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No. _____

Supreme Court of Illinois

Laflin

vs.

Casey et al

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STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 62.

Laplin
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Casey

13201

SCOTT & CO., PRINTERS, corner Clark and South Water Sts.

SUPREME COURT
OF THE
STATE OF ILLINOIS.
THIRD GRAND DIVISION.

APRIL TERM, 1860.

MATTHEW LAFLIN,	}	<i>Appeal from the Superior Court of Chicago.</i>
<i>vs.</i>		
JOHN W. CASEY, AND		
EDWIN A. CASEY, for the use of WILLIAM JONES,		
	<i>Appellants.</i>	
	<i>Appellees.</i>	

RECORD
PAGE.

ABSTRACT OF RECORD.

This was an action of debt commenced by John W. Casey, and Edwin A. Casey, in the Cook County Court of Common Pleas, against Matthew Laflin, upon a bond executed by him, dated March 1st, 1856, in the penal sum of \$17,600, with the following condition:

77 "The condition of the above obligation is such, that whereas the above named John W. and Edwin A. Casey have, on the day of the date of these presents, contracted for and purchased of Walter Laflin a certain lot or parcel of land, lying in the city of Chicago, and State of Illinois, being part of Lots Sixteen, Seventeen and Eighteen, in Block Nine, in Fort Dearborn Addition to Chicago; for a more particular description thereof, reference is had to a contract of even date herewith, signed by said Walter Laflin, and John W. Casey, and Edwin A. Casey; and in consideration that the said John W. Casey and Edwin A. Casey shall well and truly pay, either by themselves, their heirs, executors or assigns, the sum of eight thousand eight hundred dollars at the time specified in such contract,

"I do hereby covenant, contract and agree, to and with the said John

W. and Edwin A. Casey aforesaid, that the premises as described in and by said contract, intended to be sold them by the said Walter Laffin, are free and clear of any and all former grants, sales, taxes, assessments and liens of judgments, or of any kind and nature of lien whatsoever, and that the said Walter Laffin has a complete and perfect title to the same, in fee simple, at the time of the date thereof. Now, if the said Matthew Laffin shall keep and perform the several acts and obligations assumed herein, or intended so to be, and save harmless the said John W. Casey and Edwin A. Casey by reason of any former grant, conveyance, lien, tax, assessment, judgment, or decree, that shall in any way affect their title to the lot of land so purchased as aforesaid, then this obligation shall cease and become null and void; otherwise to be and remain in full force and virtue."

The declaration was filed December 31st, 1857, and contains three counts.

- 3 The first count sets out the penal part of the bond, and alleges the
non-payment of the money therein mentioned.
- 43 To this count the defendant craved oyer of the condition of the bond,
57 and pleaded general performance; to which plea the plaintiffs replied,
setting forth that they paid the sum of \$8,800, at the times specified in
their contract with Walter Laffin, and assigned as breaches of the con-
60 dition of the bond: 1st, that the premises were not, on the 1st day of
March, 1856, nor had they been at any time since, free and clear of any
and all former grants, sales, taxes, assessments, and liens of judgments,
or of every kind and nature of lien whatsoever; 2nd, that Walter Laffin,
on the first day of March, 1856, did not have, nor had he at any time
since, a complete and perfect title to the premises in fee simple, or
any property, possession or title in the same; 3rd, that the defendant
had not kept and performed the several acts and obligations assumed by
61 him, in the condition of said bond, or any of them; 4th, that the defen-
dant had not kept and performed the several acts and obligations assumed
by him, in the condition of said bond, or any of them; 5th, that the
defendant had not saved harmless the plaintiffs by reason of any former
grant, conveyance, lien, tax, assessment, judgment, or decree, that should
in any way affect their title to the premises, but had wholly neglected
and refused so to do.
- 66 To this replication the defendant rejoined, as to the first breach
assigned, that the premises were free and clear of all former grants,
sales, taxes, assessments, and liens of judgments, and of every other
kind and nature of lien whatsoever; and as to the second breach, that
Walter Laffin had a perfect title to the premises in fee simple.
- 63 The defendant demurred to the third, fourth and fifth breaches
67 assigned, which demurrer was confessed by the plaintiffs.

- 5-10 The second and third counts set out the condition of the bond, and
allege that the plaintiffs paid the sum of \$8,800, at the times specified in
9-14 the contract with Walter Laffin, and assign as breaches: 1st, that the
premises were not, on the first day of March, 1856, no had they been at
any time since, free and clear of any and all former grants, sales, taxes,
assessments, and liens of judgments, or of every kind and nature of lien
9-15 whatsoever; 2nd, that Walter Laffin had not, on the first day of
March, 1856, nor had he since that time, had a complete and perfect
title to the premises in fee simple, or any property, possession or title to
9-15 the same; 3rd, that the defendant had not kept and performed the several
acts and obligations assumed by him in the condition of the bond, or any
9-15 of them; 4th, that the defendant had not saved harmless the plaintiffs,
by reason of any former grant, conveyance, lien, tax, assessment, judgment
or decree, that should in any way affect their title to the premises.
- 47 To these counts the defendant pleaded, as to the first breach assigned,
that the premises were, at the time when, etc., free and clear of all former
grants, sales, taxes, assessments and liens of judgments, and of every
48 kind and nature of lien whatsoever, and as to the second breach assigned,
the defendant pleaded that Walter Laffin did, at the time when, etc.,
have a perfect title in fee simple to the premises, and that Walter Laffin
did, at the time when, etc., have property, possession and title in the
64 premises. To the third and fourth breaches assigned, the defendant
demurred.
- 67 The demurrer to the the third breach was confessed by the plaintiffs,
68 and the demurrer to the fourth breach was sustained by the court.
- 70 The cause was tried by the court, February 24th, 1860, and on the
trial the plaintiffs offered in evidence the defendant's bond, dated
77 March 1, 1856, the condition of which is above set forth. The plaintiffs
80 also read in evidence a contract, dated March 1, 1856, between Walter
Laffin, of the first part, and the plaintiffs, of the second part, by
which said Laffin agreed to sell and assure to the plaintiffs, by a good and
sufficient deed, with full covenants of warranty, all that part of Lots 16,
17 and 18, in Block 9, in Fort Dearborn Addition to Chicago, described
as follows, to wit: "Beginning on the south line of said Lots, on Randolph
street, at a point 20 feet east of the south-west corner of said Lot
18; running thence north, on a line parallel with the west line of said
Lot 18, 100 feet; thence east, on a line parallel with the north line of
said Lot, 22 feet; thence south, on a line parallel with said west line of
said Lot 18, 100 feet to Randolph street; thence west, on the south line
of said Lots on Randolph street, 22 feet to the place of beginning."
81 The plaintiffs agreed to pay for the premises \$8,800, as follows: \$4,000
in cash, (the receipt of which was acknowledged,) and \$4,800 in one
year from that date, with interest at six per cent., at the office of George

- 82 Smith & Co., and were to have forty days additional time to make said payment of \$4,800, if they desired it, without interest for said forty days. The plaintiffs also agreed to pay all taxes and assessments levied or assessed upon the premises subsequent to 1855, and the agreement contained a provision that the plaintiffs should forfeit their rights, at the election of Laffin, in case default should be made in the payment of the purchase money. This contract was assigned by John W. Casey and Edwin A. Casey to Charles C. Mowry, on the 1st day of October, 1856, and by Charles C. Mowry to Ira Scott, on the 9th day of October, 1856, as collateral security for the payment of a debt. Said Mowry, on the 19th day of December, 1856, executed a deed of trust to William H. King, for the use of Ira Scott, to secure the payment of the same debt, and, on the 14th day of March, 1857, Ira Scott transferred the contract and the debt due to him to William Jones.
- 84 The defendant admitted that the plaintiffs had paid, or caused to be paid, the several sums of money mentioned in said contract to be paid by them, at the times in said contract specified for the payment of the same; and also admitted that the plaintiffs had paid, or caused to be paid, all taxes and assessments on the premises since the date of the contract.
- 85 The plaintiffs read in evidence a patent from the United States to John Frink and Charles K. Bingham, dated November 1, 1839, and conveying Lots 16, 17 and 18, of Block 9, Fort Dearborn Addition to Chicago.
- 87 The plaintiffs read in evidence a deed from Charles K. Bingham and wife to Martin O. Walker, dated May 28, 1840, conveying the following described lots and parcels of land, being in the city of Chicago, all and the same as purchased from the United States at a late public sale at Chicago, through the agency of Matthew Burchard, Esq., as per his certificate, No. 171, for Lots 16, 17 and 18, in Block 9, in Fort Dearborn Addition to Chicago, reference being had to the plat therefor, and the patent or subsequent title issued by the President of the United States and Secretary of War, reference being had to said certificate of Burchard as agent, and the said plat and patent for particulars, meaning to convey all the right and title thus and subsequently obtained, and none other, to and for the equal and undivided third part thereof.
- 90 The plaintiffs read in evidence a deed from John Frink and wife to Martin O. Walker, dated June 1, 1840, conveying the following described premises, to wit: "All those certain lots and parcels of land lying and being in the city of Chicago, described and known as Lots No. 16, 17 and 18, in Block 9, in Fort Dearborn Addition to Chicago, reference being had to the certificate of purchase from Matthew Burchard, Esq.,

No. 171, as agent for the United States, and to the plat and subsequent title or patent issued therefor by the President of the United States and Secretary of War, dated the first day of November, A. D. 1839, as may appear. The true intent and meaning of this instrument is to convey to the said party of the second part, all the right, title and interest of the said party of the first part, in and unto the premises herein described, excepting and reserving one equal undivided third part of the original whole thereof."

