

No. 13435

# Supreme Court of Illinois

Johnson, Admr.

---

vs.

Short, et al

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STATE OF ILLINOIS  
SUPREME COURT,  
Third Grand Division.

No. 119.

*Shard*  
*J*

*13435*



STATE OF ILLINOIS, }  
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Madison - Greeting:

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the Circuit Court of Madison County, before the Judge thereof, between James L. Johnson admr. of James Bloomer decd.

plaintiff, and Samuel Short & Frederick H. Short impld. &c

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

as we are informed by them complainants and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgments thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the pleas aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 19<sup>th</sup> day of December in the Year of Our Lord One Thousand Eight Hundred and Sixty:.....

L.eland  
Clerk of the Supreme Court.



*Semels Short*  
*et al. mpt. &c.*

No.

vs.

*James L. Johnson*  
*adm. &c. —*

## WRIT OF ERROR.

*This Writ of Error is made a*  
*Supersedeas, and as such is to be*  
*obeyed by all concerned.*

\_\_\_\_\_  
*Clerk.*

FILED

*Dec. 19<sup>th</sup>* A. D. 1860.

*J. Keland*

\_\_\_\_\_  
*Clerk.*



# SUPREME COURT OF ILLINOIS,

April Term, A. D. 1861.

JAMES L. JOHNSON, ADMINISTRATOR, &C.,  
DEFENDANT,

ads.

SEMELE SHORT ET AL.,

PLAINTIFFS.

*Error to Jo Daviess Co.*

## POINTS FOR DEFENDANT IN ERROR.

### I.

We deem it sufficient to say, that the Bill of Complaint sets out fully and truly the facts entitling the complainant to the relief prayed for, and decreed by the Court. The statements of the bill are shown to be correct. The answer itself is sufficient to establish the claim of the complainant, for although it attempts to set up a defence, and abounds in denials and allegations, yet it is evident from its admissions and statements that there is no just defence.

When Semele Bloomer took the deed of the property she took it in trust for the estate. When she gave the deed to the creditors, dated 15th Oct., 1851, she intended to thereby convey this property. When she resigned as administratrix, she and all others interested supposed she had conveyed this property. The pretence that she originally took the title for her own use, or was to hold it as an equivalent for her dower right in other property, is all an afterthought of herself or of her advisers, and is not supported by a particle of proof.

### II.

But the counsel for the Pl'ff in error say "she obtained a discharge from the Probate Court, and such discharge is conclusive." A discharge from *what*? The order says, "from further exercise of her office as such administratrix." She is not discharged from surrendering any property remaining in her



hands, or under her control, which belonged to the estate. She did not produce or surrender in Court the property remaining in her hands, but merely the evidences of it. Whatever property may have remained in her hands at the time of such discharge would still belong to the estate, and would go to the administrator *de bonis non*.

### III.

The counsel for the Pl'ff in error say the decision of the Probate Court is conclusive until reversed, and cite a long list of authorities. Conclusive of what? The Probate Court never decided that this property belonged to Se-mele Bloomer, or that she should hold it for her own use. No such claim was made by her. It never decided that she should hold as her own whatever property of the estate remained in her possession, or to which she had the title. But the points and authorities of the counsel seem to take it for granted that some such order was made.

The decree of the Court below does no injustice to the Pl'ff in error, but it should have gone further and have directed a conveyance by her unto the purchaser, so as to clothe him with the legal title. *We ask this Court to amend it in that respect.*

FARWELL & SMITH,

*Attorneys for Appellee.*



no - 119.

Supreme Court

James L. Johnson

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Sept in Enn

adz

Samuel Short

et al -

Sept in Enn

Points of Sept in Enn.

Filed May 1<sup>st</sup> 1861

L. Leland

clerk

Samuel & Smith

Attys for Sept in Enn



STATE OF ILLINOIS, }  
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Sheriff of the County of

*Jo Daviess*

Greeting:

Because, ~~In~~ <sup>a decree</sup> the record and proceedings, and also in the rendition of the judgment of a plea which was in the *Circuit* Court of *Jo Daviess* County, before the Judge thereof, between

*James L. Johnson* admr. of the Estate of *James Bloomer* decd. -  
plaintiff; and *Samuel Short & Frederick H. Short* impl. &c.

defendants, it is said that manifest error hath intervened, to the injury of the said *Samuel Short & Frederick H. Short*

as we are informed by *their* complaints ~~the~~ <sup>a decree</sup> record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said *James L. Johnson*

that *he* be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if *he* shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *James L. Johnson*

notice, together with this writ.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *19<sup>th</sup>* day of *December* in the Year of Our Lord One Thousand Eight Hundred and Sixty.

*L. Island*

Clerk of the Supreme Court.



Executed the within writ to reading -  
the same to the within named James L  
Johnson on this the 21<sup>st</sup> day of Dec<sup>r</sup> a D 1860  
Shiriff fees, 65<sup>cts</sup>

D. H. Miner

Shiriff of Lo Damp Co, Mo

119

Seneca Short &  
Frederick H. Short  
No. <sup>chapls. sh.</sup> vs. <sup>vs.</sup>  
James L. Johnson  
admr. ce.

SCIRE FACIAS.

FILED January 2<sup>nd</sup> A. D. 1861

Lorenzo Leana  
Clerk.



# SUPREME COURT OF ILLINOIS,

April Term, A. D. 1861.

|                                       |   |                                |
|---------------------------------------|---|--------------------------------|
| JAMES L. JOHNSON, ADMINISTRATOR, &C., | } | <i>Error to Jo Daviess Co.</i> |
| DEFENDANT,                            |   |                                |
| ads.                                  |   |                                |
| SEMELE SHORT ET AL.,                  |   |                                |
| PLAINTIFFS.                           |   |                                |

## POINTS FOR DEFENDANT IN ERROR.

### I.

We deem it sufficient to say, that the Bill of Complaint sets out fully and truly the facts entitling the complainant to the relief prayed for, and decreed by the Court. The statements of the bill are shown to be correct. The answer itself is sufficient to establish the claim of the complainant, for although it attempts to set up a defence, and abounds in denials and allegations, yet it is evident from its admissions and statements that there is no just defence.

When Semele Bloomer took the deed of the property she took it in trust for the estate. When she gave the deed to the creditors, dated 15th Oct., 1851, she intended to thereby convey this property. When she resigned as administratrix, she and all others interested supposed she had conveyed this property. The pretence that she originally took the title for her own use, or was to hold it as an equivalent for her dower right in other property, is all an afterthought of herself or of her advisers, and is not supported by a particle of proof.

### II.

But the counsel for the Pl'ff in error say "she obtained a discharge from the Probate Court, and such discharge is conclusive." A discharge from *what?* The order says, "from further exercise of her office as such administratrix." She is not discharged from surrendering any property remaining in her



hands, or under her control, which belonged to the estate. She did not produce or surrender in Court the property remaining in her hands, but merely the evidences of it. Whatever property may have remained in her hands at the time of such discharge would still belong to the estate, and would go to the administrator *de bonis non*.

### III.

The counsel for the Pl'ff in error say the decision of the Probate Court is conclusive until reversed, and cite a long list of authorities. Conclusive of what? The Probate Court never decided that this property belonged to Se-mele Bloomer, or that she should hold it for her own use. No such claim was made by her. It never decided that she should hold as her own whatever property of the estate remained in her possession, or to which she had the title. But the points and authorities of the counsel seem to take it for granted that some such order was made.

The decree of the Court below does no injustice to the Pl'ff in error, but it should have gone further and have directed a conveyance by her unto the purchaser, so as to clothe him with the legal title. *If we ask this Court to amend it in that respect,*

FARWELL & SMITH,

*Attorneys for Appellee.*



No. 119. - 20

Supreme Court

James L. Johnson.

Adm?

Sept in Enm

adg

Samuel Short

et al

Plffs in Enm

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Points of Sept in Enm

Filed May 15<sup>th</sup> 1861

Y. Leland

Clerk

Lomell & Bennett

Attys for Sept in Enm



# SUPREME COURT OF ILLINOIS,

April Term, A. D. 1861.

|                                       |             |                                |
|---------------------------------------|-------------|--------------------------------|
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Mr. 119. - ~~20~~ 20

Supreme Court

James L. Johnson

admr? &c

Deft in Error

adg

Senale Short  
etal

Peff in Error

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Points of Deft in Error

Filed May 1<sup>st</sup> 1861

G. Leland

Copy

Lionell & Sonnetta

Attys for Deft in Error



# SUPREME COURT OF ILLINOIS,

April Term, A. D. 1861.

|                                       |             |                                |
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| DEFENDANT,                            |             |                                |
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| SEMELE SHORT ET AL.,                  |             |                                |
|                                       | PLAINTIFFS. |                                |

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no. 119. — 20

Supreme Court

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James L. Johnson

adm:  $\frac{1}{2}$  L  
Sept in Error  
ad?

Sen de Short

et al

Plffs in Error

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Points for Sept in Error

Filed May 18<sup>th</sup> 1841

L. Leland

clerk

Lomell & Smith

Attys for Sept in Error



# SUPREME COURT OF ILLINOIS,

April Term, A. D. 1861.

|                                       |             |                                |
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no - 119. - 86 20

Supreme Court

James L. Johnson

admr &c

Depts in Enm

adg

Samuel Short

Adm

Atty in Enm.

Points of Deft in Enm

Filed May - 1<sup>st</sup> 1861

L. Leland

Clerk

Linnell & Smith

Atty for Deft in Enm



# STATE OF ILLINOIS, SUPREME COURT.

THIRD GRAND DIVISION.

APRIL TERM, 1861.

SEMELE SHORT and  
FREDERICK H. SHORT,  
impleaded, &c.,

*vs.*  
JAMES L. JOHNSON, Adm'r.  
of the estate of  
JAMES BLOOMER, deceased.

} *Error to Jo Daviess County.*

## ABSTRACT OF RECORD.

*Page of Rec.*

2. THE Bill in this case charges that James Bloomer died Nov. 27, 1850 ; that his widow Semele was appointed Administratrix Nov. 30, 1850 ; that she so acted till Dec. 23d, 1851, when she resigned and the County Court accepted her resignation ; that on the 23d of February, 1852, the Complainant, James L. Johnson, was appointed Administrator *de bonis non*, and so remained till filing of the Bill. That the deceased, at the time of his death, owed about \$40,000 ; that the estate is insolvent and not sufficient to pay one-fourth part of said debts ; that \$36,000 of this indebtedness is due one S. C. March, of New York City ; that at the time of the death of Bloomer, Hugh McFarland owed said Bloomer ; that on the
4. 15th of April, A. D., 1851, the Administratrix, Semele, compromised and settled with McFarland, and being selected and chosen as a suitable person for that purpose, took a conveyance from him to "Semele Bloomer, Administratrix of James Bloomer, deceased," of the N. E. fr. qr. of Sec. 2, T. 28, R. 1 W. of 4th P. M., in discharge of the debt.

5. The deed is made an exhibit, and is a warranty deed in the ordinary form, with an expressed consideration of \$3,000, excepting from his covenants, a Deed of Trust given by said McFarland to said James Bloomer, an attachment proceeding in favor of Henry Corwith, on which a sale of said land has been made, and a certificate of purchase issued to Corwith, and all tax titles and taxes due.

6. The Bill further alleges, that when Semele so took this title, she took it in Trust for his estate—that the deceased in his lifetime, paid all the considerations—that this deed was in payment of McFarland's debt to the deceased—and that she was a naked trustee for the estate and creditors.

It also alleges, that on the 22d of October, 1849, McFarland executed to the said James Bloomer a Deed of Trust, to secure the payment of money and the performance of certain acts to be performed by McFarland for Bloomer, and that it was this debt and their acts that were compromised and settled by the conveyance of McFarland to said Semele of said land, which was also in this Deed of Trust with other lands. This Deed

7. of Trust is made an exhibit. That shortly after the execution of said deed, from McFarland to her, and being about to resign as aforesaid, she did, on the 15th of October, 1851, by deed convey to Daniel F. Smith,



*Page of Rec.* James Carter, N. Corwith, William H. Snyder and John J. Anderson, together with each and all of the creditors of Bloomer's estate, in proportion to their respective debts against said estate, all the right, title, interest and claims of every name, nature, kind and degree which she had in and to, or in any way growing out of said estate, including her dower in the same for the expressed consideration of \$7,000.

8.

This deed is made an exhibit, and is a full conveyance of all her interest in all real or personal estate and choses in action, etc., of the estate.

The Bill alleges that it was the intention of said Semele to vest all her interest in this estate in the various creditors, and to relinquish whatever claim she had, but that this deed was inoperative and void and passed nothing, for the reason that the grantees are not properly named, their interest is not properly set out, nor is there any description of any particular kind of property set forth in the deed.

9.

That the estate has never received any benefit from said conveyance to said Semele, nor has any of the creditors received any amount whatever, for any of the property conveyed by said deed. Nor is it possible that said estate should be benefitted thereby; because the only lands which she had title to, belonging to said estate, was the land heretofore mentioned, which Complainant insists did not pass to said creditors by this deed.

That Complainant, at the August Term, 1852, of the Jo Daviess Circuit Court, applied for a sale of the real estate of the deceased, for the purpose of paying the debts of Bloomer, deceased; and that the land heretofore described was included in his petition amongst other lands.

10. That the Court ordered a sale of the lands in the petition described. On the 18th of October, 1852, the above described land was sold at the Administrator's sale to Alexander Frear. The Administrator's deed is an exhibit. It contains a large quantity of land, and shows that the land in controversy (the N. E. qr. of Sec. 2, T. 28, R. 1) was sold for \$3,400.

11. That Bloomer was not seized of the land, and had no title which could be sold by the Administrator. That the title was in Semele, as a naked trustee for the creditors, and that no title passed to Frear. That the Administrator was advised by Counsel—that he had a right to sell, and thought so when he sold, but that he is now satisfied that he was mistaken, and that his deed to Frear is of no avail or effect.

12. The Bill here again charges, that Semele is a naked trustee; that the land was taken in payment of a debt due from McFarland to deceased, and that this is the only interest she has in it.

