State of Illinois." Also the North West $\frac{1}{4}$ of Section 33. also the South West $\frac{1}{4}$ of Section 33. Township 30 North and range one West of third principal Meridian containing 320 Acres. be the same more or less. lying and being in the

town of Lyons Putnam County State of Illinois.
 with the appurtenances, and all the estate, title and
 interest, of the said parties of the first part therein
 + And the said parties of the first part, do hereby
 covenant and agree with the said party of the
 second part, that at the time of the delivery here-
 of, the said parties of the first part are the
 lawful owner of the premises above granted and
 seized thereof in fee simple absolute and that
 they will Warrant and Defend the above granted
 premises in the quiet and peaceable possession of
 the said party of the second part his heirs and
 assigns, for ever In Witness Whereof, the said
 parties of the first part, have hereunto set their
 hands and seals the day and year first above
 written.

Sealed and delivered
 in ^{the} presence of
 (Signed) Edwin F. Corey
 (Signed) G. M. Thoms

(Signed) W^m D. Murphy
 (Signed) Ann Letitia Murphy

State of New York

City and County of New York ss.

} By this Public
 Instrument be it
 in anywise

Known to all whom ~~it~~^{same} doth or may concern that I
 Edwin F. Corey a Public Notary in and for the
 State of New York by Letters Patent under the
 Great Seal of State duly commissioned and sworn

33

dwelling in the City of New York. I, hereby certify that on the thirtieth (30) day of April one Thousand Eight hundred and fifty five before me appeared William S. Murphy and Ann-Letitia wife of said William S. Murphy whose signatures appear on the within instrument and who are personally known to me to be the real persons who subscribed and executed the same and acknowledged the same to be their free act and deed. And Ann Letitia wife of said William S. Murphy and whose signature appears to said instrument having been by me made acquainted with the contents thereof and examined separately and apart from her said husband acknowledged that she executed the same and relinquished her right of dower in the premises therein conveyed voluntarily, freely and without compulsion of her said husband.



In Testimony whereof I have
hereto affixed my official
seal and set my hand the
day and year aforesaid
(Signed) Edwin H. Corey
Notary Public

"C"

State of New York
City and County of New York ss. Orlando R.

Lewis of the City of New York. being duly sworn in due form of Law doth depose and say that on the fifth day of this month July 1855. deponent at the request of William D. Murphy of said City. executed to Ralph Lockwood a deed from said William D. Murphy and Ann Letitia his wife for certain Lands in the State of Illinois to said Ralph Lockwood bearing date Fifth day of April Eighteen hundred and fifty two for consideration of Three Thousand and Seventy Five \$100 Dollars which deed was duly executed and acknowledged before Edwin F. Corey a Public Notary in and for the State of New York on the Thirtieth day of April A. D. 1855. deponent further says at the time said Ralph Lockwood admitted that he had contracted to purchase said Land of said Murphy for the sum aforesaid and had given said Murphy Three notes in payment of the same and when paid in pursuance to said contract. said Murphy was to deliver to him said Ralph Lockwood a Warranty Deed for the same. Deponent further says at the time aforesaid the fifth day of July 1855 when deponent tendered the deed aforesaid he demanded of said Ralph Lockwood at the request of said Murphy Three Thousand Five Hundred and Seventeen \$100 Dollars. being

at the time the actual balance due said Murphy including interest and charges on said property at the time. Lockwood then said that the contract and the amount due was correct. that he had not got the money neither could he get the same as he was poor. Deponent further says. that the property described in said Deed of Murphy and wife to said Lockwood was bounded and described as follows. All the West half of North West Quarter of section Twenty and the East half of the North East quarter of section Thirteen. and the North West Quarter of section Thirty one of Township Thirty North and range one west of the third principal Meridian. containing Three Hundred and twenty ⁴⁰/₁₀₀ Acres be the same ^{more} or less. and all the South East quarter Section Seven of Township Thirty and range one west. of the Third principal Meridian containing one hundred and Fifty acres be the same more or less lying and being in the town of Lyons. Putnam County in the State of Illinois. also the North West quarter of section Number Thirty three also the South West Quarter of Quarter of section number thirty three Township Thirty north and range one west of third principal Meridian containing three hundred and twenty acres be the same more or less lying and being in the Town of

Lyons Putnam County State of Illinois.
And further deponent saith not.

C. B. Lewis.

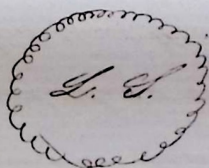
Subscribed and sworn to before me this 18th
day of July A.D. 1855.

