

13017

BAILEY ET AL

VS

DOOLITTLE

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 231.

~~1860~~

Garley

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Garley

Garley

13017

STATE OF ILLINOIS, ss.

**{ IN THE SUPREME COURT AT OTTAWA,
OF THE APRIL TERM, 1860.**

MARY and MARTHA DOOLITTLE,

vs.

**ISABELLA SAMPSON and SAMUEL
P. BAILY.**

} Error from Tazewell.

Page of
Record.

1 Term of the Court, September, 1856.

1 The petition of Mary and Martha Doolittle, by Rawley S. Doolittle, guardian.

2 The petition sets out that Mary and Martha Doolittle, the complainants, are
infants under the age of 21 years, to wit: of the age of 10 and 12 years, and R. S.
Doolittle is their guardian; represents that they, the petitioners, and one Isabella
Sampson and Samuel P. Baily are seized of the following described land, situated
in the county of Tazewell and State of Illinois, in the proportion and of the estates
hereinafter described, to wit: the north-east quarter of the south-west quarter of
section one, township twenty-four north, of range five west of the third principal
meridian; and shows and sets forth that they are seized of one undivided two
third part of said land in fee simple, absolute, and that Isabella Sampson is seized
2 of an undivided third part of said land in fee simple, absolute, both subject to the
estate of said Baily in the said premises; further sets out that Baily is seized of
said premises for life of one Rawley S. Doolittle, the guardian of the petitioners,
3 and that the petitioners derived their title and interest in said land in manner fol-
lowing: the same was granted by the United States to one Tench T. Sampson,
by patent bearing date 21st of September, 1835, and copy hereto filed, mark "A,"
part of this petition Tench T. Sampson died in 1841 intestate, leaving the fol-
lowing children and only heirs-at-law, viz: Martha Doolittle, the mother of the
petitioners, who married Rawley S. Doolittle, their father and their guardian in
this cause, and Elmira Graves, then married to Linus Graves, and Lucean A.
Sampson, also Rebecca M. Sampson, the widow of Tench T. Sampson, who died
in 1845 without having her dower assigned to her. Martha Doolittle, above
named, died intestate in 1847, leaving the petitioners, her only children and her
heirs-at-law. Eveline Graves also died intestate in 1842, leaving Linus Graves

and Emeline Graves her only children and heirs-at-law, who both died in the same year at the age of one and three years respectively, leaving no children nor no
 4 descendant of children, and the said Linus Graves was then only heir-at-law of said children, being their father. That Lucean Sampson died some time in 1849, leaving Isabella Sampson, his only child and heir-at-law and Eliza Sampson, the widow, and that Eliza Sampson, since the death of Lucean Sampson married Henry Conklin, that Lenus Graves, Eliza Conklin and Henry Conklin by deed, bearing date 24th April, 1856, conveyed all their interest in said land to the petitioners, a copy of which deed is made an exhibit marked "B" and part of this petition. That said Bailey obtained his interest in said premises in the manner following: The said Rowley S. Doolittle by his intermarriage with Martha Doolittle, above named, and by the birth of the petitioners, became entitled to a life estate of Martha's share to said premises, which was an undivided third part as tenants by courtesy. That on the 21st day of June, 1850, the said interest of said R. S. Doolittle was sold by the United States Marshal for the district of Illinois, to one B. S. Prettyman, by virtue of an execution issued by the said Marshal to the said B. S. Prettyman, January 20, 1852. The said B. S. Prettyman
 5 conveyed his interest in said premises thus obtained to the said Baily, October 6th, 1853. Baily was required to produce said deed upon trial of this cause, or be allowed to use certified copies; denies all knowledge of other persons having any interest in said premises other than those above stated. That Isabella Sampson is a minor, under 21 years of age, prays a guardian *ad litem* may be appointed for said minor, and summons may issue against Isabella Sampson and Samuel P. Bailey for division and partition of said premises, answering to the rights of the parties interested therein and for the sale of the same, if it should appear that a division cannot be made without great prejudice to the owners.

MARY DOOLITTLE,

MARTHA DOOLITTLE.

by R. S. DOOLITTLE, Guardian.

6 I. L. McINTIRE & JAMES ROBERTS, Solicitors.

Affidavit of the truth of the statement made in petition.

Copy of patent issued to Tench T. Sampson, dated 1st September, 1834.

7 Copy of deed from Linus Graves, Virginia Graves, the wife of Linus Graves,
 8 Henry Conklin, and Eliza Conklin, the wife of Henry Conklin, dated 24th April, 1856, granted and sold, quit-claimed to Martha and Mary Doolittle, to the follow-
 9 ing land: North-east quarter of the south-west quarter of section one. Township twenty-four north, range five west, of the third principal meridian. *Habendum* to them, heirs and assigns, for ever.

10 The acknowledgment of the deed made, Linus Graves and Virginia T. Graves, date 24th April, 1856.

Acknowledgment, Henry Conklin and Eliza Conklin, dated 24th April, 1856.

- 11 Certificate of the Clerk of the County Court of McLean County, attached to
the above described deed, dated 25th April, 1856.
- 12 Security for costs. Issuing summons.
- 13 Summons, dated 9th day of July, 1856. Service of summons on 26th of
July, 1856, on Bail.
THOMAS C. REEVES, S. T. C.
by C. WILLIAMSON, *Dep.*
- 14 Summons issued directed to the Sheriff of McLean county, directed to Isabella
Sampson, dated 9th day of July, 1856.

Service of summons on Isabella Sampson by delivering a true copy on 25th August, 1856.

- 15 Proceedings at the September Term, 1856.

MARY AND MARTHA DOOLITTLE,	} September 29, 1856, Petition for Partition.
vs.	
ISABELLA SAMPSON AND SAMUEL P. BAILY.	

Service of process. Charles Turner appointed Guardian *ad libitum* to the infant Isabella Sampson. Bailly ruled to answer by Friday.

- 16 Proceeding of the October term, 1856.

- 17 The extension of time to answer.

The proceedings of the 7th day of October, 1856.

The enjoining the prosecution of this suit.

Answer filed 8th October, 1856.

ANSWER.

MARY AND MARTHA DOOLITTLE, }
vs. Cirenit Court,
 SAMUEL P. BAILY AND Tazewell County.
 ISABELLA SAMPSON. }

Answer of Isabella Sampson by Charles Turner, *Guardian ad libitum*.

- 18 The answer of Samuel P. Baily denies that said petitioners, Samuel P. Baily, and Isabella Sampson are tenants in common of the land. Said petitioners, have any title in the same either in law or equity ; the respondent admits the claim of title of said land to be as the petitioners have stated so far as the patent to Tench T. Sampson, died seized of the land described, and that, as he has

been informed, believes the heirs of said Sampson are correctly set forth in said petition, and respondent further states that he is informed and believes, although neither of the above facts are within the actual knowledge of respondent; that said Martha Doolittle died as stated in said bill and also that the said petitioners are the heirs at law, and children of said Martha. Respondent also admits
 19 that said Emeline Graves, one of the heirs at law of said Tench T. Sampson, died intestate as alleged in said bill, and that Linus Graves was her sole heir at law. Respondent, however, says that he knows nothing of the death of said Lucean A. Sampson, nor whether he left any children. The respondent, further answering, says he knows nothing of the deed of said Linus Graves, Eliza Conklin and Henry Conklin to the said petitioner, but he insists, however, that if such a deed was made as stated in said bill, the said deed conveyed no title for the reasons hereinafter stated. Respondent admits that the Marshal of the state of Illinois, did, by virtue of an execution issued from the office of the Clerk of the Circuit Court of the United States, for the District of Illinois, sell on the 21st day of June, 1850, to B. S. Prettyman; that the legal time of redemption thereof having expired the said Marshal did, on the 28th day of January, 1852, convey said land to said Prettyman, who afterwards conveyed the interest acquired by said sale to respondent, which said execution was issued upon a judgment recorded in the
 20 said court at June term thereof, A. D., 1843, by John Warbston, Hezekiah King, Job P. Dean and Wyllis King against the said Rawley S. Doolittle, by which said sale and purchase, respondent became and was the owner of whatever said Rawley S. Doolittle had in the said land, both in law and equity. Respondent further states that on the 16th day of December, A. D. 1844. Rebecca M. Sampson, widow and Lenus Graves and Lucien A. Sampson, two of the heirs at law of said Tench T. Sampson, by an instrument in writing of that date, entered into a contract which, after reciting the considerations therefor as having been paid by Rawley S. Doolittle, purports to convey said land to Rawley S. Doolittle's heirs. All will more fully and at large appear by reference to the said deed, a copy as of record is hereunto filed, marked "A" and the original of which said Rawley S. Doolittle is hereby notified to produce, on the hearing of this cause, which deed was recorded in the office of the Recorder of said county of Tazewell, on the 3d day of September, A. D. 1849, and if the original of which deed cannot be found your respondent prays leave to introduce a copy thereof from said records.

Respondent further states that at the time said deed was made, the said
 21 Rawley S. Doolittle was and still is living, and therefore at the time of said conveyance to his heirs, and that the said instrument in writing failed as a conveyance for the reason that the grantee therein named were not in existence, but respondent insists, however, that at the time said conveyance or deed was made, the said Rawley S. Doolittle did actually purchase the said interest of said grantors and paid for the same and had the deed made to his heirs, under the mistaken notion that the conveyance would place the title in his children, and that the

same was thus made with the intention on the part of said Rawley S. Doolittle to prevent his creditors, especially Wauberton and others, plaintiffs in said judgment, from collecting their said judgment, the said judgment then being in full force. Respondent therefore charges and insists that said land being so purchased by Rawley S. Doolittle or whatever interest or title then being in said grantees in said deed was vested in equity in said Rawley S. Doolittle, and by said sale, and
 22 was subject to the said judgment, so as aforesaid recovered by said Warberton and others against said Doolittle, and that said Prettyman by said purchase at said sale, became and was the owner in equity of the interest so attempted to be conveyed by said Rebecca M. Sampson, Linus Graves and Lucean A. Sampson to Rawley S. Doolittle's heirs as aforesaid, and also whatever interest said Rawley S. Doolittle had as the husband of said Martha Doolittle as aforesaid, being a tenancy in courtesy of that interest, whatever the same may be determined to be.

Respondent further states that at the April term, 1845, of the Circuit Court of said County of Tazewell, a judgment was recovered in favor of the State of Illinois against the said tract of land for the taxes levied upon said land for the year 1844, that a precept was issued upon said judgment upon which the sheriff of said county sold said land at public vendue, at which sale William D. Briggs became the purchaser of the whole tract and received a certificate of purchase therefor which was by said Briggs duly assigned to the respondent, that the said land remaining unredeemed from said sale, the sheriff of said county did, on the 17th day of May, 1847, convey said land to said respondent by a deed of that date, a copy of which deed is herewith filed, marked "B," and the original made part hereof for greater certainty and for evidence. Respondent further states that he being thus intrusted with said tax title, entered into the actual possession thereof in the year 1848, and has held the possession of the same from that period to the present time, the same being a period of more than seven years prior to the commencement of this suit and has paid all taxes assessed upon the said premises from the date of said deed, by reason of which title, possession and payment of taxes, he insists that he has now a valid and legal title to the whole of said tract of land, independent of any title or interest acquired by said purchasers under said sale under said judgment against said Rawley S. Doolittle, and that he insists upon the benefit of the provision of the statute of this state in relation to the possession and payment of all taxes for seven successive years, under claim and color of title made in good faith.

24 Whereupon, having fully answered said petition, he prays to be dismissed with his reasonable costs.

MANNING & MERRIMAN, *his Solicitors.*

Know all men, by these presents, that whereas, at the April term, 1845, of the Circuit Court of Tazewell county, a judgment was obtained in said court in favor of the State of Illinois against the north-east quarter of the south-west quar-

ter of section number one, in township twenty-four north, range five west of the third principal meridian, for the sum of one dollar and sixty-seven cents, being the amount of taxes, interest, and costs assessed upon said tract of land, for the year 1844. And whereas, on the twenty-first day of April, 1845, I, R. W. Briggs, Sheriff of the county aforesaid, by virtue of a precept issued out of the Circuit Court of the county aforesaid, dated the nineteenth day of April, A. D., 1845, and to me directed, did expose to public sale at the door of the court house, in the county aforesaid, in conformity with the regulations of the statute in such
 25 case made and provided, the tract of land above described, for the satisfaction of the judgment so rendered as aforesaid, and whereas, at the time and place aforesaid, W. D. Briggs, having duly assigned his certificate of purchase to Samuel P. Baily. Now therefore I, R. W. Briggs, Sheriff as aforesaid, for consideration of the said sum of one dollar and sixty-seven cents, to me in hand paid by said W. D. Briggs, at the time of the aforesaid sale, and by virtue of the statute in such case made and provided, have granted, bargained and sold, and by these presents do grant, bargain and sell unto the said Samuel P. Baily, his heirs and assigns, the north-east quarter of the south-west quarter of section one, township twenty four, range five west of the 3d principal meridian, in Tazewell county, Illinois, to have and to hold unto him the said Samuel P. Baily, his heirs and assigns forever; subject however to all rights of redemption provided by law. In witness whereof, I, R. W. Briggs, Sheriff as aforesaid, by virtue of the authority aforesaid, have hereunto subscribed my name and affixed my seal this 7th day of May, 1847. Signed by the Sheriff and Ex-Officio Collector. [L. s.]

Acknowledgment of deed.

Deed was acknowledged before the Clerk of the Tazewell Circuit Court, on the 17th day of May, 1847, by R. W. Briggs, Sheriff of Tazewell county, in his
 26 official capacity, and the seal of the said court attached thereto.

And now afterwards came the petitioners by Roberts their attorney, and moves the Court to strike out so much of the defendant Baily's answer as set up an equitable defence to the said petition, which motion being allowed, so much of said answer as sets up an equitable defence was ordered by the court to be stricken out.

Filing replication on the 6th of October, 1856.

27 Replication avers that the plaintiffs will prove all the allegations of their bill.

28 Proceedings of the April term, 1857. On motion, the cause continued.

Proceedings of the October term, 1857.

31 Affidavit for continuance.

- 32 Proceedings of the October term, 1857. Cause continued on affidavit.
- 33 Proceedings at the April term, 1858. This cause continued by agreement.
- 34 Proceedings of the October term, 1858. This cause continued generally.
- 35 Proceedings of the December term, 1858. This cause continued generally.
- Proceedings at the February term, 1859.
- New trial had. Verdict for plaintiff.
- 36 On motion of the defendant, Baily, a new trial was granted.
- Proceedings of the June term, 1859. This cause was continued.
- 38 Proceedings of the September term, 1859. This cause came on for trial upon the issue, the jury found for the plaintiffs. Motion made for a new trial by Baily, the defendant, which motion was overruled by the court.

The court made the following decree :

MARY AND MARTHA DOOLITTLE, by their Guardian, RAWLEY S. DOOLITTLE,	}	Petition for Partition.
vs.		
ISABELLA SAMPSON AND SAMUEL P. BAILY.		

The judgment rendered by the court.

Baily, defendant, prayed an appeal, which the court granted, with leave to file bill of exceptions in sixty days, and appeal bond in the sum of two hundred dollars, with B. S. Prettyman as security.

Appeal bond filed 20th October, 1859, with B. S. Prettyman, security, in the sum of two hundred dollars.

- 42 Appeal bond. Evidence as follows by plaintiffs :

Patent of the United States to Tench T. Sampson, dated 21st September, 1835, for the the south-west quarter of section one, in township twenty-four, north of range five, west of the 3d p. m., in the district of lands at Springfield.