96 The plaintiffs then read in evidence a bill in chancery, in favor of Williams Fowler, against John Frink and Martin O. Walker, filed in the Circuit Court of Cook county, on the 21st day of November, 1840.

97 The bill sets forth, that on or about the 1st day of January, 1838, Charles K. Bingham, John Frink, Samuel G. Trowbridge, and the complainant, entered into copartnership in the business of running stages, carrying passengers, and transporting the United States Mail. That the complainant, soon after the formation of the copartnership, paid into the concern the sum of three thousand dollars in cash, which was credited to him upon the books of the company; that Bingham paid into the concern the sum of sixteen hundred dollars, or thereabouts; that Trowbridge brought into the business divers horses, carriages, coaches, and other things he had previously used in the same business, and that Frink brought into the concern some horses and carriages. That no written articles of copartnership were entered into, but it was verbally agreed between the parties, that the complainant should have one-sixth, Bingham one-sixth, Frink one-third, and Trowbridge one-third, of the profits, and that they should share the losses in the same proportion.

98 The bill sets forth, that the parties carried on the business until on or about the month of January, 1839, when Trowbridge sold out his interest to Martin O. Walker, and retired therefrom, and thereupon Walker came into the firm in the place and stead of Trowbridge. That the business of the firm was continued by Bingham, Frink, Walker, and the complainant, until May, 1840, when Bingham sold out his interest therein to Walker, and retired. That the business was thereafter continued by Frink, Walker, and the complainant. That no dissolution of the copartnership had ever taken place, and no settlement of accounts between the partners had ever been made. That Frink and Walker had possessed themselves of all the assets, and had excluded the complainant from the copartnership, and that during its continuance, in addition to the horses, carriages, and other personal property, that had been purchased with the funds of the concern, and belonged to it, *several lots of land had been purchased with the funds of the company*, and conveyances taken in the name of Frink and Bingham, generally, and barns, houses and stables, and that various shops had been erected by and belonged to the company, and that to all which real and personal property, the complainant was entitled to one-sixth interest.

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- 104 The bill prayed for an injunction, and that a receiver might be appointed; for a dissolution of the copartnership; for an account; and for payment to the complainant of any monies that might be found due to him; and for general relief.
- 105 The bill contains no other description of the real estate in controversy.
- 109-128 The plaintiffs then read in evidence the several answers of John Frink and Martin O. Walker to said bill of complaint, which were filed July 9th, 1841, and the complainant's replication thereto, filed on the same day.
- 141
- 109-130 The answers deny that the complainant was ever a copartner with the defendants as alleged in the bill; and while they admit that the copartnerships therein mentioned had acquired title to certain lots of land, they do not describe any of them.
- 122-138
- 143 The plaintiffs then read in evidence the decree of the court in said cause, rendered at the November Term, 1848, adjudging and declaring that the complainant was and had been a partner as in said bill alleged, and ordered that the cause be referred to William H. Brown, as a special master, to take an account.
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- 148 The plaintiffs then read in evidence the report of the special master, filed July 11, 1857. The report finds,
- | | | | |
|-----|-----------------------|-------------------|-------------------|
| 151 | | PAID IN. | DREW OUT. |
| | John Frink, | \$4,766.31 | |
| | Williams Fowler, | 3,000.00 | \$1,487.32 |
| | Samuel G. Trowbridge, | 14,000.00 | 16,907.13 |
| | Chas. K. Bingham, | | 1,162.45 |
| | Martin O. Walker, | 189.39 | |
| | | <hr/> \$21,955.70 | <hr/> \$19,556.90 |
- 153 That the value of the property of the company, in which was included Lots 16, 17 and 18, in Block 9, Fort Dearborn Addition to Chicago, was \$31,485.50.
- 155 And that its liabilities were \$13,348.47.
- 191 The plaintiffs then called *William H. Brown* as a witness, who testified that he was the master to whom was referred the case of *Fowler v. Frink & Walker*; that he made his report in 1850; that he commenced his duties in 1849, and that they continued through that year and ran into the spring of 1850; that he could not speak with certainty as to the exact time, and that his report was very voluminous, and he made it in a bound book, which was filed.

- 162 The plaintiffs then read in evidence a decree of the Circuit Court of
Cook county, in said suit, rendered on the 16th day of July, 1857, which
165 declares that it appeared to the court that the firm owned in fee simple,
as partnership estate, with other real estate, Lots Nos. 16, 17 and 18, in
Block 9, in Fort Dearborn Addition to Chicago, and that the legal title
to the same was, on the 21st day of November, 1840, in John Frink,
Charles K. Bingham and Martin O. Walker, and that the cost of the
166 same was \$3,347, and there was due to the complainant, Nov. 21, 1840,
167 as his one-sixth interest in said partnership, \$1,512.68, for his capital,
and \$976.50, for his share of the profits, making \$2,489.19 in the
whole.
- 168 The decree recites the submission to arbitration between John Frink
and Martin O. Walker, hereafter mentioned, and the award in pursuance
170 of the same, and the release by John Frink to Martin O. Walker, of his
interest in the subject matter of controversy, and then, by the consent
171 of the complainant and Martin O. Walker, proceeds to decree that
Walker pay Fowler the sum of twenty-five hundred dollars, in full for
all his claims growing out of said copartnership, and that the complain-
172 ant release to Walker all the interest which he had in the partnership,
and the property of the same, on the 21st day of November, 1840, and
173 in case of his neglect to execute such deed, that the same be executed
by L. C. P. Freer, master in chancery.
- 177 The plaintiffs then read in evidence a deed from L. C. P. Freer, mas-
ter in chancery, to Martin O. Walker, dated Sept. 28, 1857, conveying,
188 among other property, all the interest which Williams Fowler had in
Lots 16, 17 and 18, in Block 9, in Fort Dearborn Addition to Chicago,
on the 21st day of November, 1840.
- 211 The plaintiffs then read in evidence the submission to arbitration,
between John Frink and Martin O. Walker, dated Sept. 9, 1852,
213 together with an extension of the time for making the award therein
mentioned, dated March 19, 1853, and a further extension of the time
for making said award, dated April 14, 1853.
- 193 The plaintiffs then read in evidence the award made in pursuance of
said submission, dated April 28, 1853, together with the acceptance and
209 ratification of the same by said Frink and Walker, dated May 7, 1853.
The fourteenth article of the award provides as follows:
- 206 "We find, from the statements of said Frink and said Walker, that
there is a controversy pending between Williams Fowler and said firm
of Frink & Walker, on account of a claim made by said Fowler to a
certain interest in property and effects in the possession of said firm, and
that the same is in litigation in suits instituted by said Fowler and his
assigns or grantees, in relation to the property and effects that consti-
tute the subject of said controversy and litigation, and having in this

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award allowed said Martin O. Walker the sum of \$4,000, as an indemnification in this matter as between said John Frink and Martin O. Walker, we do direct, determine and award as follows: that whatever amount has been or shall be decreed or adjudged against the said Frink and Walker in favor of said Williams Fowler, and whatever property or money may be recovered by said Fowler, his assigns or grantees, of said Frink and Walker, or either of them, growing out of said claim of said Fowler, shall be paid and borne by said Walker individually, together with all costs and expenses that may now remain unpaid, and that may hereafter be incurred by said Frink and Walker, incident thereto, and growing out of the same, and said Walker shall save and keep said Frink harmless from all payments and costs growing out of the same; and said Martin O. Walker shall be entitled to all benefit and advantage that has accrued, or may hereafter accrue, to said Frink and Walker, from said litigation, and to the particular property and effects constituting the subject of said controversy and litigation; and said Frink shall execute instruments of release and deeds of conveyance of any interest he may have in or to the said property and effects, within ten days after the confirmation or acceptance of this award, which said instruments and deeds shall be acknowledged, and shall contain a relinquishment of dower to any and all lands and tenements in controversy as aforesaid."

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The plaintiffs then read in evidence the deposition of *Walter Laflin*, taken August 24, 1848, in the suit of *Williams Fowler v. John Frink et al.*, in which the said Walter Laflin testified, in answer

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To 1st Interrogatory. That he saw Martin O. Walker at Chicago, in July 1848, but had no acquaintance with him.

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To 2nd Int. That prior to the year 1846, his brothers, Luther and Matthew, had consulted with him relative to recovering a claim they had against Williams Fowler, and wished him to secure the same; that he told his brother Luther he might as well do it himself. He replied, that he had seen and conversed with Fowler, who promised well, but did nothing. Witness thought that by request of Luther he agreed to go to Southwick, Mass., to try to obtain security, where Fowler owned a house which Luther and Matthew thought would be security for their claim, or for some portion of it. That witness went to Southwick for this purpose, and upon inquiry was told the house was under incumbrance, so as to afford little or no prospect of security; but while there, was informed by Fowler and Charles K. Bingham, that Fowler was owner of one-sixth of the real estate held by Frink & Bingham, while they were in business in Illinois. That his brothers, Luther and Matthew, had, before this, proposed to him to purchase their claim against Fowler, but the proposition was not acted upon at that time, but remained open. That at the time witness was at Southwick, which was

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in June, 1846, becoming satisfied that little or no security could be obtained upon the house, he assumed the responsibility to give up to Fowler the claims of L. and M. Laffin, (which he thought were notes, and which he had with him at that time, and which amounted, with interest to June 2nd, 1846, to \$2,037.25,) and in addition agreed to pay Fowler \$260, which has been paid. That in consideration of the giving up of the notes, and of the \$260, amounting in all to \$2,297.25, Fowler deeded to witness one-sixth part of all the real estate held by Frink & Bingham, undivided. Witness had not the deed with him, but thought it bore date June 2, 1846. The deed was forwarded by witness to Chicago, Ill., for registry, and was returned for some informality, and another made or the informality corrected, and then forwarded to Chicago for registry. Fowler also made to witness an assignment of all his right and interest in a suit he then had pending in Cook county, Ill., against John Frink and Martin O. Walker, on condition that the real estate so conveyed as aforesaid, should not pay above sum of \$2,297.25 and interest, and so much as might be recovered by said Fowler to be applied to make up such sum as the real estate should fall short of said \$2,297.25 and interest, if the real estate should be deficient. That the amount of the claims so given up, and the \$260, were included in a note, of which the following is a copy :

“*Westfield, June 2nd, 1846.*

\$2,297.²⁵/₁₀₀ On demand I promise to pay to Walter Laffin, or order, Twenty-two hundred and ninety-seven ²⁵/₁₀₀ dollars, value received, with interest.

