

No. 13650

# Supreme Court of Illinois

Curtiss

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vs.

Brown et al

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1960 57  
STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division.

No. 120

57962  
Curtis

13650

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Island

Can you term me a states  
argument in Curtis & Brown  
no 196-59

J. D. Eaton

Nov. 6

# SUPREME COURT.

APRIL TERM, 1862.

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MARY CURTISS  
vs.  
WILLIAM H. BROWN,  
*et al.*

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## NOTES ON JUDGE SCATES' ARGUMENT.

Page 1. The grant in the premises of the Deed is to William H. Brown and *his heirs—tenendum to Brown and his heirs, &c.*

*Point.* This vests a *fee simple* of the legal estate in Mr. Brown, as trustee. Co. Lit., 299, a; 2 Blacks. Com., 298.

This is a purely legal limitation, and the effect of it, as such, cannot be taken away by the language of the *tenendum, if conflicting.*

The words, "*during the joint lives of Mary Curtiss,*" &c., limit and define the duration of the special *trust*, and do not cut down the *fee simple*, granted by the premises, and confirmed by the *tenendum*, to an estate simply *pur autre vie*.

The deed contains limitations of two kinds—legal and equitable; the former relating to the estate of the trustee at law, the other to that of the *cestui-que trust* in equity.

Brown had a *fee simple*, as trustee. Mrs. Curtiss had first, a trust estate during the joint lives of herself and husband—a *passive trust*—not executed by the statute of uses. The

trustee was to pay over the rents, &c., to her, &c. This language rendered the trust a creature of equity alone—one which the statute would not execute. 1 Cr. Dig., Lib. xii, S. 14-17.

The second limitation takes effect upon the falling of a life. If that life were the husband's, the trustees were to hold (supplying an evident ellipsis) the lands to the wife; i. e., to the use of the wife, for as a legal limitation of a legal estate, the clause in question could not take effect, for a fee simple already having been invested in the trustee, by the deed itself, a legal limitation upon that could not take effect, but would be void.

To avoid that construction and consequence, the clause in question, must be construed as the limitation of a *use*. And that construction is supported by the next clause, which declares, that in the other contingency, i. e., the death of the wife, living the husband, the trustee and his heirs should hold the land to the *use* of Mrs. Curtiss' legal representatives, her heirs, or appointees. Then, upon the event of Curtiss' death, in the life of his wife, the trustee and his heirs were to hold to the use of Mrs. Curtiss, directly, immediately, and not as a passive trust; in that event, the one in Mrs. Curtiss would be active, direct: (*Criuse Dig., labi Supra.*) She could take the rents herself, and not the trustee, in order to pay them over to herself, excluding her husband.

But if, on the contrary, the *cestui-que trust*, should die first, the trustee and his heirs were to hold the lands, to the *use* of such persons as Mary Curtiss should direct or appoint, in default of which appointments, the trustee and his heirs were to hold the lands to the use of her *heirs* and *assigns* forever.

The effect of the limitations being to vest in her first, an unexecuted trust during the joint lives of herself and husband; upon the termination of which, secondly, the whole residue of the beneficial ownership, whether a use or a trust, was to be absolutely hers in fee simple, it being limited to herself, her special appointee, or devisee, or if none such, to her heirs at law and assigns forever.

Thus the absolute fee simple at law of the legal estate and title was vested in Brown as trustee, and the whole trust estate in fee simple was vested in Mary Curtiss. No legal interest being left in any one but Brown, and no equitable interest of any description being given to any other person than Mary Curtiss—not even her husband.

Page 2. The intent is certainly clear, and equally clear are the limitations of the different estates.

The actual legal effect of those limitations is the actual and legal intent of the parties—none other can be regarded.

The legal intent in framing the deed, as expressed and set forth in the deed, must prevail over any conjectural intention.

Upon the execution of the deed by Gray, he completely and forever departed with his whole interest in the premises, both at law and in equity. He had no interest whatever when the bill was filed. No relief was asked against him. He had sold the property, and had been paid for it. Mrs. Curtiss was the purchaser, and had paid the consideration—the legal title had been conveyed to Brown, with the trusts declared in favor of the purchaser.

Whether Gray sold the land for value, or created the trust as an act of bounty to Mrs. Curtiss, is of no consequence, either to give the Court jurisdiction over the trust, and the interests of the parties in it, or to defeat its jurisdiction.