- 44 The defendant then called John M. Leighton, who testified that Martha Doolittle, the mother of the petitioners, was a daughter of Tench T. Sampson ; knew Tench T. Sampson was dead, and that said daughter Martha Doolittle was dead but do not recollect the exact date of either. Knew R. S. Doolittle and Martha Doolittle, lived together as husband and wife.

The petitioners called V. A. Sampson, who testified that he was a cousin of Tench T. Sampson, and that he departed his life in 1843, leaving Lucius A. Sampson, Martha Doolittle and Eveline Graves as only heirs at law, and that Martha Doolittle, the mother of the petitioners, died in the summer of 1847, leaving the petitioners as her only heirs at law, and that Eveline Graves died soon after, leaving two children, and Linus Graves, her husband, surviving her, and that both of said children of said Eveline died prior to 1854, leaving Linus Graves, their father, surviving them, and that he has since married and lives in McLean county, Illinois, and that Lucian Sampson died in 1849, leaving two children and widow, now Mrs. Conklin, and wife of Conklin, and after his death one of the children of Lucius A. Sampson died, leaving Isabella Samson, the defendant, the surviving heir, and Elizabeth Conklin the widow, as her heir of the estate. The plaintiff then offered to be read in evidence the following deed :

45 Know all men, by these presents, that we, Linus Graves and Virginia Graves his wife, both of the county of McLean and State of Illinois, and Henry Conklin and Eliza Conklin, wife of said Henry Conklin, both of the county of McLean, and State aforesaid, said Eliza Conklin conveying her consent of her said husband, for and in consideration of the sum of one hundred dollars to us in hand paid by Mary Doolittle and Martha Doolittle, both of the county of Tazewell, and State of Illinois, the receipt of which is hereby acknowledged, have granted, sold, and forever quit-claimed, and by these presents do grant, sell and forever quit-claim unto the said Mary Doolittle and Martha Doolittle all our right, title and interest in and to the following described tract of land, to wit: The north-east quarter of the south-west quarter of section one, (1) in township twenty-four (24) north, of range five, west of the third principal meridian ; also, the north-east quarter of the south-east quarter of section two, in township twenty-four north, range five west of the 3d principal meridian, all in the county of Tazewell, and State of Illinois, to have and to hold the same to them, the said Mary Doolittle and Martha Doolittle, their heirs and assigns to their sole use and behoof forever. In witness
43 whereof, we have hereunto set our hands and seals this 24th day of April, 1856.

LINUS GRAVES, [L. s.]

VIRGINIA GRAVES, [L. s.]

HENRY CONKLIN, [L. s.]

ELIZA CONKLIN. [L. s.]

47 The Justice's certificate of acknowledgment of the above deed, 24th April, 1856.

The Clerk's certificate of magistracy and seal.

The plaintiff rested. The defendant then offered and read in evidence the

48 Sheriff's deed, set out in the defendant Baily's answer, being for the same land in controversy.

The acknowledgment.

The reading of which the plaintiff objected. The plaintiff then offered in evidence the tax receipts for the land in controversy, for the year 1847, 1849, 1850, 1851, 1852, 1853, 1854, 1855, and 1856; to the reading of each of which the plaintiff objected, and the objection overruled and the same were read in evidence. The defendant then read, without objection, the deposition of Bernard Baily as follows :

MARY AND MARTHA DOOLITTLE,	}	State of Illinois, Tazewell County, Tazewell Circuit Court, Feb'y term, 1859.
<i>vs.</i>		
SAMUEL P. BAILY AND OTHERS.		

The deposition of Bernard Baily, a witness on behalf of the defendants, produced and sworn to be read in evidence in said cause by the consent of the plaintiffs. I am acquainted with Samuel P. Baily, one of the defendants. He is my brother, have no acquaintance with the plaintiffs. I know the land in controversy, it being the north-east quarter of the south-west quarter of section one, township twenty-four north, range five west of the third principal meridian. I first knew the land by the above description in the year 1848. I knew of some timber being put on the land by my brother, some time during the spring of 1849, for the purpose of building a house, the timber laid on the land for some time before the house was raised; and the house was raised some time during the latter part of the summer or during the fall of 1849; there was some land put in cultivation; whether it was put in cultivation in the fall of 1849 or spring of 1850, I cannot now recollect. The improvements were made at the instance of my brother. I cannot state how near the line is to where the house stands, but it stood in the S. W. corner of the above described forty. My brother or his tenant was in possession of the house on the land at the time I was on the premises, some time last fall. The house and enclosure were then standing there. There was a shaft of a coal pit on the land; it was opened by D. McCook, either in the year 1851 or 1852, think it was in 1851. D. McCook rented the land of my brother. I think A. Brown, to whom my brother sold that land, with other lands, went in possession the year 1853. I know of no person occupying the land since my acquaintance with it, only those whom I have already mentioned. My brother has always exercised ownership over the land since my first acquaintance with it, except when in the possession of Abram Brown.

BERNARD BAILY.

Subscribed and sworn to before me, this 12th day of February, 1859,

M. C. YOUNG, *Clerk*.

It was agreed that Baily sold to Brown, that Brown immediately conveyed back the land to Baily. The defendant then called Thomas King, who testified that he knew the land in controversy; had known it about seven years, that he is a surveyor, and surveyed the tract in controversy in 1856. Saw the house on it; some post and rail fence was on the land when he first knew it, and was there when he made the survey; it was situated on the south-west corner of the land. The house nor the fence had not been moved since it was built.

The defendant called James Milner, who testified that he knew the land ; had known it since 1851. Baily then had possession of it by his tenants ; it was fenced with post and rail fence. There was in cultivation corn and potatoes ; a good large lot was inclosed in the fence, an acre or two. The defendant then rested his case.

The plaintiff then called M. C. Young, who testified that he was Clerk of the Circuit Court ; had been since 1856, and can find no judgment on his record in due form for the year 1845, for taxes. The judgment record for taxes shows a judgment for the year 1840 and for the year 1845, that a report was made by the Sheriff of the delinquent lands for that year, and the following judgment was rendered thereon :

STATE OF ILLINOIS,
vs.
54 BENJAMIN RICHARDS AND OTHERS. } Suit for taxes.

List of lands and other real estate situated in the county of Tazewell, and State of Illinois, on which taxes remain due and unpaid for the year 1844.

R. W. BRIGGS,
Collector Tazewell County.

April 3d, 1845.

Patentee.	Description.	Sec.	Town.	Range.	A.	Value.	
Benjamin Richards,	S. $\frac{1}{4}$ S. W.	3	22	2	80	240	1 68
Same,	N. E. S. W.	1	24	5	40	160	1 20
Delqts.,							

Process, a copy of the Collector's report of delinquent lands, 1844, filed April 21, 1845. Here is a copy of the judgment &c., as above set out.

56 Process came into the hands of the Collector, April 19th 1845, signed by R. W. Briggs, Sheriff.

57 Return of process.

Lands and town lots in the county of Tazewell, upon which judgment has been rendered at the April term, 1845, of the Circuit Court of Tazewell County, for taxes, interest, and costs due thereon, 1844. Said sale commenced on the 21st day of April, 1845.

Purchaser.	Residence.	Description.	Sec.	Town.	Range.	Am't ad.	Sold.	Amount.
Wm. D. Briggs,	Tazewell,	N. E. S. W.	1	24	5	40		1 67

The plaintiffs then called John Gridley, Clerk of the County Court, who testified that there was a book in his office which purported to be the tax list for 1844, as per affidavit of Davis, the Assessor for that year, made in March, 1844, but nothing appeared upon it excepting the listing of the land with the assessment for that year placed to it.

58 The affidavit of Alexander B. Davis.

59 Affidavit of R. W. Briggs, Collector, not signed. No signature to the affida-

59 vit. The above Assessor's list was marked on the back : Assessor's List, 1844

60 Didimus to take deposition of Abraham Brown, on part of the plaintiffs.

61 Copy of notice to Baily, one of the defendants.

63 Interrogatories put to Brown.

64 Deposition of Abraham Brown ; who testifies that his name is A. Brown,
and aged fifty years, and resides in Iowa City, and is acquainted with all the par-
65 ties except Isabella Sampson. That he purchased of Sam'l P. Baily an undivi-
66 ded two-third part of the land, and that he purchased other lands. Baily told the
witness that one-third of the forty now in controversy belonged to the heirs of
R. S. Doolittle. Baily never told the witness in regard to the title of complain-
ants. Witness heard Baily say he had a tax title to said land, and thought he
could hold the land under his tax title. S. P. Baily sold me an undivided two-
thirds part of forty acres of land, which land is now in controversy, as I under-
stand it Baily gave warrantee deed to two-thirds undivided and a quit-claim deed
for the undivided one-third. Baily told the witness I ought to watch and buy
67 their interest, that is, Mary and Martha Doolittle's interest, to the third part when
they came of age.

Here follows the cross interrogatories by defendant, Baily.

The witness, Brown, answers to the cross interrogatories that he purchased
the land in October, 1853. Never heard Baily say anything in reference to the
land described by the plaintiff, to the s. e. quarter of the s. w. quarter of sec. 1,
68 T. 24, range 5 west 3. Baily told the witness frequently that he had paid taxes
for 7 years and upwards, accompanied by possession, and he thought he might be
set up in defence against any person. Baily never showed me a tax title deed as
he recollects ; had some conversation with Baily, in Baltimore, on the subject of
Doolittle's title, but does not recollect. Don't know who was in possession of the
land in years 1848, '49, '50, '51. S. P. Baily was in possession 1852, and D.
McCook in 1853 ; the witness was in possession in 1854, 1855, and 1856. He be-
69 lieves there stood on the land a small log house ; line divided the house. He
believes there was also a garden under improvement when I purchased it, a gin
house, a shanty, and a blacksmith shop. McCook sunk a shaft, I think in the
summer or fall of 1857.

Follows the certificate of the Justice taking deposition, signed, Jn. Jerome,
70 Justice of the Peace. The certificate that Jerome was a J. P., and seal.

The plaintiffs then called on Clark, who testified that he knew the land, in
1851, that there was then a log house and lot of ground fenced upon it. The
house was never vacant until a year or two past, when it was used as a stable,

and it was now torn down, but the whole premises are now enclosed, and Baily told him in 1851, that he did not own the land, that it belonged to some minors, but he thought he would get it. Witness dug coal in 1850 and 1851, and the house was on it when he first saw it in 1849.



Plaintiffs admitted that Baily sold the land in controversy in 1853, to one Brown, and that Brown immediately re conveyed it back to him by mortgage, and finally released it to Baily and opened a coal bank on it in 1851. This was all the evidence offered in the cause.

72 The plaintiff's instructions given by the Court as asked by the plaintiffs :

1. The Court instructs the jury that the declarations of what deceased members of the family have said, and that parties are treated as husband and wife, and live and co-habit as such together, and are received as such in society, are sufficient evidence of the marriage of Rawley S. Doolittle and Martha Sampson.

72 2. That general reputation among the members of the family, and that Martha Sampson was treated as the daughter by Tench T. Sampson, and general reputation among the members of the family, are sufficient evidence to prove that the complainants are the children of Martha Doolittle, and that Isabella was the daughter of Lucian A. Sampson.

3. That the dower interest of the widow of Lucian A. Sampson, although it could not be sold by her before assignment to a stranger, yet it could be released by her to the person having the fee simple, and if they believe from the evidence that the complainants have such, it could be released to them.

4. That no outstanding claim of dower will defeat this suit, and they are not to take into consideration any such outstanding interest.

73 5. If the jury believe from the evidence that Baily agreed to purchase land in question of R. S. Doolittle, and entered into it under that agreement, he cannot set up a tax title to the land, it being his duty to pay the same.

6. The tax title offered by Baily not having a judgment or certificate of the assessment list to support it, is totally void and of no force whatever, and unless the jury believe from the evidence that the tax title was taken by Baily in good faith, believing it to be a good and valid title and that had both actual possession and payment of all the taxes thereon for seven successive years, before the commencement of this suit, they will find for the complainant.

7. That the possession to be adverse must be open, notorious, and visible, and made out by positive proof, and unless the jury believe from the evidence that Baily has had such possession, and that such possession continued for seven successive years as would notify the world, that he was in full possession and claiming the same, they will find for complainant.

74 8. That no conveyance made by Rawley S. Doolittle will defeat the title of the complainant derived from their mother and Linus Graves' deed. No acts of R. S. Doolittle would defeat the title of the complainants. That the amount mentioned in the deed from Graves to complainant is to be taken as the true amount paid, and it is for the defendant to show that there was no consideration.

9. If the jury believe from the evidence that Baily acquired title to the life estate of Rawley S. Doolittle, and occupied the land under it, it then becomes the duty of Baily to pay the taxes, and if such is the evidence, Baily cannot set up a tax-title to said land.

Competent

12. That the admission of Baily is ~~conclusive~~ evidence of his want of good faith.

To which instructions the defendant then and there excepted.

Defendant's instructions :

75

1. The defendant Baily asked the court to instruct the jury, that the defendants derived no more title to the land in controversy than Graves had, and that if the limitations as to time had commenced running against Graves, it continued to run against him, and all persons claiming under him, until the time the suit was brought.

2. And if they further believe from the evidence that Baily got his tax title in good faith to the land in question, and had possession thereof, and paid all taxes thereon during the term of seven years before the commencement of this suit, they will find for the defendant.

3. And if they further believe from the evidence that Baily had claim and

color of title made in good faith and had possession and paid taxes of the land for seven years before the commencement of this suit, they will find for the defendant, even though they may believe that Baily's title is not supported by the judgment at law.

4. Unless the jury believe from the proof that Isabella Sampson is entitled to the land as set forth in the petition, as belonging to her, they find so.

76 5. And the jury are further instructed that hauling of timber on a tract of land for a house and the erection of the house thereon, and cultivating and fencing of a part of a tract of land, is such possession as all the world should notice, and if they further believe that Baily did so haul on timber and erect a house and fenced in the land seven years before the commencement of this suit, and paid all taxes during that time, and had at the time he took possession a regular tax deed, in form, taken in good faith, they will find for the defendant.

6. If the jury believe from the evidence that Baily agreed to purchase, and did purchase of R. S. Doolittle, and entered into the possession under that purchase, Doolittle and all persons claiming through him, are estopped from pretending that Baily did have title to the same, and so far as that title is concerned they will find for the defendant.

7. The jury are instructed that the law requires all minors, before they can set aside a tax title in good faith, they must redeem the same from the tax sale, and pay all the taxes due thereon, and until they redeem the same from tax sale and pay all taxes they have no right or title to the possession, and they will find for the defendant.

77 8. If the jury believe from the evidence that at the time of the tax sale and deed that the land in question was vacant and unoccupied land, that the occupation of the same for a part of the time for seven years next following, and payment of taxes for 7 successive years thereon, that the occupation of it for a part of the time, does not change the nature of the title and the statute in regard to limitation as to unoccupied land is in full force as to it, and that unless they believe from the evidence that the complainants have paid back all taxes paid by Baily on the land, they are not entitled to recover, and they will find for the defendant.

9. If the jury believe from the evidence that the complainants received their title from Graves and of Sampson, after tax sale and the date of tax and to Baily, that then they can have no other title or right thereby except what Graves or Sampson then had, and that the statute of limitations must apply to the petitioners just the same as it would apply to their grantees, and they being minors does not change their rights, and if Baily would be entitled in their opinion from the proof, to recover the same against Graves and Sampson, they will find for the defendants.