(Signed)

WILLIAMS FOWLER.”

“WM. G. BATES.”

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That after making the above arrangement, witness saw his brother Luther and informed him what had been done, and agreed with him for the purchase of his and Matthew Laffin's claims against Fowler, given up as aforesaid. That Luther said he did not like to fix upon a price for the claims, as the business had been done principally with Matthew, but would take such price as should be agreed upon between witness and S. A. Smith, who was then a partner in business with Matthew and Luther Laffin, and to take in payment certain notes which witness then held against his brother, Rowland Laffin, of Southwick, Mass., which notes were secured by a mortgage, and payable with annual interest. That the price for the claims to be paid by the witness had not been agreed upon by the witness and Smith.

The witness referred to the deed and assignment and to the registry thereof for their terms, not being able to state them accurately, but stated them as well as he could recollect. That the deed and assignment, or contract, were delivered to witness at this time, and the claims of his brothers given up to Fowler.

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To 3rd Int. That Luther Laflin handed or sent him the claims prior to June, 1846. That prior to June, 1846, he received from Luther Laflin, Luther and Matthew's claims against Fowler, together with an assignment from Fowler to Luther and Matthew Laflin of his claim against Frink & Walker, which was given them by Fowler, as security for their claims against him. That he could not state precisely the time he received the claims from Luther Laflin, but thought it was in 1846; that such assignment was not assigned by L. and M. Laflin to him.

To the 4th Int. That no instrument of security was assigned to him by Matthew and Luther Laflin, or either of them.

To the 5th Int. That he could not recollect whether the notes above mentioned were endorsed or not, nor the dates.

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To the 8th Int. That he had no negotiation or consultation with any one in relation to the purchase of said demands, but the persons mentioned in the answer to the 2nd Interrogatory, except counsel who drew the papers.

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To the 9th Int. That one of his brothers, which, he could not say, first informed him of their claim against Fowler.

To the 10th Int. That he had for many years been acquainted with Fowler; that he was in Chicago, Illinois, in 1845, and the real estate in Chicago, which belonged to, or had belonged to Frink, Bingham & Fowler, was pointed out to him by Matthew Laflin and others, and he saw it; that no one had told him particularly about Fowler's ability, that he could recollect, except that he had been told that he had a good claim against Frink & Walker for a considerable amount, and that Bingham informed him of the value of the real estate.

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To 11th Int. That at the time of the transaction of June 2, 1846, he did know of the pendency of a suit of said Fowler against said Frink & Walker, and was told it was for the recovery of Fowler's interest in a business in which Fowler had been concerned with Frink & Bingham, in Illinois, and was informed of this by Charles K. Bingham; that Fowler showed witness said Frink's answer in the suit, which he particularly examined.

To 13th Int. That he did take a deed, dated June 2nd, 1846, from said Fowler, for certain land in Illinois, and that the land was his, subject to the legal or equitable claim of no one to his knowledge, in any contingency or event.

To 14th Int. That his knowledge of the value of the land was derived from his own observation, and from information of other parties, and his knowledge of title was derived from Charles K. Bingham principally.

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To 15th Int. That Matthew Laflin did reside in Chicago, and was his agent in the care of his property; that he did not consult him as to the value or title of said property, that he recollected of, except as stated

in a previous answer ; that the same was shown to witness by Matthew Lafin ; that he could give no particular reason for consulting him or not consulting him, except that he was not present at the time of the transaction.

230 To 20th Int. That he could not name the time, nor by whom he was first informed of the pendency of this suit.

232 To 24th Int. That he made no contract except the one stated in his answer to the 2nd Interrogatory.

To 1st Cross-Int. That as to the assignment from Fowler to L. & M. Lafin, he did not recollect, but thought it was cancelled, and that all claims they had against said Fowler, to his knowledge, were cancelled at the time the said deed was made.

233 To 2nd Cross-Int. That Matthew Lafin has no interest in the lands conveyed to him.

235 The defendant then read in evidence a deed from Charles K. Bingham and wife, to Williams Fowler, dated June 2nd, 1846, conveying, among other property, all the right, title, interest and estate of said Charles K. Bingham, in the following described property : " Lots numbers 16, 17 and 18, in Block No. 9, in Fort Dearborn Addition to Chicago, situated in the city of Chicago, and which was purchased of the government."

236 " Also, in any other lands of which I am seized, or to which I have title, in said county of La Salle ; meaning by this deed to quit-claim to said Fowler, all the interest which I may have in and to any real estate in said county of La Salle, or in the city of Chicago, which was purchased by me, or by any firm for me, with which I was connected in business in said Illinois."

239 The defendant then read in evidence a deed from Williams Fowler to Walter Lafin, dated June 2, 1846, conveying, among other property, " one undivided sixth part of Lots 16, 17 and 18, in Block No. 9, Fort Dearborn Addition to Chicago, purchased of the government by Frink & Bingham." " Also, one undivided sixth part to any other tracts or parcels of land of which I am seized."

245 The defendant then read in evidence a certified copy of the record of proceedings in an ejectment suit in favor of Walter Lafin, against John Frink and Martin O. Walker, from which it appears that said suit was commenced on the 22nd day of April, 1852, for the recovery of an undivided one-sixth part of Lots 16, 17 and 18, in Block 9, Fort Dearborn Addition to Chicago ; that there was a trial of said suit on the 18th October, 1853, which resulted in a verdict and judgment for the plaintiff for the premises sued for ; that on the 8th day of November, 1853, the above judgment was set aside, and a new trial granted under the statute, upon the payment of costs. On the 18th day of May, 1854,

- 256 a second trial was had, which resulted in a judgment for the plaintiff,
257 on the 19th day of May, 1854, for the premises sued for. On the 28th
258 day of May, 1855, a second new trial was granted, on motion of the
259 defendants. On the 6th day of November, 1855, the cause was again
tried, and on the 16th day of January, 1856, a judgment was again rendered in favor of the plaintiff, for the premises sued for.
- 261 The defendant also read in evidence a writ of possession in said
262 ejectment suit, issued July 29, 1856, with the return of the marshal
thereon, from which it appears that the marshal delivered possession of
said premises to Walter Laffin on the 2nd day of October, 1856.
- 265 The defendant then read in evidence a bill in chancery, filed by Martin
O. Walker, in the Circuit Court of the United States for the Northern
District of Illinois, on the 5th November, 1852, and which was sworn to
by the said Walker, setting forth, that Walker was the owner in fee
simple of an undivided one-sixth part of Lots 16, 17 and 18, in Block
9, Fort Dearborn Addition to Chicago. That in the winter of 1838 or
1839, Walker, by agreement with John Frink and Charles K. Bingham,
then composing the firm of Frink & Bingham, became a joint and equal
partner with them in the staging business, property and effects, both real
and personal, and so remained up to May 28, 1840, at which time
266 Walker bought the interest of Bingham in the business. That in the
month of June, 1839, and after Walker had become a partner of the
firm of Frink & Bingham, the above lots were sold by the United
States at public sale, and purchased by Charles K. Bingham, who took a
certificate of purchase in the name of Frink & Bingham. That said
certificate remained in the hands of Frink, Bingham & Co., up to May
28, 1840, when it passed into the hands of Judge Dickey, of Chicago,
where it remained until 1853, when John Frink obtained possession of
the same, and had a patent issued to Frink & Bingham for the lands
therein described. That the whole of the purchase money paid by
Bingham for said lots, was furnished to him by Walker, out of his private
funds for that special purpose, and the certificate of purchase taken
in the names of Frink & Bingham solely as a matter of convenience, and
267 charges that thereby a resulting trust was created for the benefit of
Walker, and that by virtue thereof he was entitled to a deed of said
lots.
- 268 That on the 28th day of May, 1840, Bingham executed a bill of sale
to Walker, conveying to him all of Bingham's interest in the firm of
Frink & Bingham, a copy of which is attached to the bill, and that at
the same time it was expressly agreed by Bingham that he would assign
and transfer all of his interest in said certificate to Walker, he having
furnished the money for the purchase of the lands therein described,
which, for various reasons set forth in the bill, Bingham had never done.

269 That Williams Fowler, in 1840, filed a bill in chancery against Frink
Frink & Walker, claiming one-sixth of all the property, real and personal, of
270 Frink & Walker, and succeeded in establishing the same. That said
cause was referred to W. H. Brown, to take an account. That Fowler
claimed before the master, and procured him to take an account of one-
273 sixth interest in said lots. That Fowler then procured Bingham to
convey the premises to him, and he conveyed them to Walter Laffin,
which conveyances were alleged to be without consideration, and with
full notice of all the facts. The bill prayed for an injunction restraining
Laffin from further prosecuting an action of ejectment against Frink
& Walker for the recovery of the premises, and that Laffin might convey
the same to Walker.