It was not necessary to make Gray a party to the proceedings in chancery, because those proceedings did not affect, or aim to affect his interests in any way—they neither affected or diminished his interest in the property, nor changed, altered or affected his liability or obligation in respect of the trust estate.

The relief sought by the bill was not against himself—it sought to make no alteration in the deed, which he had given, to vary its tenor or provisions, nor insert new ones, or to take away old ones; but solely to decide a question between the *cestui-que-trust* and her trustee, involving the rights of

one, and the power and duty of the other. That question was to be decided by the court, either in favor of Mary Curtiss, or in favor of Brown—the court could not strike the case from the docket, and refuse to decide it. The only ground of complaint is, that the decision was in favor of Mary Curtiss, and not against her. She assigns for error, that the court granted her the relief she prayed for, instead of refusing to grant her any relief. It is not competent for the plaintiff in error to assign for error that her own express and solemn prayer was granted by the court, when, as she now says, it should have been refused.

Page 2. Scates assumes that the husband set up equities to the property, and that the bill was filed to transfer his wife's property to himself. The begging of a question which never arose or existed, or did the decree transfer his wife's property to himself. It directed a sale of the property. It changed the land into money—caused the subject or vehicle of the Trust to assume another form; but the money which arose from the sale was in the hands of the trustee, as trustee, subject to the trust for Mary Curtiss, and to the order of the court, and was the new subject or *res* in which the trust estate or fund existed.

He says, "The court had no jurisdiction, and the whole decree and proceeding utterly null and void."

"Court had not jurisdiction to divest the wife of her property, by its own voluntary decree without her act or consent." Page 2, printed argument.

Agree to every word of that proposition, as a proposition of law, but as a statement of fact, it is untrue. Its assumption is absolutely powerless.

1. The court did not assume to deprive Mrs Curtiss of her property of any kind, real or personal, with or without her consent.

By decreeing a sale, it did not take aught from her. The legal title to the land was Brown's—it belonged to Brown. It was

Brown's land, at law, and all that Mary Curtiss had a right to, was to enjoy certain benefits from the use, products, or fruits of that land—i. e., the execution of the trust declared. The land was Brown's, the benefits of it were Mary Curtiss's. It was Brown's land then, that was sold. The decree gave the whole benefits—fruits, products, and benefits of the land to Mary Curtiss. So that she was not deprived of them.

2. The decree was not the voluntary decree of the court, acting of its own motion, as is cunningly insinuated. The court did not act until called upon—until it was compelled *ex necessitate jurisdictionis* to do so. A formal bill was filed by the wife, in her own name, asking relief personal to herself, based upon rights vested distinctly and separately in her, showing by historical statements the origin and ground of them—her husband joining for conformity to the rule requiring a wife to sue with her husband, or by a next friend, no relief being asked for the husband in any the slightest particular, nor any right alleged to exist in him—nor ground for even an inference of right in him.

It was compulsory upon the court to decide the question arising upon the bill filed. It was bound to decide for or against Mary Curtiss. It must either grant the relief, or refuse it, or strike the bill from the docket as a thing of which it could take notice. But this last can never be contended for.

3. Nor was the Decree made without the act or consent of Mary Curtiss. The Bill was filed by her, signed by her own hand. She was the suppliant. She accused the trustee of what amounted to a refusal to do his duty. She alleged the hardship and necessity of her circumstances; her sole virtual ownership of the trust; that she created it and gave it birth, and she asked the court, that in order to answer the original purposes and ends of the trust; in order to confer upon her that measure and mode of benefit, without which, the spirit would be sacrificed to the letter—the substance to the form—the life destroyed, that the food for its support alone should be preserved, to make a decree which should accomplish those purposes; in fact, which should *execute* and not

destroy the trust. In other words, that the land *might* be sold, and the *moneys reinvested* for her benefit.

It was a question before the court, how should certain trusts be *executed*. The court directed the mode of execution. Had it not power to decide? If not, what court could decide? It was matter of actual dispute.

Page 3. Seates says: "The case differs from all cases in the books, in not being a disposition made by her by a power, will, or deed, but by decree of court. Cases may be found where courts have carried into effect a disposition of the wife, but not where the court itself has made a disposition for her."