Edwin T. Corey

Public Notary in and for the
State of New York duly commission-
ed by Letters patent under the
Great Seal of State and dwelling in
the City of New York



State of Illinois. }
Marshall County } ss. J. G. L. Fort. Clerk of the
Circuit Court of the said
County of Marshall. and by virtue thereof ex-offi-
-cio Recorder of said County; do hereby certify that
the Instrument of Writing hereto attached, and
which purports to have been executed by Orlando
B. Lewis was filed in said office, for Record on the
23rd day of July A.D. 1855 at 12 o'clock M. and
that the same was this day duly Recorded in Book
D at pages 721 & 722. In Testimony Whereof I
have hereunto set my name, and affixed the
seal of said Court, at the City of
Lacon, in said county, on this 10th
day of September A.D. 1855.



J. G. L. Fort Clerk

"Copy"

37
"A"
\$806.⁸⁰/₁₀₀ Four Months after date I promise
to pay William D. Murphy or order Eight
Hundred and Six ⁸⁰/₁₀₀ Dollars for Value Received

New-York April 5th 1851

(Signed) Ralph Lockwood

156 Water Street N.Y.

Aug 8

"Copy"

"A"
\$1070. One Year after date I promise to pay
William D. Murphy or Order One Thousand
and Seventy Dollars for value received.

New York April 5th 1851

(Signed) Ralph Lockwood

156 Water St. N.Y.

Apl 8/52

United States of America } ss.
State of New York }

"Copy"

J. Gardner Spring. Jr.

"A"
Notary Public duly commissioned and sworn
dwelling in the City of New York do hereby Certify
that on the Eighth day of April in the year of
our Lord one thousand eight hundred and fif-
ty two at the request of The President and
Directors of the Mechanics Bank, New York
the original Promissory Note hereto annex-
ed was duly presented to Ralph Lockwood

the Maker at his place of business in said City and payment thereof was then and there demanded which was refused. Whereupon I, the said Notary at the request aforesaid, did Protest, and by these presents do publicly and solemnly Protest, as well against the Maker and Endorsers of the said Promissory Note, as against all others whom it doth or may concern for exchange re-exchange and all costs, damages, and interest, already incurred, and to be hereafter incurred, for want of payment of the same. Thus done and Protested, in the City of New York, aforesaid, in the presence of John Doe and Richard Roe, witnesses

(Signed) Gar^d Spring
Notary Public Mechanics Bank

Quod Attestor

Copy

\$1,170. One Year after date I promise to pay William D. Murphy or Order One Thousand and Seventy Dollars for value received.

New York April 5th 1851

(Signed) Ralph Lockwood.

156 Water St. N.Y.

Apr 8/52

"A"

United States of America }
 State of New York }

J. Gardner Spring Jr.

Notary Public duly commissioned and sworn dwelling in the City of New York do hereby Certify that on the Eighth day of April in the year of our Lord one thousand eight hundred and fifty two at the request of The President and Directors of the Mechanics Bank New York, the original Promissory Note hereunto annexed was duly presented to Ralph Lockwood the Maker at his place of business in said City, and payment thereof was then and there demanded which was refused. Whereupon I the said Notary at the request aforesaid, did Protest and by these presents do publicly and solemnly Protest as well against the Maker and Endorsers of the said Promissory Note as against all others whom it doth or may concern for exchange re-exchange and all costs, damages, and interest, already incurred and to be hereafter incurred for want of payment of the same Thus Done and Protested in the City of New York aforesaid, in the presence of John Doe and Richard Roe witnesses

(Signed) Jas^d Spring

Notary Public Mechanics Bank

Quod Attestor

Endorsed "Filed Feb 11, 1856. G L Fort clerk"

And on the 13th day of February A.D. 1856, the Complainant filed his replication which is in words and figures as follows to wit:

Replication

"Ralph Lockwood

vs.

William D. Murphy

} In the Circuit Court
of Marshall County
In Chancery

The Replication of Ralph Lockwood the Complainant above named to the answer of the Defendant William D. Murphy filed in this cause.

The said Complainant for Replication to said answer says, that he will aver and maintain his said Bill to be true certain and sufficient, and that the answer of the said Defendant is uncertain, untrue and in "sufficient, to be relied unto by this complainant. Wherefore he prays as in and by his said Original Bill he has prayed &c "

"Purple for Compl't"

Endorsed "Filed Feb 13th 1856"

"G. L. Fort clk"

41
And afterwards to wit on the fourteenth day of April AD
1856 the same being one of the days of the April Term
of said Court and the Court being then judicially sitting
the following order was made and entered of Record in the cause
of Ralph Lockwood against William D Murphy to wit:

Order for Ralph Lockwood } Bill for "Specific performance"
Continuance vs William D. Murphy }
Be it remembered that
this day it is ordered by the Court
that this cause be continued upon the agreement of the
parties in open Court made.