279 The defendant then read in evidence a deed from John Frink to
Walter Laffin, dated November 3rd, 1857, conveying the premises described
as follows, to wit: "Beginning on the south line of Lots 16,
17 and 18, in Block 9, in Fort Dearborn Addition to Chicago, on Randolph
street, at a point 20 feet east of the south-west corner of said Lot
18; running thence north, on a line parallel with the west line of said
Lot 18, one hundred feet; thence east, on a line parallel with the north
line of said Lots, 22 feet; thence south, on a line parallel with the west
line of said Lot 18, one hundred feet to Randolph street; thence west,
on the south line of said Lots on Randolph street, 22 feet to the place
of beginning."

281 The defendant then read in evidence a bond of Walter Laffin to
282 Williams Fowler, dated June 2nd, 1846, conditioned that after said
Walter Laffin should have realized from the real estate, the proceeds of
the suit, or the partnership effects assigned to him by Fowler, as here-
after set forth, the full amount of the promissory note secured thereby,
and such sums as said Laffin should have advanced to said Fowler, and
the necessary sums expended in obtaining possession of said property,
or after Fowler should have tendered to said Laffin the balance which
might be due to him for said note and said sums advanced, said Laffin,
or his heirs and assigns, should account with Fowler for any sums remaining
in his hands, and reconvey to Fowler any of the property remaining
unsold, after such payment or tender—at the foot of which
bond appear the names of Wm. G. Bates and Edw. B. Gillett, as sub-
scribing witnesses, and on the back thereof the following endorsement:

"The within bond of Walter Laffin is this day surrendered to Matthew
Laffin, his attorney, in full satisfaction of the covenants herein contained.

WILLIAMS FOWLER."

283 "*Chicago, October 21st, 1856.*"

Also an assignment of Williams Fowler to Walter Laffin, dated June
2nd, 1846, to secure the sum of \$2,297.25, due said Laffin from said

Fowler, and such sums as said Laflin might thereafter advance to said Fowler, conveying all said Fowler's right, title and interest in and to the claim which he then had against John Frink, Martin O. Walker and Curran Walker, on which claim there was then a suit in equity pending against said Frink & Walker, in favor of said Fowler, in the county of Cook and State of Illinois; and also all said Fowler's interest, title and estate in the copartnership effects of said Frink & Walker, and Fowler, and to any balance which might be due Fowler as such copartner, and authorizing said Laflin to demand and receive the same of said Frink & Walker, to retain so much as might be sufficient to repay the above amount and such advances as should be made; and providing that Laflin should account to said Fowler for any balance that might remain after deducting actual expenses. Said bond being subscribed by Wm. G. Bates and Edw. B. Gillett, as witnesses thereto, together with an endorsement on said assignment cancelling the same, dated October 21, 1856, and signed "WALTER LAFLIN, by his att'y, Matthew Laflin."

284 The defendant then called *Wells Laflin*, who testified that he knew
William G. Bates and Edward B. Gillett, the subscribing witnesses to
said bond and assignment, and that they resided in Springfield, in the
285 State of Massachusetts. That he knew the handwriting of said Bates
and Gillett respectively, and that the signatures of said parties, as wit-
nesses to said bond and assignment, were in their handwriting.

The defendant then called *G. B. Hinman*, who testified that he had been a book-keeper for Matthew Laflin for the last four years; that the cancellation of the foregoing bond is in the witness' handwriting, except the signature of Williams Fowler thereto, and that he (the witness) saw Fowler sign the same; that he knew Walter Laflin's handwriting, and that the signature to the bond, purporting to be signed by him, was in said Walter's handwriting; that Walter Laflin has recognized the cancellation, made on the 21st of October, 1856, of both said bond and assignment. He recognized the same about two months since. Walter Laflin has always recognized Matthew Laflin as his agent in all these suits; that he thinks Matthew Laflin's appointment, as agent, was in writing; that the cancellation of the assignment, as appears on its face, was made on the 21st October, 1856; the handwriting of which was in witness' handwriting, except the signature, which is in the handwriting of Matthew Laflin.

286 Upon being recalled, the witness testified that on the 21st of October, 1856, Mr. Fowler was settled with in full, and paid by Laflin. At that time a settlement was had between the parties, of accounts between them of moneys that had been paid to Mr. Fowler, for which receipts had been given, and which were then taken up, and a balance was found due to Fowler, of nearly \$1,000, for which Matthew Laflin then gave his note.

There was to be a deduction from the amount of this note, of some costs which had not then been paid. Nearly all of it has been settled since—all, except three or four hundred dollars.

Upon cross-examination, he testified that he was not aware that there was any unsettled account between Mr. Fowler and Walter Laffin; that \$600 had been paid on the note, and when the costs were taken out of it, it would be paid; that he knew nothing of the account, except from the face of the paper, and could not recollect the items; that he could say that the accounts between Williams Fowler and Walter Laffin were settled.

287 The defendant then read in evidence an assignment of the contract between Walter Laffin and the plaintiffs, by the plaintiffs to Charles C. Mowry, dated Oct. 1, 1856, in which the plaintiffs, for the consideration of \$4,000, assign to Mowry all their interest in the contract, and in the premises thereby contracted to be sold, subject to the covenants, conditions and payments in said contract mentioned, with power to demand and receive a deed from Walter Laffin on performance of the covenants.

288 The defendant then read in evidence an assignment from C. C. Mowry to Ira Scott, of the contract last mentioned, dated Oct. 9th, 1856, and in substance and effect the same as the assignment last recited.

289 The defendant then read in evidence a deed of trust from Charles C.
290 Mowry to William H. King, dated December 19th, 1856, to secure the payment of a promissory note, signed by said Mowry, and in favor of Ira Scott, for \$2,557.00, dated October 9, 1856, and payable February 1, 1857; said deed conveying "all that part of Lots 16, 17 and 18, in Block 9, in Fort Dearborn Addition to Chicago, bounded and described as follows, to wit: Beginning on the south line of said lots on Randolph street, at a point 20 feet east of the south-west corner of said Lot 18; running thence north, on a line parallel with the west line of said Lot 18, one hundred feet; thence east, on a line parallel with the north line of said Lot, 22 feet; thence south, on a line parallel with said west line of said Lot 18, one hundred feet to Randolph street; thence west, on the south line of said Lots on Randolph street, 22 feet to the place of beginning;" to hold in trust to secure the payment of the above promissory note, with power of sale upon default in the payment thereof. Said deed
291 also contains covenants of general warranty, and for the payment of all taxes and assessments during the continuance of the deed.

292 The defendant then read in evidence the note described in the last mentioned deed, to which deed reference is had for a description thereof.

293 The defendant then read in evidence an assignment of the contract between Walter Laffin and the plaintiffs, by Ira Scott to William Jones,

dated March 14, 1857, which assignment is the same in substance and effect as the assignment of said contract last mentioned.

294 The defendant then called *Ira Scott*, as a witness, who testified that the assignment from Mowry to him was to secure the payment of the note mentioned in the deed of trust to William H. King. That after the maturity of the note, he caused Mowry's equities to be sold under the deed of trust, to William Jones, and that Jones declined to take a deed; that he thought Mr. Jones said he was a creditor of Mowry; that Mr. Jones paid him the amount of his debt against Mowry, and he transferred to him whatever securities he had; that Mr. Jones knew all the facts in relation to the securities at the time he, witness, transferred them to him, at which time there was due to Laffin, on the contract,
295 \$4,800, which he supposed Jones paid him; that the assignment to the witness by Mowry was absolute on its face, and in order to avoid going in chancery to foreclose the equity, he got a trust deed from Mowry; that it was intended that the assignment should be directly to witness, but it was assigned to Mowry first, and by him to witness on the 9th day of October, 1856, which was the day on which the whole transaction was made; that all the papers passed from Mr. Casey to witness, at his office.

296 It was admitted by the parties that \$8,800, was the value of the premises described in the contract of Walter Laffin to the plaintiffs at the date of the contract, and that the premises were of the same value at the time therein stipulated for the conveyance of the same.

The plaintiffs then read in evidence the deposition of Matthew Laffin, taken May 8, 1848, in the suit of *Williams Fowler v. Frink and Walker*, in which Laffin testified,

That he and his brother, Luther Laffin, had a claim against Williams Fowler, for \$3,500, specified in two promissory notes, one for \$1,568.84, dated August 27, 1841, and the other for \$1,915.88, dated October 26, 1841, and that in order to secure the payment of said notes, Williams Fowler, on the 26th day of October, 1841, assigned to them all his interest in the firm of Frink & Walker, and all sums which might be recovered in the suit of Fowler against them.

That Fowler afterwards, on the 10th day of April, 1843, gave to Luther and Matthew Laffin his note for \$140.85, for the interest on the above debt. That afterwards, prior to the 2nd day of June, 1856, Luther and Matthew Laffin sold said claim, together with the security for the payment of the same, to Walter Laffin, at that time endorsing the note for \$1,568.84, and the note for \$140.85; the note for \$1,915.88 having been before that time paid by Fowler. At the same time, Luther and Matthew Laffin wrote their names on the back of said assignment in blank, with the expectation that there would be written over it an acquittance or

discharge of the same upon a settlement then about to be made with Fowler.

Afterwards the following discharge was written on the back of said assignment: "In consideration of one dollar to us in hand paid by Williams Fowler, we do hereby acquit and discharge the said Fowler from this assignment, and reconvey to him all the property herein assigned. In witness whereof, we have hereunto set our hands and seals this 2nd day of June, A. D. 1846. L. and M. Laflin."

On the day of the date of said acquittance, the said assignment with said discharge thereon, and the said Fowler's notes, then remaining unpaid, were delivered up to said Fowler. He also testified that he knew all about the controversy between Fowler and Frink & Walker, and had been more or less actively engaged assisting Fowler therein.