78 10. If the jury believe from the evidence that Baily received a sheriff's deed to the land in question in good faith, in 1847, and has paid all the taxes assessed on the same from that date, until the commencement of this suit in 1856, they will find for the defendant, even though they should not be satisfied from the evidence that he had been in the actual possession of the same for seven successive years prior to the commencement of this suit.

11. If they further believe from the evidence that the defendant took his deed to the land in good faith, and paid all the taxes legally assessed thereon for seven successive years before the commencement of this suit, it makes no difference in law whither he occupied the land during a part of the said time of seven years or not, and they will find for the defendant.

And to the giving of which the plaintiff then and there excepted, and thereupon the jury found a verdict for the petitioners as follows :

We, the jury, find the title and interest to the land in controversy in the parties as set forth in petitioners' petition. The defendant then moved the court for a new trial for the following reasons :

- 79 1. The verdict of the jury is contrary to the evidence.
2. The court admitted improper evidence.
3. The court refused to admit the record of judgment for taxes on the land of the circuit court, authorizing the sale of the land for taxes.
4. The admitting in evidence of the agreement executed by Doolittle.
5. In admitting the evidence of Olark, a witness introduced by the plaintiffs.
6. Court gave improper instructions.
7. The court refused proper evidence offered by the defendant.
8. The instructions calculated to mislead the jury.
9. The instructions given by the court were not pertinent to the case under consideration.
10. Finding of the jury contrary to the evidence.

PRETTYMAN & BAILY, *Atty's for Defts.*

The hearing the case.

Judgment entered the case, viz :

And now at this day come the petitioners, and this cause having been submitted to a jury, duly selected and sworn, and the said jury having found the title and interest of said parties as set forth in said petition: It is therefore declared that the said Mary and Martha Doolittle one undivided two-thirds of said premises, and said Isabella Sampson one undivided third, all of which is subject to the interest therein of Samuel P. Baily, of one undivided third, for the life of Rawley S. Doolittle, and it is ordered that said premises be divided among said parties according to the title as above stated. It is further ordered by the court, that James R. Babcock, Middleton Tackeberry and John Gridley, be and are hereby appointed to divide and set apart the premises in said petition mentioned, being the north-east quarter of the south-west quarter of section one, in township twenty-four north, range five west of the third principal meridian, to the said parties according to their respective interests as above set forth, and declare if the same can be done without unjust prejudice to the interest of the parties, and that they report their actings and doings to the next term of this court and this cause continued.

JAMES HARRIOTT.

To the rendition of which judgment the defendant then and there excepted, and the defendant thereupon prayed that this his bill of exceptions in the cause be signed and sealed by the court, which is done.

JAMES HARRIOTT. [L. S.]

Assignment of errors.

81

1. The refusing proper evidence for the defendant.
2. Giving improper instructions for plaintiffs.
3. Overruling motion for new trial and rendering decree for partition.

SAMUEL BAILY <i>et al.</i>	} In the Supreme Court, Ottawa 1860, Error from Tazewell.
<i>vs.</i>	
MARTHA DOOLITTLE, MARY DOOLITTLE.	

Assignment of Error.

1. The admitting improper evidence for the plaintiffs and refusing proper evidence for the defendant.
2. The court erred in giving improper instructions for the plaintiffs.
3. The court erred in overruling motion for new trial and rendering a decree for the petitioners.

B. S. PRETTYMAN, *Att'y for Def't.*

~~222~~ 271-191

Bail is Dost etc

Also tract

Filed May 17. 1860
L. Deland
clerk

State of Illinois, } Third Grand Division.
SUPREME COURT. } APRIL TERM, 1860.

SAMUEL P. BAILY et. al.

^{vs.}
MARY and MARTHA DOOLITTLE.

This is a case of petition for partition, under the statutes, and the law requires that the petitioners should set forth the title and interest of all the parties entitled thereto, including tenants for years, for life, by the courtesy and in dower; and every person entitled to dower in such premises, if the same has not been admeasured, *shall* be made a party to the petition. See R. Statutes of 1845, page 400, sec. 2 and 3. Now for the sake of the argument, and discarding the tax title of Baily as proved, the evidence of the petitioners conclusively shows that Mrs. Conklin, widow of L. A. Sampson, was at the time entitled to dower in one-third of the premises, and no evidence was presented tending to show that it was ever set off to her, or that she ever released it to the heirs of Sampson, or to any one claiming the fee through them. The decree is therefore clearly erroneous in not recognizing her rights as shown by the evidence; and in decreeing it in fee to others contrary to the "rights of the parties" as shown by the proof. See statute of 1845, page 400, sec. 8. The finding of the jury was therefore clearly contrary to the evidence of the title and rights of the parties shown, in any point of view, and a new trial should have been awarded. See

But Baily had a tax deed to the premises executed in due form upon a sale of the premises for taxes to one William D. Briggs, before the date of the agreement of R. S. Doolittle to sell the same to Baily, and there is no evidence whatever but that Briggs bought in good faith, and Baily, the assignee of the certificate of purchase, took all of his rights as he then held them. Briggs then would have been in good faith entitled to a deed, and assigning to Baily, he became so entitled in good faith, and took a deed, and under it took possession of the land, and paid all taxes on it for seven years before the commencement of this proceeding; and the statute of 1839 being a statute of limitation ought to be enforced whenever a party is in a situation to call it to his aid. See case of 20 Illinois Rep., 235; case of 19 Illinois Rep., 382.

And good faith is a question of fact; see Woodward vs. Blanchard, 16 Illinois Rep., 425. And that good faith is always presumed until the contrary is shown, and bad faith must be proved to overthrow the *prima facie* rights of the parties. See McConnel vs. Street, 17 Illinois Rep., 235. And R. S. Doolittle, it is manifest by the affidavits of the petitioners and the evidence produced by them, had no title to two-thirds of the land, and his interest in the other one-third was then subject to the lien of the judgment under which it was afterwards sold from him. He therefore did not and could not sell the premises, and the whole pretence was a palpable fraud attempted on Baily; and such being already apparent the contract should have been excluded from the jury; for the law presumes that a man contracts to sell and convey a good title to the land. See Weller vs. Biscoe, 8 Eng. (Ark.) Rep., 422; 12 Alabama Rep., 39. And there the contract was only binding on the party signing it, and neither of the petitioners was a party to it. It could not be read in evidence against complainant as between the parties to this suit, and could it be read for them when they were not bound

by it, and did not claim in privity with parties so contracting for as to all that R. S. Doolittle could possibly have sold at any time? They admit that Baily is lawfully entitled. As to the binding force of such agreement, see 1 Selden's N. Y. Rep., page 229. And Doolittle was not then in possession, as well as being then without title, and not being then in any way able to carry out his contract, Baily might very properly, and should have elected as he did to consider the contract at an end, and procure the title otherwise. See Tyler vs. Young, 2d Scammon Rep., 446; Sugdon on Vendors, 209. There being then no privity of contract or estate between the parties to this cause, the article should not have been read, yet it is insisted that it should be read to show that Baily agreed to pay the taxes. But the proof is that the land was sold for taxes before the date of the agreement, and a certificate of purchase was then issued and in the hands of Briggs, which the record showed, and all parties are presumed to be cognizant of the fact, and Doolittle must have redeemed the same from sale before he could carry out his contract with Baily, and he knew that a contract to pay taxes was not a contract to redeem the land from a previous sale for taxes. The sale of land for taxes is not a payment of taxes. See 11 Illinois Rep., 414. The claim of the defendants is inconsistent with the contract of R. S. Doolittle read, and it cannot be used to support them as an estoppel. See Riply vs. Yale, 19 Vermont Rep., 156, (4 Washburne, 146.)

There was no evidence offered that tended to show that the complainants were the owners in fee of the interest in the land which Lucius Sampson owned in his lifetime; but on the contrary the petition averred that the fee in all the interest in the premises formerly owned by Lucius Sampson was then in the defendant Isabella Sampson; and the finding of the jury and decree is likewise. The case being then without a pretence, the third instruction given for the complainants below was therefore erroneous, and calculated to mislead the jury.

The fourth instruction is erroneous because it is against the letter and spirit of the Revised Statutes of 1845, page 400, sec. 2, 3 and 8.

The fifth instruction for complainant is not based upon the evidence in the case, is erroneous as applied to the facts read, and was calculated to mislead the jury.

The sixth instruction of the court, that the "tax title offered by Baily is totally void, and of no force whatever," is unwarranted by the law, and contrary to the statute. See Revised Statutes of 1845, page 104, sec. 8 and 9, and 448, sec. 73. The deed of Baily was in due form of law, and was *prima facie* evidence in all controversies in relation to the right of the purchaser; that it was listed and assessed in due form; that the taxes were not paid before the sale; that it was not redeemed at the date of the deed, that it was duly advertised and sold, and the grantor was the purchaser; and no person is permitted to question the title acquired by the collector's deed, without first showing that she, or the person under whom she claims had title to the land at the time of the sale;" "and that all taxes due upon said land have been paid by such person or the person under whom she claims title as aforesaid;" and it is not pretended that the complainants, or the persons under whom they claim, have ever paid any of the taxes to any persons whatso-

ever, or offered to pay it since the date of the deed to Baily; but, on the contrary, Baily showed that he had paid them all; and the possession of land is adverse when there is such an appropriation of it, or part of it, in the name of all, as will inform the vicinage. See *Morrison vs. Kelly*, 22 Illinois, 610. This possession Baily had.

The evidence shows that Baily took possession of the land in the spring of 1849 under his tax title. He then had no other. And that he did not acquire the deed of the life estate of R. S. Doolittle until about five years afterwards. And that the ninth instruction of complainant is clearly erroneous is patent on the most casual examination of its provisions, and is unfounded in fact and law, and is calculated to mislead the jury. And the evidence of the witnesses Brown and Clark, as to the declarations of Baily disclaiming title, ought not to have been received for the reasons that it is contrary to the statute of frauds. Parole declarations are inadmissible to prove or disprove title, or a disclaimer of title to land. See *Williams vs. Washburne*, 6 Cowen's Rep., 751; *Jackson vs. Denison*, 4 Wendall's Rep., 558; *Jackson vs. Shuman*, 6 Johnson's Rep., 22; *Jackson vs. Vosburg*, 7 Johnson's Rep., 186.

For these reasons it is apparent that the court erred in admitting for the complainant improper evidence, and gave erroneous instructions, which manifestly must have misled the jury, and the finding being contrary to the law and the evidence, and the decree being contrary to the rights of the parties in every point of view, a new trial ought to have been granted, and this case should be reversed for the errors assigned, and Baily permitted to recover.

B. S. PRETTYMAN, *for Plaintiff in Error.*

231-190

Being so Doolittle

Plffs. Argument

Filed Aug 17, 1860

Edeland

U.S.

STATE OF ILLINOIS, }
SUPREME COURT, }

Third Grand Divison,
April Term, 1860.

Samuel P. Baily

vs.

Mary and Martha Doolittle.

An addition argument of the Plaintiff in Error.

In preparing the abstract through inadvertency, I omitted the statement of the payment of the taxes for the year 1848, as by reference to the bill of exceptions—it will appear as was done.

B. S. PRETTYMAN.

231-190

Samuel P. Bailey

2

Doalittle

addition to abet

Filed May 29, 1860

L. Leland

Clk

1
Pleas to a Term of the Circuit
Court begun and held at the
Court House in the City of Peoria
within and for the County of
Tazewell and State of Illinois
on the fifth Monday of the Mo-
nth of September in the year
of our Lord Eighteen hundred
and fifty Six. Present the Hon-
orable David Davis Judge of the
Eighth judicial Circuit of the
State of Illinois composed of
the Counties of Tazewell, Woodfor-
d, &c, &c,

Be it remembered that on the 9th day of
July A.D. 1856 a Petition and Bond was
filed herein in the words and figures
following to wit

State of Illinois } In the Tazewell County Circuit
Tazewell County } September Term A.D. 1856

To the Hon. David Davis Judge
of the 8th judicial Circuit of the State of Illi-
ois.

The Petition of the undersigned Mary
Doolittle and Martha Doolittle of Tazewell
County Illinois. infants under the age of

" twenty one years to-wit of the age of ten & two-
" elve years respectively or thereabouts, by Rowley
" S. Doolittle their Guardian, of the same County
" and State, respectfully represents to your Honor
" that the said Petitioners, and one Isabella Tomp-
" son of the County of McLean and State of Illi-
" nois, and one Samuel P. Bailey of the County
" of Lapeer and State of Illinois are seized of
" the following described tract of Land, situa-
" te in said Lapeer County, in the proper
" tion and of the estates hereinafter mention-
" ed. To-wit the North East quarter of the South
" West quarter of Section One (1) in Township
" twenty four. North of Range five (5) west
" of the 3rd principal meridian. Your Petiti-
" oners further show that they are seized of
" one undivided two thirds part, of said pr-
" mises, in fee-simple absolute, and the said
" Isabella Tompson is seized of one undivided
" third part of said premises in fee-simple
" absolute, both subject to the estate of the
" said Bailey in said premises as hereinaf-
" ter named: Your Petitioners further state
" that said Bailey is seized of one undivided
" third part of said premises, for the life of one
" Rowley S. Doolittle the Guardian of your
" Petitioners. That your Petitioners and all the
" other parties aforesaid derive their title and

interest in and to said premises in the man-
 ner following to-wit: Said Tract of Land was
 granted to one Truch J. Tompson late of said
 Lawrence County by the United States Government,
 by Patent bearing date the 21st of September 1835,
 a copy of which is herewith filed and made
 part of this Petition. Marked (A) That Said
 Truch J. Tompson, died some time in the
 year 1841, intestate leaving the following nam-
 ed persons his children and only heirs at Law,
 namely, Martha Doolittle the Mother of your
 Petitioners and who was then intermarried
 with Rowley S Doolittle the father of your Pet-
 itioners, and the guardian in this cause, and
 Erline Grans then intermarried with Linus
 Grans, and Lucien A Tompson, and also Re-
 na M. Tompson the widow of said Truch J. Tom-
 pson, who died in the year 1845: without
 her dower ever having been assigned her;
 Your Petitioners further State that Martha
 Doolittle above named died intestate in
 the year 1847, leaving your Petitioners her
 only children and heirs at law. That said
 Erline Grans also died intestate, in the
 year 1848, leaving Linus and Erline Grans
 her only children and heirs at law, who both
 died in the same year, at the age of one and
 three years respectively, leaving no children

"nor descendants of children and the said
 "Linus Grane above named was the only heir
 "at law of said children he being their father.
 "That said Lucius A. Thompson also died
 "some time in the year 1849, leaving the said
 "Isabella Thompson his only child and heir
 "at Law, and Eliza Thompson his widow;
 "That Eliza Thompson has since the death of said
 "Lucius A. Thompson intermarried with Henry
 "Bouhlin. That said Linus Grane, Eliza Bouhlin
 "and Henry Bouhlin her husband, by deed bearing
 "date the 24th day of April A.D. 1856, conveyed
 "all their interest in the said premises to
 "your Petitioners, a copy of which deed is
 "also made an exhibit in this cause, marked
 "(B)" and prayed to be taken as part of this
 "Petition. That said Bailey obtained his
 "interest in said premises in the manner following,
 "the said Rowley S. Doolittle by his
 "intermarriage with Martha Doolittle above named,
 "and by the birth of your Petitioners, became
 "entitled to a life estate in said Martha
 "Doolittle's share of said premises which was
 "one undivided third part, as tenant by the
 "curtesy. That on the 21st day of June 1850,
 "the said interest of the said Rowley S. Doolittle
 "was sold by the United States Marshal for
 "the district of Illinois to one B. S. Priddyman.