And afterwards to wit on the twenty first day of May in
the of our Lord One thousand eight hundred and fifty
Seven the same being one of the days of May Term of
said Court for said year the following order was made
in said Cause and entered of Record to wit:

Order for Ralph Lockwood } Bill for specific performance
Continuance vs William D. Murphy }
This day
came the parties by their counsel
and by agreement this cause is continued.

And afterwards to wit on the fifteenth day of October A.D. 1857, the same being one of the days of the October Term of said Court for said year the following order was made in said cause to wit

Order for Continued	Ralph Lockwood	Bill for Specific performance	This day on
	vs	William D. Murphy	

And afterwards to wit on the sixth day of February A.D. 1858, the complainant submitted his proof in support of the allegations in his bill contained which proof is in words and figures as follows to wit.

Complaints
Proof

Articles of Agreement. made and entered
into this the Fifth day of April 1851 Between
William D. Murphy of the City County and
State of New York Party of the first part, and
Ralph Lockwood of the City of Brooklyn, County
of Kings and State aforesaid Party of the Sec-
ond part. Witnesseth, that the said party
of the first part for and in Consideration of
the sum of One hundred Dollars to him in
hand paid, have contracted and agreed to sell
to the said party of the second part, all those
certain pieces or parcels of land Situate and
lying in Marshall County in the State of Illinois,
Bounded and described as follows To Wit; South
East Quarter of Section Seven also East half of the
North East quarter of Section Eleven, also West
half of the North West quarter of Section Twenty
also the North West quarter of Section Thirty one
also the West half of Section Thirty Three Town
ship Thirty North and range one West of the
Third principal meridian being in all Eight
Hundred acres of Land. For the sum of Three
Thousand and Forty Six Dollars and Eighty
cents. — The balance Twenty nine Hundred
and Forty Six Dollars and Eighty cents is to be
paid as follows. Eight Hundred and Six Doll-
ars and Eighty cents to be paid within four mon-
ths from the date hereof, and Twenty one hun-

+

+

"dred and forty Dollars which notes are given
for said amounts. is to be paid within One
Year from the date hereof. - "and on the pay-
ment of all of the herein describe amount as
they become due and payable. The said William
D. Murphy and his Wife agree to make and
execute a Mortgage Deed with full covenants
free from all incumbrances (Except the Taxes
of 1851 for all of the above described Land to
the said Ralph Lockwood his heirs or assigns:
Intituled before signing "which notes are given for said amounts"

Witness present

J. C. Murphy

Ralph Lockwood

M^{rs} D. Murphy

seal

seal

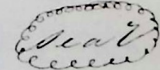
Know all men by these presents that I Ralph
Lockwood of the City of Brooklyn County of
Kings and State of New York. Do hereby ass.
signe and set over unto William B. Green of
the Town of Lyons County of Marshall State
of Illinois for the Consideration of Two hun-
-dred Dollars to me in hand paid by the
said W^m B. Green at or before the sealing
of the same the receipt thereof is hereby ack.
nowledged all my right title and interest to
a certain contract in writing made by



45

Wm D. Murphy to the said Ralph Lockwood
herein, on the fifth day of April 1851. for
all those certain pieces or parcel of Land
situate and lying in Marshall County in
the State of Illinois - Bounded and descri-
bed as follows To wit the South East quar-
ter of Section Seven also East half of the
North East quarter of Section Nineteen also
West half of the North West quarter of Sec-
tion Twenty also the North West quarter of
Section Thirty one also the West half of Sec-
tion Thirty Three Township Thirty North
and Range one West of the third principal
meridian being in all Eight hundred acres
of Land in Witness whereof I hereby
Set my hand and Seal.

in the presence of Brooklyn 22nd July 1852

Ralph Lockwood 

(No 15)

State of Illinois.

Marshall County

Collectors Office Roberts Twp.