71 The court below, on the 5th day of March, 1860, found in favor of the plaintiffs, and against the defendant, for the sum of \$11,231 ⁴⁶/₁₀₀, damages. The defendant moved for a new trial, and in arrest of judgment.

The motion for a new trial, and in arrest of judgment, was overruled on the 12th day of March, 1860, and judgment was rendered on the finding of the court.

On the 22nd day of March, 1860, the defendant prayed an appeal, which was granted, and he brings the case to this court, and assigns the following errors:

345 1st. In the rendition of the judgment for the plaintiffs, and assessing their damages for the amount of the consideration money and interest paid to Walter Laflin, by the plaintiffs or their assigns, when such damages ought to have been merely nominal.

2nd. In the rendition of said judgment, assessing the damages as aforesaid, when the measure of damages should have been the value of the outstanding title.

3rd. In overruling the motion for new trial, and in arrest of judgment.

And for other errors on the face of the record.

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Lafleur 52

vs

Casey et als
~~~~~  
Abstract

Filed May 14, 1860  
J. L. Linn  
clerk

SCOTT & CO., PRINTERS, corner Clark and South Water Sts.

SUPREME COURT  
OF THE  
STATE OF ILLINOIS.  
THIRD GRAND DIVISION.

APRIL TERM, 1860.

|                                                                        |   |                                                       |
|------------------------------------------------------------------------|---|-------------------------------------------------------|
| MATTHEW LAFLIN,                                                        | } | <i>Appeal from the Superior<br/>Court of Chicago.</i> |
| <i>Appellant,</i>                                                      |   |                                                       |
| <i>vs.</i>                                                             |   |                                                       |
| JOHN W. CASEY, AND<br>EDWIN A. CASEY, for the use of<br>WILLIAM JONES, |   |                                                       |
| <i>Appellees.</i>                                                      |   |                                                       |

RECORD  
PAGE.

ABSTRACT OF RECORD.

This was an action of debt commenced by John W. Casey, and Edwin A. Casey, in the Cook County Court of Common Pleas, against Matthew Laflin, upon a bond executed by him, dated March 1st, 1856, in the penal sum of \$17,600, with the following condition:

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"The condition of the above obligation is such, that whereas the above named John W. and Edwin A. Casey have, on the day of the date of these presents, contracted for and purchased of Walter Laflin a certain lot or parcel of land, lying in the city of Chicago, and State of Illinois, being part of Lots Sixteen, Seventeen and Eighteen, in Block Nine, in Fort Dearborn Addition to Chicago; for a more particular description thereof, reference is had to a contract of even date herewith, signed by said Walter Laflin, and John W. Casey, and Edwin A. Casey; and in consideration that the said John W. Casey and Edwin A. Casey shall well and truly pay, either by themselves, their heirs, executors or assigns, the sum of eight thousand eight hundred dollars at the time specified in such contract,

"I do hereby covenant, contract and agree, to and with the said John



W. and Edwin A. Casey aforesaid, that the premises as described in and by said contract, intended to be sold them by the said Walter Laffin, are free and clear of any and all former grants, sales, taxes, assessments and liens of judgments, or of any kind and nature of lien whatsoever, and that the said Walter Laffin has a complete and perfect title to the same, in fee simple, at the time of the date thereof. Now, if the said Matthew Laffin shall keep and perform the several acts and obligations assumed herein, or intended so to be, and save harmless the said John W. Casey and Edwin A. Casey by reason of any former grant, conveyance, lien, tax, assessment, judgment, or decree, that shall in any way affect their title to the lot of land so purchased as aforesaid, then this obligation shall cease and become null and void; otherwise to be and remain in full force and virtue."

The declaration was filed December 31st, 1857, and contains three counts.

- 3 The first count sets out the penal part of the bond, and alleges the  
non-payment of the money therein mentioned.
- 43 To this count the defendant cravedoyer of the condition of the bond,  
57 and pleaded general performance; to which plea the plaintiffs replied,  
setting forth that they paid the sum of \$8,800, at the times specified in  
their contract with Walter Laffin, and assigned as breaches of the con-  
60 dition of the bond: 1st, that the premises were not, on the 1st day of  
March, 1856, nor had they been at any time since, free and clear of any  
and all former grants, sales, taxes, assessments, and liens of judgments,  
or of every kind and nature of lien whatsoever; 2nd, that Walter Laffin,  
on the first day of March, 1856, did not have, nor had he at any time  
since, a complete and perfect title to the premises in fee simple, or  
any property, possession or title in the same; 3rd, that the defendant  
had not kept and performed the several acts and obligations assumed by  
61 him, in the condition of said bond, or any of them; 4th, that the defen-  
dant had not kept and performed the several acts and obligations assumed  
by him, in the condition of said bond, or any of them; 5th, that the  
defendant had not saved harmless the plaintiffs by reason of any former  
grant, conveyance, lien, tax, assessment, judgment, or decree, that should  
in any way affect their title to the premises, but had wholly neglected  
and refused so to do.
- 66 To this replication the defendant rejoined, as to the first breach  
assigned, that the premises were free and clear of all former grants,  
sales, taxes, assessments, and liens of judgments, and of every other  
kind and nature of lien whatsoever; and as to the second breach, that  
Walter Laffin had a perfect title to the premises in fee simple.
- 63 The defendant demurred to the third, fourth and fifth breaches  
67 assigned, which demurrer was confessed by the plaintiffs.

- 5-10 The second and third counts set out the condition of the bond, and  
allege that the plaintiffs paid the sum of \$8,800, at the times specified in  
9-14 the contract with Walter Laffin, and assign as breaches: 1st, that the  
premises were not, on the first day of March, 1856, nor had they been at  
any time since, free and clear of any and all former grants, sales, taxes,  
assessments, and liens of judgments, or of every kind and nature of lien  
9-15 whatsoever; 2nd, that Walter Laffin had not, on the first day of  
March, 1856, nor had he since that time, had a complete and perfect  
9-15 title to the premises in fee simple, or any property, possession or title to  
the same; 3rd, that the defendant had not kept and performed the several  
acts and obligations assumed by him in the condition of the bond, or any  
9-15 of them; 4th, that the defendant had not saved harmless the plaintiffs,  
by reason of any former grant, conveyance, lien, tax, assessment, judgment  
or decree, that should in any way affect their title to the premises.
- 47 To these counts the defendant pleaded, as to the first breach assigned,  
that the premises were, at the time when, etc., free and clear of all former  
grants, sales, taxes, assessments and liens of judgments, and of every  
48 kind and nature of lien whatsoever, and as to the second breach assigned,  
the defendant pleaded that Walter Laffin did, at the time when, etc.,  
have a perfect title in fee simple to the premises, and that Walter Laffin  
did, at the time when, etc., have property, possession and title in the  
64 premises. To the third and fourth breaches assigned, the defendant  
demurred.
- 67 The demurrer to the the third breach was confessed by the plaintiffs,  
68 and the demurrer to the fourth breach was sustained by the court.
- 70 The cause was tried by the court, February 24th, 1860, and on the  
trial the plaintiffs offered in evidence the defendant's bond, dated  
77 March 1, 1856, the condition of which is above set forth. The plaintiffs  
80 also read in evidence a contract, dated March 1, 1856, between Walter  
Laffin, of the first part, and the plaintiffs, of the second part, by  
which said Laffin agreed to sell and assure to the plaintiffs, by a good and  
sufficient deed, with full covenants of warranty, all that part of Lots 16,  
17 and 18, in Block 9, in Fort Dearborn Addition to Chicago, described  
as follows, to wit: "Beginning on the south line of said Lots, on Randolph  
street, at a point 20 feet east of the south-west corner of said Lot  
18; running thence north, on a line parallel with the west line of said  
Lot 18, 100 feet; thence east, on a line parallel with the north line of  
said Lot, 22 feet; thence south, on a line parallel with said west line of  
said Lot 18, 100 feet to Randolph street; thence west, on the south line  
of said Lots on Randolph street, 22 feet to the place of beginning."
- 81 The plaintiffs agreed to pay for the premises \$8,800, as follows: \$4,000  
in cash, (the receipt of which was acknowledged,) and \$4,800 in one  
year from that date, with interest at six per cent., at the office of George



- 82 Smith & Co., and were to have forty days additional time to make said payment of \$4,800, if they desired it, without interest for said forty days. The plaintiffs also agreed to pay all taxes and assessments levied or assessed upon the premises subsequent to 1855, and the agreement contained a provision that the plaintiffs should forfeit their rights, at the election of Laflin, in case default should be made in the payment of the purchase money. This contract was assigned by John W. Casey and Edwin A. Casey to Charles C. Mowry, on the 1st day of October, 1856, and by Charles C. Mowry to Ira Scott, on the 9th day of October, 1856, as collateral security for the payment of a debt. Said Mowry, on the 19th day of December, 1856, executed a deed of trust to William H. King, for the use of Ira Scott, to secure the payment of the same debt, and, on the 14th day of March, 1857, Ira Scott transferred the contract and the debt due to him to William Jones.
- 84 The defendant admitted that the plaintiffs had paid, or caused to be paid, the several sums of money mentioned in said contract to be paid by them, at the times in said contract specified for the payment of the same; and also admitted that the plaintiffs had paid, or caused to be paid, all taxes and assessments on the premises since the date of the contract.
- 85 The plaintiffs read in evidence a patent from the United States to John Frink and Charles K. Bingham, dated November 1, 1839, and conveying Lots 16, 17 and 18, of Block 9, Fort Dearborn Addition to Chicago.
- 87 The plaintiffs read in evidence a deed from Charles K. Bingham and wife to Martin O. Walker, dated May 28, 1840, conveying the following described lots and parcels of land, being in the city of Chicago, all and the same as purchased from the United States at a late public sale at Chicago, through the agency of Matthew Burchard, Esq., as per his certificate, No. 171, for Lots 16, 17 and 18, in Block 9, in Fort Dearborn Addition to Chicago, reference being had to the plat therefor, and the patent or subsequent title issued by the President of the United States and Secretary of War, reference being had to said certificate of Burchard as agent, and the said plat and patent for particulars, meaning to convey all the right and title thus and subsequently obtained, and none other, to and for the equal and undivided third part thereof.