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by virtue of an Execution issued to said Marshall from the Circuit Court of the United States for the district of Illinois. That a deed was executed for the same by the said Marshall to the said Prtlyman January 20th 1852. That said Prtlyman conveyed his interest in said premises thus obtained, to the above named Samuel P. Bailey October 6th 1853. Your Petitioners call upon said Bailey, to produce the said deeds upon the trial of this cause, or they will ask to read certified copies thereof from the recorders office.

Your Petitioners further state that to the best of their knowledge and belief no person or persons other than as above stated have any title in said premises in reversion remainder or otherwise. That said Isabella ~~Tompson~~ is a minor under the age of twenty one years and therefore prays that a guardian ad litem may be appointed for said minor That a summons may issue against the said Isabella ~~Tompson~~ and Samuel P. Bailey for a division and partition of said premises answering to the rights of the parties interested therein, and for a sale of the same if it shall appear that a division of the same cannot be made without great prejudice to

" to the owners:-

" E I McIntire &

" James Roberts

" Solicitors

} Mary Doolittle

} Martha Doolittle

} by R S Doolittle, Guardian

" State of Illinois

" Tazewell County }^{ss}

" Personally appeared before me
the undersigned clerk of the Circuit Court.

" Rawley S. Doolittle, and after being duly sworn
on oath declared that the statements made in
in said Petition are true to the best of his know-
ledge understanding and belief.

" Subscribed & sworn to } R. S. Doolittle

" before me this 9th July }

" A.D. 1856. J. A. Jones clk }

The United States of America.

To all to whom these presents shall
come-greeting:-

Thomas French T. Thompson of Tazewell County Illinois has deposited in the general land office of the United States, a certificate of the Register of the land office at Springfield whereby it appears that full payment has been made by the said Thomas T. Thompson according to the provisions of the act of Congress of the 24th of April 1820, entitled an act

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making further provisions for the sale of the public lands for the north East quarter of the south west quarter of Section One, in Township Twenty four. North of Range five west of the third principal meridian, in the district of lands subject to sale at Springfield Illinois, containing Forty Acres according to the official plat of the survey of said lands returned to the General Land Office by the Surveyor General, which said tract has been purchased Leuch T Sampson-

Now Know ye that the United States of America in consideration of the promises, and in conformity with the several acts of Congress in such case made and provided. Have given and granted and by these presents do give and grant Leuch T. Sampson, and to his heirs the said tract above described, To have and to hold the same together with all the rights, privilege, immunities and appurtenances of whatsoever nature, thenceunto belonging unto the said Leuch T Sampson. In Testimony whereof I Andrew Jackson President of the United States of America have caused these letters to be Patented, and the seal of the general land office to be thenceunto affixed,

Given under my hand at the city of Washington the Twenty first day of September

8

in the year of our Lord One Thousand Eight
hundred and Thirty five. and of the Independence
of the United States the Sixtieth.

L. S.

By the President
Andrew Jackson
By A Donelson Secy

Know all men by these presents that we
Linus Grans and Virginia F. Grans his
wife both of the County of McLean and
State of Illinois and Henry Conklin and
Eliza Conklin wife of said Henry Conklin
both of the County of McLean and State of
-said (said Eliza Conklin conveying by the
consent of her said husband.) for and in
consideration of the sum of one hundred
Dollars to us in hand paid by Mary Doolittle
and Martha Doolittle (Daughters of Rawley
S Doolittle) both of the County of Tazewell
and State of Illinois, the receipt whereof we
do hereby acknowledge have granted, sold, and
for ever quit claimed and by these presents
do grant, sell, and ^{for ever} quit claim unto the
said Mary Doolittle and Martha Dool-
-ittle, all our right title and interest in
and to the following described tracts of land
to wit: The North East quarter of the South
West quarter of Section one (1) in Township

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Twenty four (24) North of Range five (5) West
of the 3rd principal Meridian. Also the
North east-quarter of the South East quar-
ter of Section Two (2) in Township twenty
four (24) North of Range five (5) West of the
third principal meridian all in the County
of Lawrence and State of Illinois. To have
and to hold the same to them the said
Mary Doolittle and Martha Doolittle to
their heirs and assigns, to their sole use
and behoof forever: In witness whereof we
have hereunto set our hands and seals
this 24th day of April A.D. 1856.

Linus Graves seal

Virginia Graves seal

Henry Conklin seal

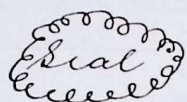
Eliza S. Conklin seal

State of Illinois }
McLean County }

Personally appeared before
the undersigned Clerk of Circuit Court
in and for the County-State above named
Linus Graves and Virginia F. Graves his
wife who are both personally known to
me to be the real persons whose names are
signed to the foregoing deed as having ex-
ecuted the same and acknowledged that
they had executed the same for the uses
and purposes therein expressed and Virgi-

nia F Grans wife of said Linus Grans. being of lawfull age, and having been by one separate and apart from her said Husband examined and the full contents of said deed made known and explained to her acknowledged that she had executed the same and relinquished her right of Dower to the lands and tenements therein mentioned voluntarily, freely and without compulsion of her said husband.

In witness whereof I have hereunto set my hand and affixed the seal of said court at Bloomington this 24th day of April A.D. 1856.



Wm M Cullough cto

By H. Burr Deputy

State of Illinois }
McLean County }

Personally appeared before the undersigned a Justice of the Peace in and for said County and State aforesaid. Henry Conklin and Eliza Conklin his wife who are both personally known to me to be the real persons whose names are subscribed to the foregoing Deed, as having executed the same and acknowledged that they had executed the same for the uses and purposes therein expressed. And Eliza Conklin wife of said Henry Conklin being of lawfull age

Answer with Isabella Sampson unto the matters and things contained in a certain bill in Chancery filed in our said circuit Court. on the Chancery side thereof. by Mary Doolittle and Martha Doolittle who sue by their Guardian Rawley S. Doolittle; and to do and perform whatever our said circuit Court shall order and direct in the premises. And you hereof make due return with an endorsement of the manner in which you shall execute the same.



Witness John A. Jones, Clerk and
the seal of said Court at Pekin
this 9th day of July A. D. 1856
John A. Jones Clerk

Which said summons was afterwards
served on the 22nd day of September A. D. 1856.
returned with the following endorsement—
Thence Robert

Served by leaving a true copy of the
within writ with S. P. Bailey the within named
defendant July 26th 1856

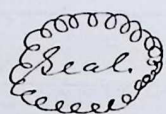
Thos L. Reens S. J. C.

By L. Williamson Deputy.

State of Illinois }
Tazewell County }

The People of the State of
Illinois to the Sheriff of
McLean County— Greeting—

We command you to Summon Isabella Sampson if she is to found in your County, to be and appear before our Circuit Court for said Lapeer County on the first day of the next term thereof to be held at the Court House in the city of Pkine on the fifth Monday of the month of September next then, and there to answer with Samuel P. Bailey unto the matters and things contained in a certain Bill in Chancery filed in our said Circuit Court, on the Chancery side thereof by Mary Doolittle and Martha Doolittle who sue by their Guardian Rowley S. Doolittle, and to do and perform whatever our said Circuit Court shall order and direct in the premises. And you hereof make due return with an endorsement of the manner in which you shall execute the same.



Witness John A. Jones, Clerk and
the seal of said court at Pkine this
9th day of July A.D. 1886

John A. Jones, Clerk.

And now afterwards found on the 2nd day of September A.D. 1886, said summons was returned with the following endorsement thereon to-wit:-

Executed by delivering to Isabella Sampson a true copy of this writ August 25th 1886

J. J. Price Shiff
by Geo. L. Linnam Deputy

And now afterwards to wit
 at a Term of the Circuit Court begun
 and held at the Court House in the City of
 Pekin within and for the County of Tazewell
 and State of Illinois on the fifth Monday of
 the month of September the same being the
 29th day of said month in the year of our
 Lord Eighteen hundred and fifty six. Present
 the Honorable David Davis Judge of the eighth
 judicial Circuit composed of Tazewell Woodford
 &c Amzi McWilliams Esq Prosecuting Attorney
 Thomas L. Kerns Sheriff and John A. Jones
 Clerk. The following proceedings were had
 in said cause to wit

Martha Doolittle and	}	September 29 th 1856
Mary Doolittle by their		Petition for Partition
Guardian Rawley S. Doolittle		
= vs. =		
Isabella Sampson &	}	
Samuel P. Bailey		

On this day came the
 Petitioners by their Solicitor Roberts, and
 it appearing to the satisfaction of the Court that
 the Defendants herein have been regularly
 served with process, on motion of said petition-
 ers Charles Turner Esq is appointed Guardian
 ad litem to the Infant defendant Isabella Sam-
 pson, and the defendant Samuel P. Bailey nel-

led to answer by Friday morning next at the opening of this Court.

And now afterwards to-wit on the 4th day of said Term, being the 2nd day of October in the year of our Lord one Thousand eight hundred and fifty six the following proceedings were had in said cause; to-wit-

Martha Doolittle and	}	Petition for-
Mary Doolittle by their		
Guardian Rawley & Doolittle		
-vs-		Partition.
Isabella Sampson	}	
and Samuel P. Bailey		

This day comes again the complainants as also the said defendant Samuel P. Bailey, and on his application the rule to answer herein is extended to Monday morning next at the opening of this Court.

And now afterwards to-wit on the 7th day of said Term being the 6th day of October of said One Thousand Eight hundred and fifty six, the following proceedings were had in said cause to-wit

Martha Doolittle and	}	Petition
Mary Doolittle by their		
Guardian Rawley & Doolittle		

vs For Partition
 Esabella Sampson }
 and Samuel P. Bailey }

The Prosecution of this
 suit being enjoined on the application of the
 Defendant Bailey it is ordered that the same
 be continued.

And now afterwards to wit, on
 the 8th day of October A.D. 1856 answers were
 filed in the words and figures following to wit

Mary Doolittle + } Circuit Court of Fayre-
 Martha Doolittle } - ell County. Petition for
 -vs- } Partition
 Samuel P. Bailey + }
 Esabella Sampson }

The answer of Esabella Sam-
 -pson by Cha^s Turner her Guardian ad Litem
 sheweth that so far as she is informed and
 advised she knows of no reason why the
 Prayer of the Petition in their said Bill should
 not be granted Esabella Sampson

By Cha^s Turner

her Guar. ad Litem

Mary Doolittle + } Lazeell Circuit Court,
 Martha Doolittle } Sept Term 1856.
 -vs- } In Chancery.
 Samuel P. Bailey }
 Petitioner

The separate answer of Samuel R. Bailey one of said defendants.

Your Respondent saving and reserving to himself all manner of exceptions to the many errors & imperfections in said contained both in substance and in form and hereby protesting and denouncing to said bill as being insufficient in law to entitle the said Petitioners to the relief sought, for answer unto the same saith.

That he denies that said petitioners, respondent & Isabella Sampson are tenants in common of the land in said petition described, and further denies that said petitioners have any title in said land either in law or equity.

Respondent admits the chain of title of said land to be as petitioners have stated so far as the patent to Leich I. Sampson & that said Leich I. Sampson died seised of the land described, and that as he has been informed and believes the heirs of said Sampson are correctly set forth in said petition, and respondent further states that he is informed & believes although neither of the above facts are within the actual knowledge of respondent that said Martha Doolittle died as stated in said Bill and also that the said petitioners are the heirs at law & children of said

Martha - Respondent also admits that said Enline Grants one of the heirs at Law of said Linck T. Thompson died intestate as alleged in said Bill, and that Linus Grant was her sole heir at Law.

Respondent however says that he knows nothing of the death of said Susan A. Thompson nor whether she left any children.

Respondent further answering says he knows nothing of the deed said Linus Grant, Eliza Conklin & Henry Conklin to said petitioners but he insists however that if such a deed was made as stated in said Bill, the said deed conveyed no title for reasons hereinafter stated. Respondent admits that the Marshall of the State of Illinois did by virtue of an execution issued from the office of the Clerk of the Circuit Court of the United States for the District & State of Illinois, sell on the 21st day of June 1850 to B. S. Prittman that the legal time of the redemption thereof having expired the said Marshall did on the 28th day of January 1852 convey said land to said Prittman who afterwards conveyed the interest acquired by said sale to respondent, which said execution was issued upon a judgment entered in said Court at the June

From thence of A.D. 1843 by John Warburton
 Arzobial King Job P Doan & Wm. King
 against the said Rawley S. Doolittle by which
 said sale and purchase respondent became
 was the owner of whatever said Rawley S.
 Doolittle had in said land both in law
 or equity. Respondent further States
 that on the 16th day of December A.D. 1844
 Rebecca M. Sampson widow & Linus Grant
 & Lucien A. Thompson two of the heirs at Law
 of said Leach J. Thompson by an instrument
 in writing of that date entered into a con-
 tract which after reciting the consideration
 therefor as having been paid by said Rawley
 S. Doolittle purports to convey said land to
 Rawley S. Doolittle heirs as will more fully
 appear at large appear by reference to the said
 deed, a copy as recorded is herewith filed
 Marked "A" and the original of which said
 Rawley S. Doolittle is hereby notified to pro-
 duce on the hearing of this cause, which
 deed was recorded in the office of the Recorder
 of said County of Lapeer on the 3rd day of
 September A.D. 1849 and if the original of
 which deed cannot be found your respon-
 dent prays leave to introduce a copy thereof
 from said records.

Respondent further States that at the time

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said deed was made the said Rawley S. Doolittle was and still is living and there for at the time of such conveyance heirs, and that the said instrument in writing failed as a conveyance for the reason that the grantors therein named were not in existence, but respondent insists however that at the time said conveyance or deed was made the said Rawley S. Doolittle did actually purchase the said interest of said grantors and paid for the same and had the deed made to his heirs under the mistaken notion that the conveyance would place the title in his children, and that the same was thus made with the intention on the part of said Rawley S. Doolittle to protect his creditors and especially the said Warburton & others plaintiffs in said judgment. From collecting their said judgment the said judgment then bring in full force: - Respondent therefore charges and insists that said Land being so purchased by said Rawley S. Doolittle or whatever interest or title then bring in said Grantors in said deed was vested equitably in said Rawley S. Doolittle, and by said Sale was subject to the said judgment so as aforesaid occurred by said War

Burton & others against said Doolittle and that said Prtlyman by said purchase at said sale became & was the owner in equity of the interest so attempted to be conveyed by said Rebecca M. Sampson, since Grant & Lucien A. Sampson to Rawley S. Doolittles heirs as aforesaid, and also of whatever interest said Rawley S. Doolittle had as the husband of said Martha Doolittle as aforesaid being a tenant in curtesy of that interest whatever the same may be determined to be.

Respondent further states that at the April Term 1845 of the Circuit Court of said County of Tazewell a judgment was recorded in favor of the State of Illinois against said tract of Land for the taxes levied upon said land for the year 1844 that a writ was issued upon said judgment upon which the sheriff of said County sold said land at public vendue, at which sale William D. Briggs became the purchaser of the whole tract, and recorded a certificate of Purchase therefor, which was by said Briggs duly assigned to Respondent that the said land remaining undeemed from said sale, the Sheriff of said County did on the 17th day of May 1845.

convey said land to said respondent by a deed of that date a copy of which deed is herewith filed marked "B" and the original made part hereof for greater certainty & for evidence. — Respondent further states that he bring thus invested with said Tax title entered into the actual possession thereof in the year 1848 and has held the possession of the same from that period to the present time, the same being a period of more than seven years prior to the commencement of this suit and has paid all taxes assessed upon said premises from the date of said deed by reason of which title possession and payment of Taxes he insists that he has now a valid and legal title to the whole of said tract independent of any title or interest acquired by said purchasers under said sale under said judgment against said Rawley S. Doolittle, and that he insists upon the benefit of the provisions of the Statute of this State in relation to the possession & payment of all taxes for seven successive years, under claim and color of title made in good faith.