February 7th 1852

Received of Wm B. Green the

Sum of Sixty five Dollars and 63 cents the tax
due the State of Illinois. County of Marshall
Town of Roberts for the year 1851

Aces	Description	Sec	Town	Range	Value	Tax	
40	N. W. N. W.	7	30	1 W	132.	7.	40
160	S. E.	7	30	1 W	350.	4.	28
160	N. E.	8	30	1 W	264	2	81
160	N. W.	8	30	1 W	352	3.	95
160	N. W.	9	30	1 W	264	2.	56
80	W 1/2 S. W.	9	30	1 W	264	2.	97
80	E 1/2 N. E.	19	30	1 W	220	2	56
80	E 1/2 S. E.	19	30	1 W	220	2.	08
80	W 1/2 N. W.	20	30	1 W	264	2	97
160	S. W.	21	30	1 W	616	6	79
160	S. W.	23	30	1 W	616	6.	62
80	W 1/2 S. E.	23	30	1 W	308	3	39
80	E 1/2 S. E.	23	30	1 W	308	3	39
160	S. W.	24	30	1 W	616	6.	62
160	N. W.	25	30	1 W	616	6.	62
160	S. E.	25	30	1 W	616	6	62
						\$65.63	

Thomas Cowen
Collector

(No H.)

State of Illinois }
Marshall County } Collectors Office Roberts Twp.
February 7th 1852

Received of W^m B. Green the
sum of Eighty Six Dollars and 59 cents the taxes due
the State of Illinois County of Marshall
Town of Roberts for the year 1851

47

Acres	Description		Sec	Town	Range	Value	Tax	
160		N.E.	26	30	1 W	616.	\$	¢.
160		S.E.	26	30	1 W	616.	6.	62
160		N.E.	27	30	1 W	616.	6.	63
160		N.W.	28	30	1 W	616.	6.	63
80	N 1/2	S.W.	28	30	1 W	308	2.	91
80	E 1/2	S.W.	29	30	1 W	440	4.	97
160		S.E.	29	30	1 W	616	6.	60
80 ⁰⁰	N 1/2	S.W.	31	30	1 W.	310	3.	41
160		N.W.	33	30	1 W	616	6.	63
160		S.W.	33	30	1 W	616	6.	63
80	N 1/2	S.W.	34	30	1 W	308	3.	39
160		N.E.	35	30	1 W	616	5.	83
160		N.E.	36	30	1 W	616	6.	63
160		S.E.	36	30	1 W	616	6.	63
Personal Tax						711	6.	45
							\$86.	59

Thomas Cowen
Collector.

(No 13)

State of Illinois }
County ss }

Feb 1852

Received of Joseph Van Buren
Six 70/100 Dollars in full for the following State
County, Town, and Special Taxes, on the follow-
ing described Real Estate, in Township No 30 Range
No 1 W and on Personal Property, due for

the year 1851. to wit:—

Description	Sec	Acres	Valuation	State Tax		County Tax		Town Tax		Township School Tax	District School Tax	Road Tax		Tax	Total Tax	
				D	C	D	C	D	C			D	C		D	C
A.W.	31	160	6.16	3.56		1.84		43		Duplicata			96		6.79	

Thomas Cowen Collector for the town of Roberts.
(No 5)

State of Illinois, }
County of Marshall. } ss
Collectors Office. Feb 11 1853
Received of William B. Green the sum of thirteen $\frac{25}{100}$
Dollars the Taxes due the State of Illinois and the
County of Marshall on the following described lands
for the year 1852.

Description	Sec	Town	Range	Value	Total Tax
320 acres N $\frac{1}{2}$	33	30 N	1 N		13. 28

A. Green Collector

(No 4)

State of Illinois }
Marshall County }
Collectors Office Feb 11th 1853
Received of William B. Green the sum of three $\frac{32}{100}$ Dollars
the taxes due the State of Illinois and the County of
Marshall on the following described lands for the
year 1852

Description	Sec	Town	Range	Value	Total Tax
80 acres N $\frac{1}{2}$ N.E.	20	30 N	1 W		3. 37

A. Green Collector

49

(No 3)

State of Illinois }
County of Marshall } ss. Collectors Office Feb 11 1853
Received of William B. Green the sum of Two $\frac{37}{100}$ Dollars
the Taxes due the State of Illinois and the County of
Marshall on the following described lands for the
year 1852

Description	Sec.	Town	Range	Value		Total Tax
80 Acres E $\frac{1}{2}$ N.E.	19	30 N	1 W			2. 37

A. Green. Collector

(No 2)

State of Illinois, }
Marshall County } Collectors Office Feb 11 1853
Received of William B. Green the sum of Four $\frac{44}{100}$ Doll.
"as the taxes due the State of Illinois and the County
of Marshall on the following described lands for the
year 1852