- 90 The plaintiffs read in evidence a deed from John Frink and wife to Martin O. Walker, dated June 1, 1840, conveying the following described premises, to wit: "All those certain lots and parcels of land lying and being in the city of Chicago, described and known as Lots No. 16, 17 and 18, in Block 9, in Fort Dearborn Addition to Chicago, reference being had to the certificate of purchase from Matthew Burchard, Esq.,



No. 171, as agent for the United States, and to the plat and subsequent title or patent issued therefor by the President of the United States and Secretary of War, dated the first day of November, A. D. 1839, as may appear. The true intent and meaning of this instrument is to convey to the said party of the second part, all the right, title and interest of the said party of the first part, in and unto the premises herein described, excepting and reserving one equal undivided third part of the original whole thereof."

96 The plaintiffs then read in evidence a bill in chancery, in favor of Williams Fowler, against John Frink and Martin O. Walker, filed in the Circuit Court of Cook county, on the 21st day of November, 1840.

97 The bill sets forth, that on or about the 1st day of January, 1838, Charles K. Bingham, John Frink, Samuel G. Trowbridge, and the complainant, entered into copartnership in the business of running stages, carrying passengers, and transporting the United States Mail. That the complainant, soon after the formation of the copartnership, paid into the concern the sum of three thousand dollars in cash, which was credited to him upon the books of the company; that Bingham paid into the concern the sum of sixteen hundred dollars, or thereabouts; that Trowbridge brought into the business divers horses, carriages, coaches, and other things he had previously used in the same business, and that Frink brought into the concern some horses and carriages. That no written articles of copartnership were entered into, but it was verbally agreed between the parties, that the complainant should have one-sixth, Bingham one-sixth, Frink one-third, and Trowbridge one-third, of the profits, and that they should share the losses in the same proportion.

98 The bill sets forth, that the parties carried on the business until on or about the month of January, 1839, when Trowbridge sold out his interest to Martin O. Walker, and retired therefrom, and thereupon Walker came into the firm in the place and stead of Trowbridge. That the business of the firm was continued by Bingham, Frink, Walker, and the complainant, until May, 1840, when Bingham sold out his interest therein to Walker, and retired. That the business was thereafter continued by Frink, Walker, and the complainant. That no dissolution of the copartnership had ever taken place, and no settlement of accounts between the partners had ever been made. That Frink and Walker had possessed themselves of all the assets, and had excluded the complainant from the copartnership, and that during its continuance, in addition to the horses, carriages, and other personal property, that had been purchased with the funds of the concern, and belonged to it, *several lots of land had been purchased with the funds of the company*, and conveyances taken in the name of Frink and Bingham, generally, and barns, houses and stables, and that various shops had been erected by and belonged to the company, and that to all which real and personal property, the complainant was entitled to one-sixth interest.

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104 The bill prayed for an injunction, and that a receiver might be appointed; for a dissolution of the copartnership; for an account; and for payment to the complainant of any monies that might be found due to him; and for general relief.

105 The bill contains no other description of the real estate in controversy.

109-128 The plaintiffs then read in evidence the several answers of John Frink and Martin O. Walker to said bill of complaint, which were filed July 9th, 1841, and the complainant's replication thereto, filed on the same day.

141 The answers deny that the complainant was ever a copartner with the defendants as alleged in the bill; and while they admit that the copartnerships therein mentioned had acquired title to certain lots of land, they do not describe any of them.

143 The plaintiffs then read in evidence the decree of the court in said cause, rendered at the November Term, 1848, adjudging and declaring that the complainant was and had been a partner as in said bill alleged, and ordered that the cause be referred to William H. Brown, as a special master, to take an account.

148 The plaintiffs then read in evidence the report of the special master, filed July 11, 1857. The report finds,

|     |                       |                   |                   |
|-----|-----------------------|-------------------|-------------------|
| 151 |                       | PAID IN.          | DREW OUT.         |
|     | John Frink,           | \$4,766.31        |                   |
|     | Williams Fowler,      | 3,000.00          | \$1,487.32        |
|     | Samuel G. Trowbridge, | 14,000.00         | 16,907.13         |
|     | Chas. K. Bingham,     |                   | 1,162.45          |
|     | Martin O. Walker,     | 189.39            |                   |
|     |                       | <hr/> \$21,955.70 | <hr/> \$19,556.90 |

153 That the value of the property of the company, in which was included Lots 16, 17 and 18, in Block 9, Fort Dearborn Addition to Chicago, was \$31,485.50.

155 And that its liabilities were \$13,348.47.

191 The plaintiffs then called *William H. Brown* as a witness, who testified that he was the master to whom was referred the case of *Fowler v. Frink & Walker*; that he made his report in 1850; that he commenced his duties in 1849, and that they continued through that year and ran into the spring of 1850; that he could not speak with certainty as to the exact time, and that his report was very voluminous, and he made it in a bound book, which was filed.

- 162 The plaintiffs then read in evidence a decree of the Circuit Court of  
Cook county, in said suit, rendered on the 16th day of July, 1857, which  
165 declares that it appeared to the court that the firm owned in fee simple,  
as partnership estate, with other real estate, Lots Nos. 16, 17 and 18, in  
Block 9, in Fort Dearborn Addition to Chicago, and that the legal title  
to the same was, on the 21st day of November, 1840, in John Frink,  
Charles K. Bingham and Martin O. Walker, and that the cost of the  
166 same was \$3,347, and there was due to the complainant, Nov. 21, 1840,  
167 as his one-sixth interest in said partnership, \$1,512.68, for his capital,  
and \$976.50, for his share of the profits, making \$2,489.19 in the  
whole.
- 168 The decree recites the submission to arbitration between John Frink  
and Martin O. Walker, hereafter mentioned, and the award in pursuance  
170 of the same, and the release by John Frink to Martin O. Walker, of his  
interest in the subject matter of controversy, and then, by the consent  
171 of the complainant and Martin O. Walker, proceeds to decree that  
Walker pay Fowler the sum of twenty-five hundred dollars, in full for  
all his claims growing out of said copartnership, and that the complain-  
172 ant release to Walker all the interest which he had in the partnership,  
and the property of the same, on the 21st day of November, 1840, and  
173 in case of his neglect to execute such deed, that the same be executed  
by L. C. P. Freer, master in chancery.
- 177 The plaintiffs then read in evidence a deed from L. C. P. Freer, mas-  
ter in chancery, to Martin O. Walker, dated Sept. 28, 1857, conveying,  
188 among other property, all the interest which Williams Fowler had in  
Lots 16, 17 and 18, in Block 9, in Fort Dearborn Addition to Chicago,  
on the 21st day of November, 1840.
- 211 The plaintiffs then read in evidence the submission to arbitration,  
between John Frink and Martin O. Walker, dated Sept. 9, 1852,  
213 together with an extension of the time for making the award therein  
mentioned, dated March 19, 1853, and a further extension of the time  
for making said award, dated April 14, 1853.
- 193 The plaintiffs then read in evidence the award made in pursuance of  
said submission, dated April 28, 1853, together with the acceptance and  
209 ratification of the same by said Frink and Walker, dated May 7, 1853.
- 206 The fourteenth article of the award provides as follows:  
" We find, from the statements of said Frink and said Walker, that  
there is a controversy pending between Williams Fowler and said firm  
of Frink & Walker, on account of a claim made by said Fowler to a  
certain interest in property and effects in the possession of said firm, and  
that the same is in litigation in suits instituted by said Fowler and his  
assigns or grantees, in relation to the property and effects that consti-  
tute the subject of said controversy and litigation, and having in this



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award allowed said Martin O. Walker the sum of \$4,000, as an indemnification in this matter as between said John Frink and Martin O. Walker, we do direct, determine and award as follows: that whatever amount has been or shall be decreed or adjudged against the said Frink and Walker in favor of said Williams Fowler, and whatever property or money may be recovered by said Fowler, his assigns or grantees, of said Frink and Walker, or either of them, growing out of said claim of said Fowler, shall be paid and borne by said Walker individually, together with all costs and expenses that may now remain unpaid, and that may hereafter be incurred by said Frink and Walker, incident thereto, and growing out of the same, and said Walker shall save and keep said Frink harmless from all payments and costs growing out of the same; and said Martin O. Walker shall be entitled to all benefit and advantage that has accrued, or may hereafter accrue, to said Frink and Walker, from said litigation, and to the particular property and effects constituting the subject of said controversy and litigation; and said Frink shall execute instruments of release and deeds of conveyance of any interest he may have in or to the said property and effects, within ten days after the confirmation or acceptance of this award, which said instruments and deeds shall be acknowledged, and shall contain a relinquishment of dower to any and all lands and tenements in controversy as aforesaid."

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The plaintiff's then read in evidence the deposition of *Walter Laflin*, taken August 24, 1848, in the suit of *Williams Fowler v. John Frink et al.*, in which the said Walter Laflin testified, in answer

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To 1st Interrogatory. That he saw Martin O. Walker at Chicago, in July 1848, but had no acquaintance with him.