It is also alleged that the estate is insolvent; that all the personal and real property has been applied to the payment of debts against the estate, *except the lands above described, which belong in equity to the creditors, and should be sold, and the proceeds applied to paying their debts*; that said Semele claims to be the absolute owner, and refuses to execute her Trust and to sell and apply the proceeds for the benefit of the estate.

13. That the creditors are prevented from getting, and the Administrator from paying them all the indebtedness due them, without a proper sale of said land, which equitably belongs to the estate.

That said Semele has intermarried with Frederick H. Short; that James F. Bloomer is an infant son of the deceased.



*Page of Rec.* Prayer for answer, (the oath waived,) and for a decree that the land be-

14. longs to the estate ; that said Semele took it in trust, etc., as a naked  
15. trustee ; that her deed of October 15, 1851, passed no title to the grant-  
ees ; that if it did, that the land may be declared to be held by the grantees  
in trust for the creditors, and that the same be ordered to be sold for the  
benefit of said creditors.

16. *That the Administrator's deed, from Complainant to Frear, may be  
declared void, and that nothing passed under it, and for other and further  
relief, etc.*

- The Answer of Frederick H. Short and Semele Short, late Semele  
43. Bloomer, admits that Bloomer died intestate, leaving said Semele his  
widow, and James an infant son ; that she took out letters of administra-  
44. tion ; that she acted till December 23, 1851 ; and that she then resigned,  
and that the resignation was accepted.

- States : That on her resignation and before the same was accepted, she  
fully settled up with and accounted for all her goods, chattels, rights,  
credits and effects of every name and kind, coming to her hands, custody  
or control, as such Administratrix, and that she was fully released and  
discharged by the Court from the administration of the estate. The An-  
swer assuming the form of a plea, then sets up as a bar to the relief  
sought, an adjudication of the County Court of Jo Daviess, sitting as a  
Probate Court. The record of said County Court is set forth in the words  
45. and figures following :

"23d Dec., 1851.

In the matter of the Estate of }  
JAMES BLOOMER, dec'd. } *Resignation of Administratrix.*

- In this case, the Administratrix of the estate having given notice as  
required by law in such cases, as appears satisfactory to the Court, tenders  
her resignation as such Administratrix in writing to the Court. And  
having made and rendered a complete settlement of all matters in her  
hands, as such Administratrix, up to this date, and having delivered into  
46. Court all evidences of property, papers, money and choses in action (with  
her expenses) belonging to said estate : It is ordered by the Court that  
said Administratrix be discharged from further exercise of her office, as  
such Administratrix."

Defendants then aver : That after her resignation and discharge, the  
Complainant was appointed Administrator *de bonis non* ; that his author-  
ity extended to the goods and chattels of the intestate unadministered  
and to debts due and unpaid ; that he has no power or authority to call  
on the former Administratrix to account for any part of the estate sold,  
converted or wasted, and that he is not the proper party to be Complain-  
ant in this case.

- Resuming the form of an answer, it is admitted that Complainant was  
appointed Administrator as alleged.

47. That Bloomer died largely in debt, as charged ; that McFarland owed  
Bloomer at the time of his death ; that said Semele did, as Administra-  
trix, by the direction and under authority of the Probate Court, compro-  
mise and settle with McFarland ; that said compromise and settlement  
was reported to and accounted for to said County Court, in the due ad-  
ministration of said estate.



Page of Rec.

48. That McFarland and wife did convey said land to her, by the name of "Semele Bloomer, Administratrix of the estate of James Bloomer, dec'd;" that this was merely a description of the person; that the deed was made to convey the land to her; that she did not take the title in trust for the creditors, but as and for her own property; that she was not chosen or selected by any one for any purpose, as stated, nor did she take it except as a purchaser, for her own use, and not in trust, and she claims the premises as her own—denying all trusts. Admits that she took the title
49. from McFarland, under said deed; and that she compromised and settled with McFarland, as she had a right to; and that she has fully accounted to the Probate Court for her acts and doings, in making the compromise and settlement; and that on a full settlement, she was discharged and released, and her acts and settlements approved and affirmed.

Denies that the title was taken in trust, or that the consideration for said conveyance was wholly furnished by James Bloomer in his lifetime, or that said Semele was a naked trustee for the estate and creditors.

- That there was a Deed of Trust from McFarland *et ux* to deceased, embracing the above and other lands and premises; that said Semele settled and compromised with McFarland, and released and discharged the Deed of Trust; that this was done by the advice of the Judge of Probate; that the settlement and compromise was approved by the Court,
50. and the proceeds duly accounted for to said Court by said Semele.

That no title passed to said estate by said Trust Deed, but said property was sold by the Sheriff of Jo Daviess, under a judgment and execution having a prior lien to the Deed of Trust; and under said sale, Henry Corwith took a certificate of purchase as the purchaser, and duly assigned the same to said Semele for a good and sufficient consideration; and that the same was never redeemed by McFarland or any judgment creditor, by means whereof and under the deed from McFarland *et ux*, a title was vested in said Semele.

- That in October, 1851, said Semele became desirous of resigning her office of Administratrix. At the time of the death of Bloomer, he was largely engaged in the lumber business in Wisconsin, owned real and personal estate worth some \$60,000 with his partner, Daniel F. Smith, now surviving, and some \$45,000 in personal property in St Louis, which had
51. been administered on in Missouri by one Edwards. All the Wisconsin property was in the hands of said partner. Under the laws of Wisconsin and Missouri, she was entitled to dower in said real and personal property.

Bloomer died seized of valuable real estate in Jo Daviess County, in which she had a Right of Dower. Wishing to resign and be discharged, and the surviving partner and the creditors wishing to obtain her Dower interest, so that the property might be sold not subject to it, she executed the deed set forth as an exhibit.

- Denies expressly, that the land described in the Bill was intended to be
52. embraced in the transfer, but the same was then, and is now, held as her absolute property, as a consideration in part for her release of her interest in the estate. And such was the expectation and understanding.

That by reason of said conveyance by said Semele, and by virtue of the decree of the Court for the sale by the Administrator, the lands of which Bloomer died seized were sold discharged of Dower, and the pro-



Page of Rec. ceeds of the sale divided among the creditors; and that it would be a fraud upon the purchaser and upon said Semele to grant the relief Complainant asks for.

Admits that it was the intention of Semele to vest all the interest she had in the estate of Bloomer in the grantees mentioned in her deed.

53. Expressly denies, that it was intended to convey her interest in the land described in the Bill.

Affirms that the deed did pass her Dower and all other interest she had in the estate of her husband. Assuming the form of a plea, it is set up by it, that the Complainant, as Administrator *de bonis non*, filed his petition for a sale of the lands of which Bloomer died seized, to pay debts.

54. On the hearing of the Administrator's petition to sell, the Administrator offered in evidence the deed of said Semele, to show that she had released the Dower. The Court ordered a sale of the lands including the Dower interest so released; and that the Administrator did sell and convey the land discharged of Dower; that the Administrator received the proceeds of the sales of said real estate and accounted to the Probate therefor. The money arising from the sale, including the Dower interest, was distributed among the creditors of the estate who had proved up their demands. Defendants plead these proceedings, and that Complainant is estopped from maintaining his Bill.

55. The Answer then denies, that the estate never derived any benefit from the deed; and states that the property sold for more on account of the Dower having been released than it would otherwise have done; and insists that the Dower interest in a large and valuable real estate did pass and the creditors of the estate had the benefit of it.

It is admitted, that no interest in the land in controversy passed, and it is claimed that there was no intention that it should.

It is admitted that said estate continues largely indebted; that the personal property may have been sold; that the order to sell real estate was obtained. That the property of said Semele was included; and denied that the proceedings divested her of any interest in the land which she owned in her own rights, not conveyed by said release.

57. That the land in controversy and various other lots and tracts were sold; that Alexander Frear purchased largely at the sale, and among other property bought that in controversy, for about \$3,500, and took a deed for it; that the amount of Frear's purchase was paid to the Complainant and by him distributed among the creditors of the estate.

58. It is also admitted, that Frear got no title to the land in controversy; that the Administrator and Frear supposed Frear got an interest; that the Complainant may be now satisfied that he had no authority, and that Frear got no title. Insists that the Administrator is not the proper party to bring the Bill.

59. Marriage with Short admitted, and general traverse in relation to matters in Bill not admitted or denied.

60. It is alleged that one Sherman obtained a judgment against Frear for \$10,133.33; that execution had been issued and levied on the lands in the Bill described; and that they have been advertised for sale under the execution; and that Frear has since conveyed the land to Sherman.



**Page of Rec.** To this pleading, a general replication, treating it as an answer, is filed.

61. There is also a replication to this plea, which is that it is no answer to the Bill and no defence thereto; and that Complainant has the right to prosecute his suit.
65. The decree is that the N. E. qr. of Sec. 2. T. 28, R. 1, was taken by said Semele, while acting as Administratrix, in payment of the McFarland debt to deceased, and conveyed to her by McFarland in payment thereof;
66. that she is a naked trustee; *that she has never accounted to the Court of Probate, nor to the estate, for the McFarland debt, with which the land was purchased*; that Bloomer's estate is insolvent; that the title and interest of said Semele Short, S. C. March, Daniel F. Smith, James Carter, Nathan Corwith, John Anderson, William H. Snyder and James F. Bloomer, and the other Defendants in said Bill, excepting the said Alexander Frear, in and to said lands, be sold by said James L. Johnson in the same manner and upon the same terms, etc., as in case of Administrators' sales, and that Johnson is authorized and empowered to make good and sufficient deeds, and to apply the proceeds of the sale to the payment of
67. the debts of the estate according to law, and make report of his actings and doings in relation to said sale to the County Court. That said Semele Short and Frederick H. Short be debarred from exercising any control over said lands by virtue of said deed from McFarland; that she took the lands as a naked trustee for the benefit of the estate; that having claimed the land in her own right, and having failed to perform her duty as trustee, that she be removed and discharged from acting further as such; that the Complainant proceed to sell and convert said trust estate into money, as herein before decreed.

That this Bill be dismissed as to said Alexander Frear.

68. THE BILL OF EXCEPTIONS contains the deed from McFarland to Semele
72. Bloomer—the Administrator's deed to Alexander Frear—the deed or
78. release from Semele Bloomer to Daniel F. Smith and others—the Deed
80. of Trust from Hugh McFarland to James Bloomer—the deposition of
92. Hugh McFarland, who testifies that he owed Bloomer at the time of his decease between \$3.000 and \$5.000; that he has paid said indebtedness in full. In the fall of 1849, the debt was about \$5.000, and a Trust Deed
93. was given to secure it in October, 1849. A portion of the debt had been paid at the time of Bloomer's death—cannot tell exactly how much. After the death of Bloomer, I settled with his widow as Administratrix; and agreed to convey to the Administratrix, or the legal representatives of Bloomer, the land in said deed, situated in Jo Daviess County. Also,
94. to quit-claim his interest to the land described in the Deed of Trust, as situated in Iowa County, Wisconsin, and to pay \$450. She, as the representative of Bloomer, agreed to relinquish and satisfy all claims and demands growing out of the business between witness and Bloomer, or out of or created by the Deed of Trust; and, also, to satisfy all claims on the land described in the Deed of Trust, situated in Columbia County, Wisconsin, known as the Van Winter farm. Witness executed deeds for the lands mentioned to Semele Bloomer, and took from her an agreement to release him and the Van Winter farm upon the payment of the \$450.
9. This money witness paid to D. F. Smith, Bloomer's partner, and took from him a receipt in full and a release or conveyance of said Van Winter farm.



*Page of Rec.* Made the conveyance mentioned in Bill, as Exhibit A, for the consideration as already explained. This deed, that of the land in Iowa County, Wisconsin, and the \$450, were in full discharge of the debt due from him  
 96. to Bloomer deceased, which had accrued before his death.

Witness made the Deed of Trust; at this time he owed Bloomer and some other persons. Bloomer assumed his debts to the others, and to secure his debt to Bloomer, so incurred, the Deed of Trust was given.

The property in dispute was encumbered by a judgment obtained by Henry Corwith against witness, and was sold on execution prior to the date of the deed from him to said Semele. Bloomer redeemed from the sale and charged him the amount of the redemption money, and this was included in the amounts for which the witness finally settled with the estate of Bloomer.

104. *Richard Seal* testified that he was Clerk of the Probate Court, and that the estate of Bloomer was largely insolvent, there being some \$21,000 yet remaining unpaid.

This was all the evidence on the part of the Complainant.

105. The Defendants introduced the inventory of Bloomer's estate, which contains to the amount of about \$20,000 real estate, \$10,800 chattels, \$9,723.99 debts due the deceased, etc.—some stated to be good, and some  
 106. doubtful, and some as accounts on St. Louis concern. That part of it in relation to the land in controversy is as follows: "The North fractional quarter of Section 2, in Town 28, Range 1 West, containing one hundred and fifty-four and five one-hundredths acres, purchased at Sheriff's sale May 1, 1850, by Henry Corwith. Certificate assigned, August 28, 1851. On the same land there is held by the estate a Deed of Trust, given by H. McFarland, October 22d, 1849, to secure the fulfillment of a certain contract and the payment of certain advances made said McFarland, \$3,000."

123. The Defendants then gave in evidence the order and judgment of the Probate Court, a copy of which may be found on page third of this Abstract.

The Defendants then introduced all the reports of said Semele in regard to her administration, as Administratrix of said estate. Then follow the administration accounts of said Administratrix—one under date of Nov.  
 124. 3d, 1851, and two of the date of Dec. 23d, 1851. It appears from these  
 125. accounts that the Administratrix has received in addition to the amount  
 126. realized from the sale of the personal property, of persons indebted to said estate, \$3,084.59, but it does not appear from whom; and she is charged by the Court with it. There is the following statement at the end of her account of Dec. 23d, 1851: "The undersigned Administratrix of the estate of James Bloomer, deceased, would respectfully submit the above statement, by which it will appear, that on the 22d of December, the total amount of assets that came into her hands was \$15,236 21."