This is not a case where the court made a disposition of the wife's property without or against her will. It has only carried into effect a previous disposition made by the wife of it herself—relieving both the estate and herself from the embarrassments consequent upon a particular mode in which it had been disposed of by her. The real ground of complaint is, as to the mode in which the court adjudged best, under all the circumstances of the case, to untie the knot.

The cases cited fail to throw any light whatever upon the present question. 8 Vesey, 174. Sperling vs. Rochfort.

O. Kate vs. Calthorpe.

In the older case, the Lord Chancellor refused to interfere, because in that case there was *no ground* to break in upon the particular settlement, not questioning for a moment the power of the court over the *res* in litigation, but asserting by that most pregnant implication in the strongest manner, the jurisdiction and power of the court even to *break in upon a marriage settlement*, in a *proper case made*. In that case, the relief prayed went to an abrogation, and breaking up of a marriage settlement if necessary and equitable, in order to dispense the justice of the court, thus supplying an authority of the strongest possible kind, in opposition to the fundamental position taken by the plaintiff in error, and to her counsel's argument in its support. Not only was that principle sanctioned

by the two cases cited, but the doctrine was never questioned.

B. They say: "The court has no jurisdiction to dispose of the wife's interest without her consent—will not presume consent—but examine her, &c., before any decree affecting her separate property."

It may be observed, that this statement of the rule in the form in which the statement is made, is much too general and vague, to have any meaning, or to be of any practical value, unless it be as a mere truism.

Of course, the court had not jurisdiction to dispose of the wife's interest without her consent, in any arbitrary or voluntary matter, except in a litigation pending before it, calling for its decision, to which the disposition of a wife's interests, without her consent, nay, even very much against her will, may be indispensable.

The court of chancery has not power to dispose of any one's rights or property, unless of a party to a suit pending before it with proper jurisdiction. In which case, upon proper allegation and proof, it has the undoubted power to do so, of right.

Many authorities are cited by Judge Seates in support of the statement, that courts act with caution when asked to give a wife's property to her husband undoubtedly. But in this case, Curtiss did not file a bill asking to have his wife's property given to him, nor setting up, or claiming any interest in it. Nor did the wife ask that her property might be given to her husband. She was asking relief for herself from the court, and there was no need to see if she knew what she was about, or was acting from her own unbiaised will.

The other citations relate wholly to cases of direct or indirect transfers of the wife's property to the husband—gifts from the wife to the husband—suits by him for its recovery, and like cases.

C. It is said, "The court had no jurisdiction to order a sale of the fee in this case by the trustee, because, the wife never consented; because, she had no power over it

“with, or without consent. All she could dispose of was her life estate in the rents, and because the deed expressly took away all power to anticipate those rents, or to dispose of the fee.”

A somewhat remarkable assemblage of statements. Some not true as facts, nor quite consistent with each other.

First, it is said, the wife never consented. But she did consent, gave strongest proof of it.

Second, if she did consent, she had no power of disposition over the estate. But her power of disposition over this estate does not effect the question of the power and jurisdiction of the court to dispose of it, in a suit, upon proper allegations, and upon proper proofs in support of these allegations. Grant that she was a married woman, wholly incapacitated to act, yet the court had power to decide the case, when its decision might deprive her of what she had claimed—this in an adverse litigation—*A fortiori*, where the decision, making such disposition, was the actual relief she sought, and was beneficial to her.

The question of her right and power under the deed, will be discussed hereafter.

It is extraordinary to say, that all she could have disposed of would be her life Estate in the rents, when the sole prohibition contained in the deed, exclusively referred to the rents, and not the Estate in fee. And yet to say, in the very next breath, that, all power, of every kind, was absolutely taken away by the deed, under which she claimed.

Page 4. It is said, “The decree in this case did not cut off her right.” It did not, why then complain of it, as if it did cut off her right?

The two citations, from Clancey and Roper, are altogether irrelevant.

The citation from 3 Alkyns 541, is likewise irrelevant. It simply decided, that a married woman should not in preference to loaning money in the common way, on mortgage, grant an annuity for her own life. The most wasteful of all kinds of anticipation and usury.

The next citation from 9 Vesey, 494, is equally foreign to the purpose. In that case, the court of chancery simply refused to enforce a void annuity, granted without any authority.