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To 2nd Int. That prior to the year 1846, his brothers, Luther and Matthew, had consulted with him relative to recovering a claim they had against Williams Fowler, and wished him to secure the same; that he told his brother Luther he might as well do it himself. He replied, that he had seen and conversed with Fowler, who promised well, but did nothing. Witness thought that by request of Luther he agreed to go to Southwick, Mass., to try to obtain security, where Fowler owned a house which Luther and Matthew thought would be security for their claim, or for some portion of it. That witness went to Southwick for this purpose, and upon inquiry was told the house was under incumbrance, so as to afford little or no prospect of security; but while there, was informed by Fowler and Charles K. Bingham, that Fowler was owner of one-sixth of the real estate held by Frink & Bingham, while they were in business in Illinois. That his brothers, Luther and Matthew, had, before this, proposed to him to purchase their claim against Fowler, but the proposition was not acted upon at that time, but remained open. That at the time witness was at Southwick, which was

224 To 3rd Int. That Luther Laflin handed or sent him the claims prior to June, 1846. That prior to June, 1846, he received from Luther Laflin, Luther and Matthew's claims against Fowler, together with an assignment from Fowler to Luther and Matthew Laflin of his claim against Frink & Walker, which was given them by Fowler, as security for their claims against him. That he could not state precisely the time he received the claims from Luther Laflin, but thought it was in 1846; that such assignment was not assigned by L. and M. Laflin to him.

To the 4th Int. That no instrument of security was assigned to him by Matthew and Luther Laflin, or either of them.

To the 5th Int. That he could not recollect whether the notes above mentioned were endorsed or not, nor the dates.

225 To the 8th Int. That he had no negotiation or consultation with any one in relation to the purchase of said demands, but the persons mentioned in the answer to the 2nd Interrogatory, except counsel who drew the papers.

226 To the 9th Int. That one of his brothers, which, he could not say, first informed him of their claim against Fowler.

To the 10th Int. That he had for many years been acquainted with Fowler; that he was in Chicago, Illinois, in 1845, and the real estate in Chicago, which belonged to, or had belonged to Frink, Bingham & Fowler, was pointed out to him by Matthew Laflin and others, and he saw it; that no one had told him particularly about Fowler's ability, that he could recollect, except that he had been told that he had a good claim against Frink & Walker for a considerable amount, and that Bingham informed him of the value of the real estate.

227 To 11th Int. That at the time of the transaction of June 2, 1846, he did know of the pendency of a suit of said Fowler against said Frink & Walker, and was told it was for the recovery of Fowler's interest in a business in which Fowler had been concerned with Frink & Bingham, in Illinois, and was informed of this by Charles K. Bingham; that Fowler showed witness said Frink's answer in the suit, which he particularly examined.

To 13th Int. That he did take a deed, dated June 2nd, 1846, from said Fowler, for certain land in Illinois, and that the land was his, subject to the legal or equitable claim of no one to his knowledge, in any contingency or event.

To 14th Int. That his knowledge of the value of the land was derived from his own observation, and from information of other parties, and his knowledge of title was derived from Charles K. Bingham principally.

228 To 15th Int. That Matthew Laflin did reside in Chicago, and was his agent in the care of his property; that he did not consult him as to the value or title of said property, that he recollected of, except as stated



in a previous answer ; that the same was shown to witness by Matthew Laffin ; that he could give no particular reason for consulting him or not consulting him, except that he was not present at the time of the transaction.

230 To 20th Int. That he could not name the time, nor by whom he was first informed of the pendency of this suit.

232 To 24th Int. That he made no contract except the one stated in his answer to the 2nd Interrogatory.

To 1st Cross-Int. That as to the assignment from Fowler to L. & M. Laffin, he did not recollect, but thought it was cancelled, and that all claims they had against said Fowler, to his knowledge, were cancelled at the time the said deed was made.

233 To 2nd Cross-Int. That Matthew Laffin has no interest in the lands conveyed to him.

235 The defendant then read in evidence a deed from Charles K. Bingham and wife, to Williams Fowler, dated June 2nd, 1846, conveying, among other property, all the right, title, interest and estate of said Charles K. Bingham, in the following described property : "Lots numbers 16, 17 and 18, in Block No. 9, in Fort Dearborn Addition to Chicago, situated in the city of Chicago, and which was purchased of the government."

236 "Also, in any other lands of which I am seized, or to which I have title, in said county of La Salle ; meaning by this deed to quit-claim to said Fowler, all the interest which I may have in and to any real estate in said county of La Salle, or in the city of Chicago, which was purchased by me, or by any firm for me, with which I was connected in business in said Illinois."

239 The defendant then read in evidence a deed from Williams Fowler to Walter Laffin, dated June 2, 1846, conveying, among other property, "one undivided sixth part of Lots 16, 17 and 18, in Block No. 9, Fort Dearborn Addition to Chicago, purchased of the government by Frink & Bingham." "Also, one undivided sixth part to any other tracts or parcels of land of which I am seized."

245 The defendant then read in evidence a certified copy of the record of proceedings in an ejectment suit in favor of Walter Laffin, against John Frink and Martin O. Walker, from which it appears that said suit was commenced on the 22nd day of April, 1852, for the recovery of an undivided one-sixth part of Lots 16, 17 and 18, in Block 9, Fort Dearborn Addition to Chicago ; that there was a trial of said suit on the 18th October, 1853, which resulted in a verdict and judgment for the plaintiff for the premises sued for ; that on the 8th day of November, 1853, the above judgment was set aside, and a new trial granted under the statute, upon the payment of costs. On the 18th day of May, 1854,

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- 256 a second trial was had, which resulted in a judgment for the plaintiff,  
257 on the 19th day of May, 1854, for the premises sued for. On the 28th  
258 day of May, 1855, a second new trial was granted, on motion of the  
259 defendants. On the 6th day of November, 1855, the cause was again  
tried, and on the 16th day of January, 1856, a judgment was again rendered in favor of the plaintiff, for the premises sued for.
- 261 The defendant also read in evidence a writ of possession in said  
262 ejectment suit, issued July 29, 1856, with the return of the marshal  
thereon, from which it appears that the marshal delivered possession of  
said premises to Walter Laffin on the 2nd day of October, 1856.
- 265 The defendant then read in evidence a bill in chancery, filed by Martin  
O. Walker, in the Circuit Court of the United States for the Northern  
District of Illinois, on the 5th November, 1852, and which was sworn to  
by the said Walker, setting forth, that Walker was the owner in fee  
simple of an undivided one-sixth part of Lots 16, 17 and 18, in Block  
9, Fort Dearborn Addition to Chicago. That in the winter of 1838 or  
1839, Walker, by agreement with John Frink and Charles K. Bingham,  
then composing the firm of Frink & Bingham, became a joint and equal  
partner with them in the staging business, property and effects, both real  
and personal, and so remained up to May 28, 1840, at which time  
266 Walker bought the interest of Bingham in the business. That in the  
month of June, 1839, and after Walker had become a partner of the  
firm of Frink & Bingham, the above lots were sold by the United  
States at public sale, and purchased by Charles K. Bingham, who took a  
certificate of purchase in the name of Frink & Bingham. That said  
certificate remained in the hands of Frink, Bingham & Co., up to May  
28, 1840, when it passed into the hands of Judge Dickey, of Chicago,  
where it remained until 1853, when John Frink obtained possession of  
the same, and had a patent issued to Frink & Bingham for the lands  
therein described. That the whole of the purchase money paid by  
Bingham for said lots, was furnished to him by Walker, out of his private  
funds for that special purpose, and the certificate of purchase taken  
in the names of Frink & Bingham solely as a matter of convenience, and  
267 charges that thereby a resulting trust was created for the benefit of  
Walker, and that by virtue thereof he was entitled to a deed of said  
lots.
- 268 That on the 28th day of May, 1840, Bingham executed a bill of sale  
to Walker, conveying to him all of Bingham's interest in the firm of  
Frink & Bingham, a copy of which is attached to the bill, and that at  
the same time it was expressly agreed by Bingham that he would assign  
and transfer all of his interest in said certificate to Walker, he having  
furnished the money for the purchase of the lands therein described,  
which, for various reasons set forth in the bill, Bingham had never done.



269 That Williams Fowler, in 1840, filed a bill in chancery against Frink & Walker, claiming one-sixth of all the property, real and personal, of Frink & Walker, and succeeded in establishing the same. That said cause was referred to W. H. Brown, to take an account. That Fowler claimed before the master, and procured him to take an account of one-sixth interest in said lots. That Fowler then procured Bingham to convey the premises to him, and he conveyed them to Walter Laffin, which conveyances were alleged to be without consideration, and with full notice of all the facts. The bill prayed for an injunction restraining Laffin from further prosecuting an action of ejectment against Frink & Walker for the recovery of the premises, and that Laffin might convey the same to Walker.

279 The defendant then read in evidence a deed from John Frink to Walter Laffin, dated November 3rd, 1857, conveying the premises described as follows, to wit: "Beginning on the south line of Lots 16, 17 and 18, in Block 9, in Fort Dearborn Addition to Chicago, on Randolph street, at a point 20 feet east of the south-west corner of said Lot 18; running thence north, on a line parallel with the west line of said Lot 18, one hundred feet; thence east, on a line parallel with the north line of said Lots, 22 feet; thence south, on a line parallel with the west line of said Lot 18, one hundred feet to Randolph street; thence west, on the south line of said Lots on Randolph street, 22 feet to the place of beginning."

281 The defendant then read in evidence a bond of Walter Laffin to  