Description	Sec	Town	Range	Value		Total Tax
160 Acres S.E.	7	30 N	1 W		1852	4. 44

A. Green Collector

\$ 7.80

(No 14)

April 9 1853. Received of W^m B. Green Esq^r the sum of
\$ 7 $\frac{80}{100}$ being the amount of taxes by me paid for
10^{ms} D. Murphy on N. W. q^r. of 31 sec 30 North and
Range 1 West for the year 1852

Thomas Powell

State of Illinois }
Marshall County. }

Collectors Office Feb 10 1854

Town of Roberts

Received of William B. Green the sum of twenty $\frac{63}{100}$ dollars and cents. for taxes levied for State, County, and Township purposes, on the following described lands for 1853

Acres	Description	Town	Range	Value	Tax
40	N.W. N.W. 7	30 N	1 N	60	0.86
160	N.E.	8	" "	160	2.14
160	N.W.	9	" "	240	3.14
80	N.W. N.W. 9	" "	"	160	2.14
80	E 1/2 N.E. 19	" "	"	240	2.90
80	E 1/2 S.E. 19	" "	"	240	2.50
80	N.W. N.W. 20	" "	"	240	3.06
80	E 1/2 S.E. 22	" "	"	320	3.89
					<u>20.63</u>

Abraham Green Collector of Roberts township

(No 7)

State of Illinois }
Marshall County. }

Treasurers Office, Lacon
Feb 28 1854

Received of Jacob C. Gatter the sum of three dollars and Eighty nine cents. for taxes levied for State, County, and Township purposes on the following described lands for 1853

Acres	Description	Sec	Town	Range	Value	Tax
80	N.W. S.W.	33	30	1 N	320	3.89

Samuel Maxwell Treasurer Marshall Co. Ills.

51

(No 87)

State of Illinois

Marshall County.

Treasurer Office, Lacon.

April 20th 1854

Received of Joseph Van Buskirk the sum of Nineteen dollars and twenty cents. for taxes levied for State, County, and township purposes on the following described lands for 1853

Acres	Description	Sec	Town	Range	Value	Tax	
80	E 1/2 NE	16	29	1 W	400	4	88
80	N 1/2 NE	"	29	1 W	400	4	88
80	E 1/2 N.W.	31	30	1 W	400	4	72
80	N 1/2 N.W.	"	30	1 W	400	4	72

\$19.20

Samuel Maxwell Treasurer Marshall Co 1765

(No 6)

State of Illinois

Marshall County

Collector's Office, December 1854

Received of H. B. Green the sum of Fourteen dollars and Seventy five cents for taxes levied for State, County, and township purposes on the following described lands for 1854.

Acres	Description	Sec	Town	Range	Value	Tax	
80	E 1/2 NE	8	30 N	1 W	80	1	00
40	N.W. N.W.	7	30 N	1 W	60		75
80	N 1/2 N.E.	8	" "	"	80	1	00
80	N 1/2 SW	9	" "	"	160	2	00
80	E 1/2 S.E.	19	" "	"	240	3	00
80	N 1/2 N.W.	20	" "	"	240	3	00
80	E 1/2 S.E.	22	" "	"	320	4	00

\$14.75

A. S. Myers Collector of Roberts Township

State of Illinois } (No 17)
 Marshall County, } Collectors Office Feb 14 1855

Received of Mr B. Green the sum
 of Twenty nine dollars and fourteen cents for
 taxes levied for State, County and township purposes,
 on the following described lands, for 1854

Acres	Description	Sec	Town	Range	Value	Tax
80	E 1/2 N.W.	9	30	1	120	1.50
80	N 1/2 N.W.	9	"	"	120	1.50
80	E 1/2 S.E.	19	"	"	240	3.00
80	N 1/2 S.W.	23	"	"	320	3.36
80	N 1/2 S.W.	27	"	"	320	4.00
80	E 1/2 S.W.	28	"	"	800	10.00
80	N 1/2 S.E.	28	"	"	480	5.84

A. S. Myers, Collector of Roberts Township \$29.14

(No 9)

State of Illinois, }
 Marshall County } Treasurer's Office Lacon

March 2^d 1855.

Received of Jacob Gatter the sum of Four Dollars
 and Cents the Taxes due the State of Illinois and
 the County of Marshall, on the following descri-
 "ibed Lands, for the year A.D. 1854.

Description	Sec.	Town	Range	Acres	Value	Year	Amount Tax
N 1/2 S.W.	33	30	1.00	80	320	1854	\$ 4.00

Jamb. Maxwell Treasurer & Collector of Marshall County