3 Brown 347, relates to a branch of the subject already fully disposed of—the power of the wife to give, or of the husband to get the wife's separate property, contrary to the provision of the settlement. The Thurlow clause against anticipation is not disputed by us. But it by no means thence follows, that a clause inserted in any deed, can defeat the jurisdiction of the court of chancery to decide upon a controversy arising on the deed of trust. *Socket vs. Wray*, 4 Brown, c. c. 485, was a bill to compell trustees to pay over the fund to the husband. This the court refused. If James Curtiss had asked the court for the land, or the money which it produced, his prayer would have been denied. In that case the trust fund yielded an income for the wife's support. In the present case, the estate was unproductive, and could not be made productive by Curtiss, or wife; and unless dealt with by the court, the *cestui-que-trust* and her husband and family might have perished, or lived in distress and wretchedness, but for the action of the court. It is not possible that gentlemen are blind to the obvious distinction between the case at bar, and the case cited to govern it. Besides, in that case, the settlement was an act of bounty from others who had the right to give, and qualify the gift by whatever condition they choose: such was not this case. This was a purchase by Mrs. Curtiss for her own benefit. And it was only right that she should have the full benefit of her purchase.

*Hyde vs. Price*, 3 Vesey, Jr. 437, decides that a wife could not grant an annuity out of the dividends of her settlement. *Whistler vs. Newman*, 4 Vesey 129, and *Socket vs. Wray*, 4 Brown, c. c. 485. That in cases under settlements, &c., the wife has no power of alienation but what is given by deed of settlement or trust, and subject to the following observation. Those cases have been overruled by all the sobriquent deci-

sions in England, and that doctrine is now considered exploded besides. It may be conceded, that they are correct in confining the wife to the specific mode and power expressed in the deed, with the qualification added, except where the law gives her such other power, as we contend was the case with Mrs. Curtiss in this case, under the laws of this State, as will be shown hereafter. *Mores vs. Huish*, 5 Ves., 692, seems to have been a refusal of the court to give specific execution of a contract of sale by a married woman, or to carry the sale into effect. It was decided on circumstances, 9 Ves., 524, *in arg.* *Hovey vs. Blakeman*, 9 Ves., 524, refused to uphold an annuity. Moreover, it was a petition, which was dismissed, with leave to *file a bill*.

See Report in Vesey.

*Lee vs. Muggridge*, 1 Ves., B., 118, and *Motley vs. Thomas* *ibid.* only decide, that a woman while married, having no power whatever to alienate or dispose of the settled property, and the property in fact *not being hers*, but in care of survivorship, can exercise no power but that given by the settlement.

In this case, Mrs. Curtiss had full power, by the laws of this State to alienate, by deed, her Real Estate as fully as an unmarried woman or man, by joining with her husband in executing the deed.

But the decision of the case upon the circumstances of it, is very far from deciding that the high court of chancery, cannot, in a proper case, dispose of the body or *corpus* of a trust fund—convert it from realty into personalty, or cause a change in the investment, and to that end, order a sale, when such a disposition of the fund is expedient and beneficial to all concerned in it.

But to meet the exigencies of the gentleman's case, such must be the law. Yet not a decision can be found in support of it.

*Francis vs. Wigzell*, 1 Mad., 147, is not in point. *Richards vs. Chambers*, 10 Versey, 580. *Seaman vs. Duill*, *ibid.* were cases of personal property, where the property settled, be-

longed to the wife, apart from the income for life, *only upon the contingency of survivorship*. Those cases differ from this, because *the wife in this case had the whole property in herself*, absolutely and without any condition of survivorship. In this case, Curtiss did not seek, by a bill filed, to have the trustee transfer his wife's estate to himself.

It was a bill filed by Mrs. Curtiss to compel and empower the trustee to do certain acts as trustee, for her due benefit.

If in *Chambers vs. Richards*, the subject of the trust instead of being a productive fund, yielding an income for her support, had been an unproductive realty, which, under the authority of the court might be made productive for her support, and the bill had sought relief of that kind, the court would undoubtedly have granted it. The nature of the relief in a given case, depends upon the nature of the subject effected, and the rights and circumstances of the funds interested.

The cases referred to are not precedents which govern this case. The decision in *Richards vs. Chambers* was, that in that case, under the circumstances stated in it, as to those parties with such and such rights, the parties ought not to have the relief asked.