Wherefore having fully answered said Petition, he prays to be hence dismissed with

his reasonable costs in this behalf expen-
 -ded by Manning & Mirmman
 his Solicitors

Know all men by these presents that whereas
 at the April term 1845 of the Circuit Court of
 Lapeer County a judgment was obtained in
 said Court in favor of the State of Illinois, against
 the North East quarter of the South west quarter of
 Section No. One in Township twenty four North
 Range five west of the 3 principal meridians for
 the sum of One dollar and sixty seven cents, being
 the amount of Taxes Interest and costs assessed
 upon said tract of land, for the year 1844, and
 whereas on the twenty first day of April 1845 J.
 R. W. Briggs Sheriff of the County aforesaid by virtue
 of a precept issued out of the Circuit Court of the
 County aforesaid, dated the nineteenth day of
 April A.D. 1845, and to me directed did expose
 to public sale at the door of the Court house in
 the County aforesaid in conformity with the reg-
 -ulations of the Statute in such case made and
 provided, the tract of land above described for
 the satisfaction of the judgment so rendered
 as aforesaid, and whereas at the time and place
 aforesaid Wm D. Briggs having duly assigned
 his certificate of Purchase to Samuel R. Bailey
 Now Therefore I R. W. Briggs Sheriff as aforesaid

for and in consideration of the said sum of One Dollar and Sixty seven cents to me in hand paid by the said W.D. Briggs at the time of the aforesaid sale and by virtue of the Statute in such case made and provided, have granted, bargained and sold and by these presents do grant, Bargain and sell, unto the said Samuel R. Bailey his heirs and assigns the North East quarter of the South West quarter of Section One in Township Twenty four Range five west of the 3 principal Meridian in Taylor County Illinois. To have and to hold unto him the said Samuel R. Bailey his heirs and assigns, for ever, subject however to all rights of redemption provided by law. In witness whereof I, R.W. Briggs Sheriff as aforesaid by virtue of the authority aforesaid have hereunto subscribed my name and affixed my seal this seventeenth day of May 1847.

R.W. Briggs Sheriff (Seal)
and Ex officio collector

State of Illinois }
Taylor County } ss I, J. A. Jones Clerk of the Circuit Court in and for said County do hereby certify that this day personally appeared before me R.W. Briggs Sheriff of said County whose signature is subscribed to the foregoing deed of Conveyance and acknowledged that he had executed the same in his official capacity for the purposes

therein expressed.

Witness my hand and official

Seal at Tarrant this 17th day of May

Seal
E. E. E.

A. D. 1847

Ans A Jones

lth

*

And now afterwards to wit on the
6th day of October A.D. 1856 applications were
filed in the words and figures following
to wit.

State of Illinois } In the Tarrant County Circuit
Tarrant County } Court September 1856

Mary & Martha Doolittle }
by their Guardian Rawley } Petition
S. Doolittle } for Partition

-05-

Samuel P. Bailey &
Isabella Sampson }

The replication of the
plaintiffs in the above cause to the separate
answer of Isabella Sampson, - This complaint
saying and reserving himself all manner of
exception to said answer &c for replication
thereunto saith, that they will prove and main-
tain all and singular the allegations in their
said Bill contained. Robert McIntire
Attorney for Plaintiffs

And now comes the Petitioner & Robert McIntire their attorney and moved the Court to strike out
so much of Defendant Bailey's answer as set up an equal answer to said petition which
motion was allowed and so much of said answer as set up an equitable defense to said
petition was ordered by the Court to be stricken out.

*

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State of Illinois } In the Lazerell County Circuit
Lazerell County } Court September A.D. 1856

Mary & Martha Doolittle }
by their Guardian Rawley }
S. Doolittle - }

vs

Samuel P. Bailey & }
Isabella Sampson }

The replication of the
plaintiffs in the above cause to the separate
answer of Samuel P. Bailey, - This replicant
saying and reserving to themselves all manner
- nor of exception to the said answer &c; for
replication therunto saith, that, they will
maintain and prove all and singular the
allegations in said petition contained &c

Roberts & McIntire
Solicitors for plaintiff

And now afterwards to wit at a Term
of the Circuit Court begun and held at the Court
House in the City of Pekin in and for the county
of Lazerell and State of Illinois on the first Monday
of the month of April the same being the sixth
day of said month in the year of our lord One
Thousand Eight Hundred and fifty Seven, Present
the Honorable E. N. Powell Judge of the 16th Judicial

circuit by Interchange Hugh Fullerton Esq
 Prosecuting Attorney Chapman Williamson
 Sheriff and Merrill & Young clerks the follow-
 ing proceedings were had in said cause
 to-wit April 6th A D 1857

Mary & Martha Doolittle	}	Petition for Partition
by their Guardian Rawley		
S. Doolittle.		
=vs=		
Samuel P. Bailey &	}	
Isabella Sampson		

And now on this day
 came again the parties by their Solicitors and
 on motion this cause is continued.

And now afterwards to wit
 on the 23rd day of October A. D. 1857 an affi-
 davit was filed in the words and figures fol-
 lowing to-wit:-

Mary Doolittle &	}	Of the October Term of the Tazewell Circuit Court A. D. 1857
Martha Doolittle		
=vs=		
Samuel P Bailey & Co	}	In Partition

State of Illinois	}	ss Samuel P Bailey on of
Tazewell County		

the Defendants in the above cause bring sworn doct^s depose and say. That he cannot safely proceed to the trial of this cause at the present term of this court. on account of the absence of witnesses who are material and necessary to defendants defense. That one of said witnesses is Bernard Bailey of Provia by whom defendant expects that he can prove actual possession of the land in controversy for more than seven years before the commencement of this suit under color of Title made in good faith, upon which land this defendant has paid Taxes for more than seven successive years next before the commencement of this suit. That this defendant had a trial set for the last Wednesday which defendant truly believes was an ejectment suit for the land in controversy in this suit.

That when said Ejectment suit was called for trial it was dismissed by the plaintiffs Atty. who there stated that this was the suit he was going to try which arrangement was a total surprise to defendant, as he had no other idea than that the merits of this suit was to have been decided in the ejectment and not in this suit. Defendant further saith that at the calling of said ejectment the above named witness was in attendance. That said witness is a Justice of the Peace of

Provia and this deponent is informed by him & only believes that his business as such justice is so pressing that said witness cannot leave it to attend here at this time And this deponent has been unable to induce said witness to remain here.

This deponent further saith that since the commencement of this work this deponent has learned for the first time Lemuel Grans of Brewitt County in this State, is a material necessary witness for this deponent by whom he expects to prove that said Grans under whom the complainants claim title, on or about the thirty first day of August 1849, stood by & was privy to & knew of Rawley S. Dootittle making a deed of trust or mortgage of the land in controversy under which deed of trust this deponent claims said land, and that the complainants as well as said Grans are estopped from setting up title to the same, The said Grans well knowing that said trust deed was so executed stood by & made no claim, of title to the same. That since said facts came to the knowledge of Deponent he has had no sufficient time to procure said witnesses attendance at this Term of the Court, but expects to be able to procure his attendance at the next term as well as the

attendances of the said B. Bailey. That he
 cannot prove the above facts so fully by any
 other witnesses as those above named, that
 this application is not made for delay, but
 for the purpose of obtaining justice, deponent
 further saith that his answer in this cause
 is defective and on learning that this suit
 was to be tried deponent immediately asked
 & obtained leave to amend his answer and
 that deponent hath not yet had time to amend
 the same so as to show the very right of this
 case & he asks to make said amendment:-
 Sworn & Subscribed } Saml. P. Bailey
 this 23rd October 1857 }
 before me, }
 Lance Harriott }

And now afterwards to
 wit at a Term of the Circuit Court begun
 and held at the Court House in the City of
 Peoria in and for the County of Tazewell and
 State of Illinois on the second Monday of the
 Month of October the same being the 12th
 day of said month, in the year of our Lord
 Eighteen hundred and fifty seven, Present
 the Honorable James Harriott Judge of the
 Tenth first judicial circuit Hugh Fullerton
 Esq. Prosecuting attorney Chapman Williamson

Shiriff and Merrill & Young clerks the following proceedings were had in said cause to wit

October 23rd A.D. 1857

Me & M. Doolittle

=vs=

Esabella Sampson & al

} October Term A.D. 1857

} Partition

And now on this 23rd day of October 1857 this cause is continued upon Affidavit.

And now afterwards to wit at a Term of the Circuit Court begun and held at the Court House in the city of Peoria in and for the County of Tazewell and State of Illinois on the first Monday of the month of April the same being the 5th day of said month in the year of our Lord Eighteen Hundred and fifty Eight - Present the Honorable James McCormick Judge of the Twenty first Judicial Circuit Hugh Fullerton Esq Prosecuting Attorney, Chapman Williamson Sheriff and Merrill & Young clerks the following proceedings were had in said cause to wit.

April 5th A.D. 1858.

Mary & Martha Doolittle

by their Guardian Rawley

S. Doolittle.

} Petition for

} Partition

Samuel P. Bailey &
Isabella Sampson }

And now on this day
came again the parties by their Solicitors
and this cause is continued by agreement

And now afterwards to wit at a
Term of the Circuit Court begun and held
at the Court House in the City of Peoria in
and for the County of Tazewell and State
of Illinois on the second Monday of the month
of October the same being the 11th day of
said month in the Year of our Lord Eight-
teen Hundred and fifty Eight Present-
the Honorable James Harriott Judge of the
Twenty first Judicial Circuit Hugh Fuller
Esq Prosecuting Attorney, Chapman Wil-
kinson Sheriff and Merrill C Young Clerk
The following proceedings were had in said
cause to wit

October 11th A.D. 1858.

Mary Doolittle and
Martha Doolittle by
their Guardian
Rowley S. Doolittle

= vs =

Samuel P. Bailey et al }

Partition for -

Partition

and now on this day came again
the parties by their Solicitors and on Mot-
ion this cause is continued generally-

And now afterwards to wit
at a Special Term of the Circuit Court
for the Transaction of Chancery business, pur-
suant to an order of the Honorable James
Hearriott Judge of the Twenty first Judicial
Circuit begun and held at the Court-house
in the city of Peoria in and for the County
of Tazewell and State of Illinois on the first
Monday of the month of December the same
being the 6th day of said month in the
year of our Lord Eighteen hundred and
fifty eight. Present the Honorable James Hear-
riott, Judge of the Twenty first judicial Circ-
uit. Hugh Fullerton Esq, Prosecuting Attorney
Thomas Le Rens Sheriff and Merrill L.
Young Clerk the following proceedings
were had in said cause, to wit

December 6th A.D. 1858-

Mary Doolittle, and	}	Petition for
Martha Doolittle, by		
their Guardian		
Rawley S Doolittle	}	Partition
vs,=		
Samuel P. Bailey		
& others	}	

And now on this day
come the parties by their Solicitors and
on motion this cause is continued generally

And now afterwards court
at a Term of the Circuit Court begun
and held at the Court-house in the city of
Pekin. in and for the ~~County~~ of LaSalle
and State of Illinois on the first Monday of
the month of February the same being the
day of said month. In the year of
our Lord Eighteen hundred and fifty nine
Present the Honorable James Kearnott Judge
of the twenty first judicial circuit Hugh Fullerton
Prosecuting Attorney Thomas Le Reux Sheriff
and Merrill C. Young Clerk the following
proceedings were had in said house-

February 24th A.D. 1859.

Mary and Martha Doolittle	}	Petition
by their Guardian Rawley S. Doolittle		
-vs-	}	for Partition
Samuel P. Bailey and Isabella Sampson		

And now on this
day come as will the Complainants by their
Solicitor Roberts as the said defrauder
Samuel P. Bailey by his Solicitor Prettyman
whereupon came a jury of twelve good

and lawfull men to wit Solomon Lincoln &c &c duly elected tried and sworn to try the issue joined in said cause who having heard the allegations and proofs of the parties and argument of Counsel thereon for verdict say we the jury find the issues for complainants as in their Petition set forth. Whereupon the defendant Samuel R Bailey entered his motion for a new trial. which is by the Court allowed, and this cause continued.

And now afterwards to wit at a Term of the Circuit Court begun and held at the Court house in the city of Chicago in and for the County of Lake and State of Illinois on the first Monday of the month of June, the same being the day of said month in the year of our Lord One Thousand eight hundred and fifty nine. Present the Honourable James Harriott Judge of the Twenty first Judicial Circuit Hugh Fullerton Esq Prosecuting Attorney Thomas C Reens Sheriff and Merrill C Youngblood the following proceedings were had in said cause.

June A. D. 1859-

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Mary Doolittle and
Martha Doolittle
by their Guardian
Rawley S. Doolittle

- vs -

Samuel R Bailey
& Isabella Sampson

Petition for
Partition

And now on this day
come the parties by their Solicitors and
on motion this cause is continued generally

And now afterwards to wit at
a Term of the Circuit Court begun and
held at the Court House in the city of Pekin
in and for the County of Taylor and State
of Illinois on the first Monday of the Month
the of September the same being the day
of said month in the year of our Lord
Eighteen hundred and fifty nine Present
the Honorable James Harriott Judge of the
Twenty first Judicial Circuit Hugh Fullerton
Esq Prosecuting Attorney Thomas C Burns Sh-
-riff and Merrill C. Young Clerk the
following proceedings were had in said
cause to wit

8th day September A.D. 1859

Mary & Martha Doolittle }
 by their Guardian Rawley S. Doolittle } Petition
 - vs - } for Partition
 Samuel P. Bailey and } In Chancery
 Isabella Sampson }

Now on this day
 Came case with the ~~complaint~~ by their
 Solicitor Roberts as the said defendant
 Samuel P. Bailey by his solicitor Portymer
 whereupon came a jury of twelve good and
 lawfull men to wit. William A. Hallender,
 John Morland, David Stittman, Samuel Berry
 Jr., M. W. Spalding, Miles Hearsh, Sylvester
 Hainline, Wm Holland, H. Richmond, John
 Burcance, S. L. Wilson, H. A. Worme, duly
 tried elected and sworn to try the issues
 found in said cause who having heard the
 allegations and proofs of parties and argu-
 ment of counsell thereon for verdict
 say for the jury find the title and interest
 to said land in the parties... as set forth
 in Petitioners Petition, whereupon the said defen-
 dant Samuel P. Bailey entered his motion
 for a new trial which, ^{motion} is by the Court dis-
 allowed. Whereupon the Court entered
 up a decree in the words and figures follow-
 ing to wit:-

State of Illinois } In Circuit Court
 Taylor County } September Term 1854

Mary & Martha Doolittle }
 & their Guardian Rawley S. } Petition for
 Doolittle } Partition

= vs =

Isabella Sampson & }
 Samuel R. Bailey }

And now at this day
 came the petitioners, and this cause having
 been submitted to a jury duly selected and
 sworn and the said jury having found
 the title and interest of said parties as
 set forth in said petition. It is therefore
 declared that the said Mary & Martha Doolittle
 do have one undivided two thirds of said
 premises, and said Isabella Sampson one
 undivided third all of which is subject to the
 interest therein of Samuel R. Bailey of one
 undivided third for the life of Rawley S. Doolittle
 and it is ordered that said premises be divided
 among said parties according to the interest
 and title as above stated. It is further
 ordered by the Court that James R. Babcock
 Medateton Zachaberry, and John Gridley
 be and are hereby appointed to divide and
 set apart the premises in said petition

mentioned being the North east-quarter of the south west-quarter of Section One in Township Twenty four North of Range five (5) west of the 3^d P.M. to the said parties according to their respective interests as above set forth and declared, if the same can be done without manifest prejudice to the rights of the parties, and that they report their doings and doings to the next term of this court, and this cause stand continued.