*Page of Rec.* That by the above statement it will appear she has made payments by order of Court, and for which she has filed the vouchers amounting to.....\$9.088 19  
 Goods on hand, and ready to be delivered to the Court..... 622 95  
 Notes, debts and accounts uncollected, ready to be delivered to the Court..... 5.525 07

\$15.236 21

All of which is most respectfully submitted, and she prays she may be released and discharged from the further administration of said estate.

SEMELE BLOOMER, Administratrix,

GALENA, Dec. 23, 1851.

By J. J. CRUIKSHANK, Att'y.

The following order of the Court was also introduced in evidence, under date of November 8th, 1851 :

127. In the matter of the Estate of } *Administratrix's Report.*  
 JAMES BLOOMER, dec'd. }

Now, at this day, the Administratrix of said estate makes report of her actings and doings in said estate, with vouchers accompanying said report in full. It is ordered that said report be accepted and filed, and that she be credited with the same, as per vouchers, amounting to \$889.47, to said estate ; and at the same time, make a report that she has received the sum of \$3.084.59 of divers persons indebted to said estate, in addition to the sale bill. It is ordered that said Administratrix be charged with said sum of \$3.084.59 in addition to said estate, as per report.

Also, the following order, under date of December 22, 1851 :

- In the matter of the Estate of } *Order of Distribution.*  
 JAMES BLOOMER, dec'd. }

This order reciting that Administratrix has reported at the late term \$3.084.59 cash on hand, directs her to pay the creditors whose claims have been allowed, thirty per cent. of the claims so allowed. Complainant objected to these reports, and the order of the Court discharged her. Objection overruled.

129. The petition of James L. Johnson, Administrator *de bonis non*, to sell real estate to pay debts, is introduced in evidence.

132. The petition alleges a deficit of personal assets—a large amount of debts still due. States that Bloomer died seized of real estate. Several other parcels of real estate and the land in controversy are described in the petition as land of which Bloomer died seized. It is also alleged in the petition, that Semele Bloomer executed the deed to Daniel F. Smith *et al*, and the deed is made an exhibit ; and it is alleged that thereby she relinquished and quit-claimed, and forever discharged the estate from all her claims, demands and Right of Dower, to all the lands of which Bloomer died seized ; and that she does not claim any interest either as Dower or otherwise.



*Page of Rec.* The order of sale by the Court was then introduced. All the lands in  
 140. the petition described, or so much thereof as may be necessary to pay  
 the debts of said James Bloomer, are ordered to be sold. There is no  
 allusion to the Right of Dower of said Semele in the order.

142. The report of sale was then introduced. Some of the lands were sold  
 Barrows and some to Alexander Frear. Frear bought several pieces, and  
 among them the land in controversy, viz: the N. E. fr. qr. Sec, 2, T. 28,

143. R. 1.

The Administrator's accounts, or reports of Johnson, Administrator, to  
 to the Probate Court, and the order of distribution of the Court, showing  
 the distribution of the proceeds of the sale of real estate, including the  
 \$3.400 bid by Frear for the land in controversy, viz, said N. E. fr. qr. of  
 Sec. 2, T. 28, R. 1, etc., were introduced in evidence.

This being all the evidence, the Court rendered the decree heretofore  
 mentioned. (See page sixth of this Abstract.)

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#### ERRORS ASSIGNED.

1st. The Court erred in rendering the decree for the Complainant.

2d. The Court erred in not dismissing the Bill as to Plaintiffs in error.

3d. The Court erred in finding against the Plea, setting up the adjudication, settlement and discharge of the Administratrix, by the Probate Court.

4th. The Court erred in finding against the Plea, setting up the order of the Circuit Court, to sell the property in dispute. The sale and distribution of the proceeds to the creditors, by the Complainant.

5th. The equitable interest of the estate, if any, passed to Frear, and he should have been the Complainant, not the Administrator, Johnson.

6th. The decree of the Probate Court discharging said Semele on her settlement and resignation, should have been held conclusive that she had accounted for the McFarland debt.

LELAND & LELAND AND M. Y. JOHNSON,  
*For Plaintiffs in Error.*



# 10

## POINTS AND AUTHORITIES.

### I.

The Probate Court had jurisdiction to make the settlement with the Administratrix, and discharge her.

The Record of the Probate Court, showing a final settlement, and accounting *in full* for everything in her hands, as Administratrix, was conclusive on the parties in this suit, until reversed.

12 Ills. R., 173. 23 Miss., (1 Cush.,) 189 and 195.

Where the judgment of a Court, having jurisdiction, is offered in evidence, its correctness is presumed as to all the facts which appear of record.

9 Geo. R., 117, 244, 362. 18 Geo. R., 526.

1 Seldon, N. Y., 497.

3 Ohio R., (N. S.), 494. 4 Ohio R., (N. S.), 508.

The Plea filed was a full answer to the Complainant's Bill, and if proved, was conclusive on the Complainant, in this suit.

The judgment of the Probate Court, in the adjudication, settlement, and discharge of an Administratrix *is, as a plea, a bar*, and as evidence, conclusive between the parties and privies, unless appealed from.

Wales vs. Lyons, 2 Mich., (Gills.,) 276.

On the Bill filed by Complainant, the Circuit Court had no power to go behind the adjudication of the Probate Court. *It was not open for examination in this proceeding.*

3 Gil. R., 626. 18 Georgia R., 346.

This Bill is not filed for an account, or to re-examine the settlement and adjudication of the Probate Court, on the ground of fraud, accident or mistake. But the Decree of the Circuit Court, says: "*She has never accounted to the Probate Court, nor to the Estate for the McFarland debt, with which the land was purchased.*" When her Inventory shows she returned it to the Probate Court, as a Deed of Trust against the land in dispute, to secure a debt of \$3,000 due the estate from McFarland.

(See Inventory on page 106 of Record.)

The judgment of the Probate Court, discharging her, says: "*Having made and returned a complete settlement of all matters in her hands, as such Administratrix, up to date, and having delivered into Court all evidences of property, papers, money and choses in action (with her expenses) belonging to said Estate.*" It is ordered that she be discharged, etc.

Here the matter was directly before the Probate Court for adjudication, reported as part of the assets of the Estate, and on a "*complete settlement of all matters in her hands as Administratrix.*" The Court having the jurisdiction, finds she has so accounted and surrendered up everything, and discharges her.

Searls vs. Scott, 14 S. & M., 94.

Stevenson vs. Phillips, 1 N. J., 70.

This judgment of the Probate Court we insist is conclusive, and the Plea setting it up is a bar.



## II

The judgment of the Probate Court, discharging the Administratrix, implies it was made on proper evidence, and that every prerequisite, to entitle her to her discharge, has been performed, and is conclusive unless attacked for fraud.

Stubblefield vs. McRaven, 5 S. & M., 130.

The Circuit Court could not re-examine and adjudicate on the settlement made with the Probate Court, under the Bill filed, the settlement was not before the Court. The Court was not authorized to find the *facts it did*—without a full examination of all the matters before the Probate Court—on a Bill filed for that purpose.

A question fully tried at law, must be regarded as *res adjudicata*, not to be reviewed in Chancery, without an allegation of fraud, in obtaining the judgment.

Triplett vs. Gill, 7, J. J. Mar., 432.

## III.

The Bill alleges on page 12 of Record—

That all the real and personal property has been applied to the payment of debts, "*except the lands in dispute, which belong in equity to the creditors, and should be sold, and the proceeds applied to pay their debts.*" While the plea sets up the order of Court, on the application of the Complainant to sell the lands in dispute. *The sale and distribution by him of the proceeds to the creditors of the Estate.*

This, we insist, is an estoppel in equity, and should have been found for Defendants.

1 Gil. R., 104. Steph. Pl., 219. 8 Missouri R., 188.  
3 A. K. Marshall, 280. Gould's Pl., 46, 343.

The Record and Decree virtually makes the Complainant say: "I have sold the land for its value to Frear, under the order of the Circuit Court, made him an Administrator's deed, transferring the interest Bloomer's estate had in it; and have distributed the money to the creditors, under an order of the Probate Court. I was mistaken; I now ask the Court to let me sell and distribute the proceeds again to the creditors. As to Frear, he is dismissed with his Administrator's deed—there is no decree against him. He acquired nothing under the sale for his \$3,400. The creditors were not entitled to the money, so paid them. I now ask, *as I am better informed*, to sell the land again and distribute the proceeds, (not to pay Frear,) but to the creditors."

This Administrator, at least, looks to the *interest* of these creditors, if not to the rights of others.

## III.

Whether the proceeds of the land were accounted *for or not*, by the Administratrix, on the settlement with the Probate Court. The land was sold by Complainant, for its value, under the order of the Circuit Court, and the proceeds distributed to the creditors. The estate has received the benefit of it, and has no right to complain.

2 Gil. R., 414.



Can the Court say from the Record, it has not been accounted for. What *item* was allowed to the Administratrix on the settlement with the Probate Court? Here was a surviving partner to be consulted—a Dower interest relinquished—an allowance to the widow—with expenses of administration to be passed on.

We insist, as shown by the evidence, that the McFarland debt was fully accounted for by the Administratrix in the settlement with the Probate Court.

It was inventoried as a debt due the estate from McFarland, secured by a Deed of Trust.

It was satisfied and discharged, on McFarland's deeding to her the land in dispute and the Iowa County land, and his paying to Smith, the surviving partner, \$450. Then it was assets, received by the Administratrix. How was it accounted for?

In the order of the Probate Court, (on page eight of Abstract,) under date of November 8th, 1851, she makes a full report, and returns vouchers into Court for \$889.47, as paid by her, which are allowed. And also reports \$3.084.49 as collected by her in addition to the sale bill; this is charged to her. On the 22d of December, 1851, the Court orders a distribution of this money, and on the next day, the 23d of December, she makes a final report, and *on a full and complete settlement of everything*, she is discharged. How stands her account then?

(See final Report, on page eight of Abstract.)

|                                                       |                      |
|-------------------------------------------------------|----------------------|
| "Whole amount of assets that came into her hands..... | \$15.236 21          |
| "Paid by order of Court, on vouchers returned....     | \$9.088 19           |
| "Goods surrendered to the Court.....                  | 622 95               |
| "Notes and debts uncollected, returned to Court..     | 5.525 07 \$15.236 21 |

When the McFarland debt was paid, it was assets in her hands, and embraced in the above report, which was before the Court when the settlement was made.

Before the judgment of the Probate Court will be reversed, the Court will examine the whole settlement, (which is not before the Court.) A single item of an Administratrix account cannot be impeached and singled out as the foundation of a suit. It must be a settlement of the whole subject.

Ward vs. Turner, 7 Ired. R.

#### IV.

The Administratrix was the widow of deceased, and as such entitled to Dower in the personal property. It was the duty of the Probate Court, on making settlement, to make her a proper allowance. The whole matter was directly before the Court, with the McFarland debt returned as assets of the estate; the difference between the indebtedness of McFarland and the price of the land paid to the surviving partner. It is not probable, with the Court, a surviving partner and creditors, all interested, this item would be overlooked, particularly when the judgment says she has fully accounted for everything in her hands as Administratrix.



## 13

Where an Administrator has failed to return an inventory, or where he has converted property of an estate to his own use, he is liable on his bond; equity will not interfere in such cases.

Edmundson vs. Roberts, 2 How. (Miss.) 822.

If an Administrator has received payment of a debt due the estate in lands or lumber, and has accounted for the *debt* to the estate, on a full settlement with the Probate Court, an Administrator *de bonis non*, cannot pursue the property in her hands; heirs or creditors might on a proper case.

## V.

An Administrator *de bonis non*, represents the estate not administrated. He cannot call on a former Administrator to account for any part of the estate sold, converted, or wasted by him—heirs and creditors may.

1 Gill. & L., 270. Neale vs. Hagthorpe, 3 Bland., 551.

Rowan vs. Kirkpatrick, 14 Ills., 1. Turney vs. Newhall, 14 Ills., 338.

## VI.

The Complainant has no interest. He is not the party to bring this suit. The Bill should be dismissed.

The Record shows she released her Dower in all the lands belonging to the estate. The Complainant, as Administrator *de bonis non*, asked the Court to sell the lands divested of her Dower; sold not only what the estate had, but sells the lands in dispute, and distributes the proceeds. Then turns around, and not only repudiates his own acts, but undertakes to defeat his own grantee by revoking his own deed. And all this, that he may again sell and distribute the proceeds to the creditors. Certainly, he should be a favorite with them.

This Decree is rendered on the hypothesis that the Defendants were bound to show—outside of the judgment of the Probate Court—that the McFarland debt was included in the settlement. We insist the judgment of the Probate Court is our shield until fraud is shown in obtaining it—it is conclusive.



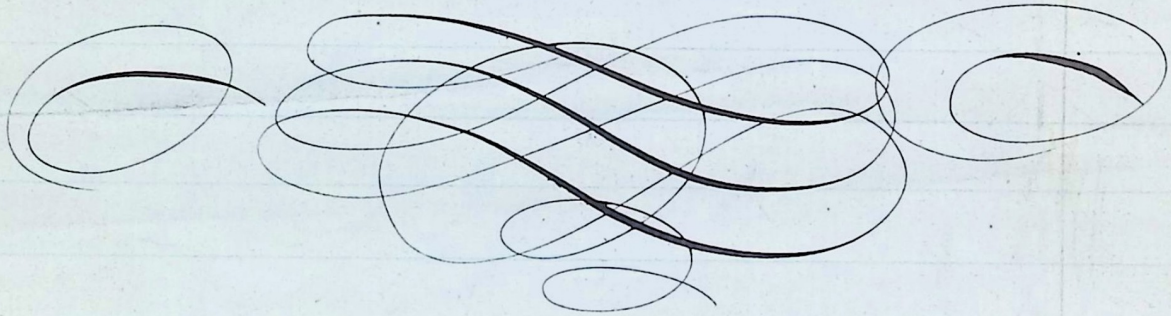
<sup>119</sup>  
Semele Short et al.  
vs.  
James L. Johnson  
Adm'r &c -

Abstract, & brief  
of papers in Error

Filed April 2<sup>nd</sup> 1861  
L. Leland  
Clerk -



James L Johnson Adm'r  
of Est. of James Bloomer dec'd  
Suzelle Short lat<sup>ms</sup> S Bloomer  
• Frederick H Short et al





State of Illinois  
So Davie County  
14th Judicial Circuit

Plens in the Circuit  
Court - begun and held  
within and for the County of So Davie  
aforesaid on the third Monday in  
the month of May A.D. 1860 before the  
Honorable Benjamin R. Sheldon sole Judge  
of the said Fourteenth Judicial  
Circuit of the State of Illinois  
W.D. Meacham Prosecuting Attorney  
J. H. Conlee Sheriff  
Wm R. Rowley Clerk.