P. O. I conceive that the ceremony of taking the wife's consent by personal examination in court, is observed only in cases where the husband sues in equity to get hold of the wife's property, to which he is, by marriage legally entitled; in such cases, the court compels a settlement as a condition of its relief, or of allowing the husband to recover. The wife, in a proper case, may waive her right to a settlement. The court requires to be fully satisfied, and examines her. Her consent, in such cases, may be given, then the husband's legal right prevail free from the obstruction.

Page 7. "But here the power and estate were neither "in her." What power, what estate? The legal estate and title are in Brown, the trustee—the equitable estate in fee simple was wholly in Mary Curtiss. Brown could potentially do acts not authorized by the deed. He could convey the

legal estate in fee simple, the trust might follow it, but the conveyance would not be void at law.

The deed did not take away all power over the fee by anticipation. What is meant by anticipation of a fee? The deed only took away her power to anticipate, or aliene the *rents* during their joint lives. No prohibition against alienation and reinvestment if the trust fund was contained in the deed. The trustee was not forbidden to do this. So that the trustee could, by conveyance vest the title in fee, in a purchaser. Equity might annex a trust to the grantee's title, but if the alienation was sanctioned by the decree of the court, would that trust nevertheless follow the land in the purchaser's hands? That would depend on whether the conveyance was authorized or not—whether it was a mark of trust or not. If authorized by the deed of trust, the trust would be cut off, as to the land thus sold. If authorized by the court on a bill filed, it would not, for the decree would confer an authority equivalent to the deed of trust, whether or not the equity established would require a sale in the matter fixed by the decision of the court in making its decree. It cannot be pretended that because the court rightfully ordered a sale of the subject, it exceeded its power and jurisdiction. A sale is within the power of the court when proper, and the propriety of it is the very fact to be settled by itself. It cannot be said that there is anything in the nature or act of sale to tie up the court, if that be the proper conveyance and means of relief in the particular case.

The power of the high court of chancery to dispose of by sale or otherwise, of the subject matter of litigation, when fully before it, in a suit on a bill, with all parties in interest before the court, whether contesting or consenting to a sale, cannot be questioned, and this is all I contend for.

Page 7. This power is not exercised upon the property of the wife, *as wife—a wife*, as such, is no more subject to the jurisdiction of the court, than a maid, a widow, or a man.

But the power of the high court of chancery in a proper

case to order a sale of real estate, the subject of litigation before it, whether belonging to a wife, an infant, or persons *sui juris*, having jurisdiction of the parties, and of the property, is one of the most undeniable of all its powers.

P. P. 7 and 8. The cases cited, 11 Versey, 17; 9 Versey, 87; 13 do., 190; 3 Mad., 385; 3 Russell, a. 5, 88; 1 Mylne & Craig, 37; 5 Mad., 157; 1 Dick, 341; 1 Atk., 280; 2 Vernon, 401, are all inapplicable.

They are subject to the distinctions, and fall under the principles already stated above.

Lord Eldon says, in *Parkes vs. White*, 11 Vesey, that the cases decided by *Pepper Arden* and *Loughborough*, the cases denying the wife's power to alienate her separate estate, constituted an innovation upon the universal course of decision for a century previous. That while he, himself, doubted for sometime, and his mind was perplexed by those considerations of equitable policy, on which *Arden* and *Loughborough* cited, he was not bold enough to follow their example, and in every case, he overruled them. And the old doctrine, reaffirmed by Eldon, has ever since his time been the doctrine of the English and Irish chancery, and of the appellate jurisdiction, the House of Lords. The exceptional cases quoted, are not now quoted, or considered in England as authorities. And no notice is ever taken of them, now in that country.

And the law in England upon the whole subject may be briefly stated as follows:

1. As to her separate property, a married woman is regarded as a *feme sole* having full power of alienation, as an inherent attribute of property.

2. In order to restrain her power of disposal, there must be positive words, or a manifest intention plainly set forth should do so. *Ad. Doc. Eq.*, p. 45.

This is the latest and most authentic statement of the doctrine, and is supported by all the authorities, that are known to me.