James Harroth

Whereupon the said Defendant Samuel P. Bailey Prayed and appeal which by the Court is granted, with leave to file Bill of exceptions in sixty days, and ^{Appeal} bond in the sum of Two hundred Dollars with B. S. Brattyman as security.

And now afterwards being on the 20th day of October 1857 an appeal Bond was filed in the words and figures following to-wit:

Know all men by these presents that Mr Samuel P. Bailey and Benjamin S. Brattyman are held and firmly bound unto Rawley S. Doolittle Guardian of Mary and Martha Doolittle in the sum of two hundred Dollars, for the payment of which well and truly to be made. We

bind ourselves our heirs executors and administrators jointly and severally and firmly by these presents and sealed with our seals, this 20th day
October 1889

Whereas at the September Term of the Tazewell Circuit Court for the year 1889, in a certain suit wherein Mary and Martha Doolittle by Rawley S. Doolittle their guardian were plaintiffs and Samuel R. Bailey & others were defendants Petition for Partition, the said plaintiffs obtained a judgment against the said defendants in said court in said cause, from which judgment the said Bailey has prayed an appeal to the supreme court to reverse the said judgment.

Now the condition of the above obligation is such, that if the said above bounded Samuel R. Bailey shall fail prosecute his said appeal with effect; that he will pay and satisfy whatever judgment the said supreme court may render in said cause, and pay all costs and damages, that may accrue to the said plaintiffs by reason of taking said appeal, then this obligation to be null and void otherwise to remain in full force & virtue,

Given under our hands & seals
the day & year above written

Sam^l R. Bailey seal
B. S. R. N. T. M. seal

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Mary & Martha Doolittle } September Term
by their Guardian R. S. Doolittle } A. D. 1859. =
vs. } Petition for Partition
Samuel P. Bailey et al. } Laywell Circuit
Court the 10th day of the Term

Be it remembered that on this day the foregoing cause came on to be heard and the plaintiff to sustain their part of the issue offered and read in evidence a patent of the United States to Truch J. Sampson to the Land in Controversy as follows.

United States of America

To all to whom these presents shall come -
Greeting- Thomas Lemuel J. Sampson of
Laywell County Illinois has deposited in the Gen-
eral Land office of the United States a certificate
of the Register of the Land office at Springfield
whereby it appears that full payment has been
made by the said Truch J. Sampson. according
to the provisions of the act of Congress of the 24th
of April 1820 Entitled an Act making further
provision for the sale of the public lands, for the
North East quarter of the South West quarter of
Section One in Township Twenty four, North
of Range Five West of the third principal mer-
idian in the District of Lands Subject to sale
at Springfield Illinois containing forty Acre

according to the Official plat of the Survey of the said Land returned to the General Land Office by the surveyor General which said tract has been purchased by the said Truch J. Sampson.

Now Know ye that the United States of America in consideration of the promises and in conformity with the several acts of Congress in such case made and provided have given and granted and by these presents do Give and Grant unto the said Truch J. Sampson, and to his heirs the said tract above described To have and to hold the same together with all the rights privileges immunities and appurtenances of whatsoever nature thence belonging unto the said Truch J. Sampson

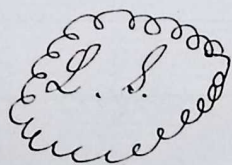
In Testimony whereof J. Andrew Jackson, President of the United States of America have caused these letters to be ~~made~~ Patent, and the Seal of the General Land Office to be thereto affixed — Given under my hand at the City Washington the Twenty first day of September in the Year of our Lord One Thousand Eight hundred and thirty five and of the Independence of the United States the Sixtieth

By the President

Andrew Jackson

By A. Donelson Secy

and then called John M. Lightow, who testified that Martha Doolittle the Mother of Petitioner



Know all Men by these presents that W^{illiam} Linus
 Grans and Virginia F. Grans his wife both of the
 County of McLean and State of Illinois and
 Henry Conklin and Eliza Conklin wife of said
 Henry Conklin both of the County of McLean and
 State of Iowa (said Eliza Conklin conveying by
 the consent of her said husband) for and in con-
 sideration of the sum of One thousand Dollars
 to us in hand paid by Mary Doolittle and
 Martha Doolittle (Daughters of Rawley S. Doolittle
 both of the County of Lapeer and State of Illi-
 nois. the receipt whereof we do hereby acknowledge
 have granted sold and forever quit claimed,
 and by these presents do grant sell and forever
 quit claim unto the said Mary Doolittle and
 Martha Doolittle, all our right title and in-
 terest in and to the following described tract
 of land, to-wit The North East quarter of the
 South West quarter of Section one (1) in Town-
 ship Twenty four (24) North of Range five (5) West
 of the 3rd principal Meridian Also the North
 East quarter of the South East quarter of Section
 two (2) in Township Twenty four (24) North of
 Range five (5) West of the third principal Meri-
 dian All in the County of Lapeer and State
 of Illinois. To have and to hold the same to
 them the said Mary Doolittle and Martha Dooli-
 ttle to their heirs and assigns to their sole

use and behoof forms In witness whereof
we have hereunto set our hands and seals this
24th day April A.D. 1856.

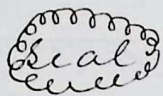
Linus Grans	<u>seal</u>
Virginia Grans	<u>seal</u>
Henry Conklin	<u>seal</u>
Elyza Conklin	<u>seal</u>

State of Illinois }
McLean County }

Personall appeared before the undersigned clerk of Circuit Court in and for the County. State above mentioned Linus Grans and Virginia F. Grans his wife who are both personall known to me to be the real persons whose names are signed to the foregoing deed as having executed the same for the use and purposes therein expressed. And Virginia F. Grans wife of said Linus Grans being of lawful age and having been by me separately and apart from her said husband examined, and the full contents of said deed made known and explained to her, acknowledged that she had executed the same, and relinquished her right of dower to the lands and tenements therein mentioned voluntarily freely and without compulsion of her said husband. In witness whereof I have hereunto set my hand and affixed the seal of said Court at Bloomington this 24th day of

47

April A.D. 1856.



Wm McCullough Clerk

By H. Burr Deputy

State of Illinois

McLean County,

Personally appeared before the undersigned a Justice of the Peace in and for the County and State aforesaid Henry Conklin and Eliza Conklin his Wife who are both personally known to me to be the real persons whose names are subscribed to the aforesaid deed, as having executed the same and acknowledged that they had executed the same for the uses and purposes therein expressed. And Eliza Conklin wife of said Henry Conklin being of lawful age, and by me separately and apart from her said husband Examined, and the contents of said Deed have been fully made known and explained to her - acknowledged that she had executed the same voluntarily and freely and without compulsion of her husband and does wish to retract.

In Witness whereof I have hereunto set my hand and Seal April 24th 1856.

Edwin C. Burtin J.P. Seal

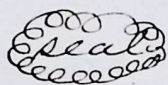
State of Illinois

McLean County,

J. E. Ho. Road Clerk of the

County Court in and for said County do
 hereby certify that Edwin C. Rusk Esq whose
 name appears subscribed to the within certifi-
 cate was at the time of signing the same
 an acting Justice of the peace in and for said
 County duly commissioned and qualified
 as appears to me of Record -

Witness my hand and seal
 of Office this 25th day of April A.D. 1856.



E. H. Rusk Clk

Plaintiff then stated:

Defendant then offered and read in evidence
 the following Ord which was recorded 14 July
 1848 in said County, to wit: Know all men by these
 presents That whereas at the April Term 1845 of
 the Circuit of Lapeer County a judgment was
 obtained in said Court in favor of the State
 of Illinois against the North East quarter of the
 South West quarter of Section No one in Township
 Twenty four North Range first west of the 3^d meri-
 dian for the sum of one dollar and
 sixty cents, being the amount of Taxes
 interest and costs assessed upon said tract of
 Land for the year 1844, and whereas on the
 Twenty first day of April 1845, J. R. W. Briggs
 Sheriff of the County aforesaid by virtue of a
 precept issued out of the Circuit Court of the
 County aforesaid dated nineteenth day of April

"A. D. 1845; and to me directed did expose to public sale at the door of the Court House in the County aforesaid in conformity with the requisitions of the Statute. in such case made and provided the tract of Land above described for the satisfaction of the judgment so rendered, as aforesaid, and whereas at the time and place aforesaid Wm D. Briggs of the County of Lapeer and State of Illinois having offered to pay the aforesaid sum of One Dollar and Sixty Cents for the whole of said tract of Land which was the least quantity bid for the said tract of Land was stricken off to him at the price, and the said Wm D. Briggs having duly assigned his certificate of Purchase to Samuel P. Bailey. Now therefore I, R. W. Briggs sheriff as aforesaid for and in consideration of the sum of One Dollar and Sixty cents to me in hand paid by the said W. D. Briggs at the time of the aforesaid sale and by virtue of the Statute in such case made and provided have granted bargained and sold and by these presents do grant bargain and sell unto the said Samuel P. Bailey his heirs and assigns the North east-quarter of the South west quarter of Section One in Township Twenty four Range five west of the 3rd principal Meridian in Lapeer County State of Illinois To have and to hold unto him the said Samuel P. Bailey

his heirs and assigns forever. Subject to all the rights of redemption provided by law -

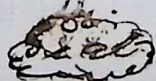
In Witness I R. W. Briggs Sheriff as aforesaid by virtue of the authority aforesaid have hereunto subscribed my name and affixed my seal this Seventeenth (17th) day of May 1847,

R. W. Briggs Sheriff 
& Ex Officio collector-

State of Illinois }
Lazell County } ss

I, J. A. Jones Clerk of the circuit Court in and for said County do certify that this day personally appeared before me R. W. Briggs Sheriff of said County whose signature subscribed to the foregoing deed of conveyance and acknowledged that he had executed the same in his official capacity for the purposes ~~therein~~ expressed.

Witness my hand and official seal at Trumont this 17 day of May
A. D. 1847



John A Jones
clk

for the Land in controversy, to the making of which Plaintiff objected.

Defendant then offered in evidence the following Tax Receipts for the Land in Controversy for the years 1847, 1848, 1849, 1850, 1851, 1852, 1853, 1854, 1855, 1856, to making

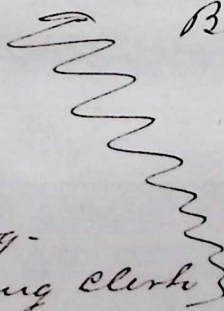
of each of which the Plaintiff objected and the objections were overruled and the same were read in evidence. Defendant then read without objection the deposition of Barnard Bailey as follows

Mary and Martha Doolittle	}	State of Illinois
vs		Jazzell County
Samuel P. Bailey & others	}	Jazzell Circuit
		Court February Term 1859

The Deposition of Barnard Bailey a witness on the behalf of the defendants produced and sworn to be read in evidence in said cause by the consent of the plaintiffs. - I am acquainted with Samuel P. Bailey one of the defendants, he is my Brother have no acquaintance with the plaintiffs. I know the land in controversy it being the North east quarter of the south west quarter of Section one Township Twenty four North Range Five west of third principal Meridian. I first knew the land by the above description in the year of Eighteen hundred and forty eight. I knew of some timber being put on the land by my Brother sometime during the Spring of Eighteen hundred and forty nine for purpose of building a house. The Timber laid on the land for some time before the house was raised, and the house was raised sometime during the latter part of the summer or during

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the fall of Eighteen hundred and forty nine
 there was some land put in cultivation. Whether
 it was put into cultivation in the fall of Eighteen
 hundred and forty nine or in the Spring of Eighteen
 hundred and fifty I can not now recollect. The
 improvements were made at the instance of my
 Brother, I cannot state how near the time is to
 when the house stand, but it stand in the
 South west corner of the above described forty.

My brother or his tenant was in possession
 of the house on the land at that time. I was on
 the premises some time last fall. the house &
 enclosure were then standing there. There
 is a shaft of a coal pit on the land, was open-
 ed by D. McCook either in year 1851 or 1852, think
 it was in 1851 D McCook wanted the land of
 my Brother, I think A. Brown to whom my
 brother sold that land with other lands went
 into possession in the year 1853 I know of
 no person occupying the land since my acquai-
 intance with it only those who I have already
 mentioned, I my Brother has always exercised
 ownership over the land since my first acquai-
 intance with it except when in the possession
 of Abram Brown.  Bernard Bailey
 Subscribed and
 sworn to before me
 this 12th day of July 1854.
 M. C. Young Clerk }

It is agreed that Bailey once sold to Brown and that Brown immediately conveyed back the land to Bailey. - Defendant then called Thomas King who testified that he knew the Land in controversy, had known it about seven years, that he is a surveyor and surveyed the tract in controversy in 1856. Saw House on it. - Some post and Rail Fence was on the land when he first it and was there when he made the survey. It was situated on the south west corner of the land. The House nor fence had not been moved since it was built.

Defendant called James Millner who testified that he knew the land, had known it since 1857. Bailey then had possession of it by his tenants it was fenced with Post & Rail fence then and was cultivated to corn and potatoes - a good large lot was enclosed in the fence an acre or two. Defendant then asked Plaintiff then called Mr. L. Young who testified that he was Clerk of the Circuit Court, and had been since the fall of 1856, and can find no judgment on his records in due form for the year 1845; for taxes, the judgment Record for taxes shows a judgment for the year 1840. And for the year 1845, that a report was made by the Sheriff of the delinquent lands for that year and the following judgment was rendered

Thereon.

State of Illinois }
 vs } Suit for Taxes
 Benjamin Richard & others }

List of Lands and other
 real estate situate in the County of Tazewell and
 State of Illinois on which Taxes remain due and
 unpaid for the year A.D. 1844.