James S. Johnson Adm<sup>r</sup>  
of Estate of Jas Bloomer dec<sup>d</sup>.

vs  
Semele Short

Fredrick H. Short et al

Chancery

Be it remem-  
bered that

heretofore the Complainant by his  
solicitor filed in the office of the  
Clerk of the Circuit Court in and  
for said County his Bill of Complaint  
which is in the words and figures  
following to wit:



To the Honorable Benjamin R. Sheldon  
Judge of the Circuit Court in and for  
the county of So Davie in the State of  
Illinois - In Chancery sitting

p 2

Humbly complaining unto your Honor  
your Oreator James L. Johnson of the county  
& State aforesaid shews that on or about 24<sup>th</sup>  
day of November A.D. 1850 James Bloomer  
then of said county of So Davie departed  
this life intestate and that after his said  
decease to wit on the 30<sup>th</sup> day of November  
A.D. 1850 Lemelle Bloomer <sup>now Lemelle Short</sup> his surviving  
widow did take out letters of administration  
upon his estate in due form of law in said  
county & entered upon the duties of administering  
upon said estate of said James Bloomer  
deceased & continued to act as administratrix  
of said estate until the 23<sup>rd</sup> day of December  
A.D. 1851 when she resigned her said  
office of administratrix of said estate &  
which said resignation of said Lemelle Bloomer  
<sup>now Lemelle Short</sup> was accepted by the County Court of said county  
on the said 23<sup>rd</sup> day of December A.D. 1851

And your Oreator further shews that after  
the resignation of the said Lemelle Bloomer <sup>now Lemelle Short</sup> as  
aforesaid To wit on the 23<sup>rd</sup> day of February  
A.D. 1852 he your Oreator was by the said  
County Court duly appointed Administrator

Amended in Red Ink



de bonis non of said estate of said James Bloomer dece<sup>d</sup> and as the successor of said Lemuel Bloomer, <sup>now Lemuel Short</sup> and that he immediately entered upon the discharge of his duties as such administrator and has ever since continued to be and now is the administrator of said Estate

And your Orator further shows that the said James Bloomer at the time of his said decease was largely indebted to the amount of about Forty thousand Dollars as appears by a reference to the Records of the County Court of said County of So Daviels to which your orator refers & prays to make the same a part of this Bill whenever it may be necessary so to do - and that the greater part of said indebtedness is still due & unpaid & that said estate is insolvent and utterly insufficient to pay the said debts or even one fourth part of the same - That said Estate is still indebted to S. C. March of the City & State of New York in about the sum of thirty six thousand Dollars which is due & unpaid & which comprises most of the said indebtedness -

And your Orator further shows that at the time of the decease of said James Bloomer one Hugh McFarlane of the County of Columbia in the State of Wisconsin was indebted to the said James Bloomer in a



4

large sum of money being and remaining  
 due and unpaid by & from said M<sup>c</sup> Farlane  
 and said Semele Bloomer <sup>now Semele Short</sup> thereafter to wit  
 on the nineteenth day of April A.D. 1851  
 then acting as the Administratrix of the Estate  
 of said James Bloomer deceased did make a  
 compromise & settlement with the said Hugh  
 M<sup>c</sup> Farlane of the said indebtedness so due &  
 unpaid by him as aforesaid to the said Estate  
 And upon said compromise & settlement said  
 M<sup>c</sup> Farlane did then & there agree with said  
 Administratrix to convey the lands and property  
 hereinafter described to the said Semele Bloomer  
<sup>now Semele Short</sup>  
 Administratrix as aforesaid in full payment -  
 satisfaction & discharge of his said indebted-  
 ness to said Estate - And said Semele Bloomer  
<sup>now Semele Short</sup>  
 then & there acting as the administratrix of  
 said Estate did agree with said M<sup>c</sup> Farlane  
 to take & receive said lands & property in  
 payment satisfaction & discharge of said  
 debt of said M<sup>c</sup> Farlane to said Estate  
 And it being necessary that some person  
 should be selected & designated to take  
 and hold the legal title to said lands for  
 the benefit of said estate and of the  
 creditors thereof the said Semele Bloomer  
<sup>now Semele Short</sup>  
 was chosen as the most fit and suitable person  
 to take the <sup>said</sup> title she being then the sole and  
 acting administratrix of said Estate -



3  
5 And your orator avers that she was the most proper person from her relations to said estate to take said conveyance of said lands and to execute the trust which said Deed & conveyance imposed upon her -

And your orator further shows that in pursuance of said Agreement the said Hugh McFarlane & Sarah his wife did on the said 19<sup>th</sup> day of April A.D. 1837 for the nominal consideration of Three thousand dollars that being the amount due by said McFarlane to the said Estate as aforesaid grant bargain sell and convey by their Deed of that date all the following described piece or tract of land & situated in said county of Jo Davies & State of Illinois (being the same land and property hereinabove referred to) to wit, The North East quarter of fractional section number two (2) in Township number Twenty Eight (28) North of Range number one West of the 4<sup>th</sup> principal meridian & containing one hundred & fifty four <sup>now Simele Short</sup> acres more or less unto said Simele Bloomer as the administratrix of said estate and which said conveyance was taken by said Simele Bloomer <sup>now Simele Short</sup> in payment of the aforesaid indebtedness of said McFarlane to said Estate as aforesaid & was duly acknowledged & executed according to Law by said Hugh McFarlane & wife & delivered by them <sup>now Simele Short</sup> to said Simele Bloomer & a copy of which said Deed



is hereto annexed & marked "Exhibit A" & prayed  
to be made & taken as a part of this Bill of &  
Complaint

And your orator avers that when said  
Semele Bloomer, <sup>now Semele Short</sup> took the title to said land by  
said conveyance she took the same in Trust for  
the said Estate and the consideration for the  
conveyance of said land was wholly furnished  
by said James Bloomer in his lifetime & that  
said Deed was made in payment of said &  
indebtedness of said M<sup>c</sup> Farlane to said Estate  
as aforesaid and that said Semele Bloomer, <sup>now Semele Short</sup> took  
no beneficial Interest to herself whatever in said  
lands but was merely a naked Trustee without  
any Interest in said Deed & held the title to said  
land for the benefit of said Estate & of the creditors  
thereof -

And your orator further says that long prior  
to the aforesaid Conveyance by the said Hugh M<sup>c</sup>  
Farlane & wife to said Semele Bloomer, <sup>now Semele Short</sup> administration  
as aforesaid & wit on the 22<sup>nd</sup> day of October A.D.  
1849 the said M<sup>c</sup> Farlane then being largely &  
indebted to the said James Bloomer made and  
executed a certain Deed of Trust of said last  
mentioned date by which he conveyed to said  
James Bloomer the said lands & premises above  
described & for the purpose of securing to said  
James the payment of certain sums of money &  
the performance of certain Agreements & undertakings.



therein specified - a copy of which deed of trust  
is hereto annexed & marked "Exhibit B" &  
7 prayed to be taken as a part of this Bill -

And your Orator furthermore states and  
shews that said Deed of Trust was never  
fully paid & satisfied by said Hugh M<sup>c</sup> Farlane  
until said M<sup>c</sup> Farlane & wife conveyed the aforesaid  
land to said Semele Bloomer <sup>now S. Semele Short</sup> administratrix as  
aforesaid by their said Deed of the 19<sup>th</sup> day of April  
A.D. 1851 upon the compromise & settlement  
aforesaid.

And your orator further states that shortly  
after the making of the aforesaid Deed by said  
M<sup>c</sup> Farlane & wife to said Semele Bloomer <sup>now S. Semele Short</sup>,  
she the said Semele became & was desirous of  
resigning the said office of administratrix of said  
Estate and it became necessary that she should  
divest & disconnect herself from all interest in the  
said Estate and for the purpose & with the design  
of freeing herself from all connection with the  
same she did on the fifteenth day of October A.D.  
1851 by her deed of that date duly executed &  
acknowledged grant bargain & sell convey confirm  
relinquish & transfer unto Daniel F. Smith,  
James Carter & N. Corwith (then of the City of  
Galena), William H. Snyder & John S. Anderson  
(then of St. Louis Mo<sup>o</sup>) together with each &  
all of the Creditors of the Estate of James  
Bloomer deceased in proportion to their respective



8 debts against said estate all the right title interest & claim of every name nature kind & degree which she had in & from or in any way growing out of said Estate including her dower in the same for the consideration of Seven thousand Dollars & a copy of which said Deed is hereto annexed and marked "Exhibit C" & prayed to be made & taken as a part of this Bill as fully as if the same were at length incorporated herein

And your Orator further states that the said Lemelle Bloomer <sup>sup. Lemelle Short</sup> having made and delivered the last mentioned Deed for the purpose of divesting herself of all Interest in said Estate and of being prepared to resign her said office of Administratrix did on the 23<sup>rd</sup> day of December A.D. 1851 tender her resignation of said office & which resignation was accepted on said 23<sup>rd</sup> of December by the County Court of said county as hereinbefore set forth -

And your orator further states that it was the intention of the said Lemelle to vest all the Interest she had at the time of making said last mentioned Deed in the said Estate in the various creditors of said Estate & that she intends thereby to forever relinquish all claim or demand which she might have of whatsoever kind & nature in said Estate - But your orator avers that said last mentioned Deed was & is inoperative and void & passed



nothing to any of the Grantees for the reason that  
the grantees are not properly named and described  
9 nor is their interest set out nor any description of  
any particular kind of property set forth in said Deed.

And your orator further states and shews  
that said Estate has never received any benefit  
from said conveyance of said Semele nor has it  
ever received any credits for any amount whatever  
for any of the property conveyed by said Deed from  
any of the creditors of said estate nor is it possible  
from the nature of the case that said Estate should  
be benefited or any of the creditors thereof be benefited  
by means of the said conveyance - owing to the  
situation of the property belonging to said Estate -  
the only Lands which said Semele had any legal  
title to belonging to said estate being the same  
Lands hereinafter before described and which your  
orator insists did not pass by said Deed to said creditors.

And your orator further states that the said  
estate being & continuing largely indebted & all the  
personal property & effects belonging thereto having  
been applied to the payment of said debts your orator  
did at the August term A.D. 1832 of the Circuit  
Court of said Jo Davie's County present a petition  
to said Court as administrator of said Estate  
under & pursuant to the Statute of said State of  
Illinois for the sale of the Real Estate belonging to  
the same for the purpose of paying the debts against the  
same & amongst other lands in said petition he prayed for



a sale of the lands hereinbefore described -

10 And that upon the presentation of said petition such proceedings were thereupon had in said Court that the said Lands therein described were all ordered to be sold by your orator as administrator as aforesaid for the purposes aforesaid as will more fully & at large appear by reference to the Records of the said Circuit Court & to which your orator craves leave to refer whenever it may become necessary so to do -

And that acting as administrator as aforesaid under the said order of said Court your orator did on the 18<sup>th</sup> day of October A. D. 1852 sell the above described land at public sale to one Alexander Frear of the City & State of New York & did make execute & deliver to said Frear a Deed of said lands a copy of which said Deed is hereto annexed & marked "Exhibit D" & prayed to be taken as a part of this Bill -

But your orator avers that at the time of the death of said James Bloomer the said James was not seized of said lands in fee and had no such title in the same as could be sold under the proceedings aforesaid & that by the said sale no title whatever passed to the said purchaser Alexander Frear - that when said petition was presented & when said order & decree of said Circuit Court were made the legal title to said lands was in the said Lemuel Bloomer, <sup>now Sen. of N. York</sup> under the virtue of said Deed from said



11 Hugh M<sup>c</sup> Farlane wife to her but that said land belonged equitably to the said Estate of said James Bloomer and that said Gemele held the legal title to said land as a naked Trustee for the benefit of the creditors of said Estate but had & has no beneficial interest in said lands - that when your orator sold said lands he supposed that he had a right to sell the same as the administrator of said Estate & was so informed by his counsel but that he is now satisfied he was then mistaken & that he had no authority to sell said lands & that his said deed to said Frear is of no avail or effect -

And your orator avers & so states & charges the fact to be that the aforesaid land was purchased from said Hugh M<sup>c</sup> Farlane wife with the funds & moneys of said Estate in the manner & hereinbefore set forth - and that the said Gemele Bloomer, <sup>now Semple Short</sup> did not furnish or pay any part of the consideration money for said land but that said M<sup>c</sup> Farlane being largely indebted to said Estate conveyed the said land to said Semple Bloomer <sup>now Semple Short</sup> as the administratrix of said Estate in full & payment of his said indebtedness & that said Gemele acting as administratrix of said Estate agreed to take and receive said lands from said M<sup>c</sup> Farlane wife & did take & receive the same in full payment satisfaction & discharge of said indebtedness & took & held the said land



still holds the same as a naked Trustee for the said Estate for the benefit of the creditors thereof and that she has not now nor did she ever have any Interest in said lands except as a Trustee as aforesaid -

And your orator further avers that the said Estate is largely insolvent that all the personal & real property belonging to the same has been long since applied to the payment of the debts against said Estate except the said lands above described which said lands belong in Equity to the creditors of said Estate & should be sold & the proceeds applied towards the payment of the said debts against said Estate -

But now so it is may it please your Honor that the said <sup>now Senjell Short</sup> Gemele Bloomer pretends to hold & own the said land & claims the absolute & indefeasible fee simple title to the same under & by virtue of said Deed of Hugh M<sup>c</sup> Farlane wife to her and refuses to release or to sell said land for the benefit of said Estate & to pay the debts against the same and refuses to execute the Trust undertaken & assumed by & reposed in her when she took said conveyance from said M<sup>c</sup> Farlane wife as aforesaid -

By means of which said actings & donings the said Estate is greatly prejudiced & the creditors of the same are prevented from receiving the share



13 of their indebtedness to which they are entitled  
& your orator as administrator of said estate  
is unable to pay any more of said indebtedness  
without a proper sale of the said lands which  
equitably & of right belong to the said Estate -  
and the said estate cannot be closed or settled  
up - all of which actings & doings of said Semele  
<sup>now Semele Short</sup> Bloomer, are contrary to Equity & good conscience  
the only relief against which in the premises can be  
found in a Court of Chancery where matters of this  
nature are properly cognizable & relievable -

And your orator further shews that said  
Semele has since intermarried with & now is the  
wife of one Frederick H. Short since the filing  
of the Bill herein

And your orator prays that the <sup>formerly</sup> said Semele  
<sup>now Semele Short</sup> Bloomer, Daniel F. Smith James Carter  
Nathan Corwith William H. Snyder John  
Anderson Alexander Fear S. Co.  
<sup>& said Frederick H. Short</sup> Mearsh, & all the other creditors of said Estate  
whose names are unknown to your orator together  
with James Frank Bloomer who is an Infant &  
the son & only surviving heir at law of said James  
Bloomer deceased may be all be made parties  
defendant to this Bill of Complaint & that  
process may issue against them in due form  
of law and that they may be required to true &  
perfect answers make to all & singular the matters  
& things & premises herein as fully & particularly as



if the same were here again repeated (their oaths  
14 being expressly waived) and particularly that  
they may state & set forth whether the said  
Semele Bloomer, <sup>now Semele Short</sup> did not take the said land in  
payment & satisfaction of a debt due from said  
McFarlane to said Estate as hereinbefore stated  
& set forth?