282 Williams Fowler, dated June 2nd, 1846, conditioned that after said Walter Laffin should have realized from the real estate, the proceeds of the suit, or the partnership effects assigned to him by Fowler, as hereafter set forth, the full amount of the promissory note secured thereby, and such sums as said Laffin should have advanced to said Fowler, and the necessary sums expended in obtaining possession of said property, or after Fowler should have tendered to said Laffin the balance which might be due to him for said note and said sums advanced, said Laffin, or his heirs and assigns, should account with Fowler for any sums remaining in his hands, and reconvey to Fowler any of the property remaining unsold, after such payment or tender—at the foot of which bond appear the names of Wm. G. Bates and Edw. B. Gillett, as subscribing witnesses, and on the back thereof the following endorsement:

"The within bond of Walter Laffin is this day surrendered to Matthew Laffin, his attorney, in full satisfaction of the covenants herein contained.

WILLIAMS FOWLER."

283 "*Chicago, October 21st, 1856.*"

Also an assignment of Williams Fowler to Walter Laffin, dated June 2nd, 1846, to secure the sum of \$2,297.25, due said Laffin from said



Fowler, and such sums as said Laflin might thereafter advance to said Fowler, conveying all said Fowler's right, title and interest in and to the claim which he then had against John Frink, Martin O. Walker and Curran Walker, on which claim there was then a suit in equity pending against said Frink & Walker, in favor of said Fowler, in the county of Cook and State of Illinois; and also all said Fowler's interest, title and estate in the copartnership effects of said Frink & Walker, and Fowler, and to any balance which might be due Fowler as such copartner, and authorizing said Laflin to demand and receive the same of said Frink & Walker, to retain so much as might be sufficient to repay the above amount and such advances as should be made; and providing that Laflin should account to said Fowler for any balance that might remain after deducting actual expenses. Said bond being subscribed by Wm. G. Bates and Edw. B. Gillett, as witnesses thereto, together with an endorsement on said assignment cancelling the same, dated October 21, 1856, and signed "WALTER LAFLIN, by his att'y, Matthew Laflin."

284 The defendant then called *Wells Laflin*, who testified that he knew  
William G. Bates and Edward B. Gillett, the subscribing witnesses to  
said bond and assignment, and that they resided in Springfield, in the  
285 State of Massachusetts. That he knew the handwriting of said Bates  
and Gillett respectively, and that the signatures of said parties, as wit-  
nesses to said bond and assignment, were in their handwriting.

The defendant then called *G. B. Hinman*, who testified that he had been a book-keeper for Matthew Laflin for the last four years; that the cancellation of the foregoing bond is in the witness' handwriting, except the signature of Williams Fowler thereto, and that he (the witness) saw Fowler sign the same; that he knew Walter Laflin's handwriting, and that the signature to the bond, purporting to be signed by him, was in said Walter's handwriting; that Walter Laflin has recognized the cancellation, made on the 21st of October, 1856, of both said bond and assignment. He recognized the same about two months since. Walter Laflin has always recognized Matthew Laflin as his agent in all these suits; that he thinks Matthew Laflin's appointment, as agent, was in writing; that the cancellation of the assignment, as appears on its face, was made on the 21st October, 1856; the handwriting of which was in witness' handwriting, except the signature, which is in the handwriting of Matthew Laflin.

286 Upon being recalled, the witness testified that on the 21st of October, 1856, Mr. Fowler was settled with in full, and paid by Laflin. At that time a settlement was had between the parties, of accounts between them of moneys that had been paid to Mr. Fowler, for which receipts had been given, and which were then taken up, and a balance was found due to Fowler, of nearly \$1,000, for which Matthew Laflin then gave his note.



There was to be a deduction from the amount of this note, of some costs which had not then been paid. Nearly all of it has been settled since—all, except three or four hundred dollars.

Upon cross-examination, he testified that he was not aware that there was any unsettled account between Mr. Fowler and Walter Laffin; that \$600 had been paid on the note, and when the costs were taken out of it, it would be paid; that he knew nothing of the account, except from the face of the paper, and could not recollect the items; that he could say that the accounts between Williams Fowler and Walter Laffin were settled.

287 The defendant then read in evidence an assignment of the contract between Walter Laffin and the plaintiffs, by the plaintiffs to Charles C. Mowry, dated Oct. 1, 1856, in which the plaintiffs, for the consideration of \$4,000, assign to Mowry all their interest in the contract, and in the premises thereby contracted to be sold, subject to the covenants, conditions and payments in said contract mentioned, with power to demand and receive a deed from Walter Laffin on performance of the covenants.

288 The defendant then read in evidence an assignment from C. C. Mowry to Ira Scott, of the contract last mentioned, dated Oct. 9th, 1856, and in substance and effect the same as the assignment last recited.

289 The defendant then read in evidence a deed of trust from Charles C.  
290 Mowry to William H. King, dated December 19th, 1856, to secure the payment of a promissory note, signed by said Mowry, and in favor of Ira Scott, for \$2,557.00, dated October 9, 1856, and payable February 1, 1857; said deed conveying "all that part of Lots 16, 17 and 18, in Block 9, in Fort Dearborn Addition to Chicago, bounded and described as follows, to wit: Beginning on the south line of said lots on Randolph street, at a point 20 feet east of the south-west corner of said Lot 18; running thence north, on a line parallel with the west line of said Lot 18, one hundred feet; thence east, on a line parallel with the north line of said Lot, 22 feet; thence south, on a line parallel with said west line of said Lot 18, one hundred feet to Randolph street; thence west, on the south line of said Lots on Randolph street, 22 feet to the place of beginning;" to hold in trust to secure the payment of the above promissory note, with power of sale upon default in the payment thereof. Said deed  
291 also contains covenants of general warranty, and for the payment of all taxes and assessments during the continuance of the deed.

292 The defendant then read in evidence the note described in the last mentioned deed, to which deed reference is had for a description thereof.

293 The defendant then read in evidence an assignment of the contract between Walter Laffin and the plaintiffs, by Ira Scott to William Jones,



dated March 14, 1857, which assignment is the same in substance and effect as the assignment of said contract last mentioned.

294       The defendant then called *Ira Scott*, as a witness, who testified that the assignment from Mowry to him was to secure the payment of the note mentioned in the deed of trust to William H. King. That after the maturity of the note, he caused Mowry's equities to be sold under the deed of trust, to William Jones, and that Jones declined to take a deed; that he thought Mr. Jones said he was a creditor of Mowry; that Mr. Jones paid him the amount of his debt against Mowry, and he transferred to him whatever securities he had; that Mr. Jones knew all the facts in relation to the securities at the time he, witness, transferred them to him, at which time there was due to Laflin, on the contract,

295       \$4,800, which he supposed Jones paid him; that the assignment to the witness by Mowry was absolute on its face, and in order to avoid going in chancery to foreclose the equity, he got a trust deed from Mowry; that it was intended that the assignment should be directly to witness, but it was assigned to Mowry first, and by him to witness on the 9th day of October, 1856, which was the day on which the whole transaction was made; that all the papers passed from Mr. Casey to witness, at his office.

296       It was admitted by the parties that \$8,800, was the value of the premises described in the contract of Walter Laflin to the plaintiffs at the date of the contract, and that the premises were of the same value at the time therein stipulated for the conveyance of the same.

The plaintiffs then read in evidence the deposition of Matthew Laflin, taken May 8, 1848, in the suit of *Williams Fowler v. Frink and Walker*, in which Laflin testified,

That he and his brother, Luther Laflin, had a claim against Williams Fowler, for \$3,500, specified in two promissory notes, one for \$1,568.84, dated August 27, 1841, and the other for \$1,915.88, dated October 26, 1841, and that in order to secure the payment of said notes, Williams Fowler, on the 26th day of October, 1841, assigned to them all his interest in the firm of Frink & Walker, and all sums which might be recovered in the suit of Fowler against them.

That Fowler afterwards, on the 10th day of April, 1843, gave to Luther and Matthew Laflin his note for \$140.85, for the interest on the above debt. That afterwards, prior to the 2nd day of June, 1856, Luther and Matthew Laflin sold said claim, together with the security for the payment of the same, to Walter Laflin, at that time endorsing the note for \$1,568.84, and the note for \$140.85; the note for \$1,915.88 having been before that time paid by Fowler. At the same time, Luther and Matthew Laflin wrote their names on the back of said assignment in blank, with the expectation that there would be written over it an acquittance or



discharge of the same upon a settlement then about to be made with Fowler.

Afterwards the following discharge was written on the back of said assignment: "In consideration of one dollar to us in hand paid by Williams Fowler, we do hereby acquit and discharge the said Fowler from this assignment, and reconvey to him all the property herein assigned. In witness whereof, we have hereunto set our hands and seals this 2nd day of June, A. D. 1846. L. and M. Laffin."

On the day of the date of said acquittance, the said assignment with said discharge thereon, and the said Fowler's notes, then remaining unpaid, were delivered up to said Fowler. He also testified that he knew all about the controversy between Fowler and Frink & Walker, and had been more or less actively engaged assisting Fowler therein.

71 The court below, on the 5th day of March, 1860, found in favor of the plaintiffs, and against the defendant, for the sum of \$11,231 <sup>48</sup>/<sub>100</sub>, damages. The defendant moved for a new trial, and in arrest of judgment.

The motion for a new trial, and in arrest of judgment, was overruled on the 12th day of March, 1860, and judgment was rendered on the finding of the court.

On the 22nd day of March, 1860, the defendant prayed an appeal, which was granted, and he brings the case to this court, and assigns the following errors:

345 1st. In the rendition of the judgment for the plaintiffs, and assessing their damages for the amount of the consideration money and interest paid to Walter Laffin, by the plaintiffs or their assigns, when such damages ought to have been merely nominal.

2nd. In the rendition of said judgment, assessing the damages as aforesaid, when the measure of damages should have been the value of the outstanding title.

3rd. In overruling the motion for new trial, and in arrest of judgment.

And for other errors on the face of the record.

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Laflin

vs

Casey et al  
                      
Abstract

Filed May 14, 1860  
L. Leland  
Clerk