Thus in England, the doctrine asserted rests upon a few

exceptional cases decided towards the end of the last century, by a vice-chancellor of secondary authority, and by a solitary chancellor whose personal authority is not comparable to that of any of his predecessors or successors. It is opposed to the otherwise unbroken course of decision for near two hundred years—to the great personal authority of Nottingham, the founder of the rule, Macclesfield, Hardwicke, Thurlow, Eldon, and all the more recent chancellors, by the current authority of all the approved text writers, and of the profession in Great Britain and Ireland.

In this country, the innovation rests mainly upon the authority of three leading cases which seem to have introduced it, *Methodist Church vs. Jaques*, in New York; *Ewing vs. Smith*, in South Carolina; *Morgan vs. Elam*, in Tennessee. These three cases deserve a careful scrutiny.

The first case, that in New York, was reversed on appeal upon the principal point, and was judicially condemned in its principle, and instance without a dissenting voice, except three laymen whose names are otherwise unknown.

The second case, that in South Carolina, was decided by a bare majority of one, out of five judges—the weight of personal authority preponderating much in favor of the minority.

Chancellor Kent concedes the main ground—that the wife has the power of alienation, unless *restrained by the deed*. All agree to that; the point of separation is, that Kent contends that prescribing a mode of disposition is an implied prohibition on all others. But if no mode were expressed, without more, the right of alienation would exist; thus such expression is inoperative, because the expression of what is implied is void of effect or consequence, had that which in its nature is only an instance illustrative, as an example of others, ought not to be deemed an exclusion of them. Besides, the right of alienation exists, and is made to exist, as a right of property *prima facie*, and is not to be done away with but by the *express* word or *plain intent*, which the pointing out of a mode, is not.

The authorities upon this subject are fully and unanswerably discussed by Breese, in *Swift vs. Castle*. 23 Ill.

P. P. 9 and 10. The authorities are much jumbled up by Scates, i. e. *Hulme vs. Tennant*, 1 Bro. 16., a strong case against him, is cited as sustaining the exceptional cases of *Pepper Arden* and *Loughborough*, diametrically opposed to it.

P. 10, Sec. 84. Can it be contended that Brown had a bare power without an interest, when he had and owned the whole estate at law?

The conclusion of Judge Scates' observation in support of his first point, is merely an anticipation of his second point.

P. 11. *Second Point*. The statement of the proposition as a general statement is unmeaning, or a truism.

The court has not power to transfer by order or decree, or otherwise the real or personal estate of married or unmarried women, or men, or children. But the court of chancery has the power, having perfect jurisdiction of the question, subject, persons in interest, to sell, and to decree a sale of the property, real or personal, involved in litigation, upon a bill filed, containing proper allegations, and sustained by proper points, to sell such property and to convey a legal title to the purchasers in good faith for value, cutting off all trusts attending it.

The words "nor can the court authorize or enlarge the powers of a *feme sole* to do so contrary to a deed or settlement," contain a proposition obviously foreign to the cause now in discussion.

P. 11. The doctrine of fines, etc., is foreign to the subject, and allusions to it are irrelevant.

The power of alienation of *real estate* in this State is given by statute, and the effect of the statute is to make a *feme covert*, joining with her husband, as able to *convey* or *affect* her real estate as a woman unmarried, or a man, giving her complete and unlimited power of alienation.

The long quotation from *Peacock vs. Monk*, 2 Vesey, Sr. 190, is foreign to the case at bar, and the questions it presents. That case recognizes and illustrates a most undoubted rule of

law; i. e. if a woman before her marriage, agrees with her husband, that she shall have the power to make a will and dispose of her land, such agreement shall bind the husband, and bar him of his estate by the curtesy; but yet, shall not relieve her from her disability to convey or dispose of her land as against her heir, such covenant or agreement is held purely executory, and not as effecting by its intrinsic operation what the law does not allow. Her agreement with her husband that she may make a will binds him, yet the moment she is married, she is disabled to make a will, yet her husband by force of his express covenant is concluded to dispute it. But not her heir at law, who is allowed to avail himself of the disobliging operation at law of coverture, to question and annul her act to his prejudice.

P. 13. The right of survivorship is a legal right; and at law a married woman is absolutely disabled to act; she cannot when disabled by law deprive herself of a legal right, or convey away her legal title, or in anywise affect it.