And who furnished the consideration for the  
said Deed of said Land from said McFarlane  
& wife to said Semele?

And if said land was not bought with the  
funds of said Estate?

And if said Semele Bloomer, <sup>now Semele Short</sup> furnished any  
part of the said consideration money for said land

And if said Semele in taking said Deed  
did not act as the administratrix of said Estate  
& if she did not take the title to said land in  
trust for said Estate and whether said Land is  
not rightfully & justly the property of said Estate  
- and if said Semele had or has any other interest  
in said land than as a Trustee & if so what  
interest & how did she acquire it & with whose money

Whether the said Estate is not largely  
indebted & insolvent?

Whether there is any property belonging to  
said Estate except the said Land above  
described?

Whether said Estate has ever received any



credits for said land under said Deed from said  
 Gemele Bloomer, <sup>now Gemele Short</sup> to said Daniel F. Smith and  
 others?

Whether the creditors of said Estate  
 ever received any benefit or money under or  
 through said last mentioned Deed?

Whether said Gemele notwithstanding  
 said last mentioned Deed does not claim to  
 own & possess the said land in fee simple absolute?

And the premises considered your orator prays  
 that your Honorable Court may order decree & declare  
 that the said Land is the property of the said Estate  
 - that the said Gemele Bloomer, <sup>now Gemele Short</sup> by said Deed of  
 Hugh M<sup>c</sup> Farlane & wife to her took the title to said  
 land in Trust for the said Estate & for the creditors  
 thereof & that the only interest she has or had then  
 in said land was the Interest of a naked Trustee  
 without any beneficial Interest whatever - that the  
 said conveyance of the 15<sup>th</sup> day of October A.D. 1837  
 by said Gemele to said Daniel F. Smith & others  
 passed no title to the Grantees & that notwithstanding  
 said Deed the legal title to said lands remained  
 in said Gemele Bloomer, <sup>now Gemele Short</sup> as before in trust for said  
 Estate & the creditors thereof But if your Honorable  
 Court shall be of opinion that the title to said  
 land did pass out of said Gemele by her said  
 Deed of said 15<sup>th</sup> October 1837 that then said  
 Land may be declared to be held by the grantees  
 in trust for the creditors of said Estate & that the



16 same be ordered to be sold for the benefit of said creditors in such manner times & upon such terms as to your Honor may seem best -

And also that said Deed from your orator to said Alexander Fear may be held & declared void & of no effect & that nothing passed under said sale & Deed to said Fear.

And that said <sup>now Semele Short</sup> Semele Bloomer may be declared to be a Trustee in regard to said Land & be barred from having or exercising any other or further control over said Lands for her own use or benefit -

And that the said Land may be ordered to be sold & the proceeds applied to the payment of the said indebtedness against said Estate in such manner & proportions as the said creditors rights & Interests may demand -

And that such other & further order & decree may be made and such other relief given as the peculiar nature of the case may require and as to your & Honorable Court may seem meet and to Justice & Equity may appertain

And your orator comes & brings his letters of administration upon said estate into Court in due form of law from which it sufficiently appears that he is the lawful administrator of said Estate &c

James L. Johnson

Douglas & McClellan  
Sols<sup>rs</sup> for Complainant

Administrator of Estate of  
James Bloomer dec<sup>d</sup>  
By Douglass & McClellan  
his Solicitors



"  
Exhibit A"

Hugh McFarlane et ux  
To DEED  
Lemelle Bloomer Adm<sup>r</sup> of James  
Bloomer deceased

This Indenture made  
this nineteenth day of  
April in the year of our

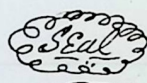
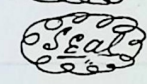
Lord one thousand eight hundred and fifty one  
17 between Hugh McFarlane and Sarah his wife  
of the county of Columbia in the State of  
Wisconsin of the first part and Lemelle Bloomer  
administratrix of James Bloomer deceased of  
Galena Illinois of the second part witnesseth  
that the said parties of the first part for &  
in consideration of the sum of Three thousand  
Dollars lawful money to them in hand paid  
by the said party of the second part the receipt  
whereof is hereby acknowledged have granted  
bargained sold remised released aliened and  
confirmed and by these presents do grant bargain  
sell remise release alien and confirm unto the said  
party of the second part and to her heirs and  
assigns forever all that certain tract or parcel  
of land situate lying and being in the county of  
Jo Davies in the State of Illinois known and  
described as the North East Quarter of fractional  
section number Two 2 in Township ~~number~~ number  
Twenty eight (28) North of Range number one  
(1) West of the fourth principal meridian  
containing One hundred and fifty four acres  
and five hundredths of an acre more or less



18 together with all and singular the heredit-  
aments and appurtenances thereunto belonging  
or in anywise appertaining To have and To  
hold the said premises with the appurtenances  
to the said party of the second part and to her  
heirs and assigns forever And the said Hugh  
M<sup>c</sup> Farlane and Sarah his wife for themselves  
their heirs executors and administrators do  
covenant and agree to with the said party of  
the second part his heirs and assigns that at  
the time of the enrolling and delivery of these  
presents they are lawfully seized in fee of the premises  
above described that they have good right to sell &  
convey the same to the said party of the second  
part that the same are free & clear from all  
incumbrances except a deed of Trust given by said  
Hugh M<sup>c</sup> Farlane to said James Bloomer excepting  
also that if an attachment proceeding in favor of  
Henry Corwith of Galena Illinois on which a  
sale of said land has been made and a certificate  
of purchase issued to said Corwith for the amount  
of his Judgment and costs in said attachment  
and also excepting all tax titles and taxes due by  
virtue of any law of the said State of Illinois  
and that they will warrant and defend the same  
to the said party of the second part her heirs and  
assigns forever against the lawful claims and  
demands of all persons save and except the



Deed of Trust and proceeding in Attachment  
and certificate and tax title and taxes afore &  
mentioned which said incumbrances the said  
19 Hugh M<sup>c</sup> Farlane nor Sarah his nor either  
of them or their legal representatives or the legal  
representatives of either of them shall not in  
any event be bound to pay or discharge or in  
any manner defend against In witness whereof  
the said parties of the first part have hereunto  
set their hands and seals the day and year first  
above written.

Signed sealed and delivered } H. M<sup>c</sup> Farlane   
in presence of. } Sarah M<sup>c</sup> Farlane   
Wm Anthray An<sup>da</sup> Dunn

State of Wisconsin } It is remembered that  
Columbia County } on this twenty first day  
of April A.D. 1857 before me James Delany Jr  
Clerk of the Circuit Court in and for said  
County personally appeared Hugh M<sup>c</sup> Farlane  
and Sarah M<sup>c</sup> Farlane his wife to me known as  
the identical persons who executed the within &  
foregoing deed of conveyance and acknowledged  
that they had executed the same as their free &  
voluntary act and deed for the uses & purposes &  
therein expressed And the said Sarah M<sup>c</sup> Farlane  
wife of the said Hugh M<sup>c</sup> Farlane being by me  
examined separate and apart from her said husband  
declared that she had freely and voluntarily executed



the said deed without any fear or compulsion  
 of her said husband In witness whereof I.  
 20 have hereunto set my hand and affixed the seal of  
 said Court at Fort Winnebago in  
 the said County the day and year  
 above written.



James Delany Jr.

Clerk Circuit Court,

Columbia Co. Wis.

Recorded June 28<sup>th</sup> 1851 at 5 o'clock P.M.

Wm H. Bradley Clk

By E. C. Ripley Dep'ty

## "Exhibit D"

Jas L. Johnson Adm<sup>r</sup>.  
 To } Deed  
 A. Frear }

This Indenture made  
 and entered into this  
 Eighteenth day of October  
 in the year of our Lord one thousand eight  
 hundred and fifty two Between James L. Johnson  
 Administrator of the Estate of James Bloomer  
 deceased late of the county of Jo Davie's and  
 State of Illinois of the first part and Alexander  
 Frear of the City and State of New York of the  
 second part Witnesseth that whereas heretofore  
 to wit on the twenty seventh day of August in  
 the year of our Lord one thousand eight hundred  
 and fifty two as yet of the August term of the



21 Circuit Court A.D. 1852. in and for the County of  
Jo Daviess and State of Illinois on a certain  
petition for the sale of Real Estate filed by the  
said James L. Johnson administrator as aforesaid  
then and there pending in said Court it was ordered  
and decreed by the said Court that sale be made  
of the real estate in the said petition described  
Which said order and decree of the said Circuit  
Court are in the words and figures following to wit  
In the matter of the Petition of James L. Johnson  
Administrator of the Estate } For sale of  
of James Bloomer deceased } Real Estate

Now at this day comes the said James  
L. Johnson administrator as aforesaid by his  
Counsel and he having heretofore filed his petition  
for the sale of the real estate of which the said  
James Bloomer died seized And also proof of notice  
of this application according to law and the abstracts  
from the County Court of Jo Daviess County from  
which it appears that an Inventory appraisement  
Bill and sale bill have been made and filed in  
the office of the Clerk of said County Court  
according to Law and also the personal Estate  
of the said James Bloomer deceased is insufficient  
to pay his just debts and the infant heirs of the  
said James Bloomer deceased by their Guardian  
ad litem Robert H. McLellan Esq<sup>r</sup> having filed  
their answer herein making no objection to the sale  
of said Real Estate and no one appearing to resist



or make objections to the sale of said real estate and the Court having heard and examined the allegations & proof of the said administrator and after due deliberation being satisfied of the truth of the allegations contained in said petition and of the necessity of the sale of the said Real Estate for the purpose of paying the debts of the said James Bloomer deceased doth hereby order and direct that the whole of the real estate described in said petition or so much thereof as may be necessary to pay the debts of said Estate to wit Lots numbered one (1) Two (2) three (3) four (4) Five (5) and six (6) on Bench Street in the City of Galena Also Lot number fifteen (15) in Block number Twelve (12) on High Street in the City of Galena Also Lot number seven (7) in Block sixty seven (67) in the City of Galena: Also Lot number seventy five (75) on Water Street Galena Also the following described Land lying and being in the county of Jo Davie's and all being in the county and State aforesaid to wit being particularly described as the North East Fractional Quarter of section number two (2) in township number twenty eight (28) North range one (1) West of the fourth principal meridian containing One hundred and fifty four  $\frac{53}{100}$  Acres be sold by the said Administrator at public vendue according to the manner and on the condition as prescribed



by law and upon such sale conveyance thereof to make according to law and to make a return of his acts doings and proceedings herein at the next term of the Court And afterwards to wit on the eighteenth day of October A.D. 1852 between the hours of ten o'clock in the forenoon and five o'clock in the afternoon of the same day the premises herein conveyed having been duly advertised as the law directs by publishing for six weeks successively previous to the date of the sale herein described in the Galena Daily Advertiser a newspaper printed in Galena Jo Daviess County aforesaid The time and place of holding said sale the said James L. Johnson administrator as aforesaid at public sale openly sold and struck off to the said Alexander Frear the following described Lots of Land and premises, to wit Lot number seventy five (75) on Water Street in said City of Galena for the sum of nine hundred and ten dollars Also Lot number seven (7) in Block sixty seven (67) in said City for the sum of Six hundred & ten dollars for a more full description of which said Lot number seven reference may be had to the Deed of said Lot to said James Bloomer by John A. Burrichter and wife recorded in the Records office of said Jo Daviess County in Book L of Deeds pages 361 & 362 Also the North half of Lot number fifteen (15) in Block number Twelve (12) on High Street in said City of Galena for the sum of three



hundred and sixty dollars Also the following  
described tract of land in the said County of Jo  
Davies viz. The North East Fractional Quarter  
24 of section number two (2) in Township number  
twenty eight (28) north Range One (1) West of the  
fourth principal meridian and containing One  
hundred and fifty four <sup>53</sup>/<sub>100</sub> Acres for the sum of  
thirty four hundred dollars for a more full and  
particular description of which said tract of land  
reference may be had to the Deed conveying the same  
as recorded in the Records Office for said Jo Davies  
County in Book "N" of Deeds on pages 369.370  
& 371 which said Lots of land were sold as aforesaid  
in separate parcels at public auction to the said  
Frear for the said several sums aforesaid and amounting  
in all to the sum of Five thousand two hundred and  
Eighty dollars said Alexander Frear being the highest  
and best bidder therefor and no person having bid  
more for the said lots of land the same were sold  
to the said Frear as aforesaid And which said Lots  
are the same lots of land mentioned and described  
in the aforesaid order and decree of the said Circuit  
Court To have and to hold the above mentioned  
Lots and tracts of land so sold as aforesaid  
together with all the privileges and appurtenances  
thereof unto him the said Alexander Frear his heirs  
and assigns to his and their benefit and behoof  
forever And I the said James L. Johnson

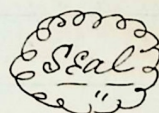


25

administrator as aforesaid do covenant with the  
 said Alexander Fear his heirs and assigns that  
 I have full power and authority as administrator  
 as aforesaid to grant and convey the above described  
 premises in the manner and form aforesaid Now  
 therefore this Indenture witnesseth that the  
 said James L. Johnson administrator as afore-  
 said for and in consideration of the said sum  
 of Five thousand two hundred and Eighty Dollars  
 to him paid by the said Alexander Fear the  
 receipt whereof is hereby acknowledged hath  
 granted bargained and sold and by these presents  
 doth grant bargain sell convey and confirm unto  
 the said Alexander Fear his heirs and assigns  
 forever the above described premises so sold to the  
 said Fear as aforesaid and all of which said  
 premises are situated in the said County of Lo  
 Davie and State of Illinois In witness whereof  
 the said James L. Johnson administrator as  
 aforesaid hath hereunto set his hand and seal  
 the day and year first herein above written.