April 3rd 1845;

R. W. Briggs Collector
 Tazewell Co. Ill.

Patentee	Description	Sec.	Town	Range	A.	Value	Assess.
Benjamin Richards	S 1/2 S.W.	3.	22.	2.	80	240.	1.68
Same	-	-	-	-	-	-	-
Delgt &c	N.E. S.W.	1	24.	5	40	160.	1.20

And whereas due notice has been
 given of the intended application for a judgment
 against the lands and no owner hath appeared
 to make defense or show cause why judgment should
 not be entered against said Lands for the Taxes
 interest and costs due and unpaid thereon for the
 year or years herein set fourth. therefore it is ordered
 and by the Court that judgment be and is hereby
 entered aforesaid Tract or tracts of Land or parts
 of Tracts. in the name of the State of Illinois for
 the sum annexed to each parcel of Land being the

amount of Taxes interest and costs due severally
thereon and it is ordered by the Court that the said
several tracts of Land or so much thereof as shall
be sufficient of them to satisfy the amount of Taxes
interest and costs annexed to them severally be
sold as the law directs

Process

Copy of collectors report Delinquent Lands 1844
Filed April 21st 1845

John a Jones clk-

State of Illinois Tazewell County, }

Whereas

Robert W. Briggs collector of said county returned
to the Circuit Court of said County on the 4th day
of April in the year of our Lord one thousand eight
hundred and forty five the following tracts and
parts of tracts of Lands as having been assessed
for Taxes by the assessor of said County of Tazewell for
the year Eighteen hundred and forty four, and that
the Taxes remain due and unpaid on the day
of the date of the said collectors return and that
the respective owner or owners have no goods and
chattels within this county on which the said coll
ector can levy for the Taxes interest and costs due
and unpaid on the following described
land to-wit:

Patentee	Description	S.	T.	R.	A.	N.	Tax
Benjamin Richards	8 1/2 A.U.	3	22	2	80.	240	1 68
"	—	—	—	—	—	—	—
Delapt	A. & S. U.	1	24	5	40	160	1 20

And whereas due notice has been given of the intended application for the judgment against said Lands and now owners that they appeared to make defense or show cause why judgment should not be entered against the said Lands for the Taxes interest and costs due and unpaid thereon for the year or years herein set forth therefore it is considered by the Court that judgment be and is hereby entered against the aforesaid tract or tracts of Land or parts of tracts in the name of the State of Illinois for the sum assessed to each parcel of Land being the amount of Taxes interest and costs, due severally thereon, and it is ordered by the court that the said several tracts of Land or so much thereof as shall be sufficient of them to satisfy the amount of Taxes interest and costs assessed to them severally be sold as the Law directs,

State of Illinois }
 Jayneville County }

I John A. Jones clerk of the Circuit Court in and for said County, do hereby certify the foregoing to be a true copy of the collection

report to the circuit court of said county of the delinquent lands and town lots, on which the Taxes and costs due thereon for the year of our Lord one thousand eight hundred and forty four and remaining unpaid together with the order and final judgment of the court thereon =

In testimony whereof I have hereunto set my hand and affixed the seal of said court this

Great Seal

19th day of April A.D. 1845

John A Jones clerk

Seance to hand April 19th 1845 at 4 O.C. P.M. 1845- RLB Briggs Sheriff Tazewell Co.

Returned the within process satisfied by the sale of the foregoing lands and Town Lots this 21st day of April 1845-

RLB Briggs Sheriff T.C.

* Plaintiff then called John Gridley clerk of the county court who testified that there was a book in his office which purported to be the Tax list for 1844 as per affidavit of Davis the assessor for that year made in march 1844 but nothing appeared upon it excepting the listing of the Land with the assessment for that year placed opposite the same, no certificate was attached to it; * The plaintiff then read the deposition of A Brown as follows.

Lands and town lots in the County of Tazewell, Illinois upon which judgment has been rendered within & since 1845; & the circuit Court of Tazewell County for 1845; due thereon 1844 said sale commenced on 21st day of April 1845-

Amount	Assess	Range	Section	Precedence	Residence	Business
167	40	5	1	1	1	1

*
58 State of Illinois
Lazear County

I Alexander B. Davis
do solemnly swear that I will faithfully
and impartially perform the duties required
of me as assessor of Lazear County in
the County of Lazear according to the best of
my skill and judgment so help me God
Subscribed and sworn Alex B Davis

to before me this 10th
day of March A.D. 1844

John H. Morrison
Clerk of the County
Commissioners Court
of said County

Rateable		T 24	A.R.	5	10		
			See				
Imch J Sampson	40	N 6 1/4 S 1/2	1	4		D 40	160.

I Robert M. Briggs Collector of the County of
Lazear in the State of Illinois do solemnly
swear that I will faithfully diligently and

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impartially, and to the best of my skill & judgment perform the duties required of me by law as collector of the said County Tazewell for the year 1844.

sworn and subscribed before
me this day of Oct^r 1844, }

John H. Morrison
Clerk of the Common
Court of Tazewell
County Illinois.

The above is the Assessors list which was marked on the back "Assessors List 1844".

And there was no other heading or certificate to said list.

State of Illinois }
 vs } Suit for Taxes
 Benjamin Richards & others }

List of Lands and other
 real estate situate in the County of Tazewell and
 State of Illinois on which Taxes remain due and
 unpaid for the year A.D. 1844.
 April 3rd 1845; R. W. Briggs Collector
 Tazewell Co. Ills

Patentee	Description	Sec.	Town	Range	A.	Value	Balance
Benjamin Richards	8 1/2 S.W.	3.	22.	2.	80	240.	1.68
Same	-	-	-	-	-	-	-
Delgt &c	N.E. S.W.	1	24.	5	40	160.	1.20

And whereas due notice has been
 given of the intended application for a judgment
 against the lands and no owner hath appeared
 to make defense or show cause why judgment should
 not be entered against said Lands for the Taxes
 interest and costs due and unpaid thereon for the
 year or years herein set fourth. therefore it is consid-
 ered by the Court that judgment be and is hereby
 entered aforesaid Tract or tracts of Land or parts
 of Tracts. in the name of the State of Illinois for
 the sum annexed to each parcel of Land bring the

amount of Taxes interest and costs due severally
thereon and it is ordered by the Court that the said
several tracts of Land or so much thereof as shall
be sufficient of them to satisfy the amount of Taxes
interest and costs annexed to them severally be
sold as the law directs

Process

Copy of collectors report Delinquent Lands 1844
Filed April 21st 1845

John A Jones clerk-

State of Illinois Lapeer County, }

Whereas

Robert W. Briggs collector of said county returned
to the Circuit Court of said county on the 4th day
of April in the year of our Lord one thousand eight
hundred and forty five the following tracts and
parts of tracts of Lands as having been assessed
for Taxes by the assessor of said county of Lapeer for
the year Eighteen hundred and forty four, and that
the Taxes remain due and unpaid on the day
of the date of the said collectors return and that
the respective owner or owners have no goods and
chattels within this county on which the said col-
lector can levy for the Taxes interest and costs due
and unpaid on the following described
land to-wit;

Patentee	Description	S.	T.	R.	A.	N.	Tax
Benjamin Richards	8 1/2 A.U.	3	22	2	80.	240	1 68
"	—	—	—	—	—	—	—
Delgt	A. & S. U.	1	24	5	40	160	1.20

And whereas due Notice has been given of the intended application for the judgment against said Lands and now owners that they appeared to make defence or show cause why judgment should not be entered against the said Lands for the Taxes interest and costs due and unpaid thereon for the year or years herein set forth therefore it is considered by the Court that judgment be and is hereby entered against the aforesaid tract or tracts of Land or parts of tracts in the name of the State of Illinois for the sum assessed to each parcel of Land being the amount of Taxes interest and costs, due severally thereon, and it is ordered by the Court that the said several tracts of Land or so much thereof as shall be sufficient of them to satisfy the amount of Taxes interest and costs assessed to them severally be sold as the Law directs,

State of Illinois }
 Layswell County }

I John A. Jones clerk of the Circuit Court in and for said County, do hereby certify the foregoing to be a true copy of the collection

5-7

Amount	Assess	Adm	Range	Town	Sec	Prescription	Residence	Business
1.67		40	5	24.	1	No. 8.00.	Lynwell	Willa & Bings
		12	80	10	10	10	10	10

report to the circuit court of said county of the delinquent lands and town lots, on which the Taxes and costs due thereon for the year of our Lord one thousand eight hundred and forty four and remaining unpaid together with the order and final judgment of the court thereon =

In testimony whereof I have hereunto set my hand and affixed the seal of said court this

Seal

19th day of April A.D. 1845

John A Jones Clerk

leave to hand April 19th 1845 at 4 O.16. P.M. 1845- R.W.Briggs Sheriff Lynwell les.

Returned the within process satisfied by the sale of the foregoing lands and Town Lots this 21st day of April 1845-

R.W. Briggs Sheriff J.C.

* Plaintiff then called John Bradley Clerk of the County Court who testified that there was a book in his office which purported to be the Tax list for 1844 as per affidavit of Davis the assessor for that year made in March 1844 but nothing appeared upon it excepting the listing of the Land with the assessment for that year placed opposite the same, no certificate was attached to it; * The plaintiff then read the deposition of A Brown as follows.

Lands and town lots in the County of Lynwell, Wisconsin upon which judgment has been rendered in the County of Lynwell, Wisconsin for the year 1844, due thereon 1844 said sale commenced on the 19th day of April 1845-

58

*

State of Illinois
Lazearll County

I Alexander B. Davis
do solemnly swear that I will faithfully
and impartially perform the duties assigned
of me as assessor of Lazearll property in
the County of Lazearll according to the best of
my skill and judgment so help me God
Subscribed and sworn Alex B Davis
to before me this 10th
day of March A.D. 1844

John H. Morrison
Clerk of the County
Commissioners Court
of said County

<u>Rateable</u>	<u>T 24</u>	<u>A.R.</u>	<u>5</u>	<u>W.</u>			
		See					
Imch J Sampson 40	N 6 1/4 S.W.	1	4			D 40	160.

I Robert M. Briggs Collector of the County of
Lazearll in the State of Illinois do solemnly
swear that I will faithfully diligently and

59

impartially, and to the best of my skill & judgment
perform the duties required of me by law as
collector of the said County Tazewell for the year
1844.

sworn and subscribed before
me this day of Oct^r 1844, }

John H. Morrison
Clerk of the Co. Court
County of Tazewell
County Illinois.

The above is the Assessors list which was marked
on the back "Assessors List 1844".
And there was no other heading or certificate
to said list.

60

State of Illinois } The people of the State of Illinois
Tazewell County }^{vs} To J. K. Jones a Justice of the
Peace of Johnson County, Iowa -
Solemnly - Know you that, trusting in your
fidelity and circumspection, we do hereby authorize
and require you to cause to come before you at such
time and place as you may designate Abraham
Brown resident of Johnson County Iowa, as
witness on the part of the plaintiffs in a certain
matter of controversy now depending in our circuit
Court of Tazewell County, in which Mary & Martha
Doolittle, by Rawley S. Doolittle their guardian, are
plaintiffs, & Samuel P. Bailey & Isabella Sampson
defendants, and then and there diligently to
examine the said witness upon ~~the case~~ the
touching the said controversy, upon all and sing-
ular the Interrogatories herunto attached, as well
on the part of the plaintiffs as the defendants
that you make to writing each of said Interrogat-
ories, in the order in which they are propounded to-
gether with the answer of said witness, and certify
the same to our said Court, under your hand
and seal, returning also this writ.

Witness Wiley Young Clerk of said circuit Court
at Pekin in said County, the Twenty Seventh
day of September AD 1858 the seal of the Court

Real. bring hereto attached.

Mumick to Young Clerk
by Dr. Shepherd D.C.

Samuel R Bailey

You are hereby notified
that we will on the 27th day of September 1858
sue out of the Clerk's Office of the Circuit Court
of Tazewell County Illinois a Decree potestatum
under the seal of said Court to be directed to be
directed to J. N. Irvine a justice of Johnson County
Iowa to take the deposition of Abraham Brown
a resident of Johnson County Iowa to be made
in evidence in a certain cause now pending
in the Circuit Court of Tazewell County Illinois
wherin Mary and Martha Doolittle by Rawley
S. Doolittle their guardian are plaintiffs and
Samuel R. Bailey & Isabella Sampson are defen-
dants in partition, on the parts of the plaintiffs
and that the following interrogatories will be
annexed to said decree to be propounded
to said witness

Sept 16/1859

James Roberts

atly for Mary &
Martha Doolittle

Mary & Martha Doolittle }

by Rawley S. Doolittle their
Guardian - }

-vs-

Samuel R. Bailey & }

Isabella Sampson }

Plaintiffs in the Circuit
Court of Tazewell County
Illinois

Interrogatory 1st - What is your name age and place of
Residence?

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2nd

Are you acquainted with the parties to this suit - i

3rd

Did you ever purchase any land of Samuel R Bailey one of the Defendants if so give a description of said Land - i

4th

Did you ever hear said Samuel R Bailey in regard to the title to said land. If so state what he said and to what piece of Land he referred - i.

5th

Did you at any time hear said Bailey say any thing in regard to said plaintiffs Mary & Martha Doolittle to the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of section one in Township twenty four range five west of the 3rd principal meridian in Tazewell County Illinois If so state what he said - i

6th

Did you ever hear said Bailey say any thing in reference to his tax title upon of Land. if so state what he said - i

7th

Do you know any thing else mentioned to the matters in controversy - i

James Roberts

atty for plaintiff

Mary & Martha Doolittle } In Partition
vs } in the Circuit Court of
Samuel R Bailey & others } Tazewell County =.
Cross interrogatories by the Defen-

63 -dant. to be answered by the witness

Interrogatory 1st If you purchased any land of said Bailey the deft. State what year you purchased it:

Inter 2nd If you heard Bailey say any thing about the little Mary and Martha Doolittle had to the land inform to State when it was and what year?

Inter 4th The controversy if any you had with Bailey about the title, did not Bailey always insist that he after he had paid taxes for seven years accompanied by possession a good title to the land & did not Bailey at the time of the sale of the land to you made by him show you a tax deed to that piece of Land and an other piece besides? and did he Bailey also so inform you of the Tax deed when you saw him in Baltimore?

Inter 5 Who did you employ to examine Bailey's title when you made the purchase -?

Inter 6 Who was in possession of the land in the year Eightteen hundred and forty eight, forty nine, fifty, fifty one, fifty two, fifty three, fifty four, and Eighteen hundred and fifty five, & what improvement had there been made on the land in controversy, what improvement was on the land when you

purchased it, and what time was it that McCook
sunk the shaft. Prtymann & Danison Attys

Disposition of witness taken on the 16th
day of October 1858 between the hours of 8 A.M. &
10 P.M. at my office in Iowa City. Johnson
County State of Iowa before me J. N. Johnson
a justice of the peace in and for said John-
son County State of Iowa upon the enclosed
Interrogatories & by virtue of the enclosed commis-
sion to be read in evidence in a certain
suit now pending in the circuit Court of Jay-
-well County in the State of Illinois described
in said Commission and Interrogatories
wherein Mary & Martha Doolittle by Rawley
S. Doolittle their Guardian are plaintiffs and
Samuel R. Bailey & Isabella Simpson are
Defendants.

Disposition of Abraham Brown the said Brown
being first duly sworn doth depose and say
in answer to the several interrogatories as follows
to wit

Interrogatory first. - What is your name age & place of residence

Answer. My name is A. Brown - my age fifty years -
my residence Iowa City Iowa -

Interrogatory 2nd are you acquainted with the parties to this suit—

Answer— I am with all except Isabella Simpson

Interrogatory 3rd— Did you ever purchase any land of Samuel R. Bailey one of the defendants? If so give a description of said Land—

Answer I find by reference to my Deed that I purchased of S. R. Bailey the undivided two thirds part of the North East quarter of the South West quarter of Section One Township Twenty four Range five west of the third Principal Meridian— Also the North West quarter of the South West quarter & the South half of the south west quarter of section One Township Twenty four (24) North of Range five west of the 3rd Principal Meridian— Also the North East quarter of the North West quarter of section N^o Twelve & the North West quarter of the North West quarter of section N^o Twelve (both) in Township N^o Twenty four North of Range five west of the third Principal Meridian—

Interrogatory 4th— Did you ever hear said Samuel R. Bailey in regard to the title to said Lands say anything, If so state what he said & to what piece of Land he referred—

Answer S. R. Bailey told me that $\frac{1}{3}$ of the 140 acres more

66 in controversy belonged to the heirs of Rella Doolittle.

Interrogatory 5th - Did you at any time hear said Bailey say any thing in regard to the title of the said plaintiffs, Mary & Martha Doolittle to the S.E. 1/4 of the S.W. 1/4, of Section one in Township twenty four Range five west of the 3rd principal meridian in Tazewell County Illinois? If so state what he said.