In presence of  
 Wm. Bostwick }

James L. Johnson Administrator  
 of the Estate of James  
 Bloomer deceased

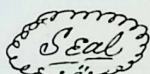


*[Handwritten signature]*



State of Illinois

26 In Daviess county & I the undersigned a Justice  
of the Peace in and for said County do hereby  
certify that James L. Johnson whose signature  
appears to the foregoing Deed of Conveyance  
and who is personally known to me to be the  
identical person who executed the same this day  
appeared before me in person and acknowledged  
he had signed sealed and delivered the same as  
his free act and deed and for the uses and purposes  
therein expressed In witness whereof I have here-  
unto set my name & affixed my seal at Galena  
this 27<sup>th</sup> day of October A.D. 1852.

Wm G. Postwick J. P. 

Recorded October 29<sup>th</sup> 1852 at 10 o'clock AM

Wm St. Bradley Clk

Joy J. L. Charles Depy

"Exhibit C"

This Indenture made and entered into  
on this the fifteenth day of October one  
thousand eight hundred and fifty one between  
Genele Bloomer of the first part of the City  
of Galena & State of Illinois and the following  
named persons of the City of Galena & Saint Louis  
to wit Daniel F. Smith James Carter & N. Corwith



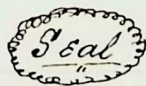
of the City of Galena and William H. Snyder  
and John I. Anderson of St. Louis Mo together  
with each & all of the creditors of the Estate of  
27 James Bloomer deceased as parties of the second  
part witnesseth that for & in consideration of the  
sum of Seven thousand dollars to me in hand  
paid by the said <sup>Daniel</sup> ~~James~~ F. Smith for himself as  
surviving partner of James Bloomer deceased & on  
behalf of the various creditors of the Estate of said  
James Bloomer the receipt of which said sum is  
fully acknowledged before the en sealing of these  
presents I do by these presents grant bargain sell  
convey confirm relinquish transfer & absolutely vest  
in them the said Daniel F. Smith James Carter  
N. Corwith William H. Snyder John I. Anderson  
& all of the respective creditors of the Estate of  
James Bloomer deceased in proportion to their  
respective debts against said estate all my right  
title interest & claim of every name nature kind  
& degree in & from or in any way growing out of said  
estate including my right of dower in & to all &  
singular the lands & tenements of every name &  
kind & wheresoever situated together with all  
interest claim & demand I now have or may hereafter  
have in all & singular the real estate by Dower or  
otherwise with all mortgages deeds of trust bonds  
notes obligations contracts dues & demands that I now  
have or may hereafter be entitled either as dower reversion  
or remainder from or in any way growing out of the



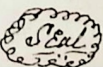
28

Estate either real personal or mixed of my late husband James Bloomer hereby releasing relinquishing & absolutely vesting in said parties of the second part all my interest whether absolute conditional reversionary contingent or in expectancy in & to all and singular of said Estate of James Bloomer deceased together with all claim or demand or right to claim or demand either present or in the future growing out of or connected with said Estate either real or personal To have & to hold all the rights buildings privileges & appurtenances to them the said parties of the second part their heirs and assigns in payment of the debts of said Estate - And the said party of the first part covenants to & with the said parties of the second part that she will warrant & defend the interest hereby sold & transferred from the claims of all & any person or persons claiming by through or under her but in no event will she warrant any title or interest in any of the premises or personalty hereby transferred But only warrants whatever interest she may have & those claiming under or through her In testimony whereof I have hereunto set my hand & seal the day & year above written.

Lemle Bloomer



State of Illinois } Before me the undersigned Justice of the Peace of said County  
 So Daviess County } personally appeared this day Lemle Bloomer to me personally known  
 to be the undersigned identical person and who executed the foregoing instrument  
 of writing & acknowledged to me that she had executed the same freely and  
 voluntarily for the uses & purposes therein mentioned Witness my hand  
 & seal this 16<sup>th</sup> October 1851. William C. Bostwick J.P.





" Exhibit B "

Hugh M<sup>c</sup>Farlane

To — Deed of Trust }  
James Bloomer

29

This Indenture made this  
twenty second day of October in  
the year of our Lord one thousand eight hundred  
and forty nine between Hugh M<sup>c</sup>Farlane of the  
County of Portage and State of Wisconsin of the first  
part & James Bloomer of the county of Jo Davie's  
and State of Illinois of the second part witnesseth  
That the said Hugh M<sup>c</sup>Farlane for and in  
consideration of the special trust & confidence  
reposed in said James Bloomer and of the covenants  
hereinafter mentioned and the sum of Five thousand  
dollars to the said Hugh M<sup>c</sup>Farlane paid by the said  
James Bloomer the receipt whereof is hereby acknowledged  
has granted bargained sold and conveyed and by these  
presents does grant bargain sell & convey unto the said  
James Bloomer all the right title & interest which the  
said Hugh M<sup>c</sup>Farlane has or which he may hereafter  
have in & to the following described lots or parcels of  
land to wit the seventh south half of the North East  
quarter and the north half of the North East quarter  
of section numbered Two (2) in Township N<sup>o</sup> Twenty  
eight north range due West of the 4<sup>th</sup> principal meridian  
situate in the County of Jo Davie's & State of Illinois  
Also the East half of the North West quarter and the  
north East quarter of the south west quarter of section  
N<sup>o</sup> thirty two (32) and the East half of the North  
East quarter and half of the west half of the North West



quarter of section No thirty three (33) all in town  
six north range four East of the fourth principal  
meridian containing 240 acres more or less situate  
in the county of Iowa Wisconsin Also the whole of  
the Von Meter farm (so called) containing three  
hundred forty acres situate in Columbia County  
in the State of Wisconsin purchased of one Van  
Meter by said M<sup>c</sup> Farlane and for a more particular  
description of the same reference can be had to the  
deed from said Van Meter to said M<sup>c</sup> Farlane To  
have and to hold the above described premises together  
with all & singular the improvements right privileges  
& appurtenances thereunto in any wise belonging  
unto the said James Bloomer heirs & assigns for ever.  
In Trust for the uses & purposes hereinafter declared  
and for no other Now know to that whereas the  
said Hugh M<sup>c</sup> Farlane stands & is indebted to the  
said James Bloomer for the sum of Five thousand  
& thirty two dollars and  $\frac{82}{100}$  advanced paid to B.  
H. Campbell at said M<sup>c</sup> Farlanes request and for  
the sum of \$1685  $\frac{56}{100}$  paid A. L. Holmes and  
Bloomer & Holmes And whereas the said Holmes has  
agreed to advanced further to the said M<sup>c</sup> Farlane  
not exceeding five thousand dollars in goods and  
five hundred dollars in cash in consideration whereof  
and of other matters & things the said Hugh M<sup>c</sup> Farlane  
has contracted to deliver to said Bloomer 300,000  
feet of lumber before the first day of June 1850 and

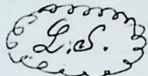


300,000 feet more before the first day of September 1850 and other large & divers amounts of lumber at different places and to do & perform divers other matters & things agreeably to a certain contract in writing bearing even date herewith made & entered into between said McFarlane and Bloomer to which reference is now made in the doing & performing of which contract & according to the terms thereof default is in no particular to be made the said McFarlane now in default so to be made aforesaid in any particular the said Hugh McFarlane authorizes & empowers the said James Bloomer to enter upon and take possession of said premises above described & dispose of the same at Public sale after giving thirty days notice of such sale in any newspaper printed in Galena Illinois to the highest bidder for ready money and to apply the proceeds of said sale to the payment of any debt or damages on the above contract above mentioned and should there be any overplus after paying said debts & damages and all costs & expenses attending or arising from said sale to pay the same to the said Hugh McFarlane and the said James Bloomer upon making sale as aforesaid is hereby authorized & empowered in trust of selling to execute & deliver to the purchaser, or purchasers thereof good & sufficient deeds therefor conveying all the right of the said Hugh McFarlane in as free & ample a manner as the said Hugh McFarlane might or could do; but should the said McFarlane perform said contract in all & particulars with the said James Bloomer according to the tenor thereof then this deed of Trust is to be



void and of no effect otherwise to remain in full force  
& virtue In witness whereof I have hereunto set my hand  
to seal the day & year first above written.

32

H. McFarlane 

Signed sealed & delivered in presence  
of A. L. Holmes, Wm. C. Postwick }

State of Illinois } I the undersigned  
In Daviess County, City of Galena } Notary Public of said  
City in said County do Certify that Hugh McFarlane  
whose signature appears to the foregoing Deed of  
Trust who is personally known to me to be the  
identical person who signed the same this day appeared  
before me and acknowledged that he had signed sealed  
and delivered the same as his free act & deed for the  
uses & purposes therein expressed - In witness whereof  
I have hereunto set my name and affixed my seal at  
Galena this Twenty third day of October A.D. 1849.

Wm. C. Postwick Not. Pub

State of Illinois } In Circuit Court  
In Daviess County } June term A.D. 1857  
In Equity

To the Hon. B. R. Sheldon Judge of said  
Court in Chancery sitting

Humbly complaining unto your Honor your  
orator James L. Johnson administrator de bonis non



of the estate of James Bloomer deceased that since the filing of the original Bill in the case in which your orator is the complainant as administrator as aforesaid & Lemuel Bloomer et al one of the defendants since the filing of said Bill the said Lemuel Bloomer has intermarried with & is now the wife of one Frederick H. Short whom your orator prays may be made a party defendant to this Bill of Complaint & that summons may issue against him & that he may answer the said Bill fully as is prayed in said Bill as to the other of said defendants &c.

R. H. McClellan

Sol. for complainant

Endorsed,

Filed June 8<sup>th</sup> 1854

Wm R. Rowley, clerk

The Affidavit of nonresidence of a part of the Defendants in said cause is in the words and figures following to wit,

State of Illinois

In Circuit Court

So Davis County

To October Term AD 1855

In Chancery

James L. Johnson Administrator of the Estate of  
James Bloomer deceased

v's

Lemuel Bloomer James Frank Bloomer Alexander Frear  
Samuel C. Mearsh Daniel F. Smith James Carter



Nathan Corwith William H. Snyder John  
Anderson & the unknown creditors of James  
Bloomer deceased

34

James L. Johnson the said complainant  
being first duly sworn according to Law says  
that the aforesaid defendants Alexander  
Frear Samuel C. Marsh Daniel F.  
Smith & John Anderson are non residents  
of this State and that there may be  
creditors of said Estate whose names are  
unknown to this affiant.

James L. Johnson

Subscribed & sworn to  
before me this 4<sup>th</sup> day  
of September AD 1855

W B Green clk

Endorsed

Filed Sept. 4<sup>th</sup> 1855

W B Green clk

The summons issued in the above entitled cause  
is in the words & figures following to wit,

State of Illinois

So Daviess County

Set The People of the State of  
of Illinois to the Sheriff of So Daviess County - Greeting  
We command you to summon Lemuel Bloomer James  
Frank Bloomer Alexander Frear Samuel C. Marsh



Daniel F. Smith James Carter Nathan Corwith  
 William H. Snyder & John Anderson to appear  
 before the Circuit Court of Jo Davie's county at the  
 35 next term to be holden at Galena on the third  
 Monday of October next to answer James L. Johnson  
 administrator of the Estate of James Bloomer  
 deceased in a Bill in Chancery And have you  
 then there this writ Witnefs William B. Green clerk  
 of the Circuit Court of Jo Davie's County  
 Illinois and the seal thereof at  
 Galena this 3<sup>rd</sup> day of September  
 AD 1855.



Attest W B Green Clerk  
 upon which is endorsed the following return,  
 'Executed the within summons by delivering a true  
 & correct copy of the same to N. Corwith Sept. 26<sup>th</sup>  
 1855 to W H Snyder Oct. 26<sup>th</sup> 1855 & one to J. Carter  
 October 28<sup>th</sup> 1855 the other parties herein named not  
 found.'

W R Rowley Shff

Jo Davie's County Illinois

And afterwards to wit on the 5<sup>th</sup> day of  
 November AD 1855 as yet of the October Term  
 A.D. 1855 of said Jo Davie's County Circuit  
 Court in the record of the proceedings thereof  
 in said cause appears the following entry to wit  
 James L. Johnson admor

vs

& Bill

Genele Bloomer et al

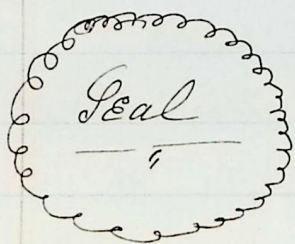
On motion of the complaining  
 by their Solicitor It is ordered by the Court that an



alias summons issue to the defendants Semele  
Bloomer James F. Bloomer Alexander Frear  
Samuel C. Marsh & Daniel F. Smith returnable  
to the next term of this Court and that this cause  
be continued to the next term of this Court -

The Alias summons issued in accordance  
with the above order is in the words & figures  
following to wit,

State of Illinois } The People of the State of Illinois  
So Daviess County } set to the Sheriff of So Daviess County  
Greeting We command you to summon Semele Bloomer  
Jas Frank Bloomer Alex<sup>r</sup> Frear Samuel C. Marsh  
and Daniel F. Smith to appear before the Circuit  
Court of So Daviess County at the next term to be  
holden at Galena on the second monday of March  
next to answer James L. Johnson administrator of  
the estate of James Bloomer deceased in a  
Bill in Chancery And have you then there this  
writ. Witness Geo Me. Mitchell Clerk of the  
Circuit Court of So Daviess County  
Illinois and the seal thereof at Galena  
this 27<sup>th</sup> day of November A.D. 1855  
Attest Geo Me. Mitchell Clerk



upon which is endorsed the following return,

Executed the within summons this 27<sup>th</sup> day of  
November A.D. 1855 by delivering a true & correct  
copy of the same to Semele Bloomer & one to Jas F.  
Bloomer - Alex<sup>r</sup> Frear Jas C. Marsh & Daniel F.



Smith not found within my county -

Wm R. Rowley Shff

So Daviess County Ills.

37

And afterwards to wit on the 10<sup>th</sup> day of March  
A.D. 1856 defendant Semele Bloomer by her  
solicitor files Demurrer to Complainants bill  
which is in the words and figures following  
to wit,

James L. Johnson Adm<sup>r</sup>  
de bonis non of the Estate  
of James Bloomer deceased  
vs  
Semele Bloomer et al

In the Circuit Court  
of So Daviess County  
In Chancery  
March Term 1856

The separate Demurrer of Semele Bloomer  
one of the Defendants to the above entitled cause  
This defendant by protestation not confessing or  
acknowledging all or any of the matters in and by  
said bill set forth and complained of as true in  
manner and form as the same are therein and  
thereby set forth and alleged says she is advised  
that there is no matter or thing in the complainants  
said Bill of Complaint contained good and  
sufficient in Law to call this defendant to  
account in this Honorable Court for the same  
But that there is good cause of demurrer thereto  
and she doth demur thereto accordingly and for  
some of the causes of demurrer shows to the Court



the following - That if said Complainant's Bill of Complaint were true (which this defendant doth in no wise admit) said Bill of Complaint shows that the complainant is not the proper party to bring this suit as administrator de bonis non And because said Bill of Complaint contains not any matter or thing whereon this Court can ground any decree or grant the complainant any relief or assistance against this defendant Wherefore and for divers other errors and defects in the complainant's said Bill of Complaint contained and appearing on the face thereof this defendant doth as aforesaid Demur in Law thereunto and humbly craves the Judgment of this Honorable Court in the premises whether she is compellable or ought to make any answer thereto otherwise than as aforesaid And this defendant humbly prays to be hence dismissed with her costs and charges in this behalf most wrongfully sustained.

Femele Bloomer

by M. Y. Johnson, her  
Solicitor

Endorsed

Filed 10<sup>th</sup> Mch 1856

Geo M. Mitchell clk



39

And afterwards to wit on the 10<sup>th</sup> day of April  
A.D. 1856 as yet of the March Term A.D. 1856  
of said So Davie's County Circuit Court in the  
Record of the proceedings thereof in said cause appears  
the following entry to wit,

James L. Johnson Administrator of  
the estate of Jas. Bloomer dec<sup>d</sup>

vs

Samuel Bloomer Jas. F. Bloomer Alex<sup>r</sup>  
Frear Sam<sup>l</sup> C. March Dan<sup>l</sup> F. Smith James  
Carter Nathan Corwith W<sup>m</sup> H. Snyder John  
Anderson and unknown creditors of Jas Bloomer dec<sup>d</sup>

Bill in  
Chancery

Now at this day come the complainants Solicitor  
& files proof of Publication to Alex<sup>r</sup> Frear S. C.  
March Dan<sup>l</sup> F. Smith & John Anderson and  
also to the unknown heirs (if any) of Jas. Bloomer  
deceased -

The Notice and proof of publication thereof  
referred to in the last recited entry is in the words  
and figures following to wit

State of Illinois  
So Davie's county

In Circuit Court to  
October Term A.D. 1855

James L. Johnson Administrator of the estate of James  
Bloomer deceased vs Samuel Bloomer James Frank  
Bloomer Alexander Frear Samuel C. March Daniel  
F. Smith James Carter Nathan Corwith William H. Snyder  
John Anderson and the unknown creditors of James Bloomer dec<sup>d</sup>.



40 The said complainant James L. Johnson administrator of the estate of James Bloomer deceased by his Solicitor having filed his Bill of Complaint for relief as against the said defendants in the said Circuit Court and also an affidavit of the non residence of four of the said defendants to wit: Alexander Fear Samuel C. Marsh Daniel F. Smith and John Anderson

Now therefore notice is hereby given to the said Alexander Fear Samuel C. Marsh Daniel F. Smith and John Anderson; also to the unknown creditors (if any) of the estate of James Bloomer deceased that unless you appear before the Circuit Court on the first day of the next term thereof to be holden at the Court House in Galena on the third Monday of October next and answer said Bill of Complaint now pending in said Court against you the same will be taken as confessed and a decree entered against you according to the prayer of said Bill.

W. B. Green Clerk

R. H. Mc Gillan Esq  
Compt's Atty.

This is to certify that the notice a copy of which is hereunto annexed was published in the Galena Daily Advertiser a newspaper published in Galena Illinois, four weeks successively the first of which publications was on the Eighth day of September A.D. 1855 and the last on the fourteenth day of



October A.D. 1855.

Galena March 12<sup>th</sup>  
A.D. 1856 }

J. H. Houghton & Co

Publishers of said Paper

Charge for Publication \$ 8 <sup>00</sup>

41

Endorsed

Filed 4<sup>th</sup> April 1856

Geo M. Mitchell clk

And afterwards to wit on the 15<sup>th</sup> day of  
November A.D. 1856 as yet of the October Term  
A.D. 1856 of said Jo Daviess County Circuit Court  
in the Record of the proceedings thereof in said  
cause appears the following entry to wit

Chy 32 James L. Johnson

vs

Emile Bloomer James Frank  
Bloomer Alexander Frear  
Samuel G. Marsh Daniel  
Smith John Anderson Nathan  
Corwith William H. Snyder  
and the unknown heirs of James  
Bloomer deceased

Bill in  
Chancery

Now came on to be heard the demurer of the  
said defendants Emile Bloomer heretofore filed to the  
said Plaintiffs Bill of Complaint which after argument  
is overruled by the Court and on motion of the  
complainants Solicitor M. Y. Johnson is appointed  
Guardian ad litem for James Frank Bloomer an  
infant who is present and excepts the trust and Alexander



42

Fear Samuel C. Marsh Daniel F. Smith  
John Anderson Nathan Corwith Wm H. Snyder  
and the unknown creditors of James Bloomer  
deceased being three times solemnly called came  
not but made default It is thereupon considered  
by the Court that the Bill be taken pro confesso  
as to them and let. Ex parte for hearing and  
the said Gemelle Bloomer asks leave to withdraw  
her demurrer herein which is granted and she is  
ruled to answer in sixty days from the rising  
of this Court—

And afterwards to wit on the fourth day of  
January A.D. one thousand eight hundred and  
fifty seven as yet of the May Term A.D. one  
thousand eight hundred and fifty seven of said  
So Davie's County Circuit Court in the Record of  
the proceedings thereof in said cause appears the  
following entry to wit

Chy. 22

James L. Johnson Adm<sup>r</sup>  
of Estate of James Bloomer dec<sup>d</sup>  
vs

Gemelle Bloomer et al

Bill

Now at this day comes the  
complainant by his solicitor  
and suggests the marriage of Gemelle Bloomer  
to one Frederick H. Short & who by M. G. Johnson  
comes & enters his appearance and leave is granted  
complainant to file supplemental Bill



22  
413 And afterwards to wit on the twenty second day of September A.D. 1857 the said defendants Semele Short and Frederick Short filed in the office of the clerk of said Jo Daviess County Circuit Court their answer which is in the words and figures following to wit,

To the Hon<sup>e</sup> Benjamin R. Sheldon  
Judge of the Circuit Court in and for the  
county of Jo Daviess in the State of Illinois  
In Chancery

The joint and separate answer of Frederick H. Short and Semele Short to the amended Bill of Complainant exhibited against them makes answer thereto saving and reserving all just & proper grounds of exceptions to the many errors uncertainties and inaccuracies in said Bill of Complaint makes answer thereto to so much and such parts as they are advised are material and necessary to answer - Answering States

That it is true as stated in said Bill of Complaint that James Bloomer departed this life about the time named in said Bill of Complaint and that he died intestate & leaving your respondent Semele Bloomer now Semele Short his widow and James Frank Bloomer his son of tender years surviving him

Your respondents further admit as true and state the facts to be that on or about the 30<sup>th</sup> day



44 of November A.D. 1850 Lemelle Bloomer now  
Lemelle Short did take out letters of administration  
on the Estate of James Bloomer deceased in due  
form of Law in Jo Davie's County Illinois  
and qualified as such administratrix and entered  
upon and discharged the duties of said administratrix  
of said Estate until about the 23<sup>rd</sup> day of  
December A.D. 1851 when she resigned her said  
Office as administratrix of said Estate which  
resignation was duly accepted by the County Court  
on the 23<sup>rd</sup> day of December A.D. 1851 and on  
said resignation and before the same was accepted  
by the County Court as aforesaid she fully settled  
up with and accounted for all the goods & chattels  
rights credits and effects of every name and kind  
coming to her hands custody or control as such  
administratrix and on such settlement and  
accounting with the said County Court her resignation  
as administratrix aforesaid was duly accepted by  
said County Court entered and filed of Record  
in said Court and from and after said acceptance  
aforesaid she was fully released and discharged  
from the administration of said estate -

And for a joint and separate plea in this  
behalf the said defendants by protestation not  
confessing or acknowledging all or any of the matters  
or things in the Complainant's Bill of Complaint contained  
to be true in manner and form as therein mentioned and



22  
set forth do plead thereunto and for cause of plea shows  
to the Court the following That said complainant  
should not have and maintain his aforesaid Bill of  
115 Complainit against them Because they say as to so  
much and such parts of said Bill of Complainit  
as seeks relief and discovery they say that heretofore  
and before the said complainant exhibited his  
present Bill of Complainit in this Honorable  
Court To wit on the twenty third day of December  
in the year eighteen hundred and fifty one the  
said defendant Femele Bloomer now Femele Short  
at the December Term of the County Court of  
do Daviess County A.D. 1851 then sitting as a  
Probate Court in and for said County did tender  
her resignation as such Administratrix of the Estate  
of James Bloomer deceased which was accepted by  
said Court as the same appears of Record in said  
Court as follows,

23<sup>rd</sup> Dec. 1851

In the matter of the Estate } Resignation of  
of James Bloomer dec'd. } Administratrix

In this case the Administratrix of the Estate  
having given notice as required by Law in such cases  
as appears satisfactory to the Court tenders her  
resignation as such Administratrix in writing to  
the Court And having made and rendered a complete  
settlement of all matters in her hands as such admin-  
istratrix up to this date and having delivered into  
Court. all evidences of property papers money and



chose in action (with her expenses) belonging to said Estate. It is ordered by the Court that said Administratrix be discharged from further exercise of her office as such Administratrix -

46 And these defendants aver that after the entry of said order and Judgment of the County Court and after the resignation of said Administratrix was accepted and she was discharged as such Administratrix of and from said Estate said Court at the February Term (A.D. 1852) selected and appointed the complainant herein the Administrator de bonis non of the Estate of James Bloomer dec'd, and as such Administrator de bonis non - his power and authority extended to the goods and chattels of the Estate unadministered and to debts due and remaining unpaid. And these defendants further aver that the complainant as Administrator de bonis non has no power and authority to call on a former Administratrix to account for any part of the Estate sold converted or wasted and that said Administrator de bonis non is not the proper party to exhibit this Bill of Complaint in this Hon<sup>e</sup>. Court against these defendants for the matters and things relief and purposes as the said now complainant doth by his present Bill demand and set forth wherefore these defendants doth plead in bar to the said Complainant's present bill and humbly pray the Judgment of this Hon<sup>e</sup>. Court whether it behoves them to make any further or other



24  
47 answer thereto than as aforesaid and pray to be hence  
dismissed with their reasonable costs and charges in  
this behalf most wrongfully sustained

And these respondents further answering other  
parts of said Bill of Complaint admits the fact  
to be true that said Complainant was appointed  
the administrator de bonis non of the Estate  
of said James Bloomer dec<sup>d</sup> as in said Bill set forth

And these respondents further answering admit  
as true that the said James Bloomer at the time of  
his death was largely indebted to various persons in  
about the sums and to the amounts and persons therein  
named and that large amounts remain due and unpaid from  
said Estate

And your respondents further answering admits  
as true that said Hugh Mc Farland was indebted  
to James Bloomer at the time of his decease and  
your respondent as the Administratrix of the Estate  
of James Bloomer dec<sup>d</sup> did compromise and settle  
with said Mc Farland by the direction and under  
the authority of the County Court acting as a  
Probate Court in and for So Davis County and  
these respondents further state in making said  
compromise and settlement with said Mc Farland  
the same was reported to and accounted for to said  
County Court in the due administration of said  
estate by your respondent -

Your respondent further answering States that  
it is true she purchased from said Hugh Mc Farland



48 and wife the lands described in Complainants Bill  
and took a deed therefor about the time named in  
said Bill of Complaint And that said Deed was  
made to your respondent by the name of Lemile  
Bloomer Administratrix of James Bloomer dec<sup>d</sup>. But  
this respondent says that the prefix of administratrix  
was only descriptive of the person when in fact and  
in truth the deed was made to your respondent and  
conveyed to her an Estate in fee in the land and premises  
neither did she take the same in Trust for said  
Estate or the creditors of said Estate but as the  
sole and independant property in fee simple of your  
respondent Neither was she chosen or selected by any  
one or for any purpose to take the title to said land  
as named in said Bill but that she took the same  
as a free and voluntary purchaser for a valuable  
consideration for her own use and benefit and not in Trust  
or for the benefit of any person or persons whatever -