Answer I never did, the S.E. 1/4 of the S.W. 1/4 is not the land in controversy as I understand it.

Interrogatory 6th - Did you ever hear said Bailey say any thing in regard to his tax title upon said land? If so state what he said.

Answer - I have heard Mr Bailey say he had a Tax title to said Land & that he thought he could hold the land under this tax title.

Interrogatory 7th - Do you know any thing else material to the matter in controversy?

Answer I know that S.P. Bailey sold me an undivided 2/3 part of forty acres of land which Land is now in controversy as I understand it; Said Bailey gave me a Warrant Deed for the undivided 2/3 & a quit claim Deed for the undivided one third & told me I ought to watch & by their interest - that that is Mary & Martha Doolittle.

interest - to the one third part when they became of age - I know of nothing else material to the matter - A. Brown

— Cross Interrogatories —

Interrogatory 1st If you purchased any land of said Bailey the 1st; State what year you purchased it -

Answer I purchased Land of S. P. Bailey in Oct-1853-

Interrogatory 2nd If you heard Bailey say any thing about the title Mary & Martha Doolittle had to the land aforesaid to - State when it was & in what year

Answer - I never heard S. P. Bailey say any thing in reference to the land described in Plaintiff's Interrogatory No. five - Nor any thing in reference to Mary & Martha Doolittle's title to the S E 1/4 of the South west 1/4 of Section Township 24 Range 5 - West of 3rd P. M. -

Interrogatory 4th - (should be 3rd) The controversy if any you had with Bailey about the title did not Bailey always insist that he - after he had paid taxes for seven years, accompanied by possession a good title to that Land, & did not Bailey at the time of the sale of the Land to you made by him show you a Tax deed to that piece of Land & an other piece besides & did he (Bailey) also so inform you of the Tax title when you saw him in

68 Battimore -

Answer to Interrogatory 4th - S. P. Bailey told me frequently that he had paid Taxes for 7 years & upwards accompanied by possession & he thought that might be set up as a defense against any person - Bailey never showed me a tax title deed that I now recollect - I recollect of having a talk with S. P. Bailey in Battimore on the subject of Doovitt's title to said Land but do not now recollect what that conversation was -

Interrogatory 5th - whom did you employ to examine Bailey's title when you made the purchase -

Answer I do not think I employed any person particularly -

Interrogatory 6th - who was in possession of said Land during the years 1848, 49, - 50, 51, 52, 53, 54, and 1855 - ? and what improvements had been made on the land in controversy ? - what improvement was on the land when you purchased it ? & what time was it McCook sunk the shaft -

Answer - I do not know who was in possession of said Land in 1848, 1849, - 1850 - 1851, - S. P. Bailey was in possession in 1852 & D. McCook in 1853

I was also in possession during the years 1854 1855 - & 1856 - ? I believe there stood on the land one half of a small log house - the

west line dividing the house - I believe
 there was also a garden spot; under improv-
 -ment when I purchased it - that was the Cabin
 & garden referred to. The gin house & a shaft for
 a Blacksmiths shop - McCook sunk the shaft
 I think in the summer or fall of 1857 ~
 A. Brown

State of Iowa }
 Johnson County } ss

I J. N. Jerome a Justice of the Peace
 in & for said County do hereby certify that the said
 within A. Brown prior to the taking of the
 foregoing deposition & on the 16th day of Oct-
 A.D. 1888, was by me duly sworn to testify the
 truth in relation to the matter in controversy in
 the suit mentioned in the caption to these depo-
 -sitions & in the inclosed commission so far as he
 might be interrogated in relation thereto -
 And the said deposition was on the 16th day of Oct-
 1888 at my office in said County & State taken &
 reduced to writing by myself & signed and
 sworn to by said witness in my presence -
 Given under my hand this 16th day of Oct-
 A.D. 1888 at Iowa city J. N. Jerome

Justice of the Peace

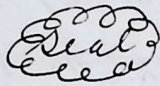
State of Iowa }
 Johnson County } ss

I Stathiel Butcheller clerk

of the District Court, in and for the County of Johnson, State of Iowa, do hereby certify that J. N. Jerome Esq whose genuine signature is affixed to the foregoing certificate and deposition was at the time of taking such deposition an acting Justice of the Peace in and for the County of Johnson State of Iowa duly authorized by law to take deposition & certify to the same and that full faith and credit are due to all his official acts as such

and I further certify that the foregoing certificate was executed and acknowledged in accordance with the laws of this State—

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Iowa City this 18th day of October A.D. 1858



S. Batcheller Clerk

Plaintiff then called on clerk who testified that he knew the land in 1857, and that it then had a log house and lot of ground fenced upon it. the house was now vacant until a year or two past when it was used as a stable, and it is now torn down, but the whole premises is now enclosed & Bailey told him in 1857, that he did not own the land, that it belonged to some minors but that he thought he would get it witness dug coal on it in 1857-58

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It is admitted on the part of the defendant that the land described in the contract from R.S. Doolittle to S.P. Bailey is the land in controversy

- the house was then on it, first saw it in 1849. Plaintiff then called on Bailey to produce a contract or made concerning said Land return him and R.S. Doolittle which was done and the Plaintiffs then offered the same in Evidence to the reading of which Defendant objected which objection was overruled and defendant excepted and the paper was read as follows - This day sold S.P. Bailey Forty acres of Land siting north of S.P. Bailey tract, which his house is on and the same is west of a tract owned by John King of Prussia or his assigns. the same is to be paid for by said Bailey in notes on good and responsible men to the amount of two hundred dollars said Bailey is to pay all Taxes and they are to be deducted from the amt. of \$200, and R.S. Doolittle is to make to said Bailey a deed for the same - on delivery of said notes, Bk in Feb 16th 1849

R.S. Doolittle,

* Plaintiffs then admitted that Bailey sold the premises in 1853 to one Brown and that Brown immediately mortgaged it to him by mortgage and finally released it to Bailey and opened a coal Bank on it in 1857 and this was all the evidence offered in the Cause - Plaintiff then asked the court to

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instruct the jury as follows—

1st

The court instruct the jury that the declarations of what deceased members of the family have said, and, and that parties are treated as husband and wife, and live and cohabit as such together, and are received as such in society are sufficient evidence of the marriage of Rawley S. Doolittle and Martha Sampson

2nd

That General reputation among the members of the family and that Martha Sampson was treated as his daughter by John J. Sampson and general reputation among the members of the family are sufficient evidence to prove that the complainants are the children of Martha Doolittle and that Isabella Sampson was the daughter of Lucien A. Sampson—

3rd

That the power interest of the widow of Lucien A. Sampson although it could not be sold by her before assignment to a stranger, yet it could be released by her to the person having the fee simple and if they believe from the evidence that the complainants have such, it could be released to them—

4th

That no outstanding claims of power will defeat this suit and they are not to take into consideration any such outstanding interest—

- 5th If the jury believe from the evidence that Bailey agreed to purchase in question of R.S. Doolittle and entered into it under that agreement he cannot set up a tax title to the land, it being his duty to pay for the same.
- 6th That the Tax title offered by Bailey not having a judgment or certified return of the assessment list to support it is totally void and of no force whatever, and unless the jury believe from the evidence that the Tax title was taken by Bailey in good faith believing it to be a good and valid title and that he has had both actual possession and paid the Taxes thereon for seven successive years before the commencement of this suit they will find for complainant.
- 7th That possession to be adverse must be open notorious and visible, and made out by positive proof, and unless the jury believe from the evidence that Bailey has had such possession, and that such possession continued for seven successive years as would notify the world that he was in possession and claiming the same they will find for complainant.
- 8th That no conveyance made by Rawley S. Doolittle

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will defeat the title of the complainants deriving from their mother or Grand, and not acts of Rawley & Doolittle could defeat the title of complainants that the amount mentioned in the deed from Grand to complainant is to be taken as the true amount paid and it is for the defendant to show that there was no consideration.

9th - If the jury believe from the evidence that Bailey acquired the life estate of Rawley & Doolittle and occupied the land under it, it then becomes the duty of Bailey to pay the Taxes, and if such is the evidence, Bailey cannot set up a tax title to said Land.

10th - That unless Bailey there proved that he has had actual possession of the land in question for some successive years before the commencement of this suit, and that the taxes due is as stated they will find for the Defendants.

11th - That although Bailey may have paid the presentment of Taxes for some successive years yet unless the jury believe from the Evidence that he also had actual possession of the land in question for some successive years, or that the Taxes were paid for some successive years, while the land was vacant and unoccupied, then Bailey's tax title is no defense to this suit.

12th - That admissions made by Bailey are competent evidence of his want of good faith.

to which instructions the defendant then
and then accepted-

and the defendant then asked the court to in-
struct the jury as follows

- 1st The defendant Bailey ask the court to instruct
the jury that the plaintiffs derived no more title to
the land in controversy than Grans had, and
that if the limitations as to time had commenced
running against Grans. It continued to
run against him and all persons claiming in
der him until the time this suit was brought.
- 2nd - And if they further believe from the evidence
that Bailey got his tax title in good faith to the
land in question and had possession thereof
and paid all taxes thereon during the term of
seven years before the commencement of this
suit: they will find for the defendant -
- 3rd - And if they further believe from the evidence
that Bailey had claim and color of title
made in good faith and had possession of and
paid taxes of the land for 7 years before the
commencement of this suit they will find
for the defendant: even though they may
believe that Bailey's title is not supported
by a regular judgment at Law.
- 4th Unless they believe from the proof that Isabella
Sampson is entitled to the land set forth in the
Petition as belonging to her. they will find as

far as that is concerned for the defendant-
 5th - And the jury are further instructed that the Hauling of Timber on a tract of Land for a House and the erection of a house thereon and cultivation and fencing of a part of a tract of a tract of Land, is such possession as all the world should notice, and if they further believe that Bailey did so Haul on timber, & Erect a House & fence in the Land some years before commencement of this suit and paid all taxes during that time, and had at the time the took possession a regular Tax deed inform taken in good faith they will find for the defendant-

6th - If the jury believe from the evidence that Bailey agreed to purchase and did purchase it of R. S. Doolittle, and entered into the possession under that purchase, Doolittle and all persons claiming through him, are estopped from pretending that Bailey did not have title to the same, & so far as that title is concerned they will find for the defendant-

7th - The jury are instructed that the law requires, all ~~owners~~ owners, before they can set aside a Tax title, acquired in good faith they must redeem the same, from the Tax sale and pay all the taxes due thereon, and until they redeem & the taxes are all by them they have no

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right or title to the possession, and they will find for the defendant. -

8th - If the jury believe from the evidence that at the time of the tax sale & deed that the land in question, was vacant and unoccupied land, that the occupation of the same for a part of the time for the 7 years next following and payment of Taxes for seven successive years thereon, that the occupation of it for a part of the time does not change the nature of the title and the Statute in regard to limitation as to unoccupied land is in full force as to it, and that unless they believe from the evidence that the complainants have paid back all taxes paid by Bailey, on the land they are not entitled to recover, and they will find for the defendant. -

9th - If the jury believe from the evidence that the complainant received their title from Grange & Sampson after the tax sale, and the date of the Tax and to Bailey, that then they can have no better title or right thereby, except what Grange or Sampson then had, and that the Statute of Limitation, must apply to the Petitioners just as the same would apply to their grantors, and they bring minors, does not change their rights, and if Bailey would be entitled in their opinion from the proof

to receive the same against Grans & Sampson they will find for Defendant -

10th - If the jury believe from the evidence that Bailey received a sheriff's deed to the land in question in good faith in 1847, and has paid all the taxes assessed on the same from that date until the commencement of this suit in 1856, they will find for the defendant; even though they should not be satisfied from the evidence that he had been in the actual possession of the same for some successive years prior to the commencement of this suit -

11th - If they further believe from the evidence that the defendant took this deed to the land in good faith and paid all the taxes legally assessed thereof for some successive years before the commencement of this suit, It makes no difference in Law whether he occupied the land during a part of said term of years, or not; and they will find for the defendant; - and

And to the giving of which the Plaintiff then and there excepted and thereupon the jury found a verdict for the Petitioner as follows - "We the jury find the title and interest to the land in controversy in the parties as set forth in Petitioner's petition." Defendant then moved the court for a new

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Trial for the following reasons -

Doollittle & others

vs.

Samuel R. Bailey & others

} Petition for Partition

And now comes the

defendant and moves the court for a new trial for the following reasons -

- 1 The verdict of the jury was contrary to the evidence.
- 2nd The court admitted improper evidence -
- 3 The court refuse to admit the record of the judgment for taxes on the land of the circuit court authorizing sale of the land for taxes
- 4th - The admitting in evidence of the agreement executed by Doollittle
- 5th In admitting the evidence of Clark a witness introduced by the plaintiff -
- 6 Court gave improper instructions -
- 7 The court refused proper ~~evidence~~ offered for the defendant - Which motion the court ~~overruled~~ and ~~rendered~~ a decree for the Petitioners as follows
- 8th - The Instructions were calculated to mislead the jury
- 9th - The instructions given by the court for the plaintiff was not pertinent to the case under consideration -

10th - The finding of the jury was contrary to law
 Puttman & Bailey
 atty. at l.

Which motion the Court overruled and ordered a decree for the Petitioners as follows -

State of Illinois } In Circuit Court
 Jayville County } September Term 1854 =

Mary & Martha Doolittle }

by their guardian Rawley }

S. Doolittle }

vs. =

Isabella Sampson & }

Samuel R. Bailey }

Petition for

Partition

And now at this day came the petitioners and this cause having been submitted to a jury duly selected and sworn and the said jury having found the title and interest of said parties as set forth in said petition. It is therefore declared that the said Mary & Martha Doolittle own undivided two thirds of said premises and said Isabella Sampson one undivided third all of which is subject to the interest of Samuel R. Bailey of one undivided third for the life of Rawley S. Doolittle - and it is ordered that said premises be divided among said parties according to the title as above stated. It is further ordered by the Court that James B. Babcock Middleton Tuckers,

the Cause therein named, as the
same appears of record in my Office.

In Witness whereof, I have hereunto
set my hand, and affixed the
Judicial Seal of said Circuit
Court, at the City of Pekin, this
6th day of April, A.D. 1860.

Merrill & Young Clerk

Fees for making
Transcript \$ 20.²⁵/₁₀₀

State of Illinois. ss

In the Supreme Court.
to the April Term 1860

Samuel O'Bailey & el, ~~plffs in Error~~ at Ottawa

vs

Error from Jarewell

Martha Doolittle &

Mary Doolittle defendants in Error.

And the said appellant comes and says
there is manifest Error in said Cause
for the following Reasons. viz

1st The admitting improper evidence for
the plaintiffs and refusing proper evidence
for the defendant.

2nd The Court Erred in giving improper
instructions ~~evidence~~ for Plaintiffs.

3rd The Court Erred in overruling motion
for a new trial and rendering Decree
for new trial and rendering a decree
for partition.

As Puttymann

Atty for defnt. ~~Puttymann~~

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Samuel O'Bailey

Henry Watkinson

Revised &
corrected by
George A. Evans

Filed April 15, 1860
L. Leland
Clerk



Puttymann
Robert J. Apple

State of Illinois } 3^d Grand Division
Supreme Court } April Term 1860

Samuel P. Bailey

vs.

Mary Martha Solittle
Isabella Sampson

And the said defendants by
James Roberts their attorney say that
there is no error in the record and
proceedings aforesaid, and pray
said judgment to be ~~reversed~~
affirmed

James Roberts

231-190

Samuel P. Bail

4.

Mary Martha

Bookette

Transcript