Your respondents admit that the land and  
premises are correctly described and that the Deed  
executed by Hugh Mc Farland and wife is correctly  
and truly set forth as an Exhibit to said Bill of Complaint  
And that she claims said premises under said Deed  
as the owner in fee simple expressly denying all trusts  
and interest of all other persons whatsoever -

Your respondents admit that she took the title  
from Mc Farland and wife under said Deed and that  
she settled and compromised with said Mc Farland



as she had a right to do as Administratrix of said Estate under the order of the County Court and that she fully accounted for to said Court for her acts and  
49 And on such accounting for the same to said Court and on a full settlement she was discharged and released and her acts and settlements approved and affirmed

Your respondents deny that she took the title to said Land in Trust for said Estate or that the consideration for said conveyance was wholly furnished by James Bloomer in his life time or that she took no beneficial interest in said property or that she was a naked Trustee without any interest in said lands and held the same for the benefit of said Estate and of the creditors thereof-

Your respondents admit that there was a Deed of Trust executed by said Mc Farlane and wife as shown in said exhibit embracing the lands set out and described in Complainant's Bill with other lands and premises in the State of Wisconsin to secure an amount of money therein named to James Bloomer in his lifetime And this respondent while acting as Administratrix of said Estate did make a settlement and compromise with said Mc Farlane and did release and discharge said Deed of Trust as she had a right to do And this respondent further states in making said compromise and settlement the same was made by the advice of the Judge of the Probate Court and was accepted and approved by said Court and the proceeds duly accounted for to said



Count by your respondent -

50

Your respondent further states that no title or interest ever passed to said Estate under or by virtue of said Deed of Trust but that said property was sold by the Sheriff of So Daviess County under a Judgment and Execution having a prior lien to the Deed of Trust executed to James Bloomer by McFarlan wife and under said sale Henry Gorwith became the purchaser and took a certificate of purchase therefor and afterward duly assigned and transferred the same to your respondent for a good and sufficient consideration and that the same never was redeemed in pursuance to Law by said McFarlan or any Indemnt creditor by means whereof and under the deed of McFarlan wife and absolute title in said lands and premises vested in your respondent in fee simple -

Your respondents further answering states that in October A.D. 1851 she became desirous of resigning her office as Administratrix of said Estate in So Daviess County And that at the time of the death of James Bloomer he was largely engaged in the Lumbering business in the State of Wisconsin and owned large and valuable real and personal estate in connexion with Daniel F Smith his partner then and now surviving him amounting to some sixty thousand dollars in the State of Wisconsin And some forty five thousand dollars in personal property in the City of St. Louis in the State of Missouri which had been duly administered on in the State of Missouri



by one Edwards And that all of said property and personal effects in Wisconsin was in the hands of the above named partner and survivor And that under the Laws of the State of Wisconsin and Missouri your respondent was entitled to Dower as the widow of James Bloomer dec<sup>d</sup> in the real and personal property belonging to him at his death And your respondent would further state and show to the Court That said James Bloomer died seized and possessed of large and valuable real Estate situated in Jo Daviess County in which your respondent was entitled and held a dower interest under the laws of this State And wishing to resign her administration of said Estate and be fully discharged and released therefrom and at the same time the surviving partner and creditors wishing to secure and extinguish the dower interest of your respondent in the Lands lots and property of said Estate that the same might be sold not subject to Dower but free and unincumbered for the benefit of said Estate on the application of the surviving partner and the creditors most largely interested she was induced and did make and execute the transfer for all her interest and right of Dower in the Lands and property of which James Bloomer died seized And that the transfer and conveyance set forth as an Exhibit is a true and correct copy thereof But this respondent expressly denies that the property named in said Bill of Complaint was intended or embraced in said transfer but the same was then and ever since



held as the absolute property of this respondent  
 And in and by said transfer it was then understood  
 and this respondent released her right of Dower in  
 and to all and singular the property of said Estate  
 with the full understanding expectation and belief  
 on her part that she was the absolute owner of said  
 lands and premises And that was a part of the  
 consideration moving her to release and discharge her  
 right of dower in the lands and premises belonging  
 to said Estate - Your respondent would further state  
 to your Honor that under and by virtue of the last  
 named conveyance herein above referred to the  
 Complainant by the order and Judgment of this  
 Hon<sup>ble</sup> Court obtained an order of sale of all and  
 singular the lands and real estate of which the  
 said James Bloomer died seized and under and  
 by virtue of said Conveyance the same was by the  
 order and Judgment of this Hon<sup>ble</sup> Court sold divested  
 and discharged of right of Dower and the proceeds  
 distributed by the Administrator under the order of  
 the County Court among the various creditors of  
 said estate. Your respondent <sup>insists</sup> it would be a fraud  
 on the rights of purchasers and your respondent  
 to grant the relief asked for by complainants. Will

Your respondent admits that it is true it was her  
 intention to vest all interest she might have in the Estate  
 of James Bloomer to the persons therein named and the  
 other creditors of the Estate under and by said Conveyance



But she expressly denies that it was her intention to vest in either the Estate the persons named or the creditors any of the property land and premises claimed in the Bill of Complainant but the same was no part of the Estate of James Bloomer and did not pass and was not intended to pass or be passed by said Conveyance said Estate never having any interest in the same except a lien by Deed of Trust to secure a debt -

Your respondent further answering denies that said Deed of Conveyance did not pass any interest to the persons therein named - but avows that it did pass the dower interest and all other interest that this respondent had in the Estate of her late husband James Bloomer deceased neither was the same inoperative and void and passed nothing as stated in said Bill of Complaint

And the said defendants for further plea in this behalf by protestation not confessing or acknowledging all or any of the matters and things in the Complainant's said Bill to be true in manner and form as the same are therein declared and stated do plead thereto and for cause of plea says that heretofore and before the said Complainant exhibited his said Bill of Complaint in this Hon<sup>l</sup> Court he the said Complainant as Administrator de bonis non of the Estate of James Bloomer deceased filed his petition in writing in this Hon<sup>l</sup> Court praying said Court to grant an order and decree authorizing him as administrator de bonis non to sell the lands and premises situated in St Davids County of which the said James Bloomer died seized



54  
to pay the debts of said Estate on the hearing  
of said petition the administrator aforesaid  
offered in evidence to the Court said deed of  
Conveyance showing unto your Hon<sup>l</sup> Court that this  
defendant had released and relinquished her right  
of Dower in all the lands belonging to said Estate  
And your Hon<sup>l</sup> Court then and there ordered and  
directed said lands mentioned in said petition to be  
sold by said Administrator to pay the debts against  
said Estate including and selling the Dower interest  
so released and transferred by your defendant And  
these defendants aver that under and by virtue of said  
order and Judgment aforesaid said Administrator did  
sell all and singular the lands and tenements belong-  
ing to said Estate including the Dower Interest of  
this defendant and on making sale as aforesaid said  
Administrator made sale of said premises on the  
18<sup>th</sup> Oct. A.D. 1852 under said order and executed  
deeds of conveyances to the purchasers thereof released  
and discharged of all Dower interest whatsoever And  
these defendants further aver that on making sales  
as aforesaid said Administrator received the proceeds  
thereof and accounted to the County Court of So<sup>u</sup>  
Davies County And the monies so arising from said  
sale including the dower interest of this defendant so  
transferred and released and discharged was in pursuance  
to the order and Judgment of said County Court paid  
out and distributed to the various creditors of said Estate



38  
55 who had proved up their demands And therefore these defendants do plead the said Judgment and proceedings and that said complainant is estopped from having and maintaining his present Bill of Complaint and humbly pray the Judgment of this Court whether it behoves them to make any further answer thereunto than as aforesaid And pray to be dismissed with their reasonable costs & most wrongfully sustained -

And these defendants further answering deny that it is true as stated in said Bill of Complaint that said Estate has never received any benefit from said conveyance, but they aver, that said property sold for a greater price including the Dower interest than it would if said release and discharge had not been executed and the same was distributed among the creditors in proportion to their respective debts And these defendants utterly deny that it is true as stated in said Bill of Complaint that said Estate has never received any credit for any of the property conveyed by said Deed from any of the creditors of the Estate neither is it true that said Estate has not been or any of the creditors thereof benefitted by said conveyance neither is it true that the only lands in which the said Genele (the defendant) had any title to belonging to the Estate were the lands described in said Bill which did not pass by said Deed to said creditors But these defendants insists that the truth and the facts are that her Dower interest passed by said conveyance to large



and valuable parcels of land lots houses & grounds in  
the County of Jo Daviess Illinois and in the State of  
56. Wisconsin of more than Fifteen thousand dollars in  
value and that the same in Jo Daviess County was  
sold under the order of this Court and the proceeds  
went to the Creditors of said Estate if said administrator  
de bonis non has done his duty These defendants  
admit that no interest ever passed neither was it  
intended that any should pass under the Deed of  
Conveyance of the premises claimed & owned by this  
defendant in fee simple as described in said Bill  
of Complaint.

These defendants admit that it is true that  
said Estate continues and is largely indebted and all  
the personal property may have been sold And that said  
administrator did procure an order of Court to sell the  
real Estate belonging to said Estate and the property  
of this defendant was included and that said order  
of sale was granted at the time therein stated all of  
which appears of Record But defendant denies that  
said order of Court divested this defendant of any right  
or interest in said lands as was held and owned by her  
in her own right and not conveyed by the release  
heretofore referred to.

Yours depts further admit that said Administrator  
sold the property described in the Bill of Complaint  
with various other pieces of grounds lots and houses on  
the 18<sup>th</sup> of October 1852 as the Administrator of said



29  
57 Estate And that said Alex<sup>r</sup>. Frear at such  
sale purchased largely of the property belonging  
to said Estate and among other property the lands  
in dispute in this Bill of Complaint named was  
put up at auction by said administrator and the  
interest of the Estate in said lands were sold and the  
same was bid off by said Frear at about thirty five  
hundred dollars and that said Administrator made  
said Frear a deed for the same, And these defendants  
further say that the amount of said purchase by  
Frear was paid to said administrator and reported to  
the Court and by the order of said Court distributed  
to the various creditors of the Estate and that the  
same has been paid over to them by the Administrator  
and said Estate has received a credit therefor -

These defendants admit that at the time of  
the death of James Bloomer he was not seized  
in fee and had no title to the land described And  
that by the sale aforesaid no title passed But  
at the time the order passed the legal title was  
in this defendant And they deny all legal &  
equitable interest in the Estate of James Bloomer or that  
she held said land in Trust or as a naked Trustee or in  
any other manner or purpose than as owner in fee simple

Now defendants admit that when the order of  
sale was procured and when the sale was made to Frear  
that said administrator might have supposed and that  
~~Frear~~ did suppose he was purchasing some interest  
in said lands And said Administrator may be now



58 satisfied that he had no authority to sell and said Frier may be satisfied he got no title - But these defendants insist that whether the Administrator is satisfied or not he received for said interest or supposed interest of the Estate some thirty five hundred dollars and distributed the same among the creditors of the Estate under the order of the Probate Court - And these defendants further insist that said Frier by said purchase got all he purchased To wit the interest of the Estate of James Bloomer whether it amounted to anything or not and whether he got any title or not That neither Frier or the Administrator for him can come into a Chancery Court and be relieved from their improvident speculations and reckless purchases. That the Administrator is not the proper party to correct any errors if any exist by reason of any defect in the title or either is he the proper party to bring this Bill of Complaint before your Honor Court and ask and receive any relief as therein prayed -

These defendants further answering admit that she intermarried with Frederick H. Short as in said Bill alleged But denies that said Frederick H. Short has any interest either legal or equitable - And the said Frederick H. Short for separate answer to said Bill of Complaint admits that he intermarried with said Lemelle at the time named in said Bill But he hereby disclaims any and all interest in the land and premises in said Bill of Complaint mentioned But insists



the same are held and owned by said Lemelle in her own right And as to all and singular the facts and statements set forth in said Bill this defendant answers J.C. is an entire stranger and knows nothing whatever -

And these defendants for further answer to said Bill of Complaint and each and every part thereof not hereinbefore answered admitted or denied makes answer thereto and utterly denies each and every part and paragraph as therein set forth and stated

And these defendants further answering shows to your Honor Court that one Orran Sherman obtained a Judgment in the Cook County Court of Common Pleas at the April Term 1857 against the said Alexander Frier for the sum of Ten thousand and thirty three dollars and thirty three cents and costs on which said Judgment an execution has been duly issued in pursuance to law directed to the Sheriff of So Davie's County to execute and under and by virtue of said execution the Sheriff aforesaid duly levied the same on the 22<sup>nd</sup> day of April 1857 on the lands and premises described in the Complainant's Bill of Complaint as the land and premises of Alexander Frier and has duly advertised the same for sale in pursuance to law to pay and satisfy said Judgment and costs against said Alexander Frier -

And for an amended Answer to so much of said former answer as sets up that Orran Sherman obtained



60 a Judgment against said Frier & these defendants  
answer That said Frier by his certain Deed of  
Conveyance duly acknowledged and entered of  
Record in the Recorders Office of Jo Daviess  
County Ill. granted bargained and sold unto said  
Orrin Sherman all and singular the lands and  
premises in said Bill of Complaint named  
and that under and by virtue of said Conveyance  
said Sherman became and was possessed of all the  
interest in and to said lands and premises purchased  
by said Frier at said Administration Sale aforesaid  
by means whereof the said Sherman became and was  
the owner and holder of all the right title and  
interest of the said Frier -

These defendants further answering denies all  
Trust combinations and confederacy with any  
and all persons whatsoever And having answered  
fully prays to be discharged with their costs most  
wrongfully sustained.

As in duty bound &c

Jomele Short  
Frederick H. Short

M. G. Johnson  
Sol. for Resp<sup>t</sup>

Endorsed,

Filed Sept. 22<sup>nd</sup> 1857

Wm R Rowley clk