1. Ves. B. 118, is good law, but has no application, nor has 2 Story, Eq. Jurs., Sec. 1413.

Some powers must necessarily be strictly pursued, while others need not.

P. 14. The position reported on this page is only a repetition *de novo* of a matter of discussion already exhausted.

Quoting it literally, "That a married woman is only to be regarded as an unmarried one, so far as the deed makes her so, which creates her separate estate." Grant it true, how far does this deed give her that character? As to such separate property, she is so universally in equity, except so far as such deed makes her otherwise. Such is the universal English doctrine—that of New York. Story, etc., *et supra*.

The true doctrine is that a deed or settlement creating a separate estate, in the absence of express terms, or manifest intent plainly shown, by its intrinsic operation makes such married woman universally a *feme sole* in equity as to such separate estate or property, this is its proper effect and opera-

tion, and is only done away with by what is equivalent to a covenant or deed for that very purpose. A deed of settlement or trust makes her a *feme sole* as to such settlement or trust estate; nothing but another deed can deprive her of that character and capacity in equity, or what is equal in effect and operation to another deed contained in the same deed.

Manifestly silence or omission cannot have, and has not that effect. For to have that effect express words must be used in, or manifest intent shown by the deed. The wife's power of disposition grows out of her separate character and capacity, and from the fact of her having a separate estate created for her. Ad. Doc. Eq. pp. 43, 44, 45.

It is true that prohibitions are legal—and are sustained by the court. But the law is, that they shall not be implied unless *necessarily*. Ad. Eng. 45.

Whether a voluntary settlement shall be set aside or not, depends upon circumstances. If by it rights are fixed and vested in others, the settler alone cannot revoke it, all interested in it must consent. If its *uses are still all his own, he may revoke it*.

P. 15. "The court has no power to change the contract of parties." True, but in case of doubt or conflict of interests, the court may execute it and decide the rights of parties under it. It cannot be pretended, that property conveyed and sold by the court, as guardian of a trust in the very execution of the trust, is so conveyed in violation of the trust.

The court has not assumed to deal with a contingent remainder of a married woman; she had no contingent remainder. The deed did not forbid the alienation of the estate in fee, it only forbade its dismemberment by a separation of the rents from the *corpus* of the estate. It is untrue that the court gave or allowed the husband any power or right over the property or its proceeds. If that was done it was by the free act of the plaintiff herself. If a parallel to the argumen-

tation, statement, and *perversions* of this pamphlet can be found, it is a great wonder and unknown to me.

Ad. Ped. p. 15. The act of making title is twofold. Brown who had the legal title passed it by this deed, Mary Curtiss who had an equitable *fee simple*, passed it by her deed in which her husband joined. If she had been unmarried, it cannot be denied, that, by joining with the trustee the whole equitable and legal title in *fee simple* passed. By force of the statute, her husband joining with her, made her deed as good, valid and operative, in law, as it would have been, if executed by her as an unmarried woman. Consequently it conveyed the whole legal and equitable title to these premises.

P. 16. Judge Scates says that the plaintiff, Mary Curtiss, being the absolute, unconditional owner, and sole *cestui que trust* in *fee simple* of this property, that too by her own purchase, not by others gift, and her benefit, right, and advantage being the sole object of creating the trust, neither her wants nor her wishes were to be taken into account or regarded by the court, upon the hearing of a cause upon a bill filed, setting forth the nature, origin, and object of the trust, and her own circumstances, which were the grounds on which she sought relief.

The zeal, or want of consideration on the part of counsel, may account for such positions, but can never justify them or make them valid.

Without further comment, I proceed to my affirmative argument in support of the decree, and in defence of the right of innocent purchasers in good faith, who reposed faith and confidence in the power of the court, and who now ask its protection against the most ruthless and atrocious attack ever made in a judicial proceeding.

ARTHUR W. WINDETT,

*Of Counsel with Defendants in Error.*

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SUPREME COURT.

APRIL TERM, 1862.

—♦♦—  
MARY CURTISS,

vs.

WILLIAM H. BROWN, ET AL.

—♦♦—  
NOTES ON PLAINTIFF'S ARGUMENT,

BY

A. W. WINDETT.

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# SUPREME COURT.

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MARY CURTISS  
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## NOTES ON JUDGE SCATES' ARGUMENT.

Page 1. The grant in the premises of the Deed is to William H. Brown and *his heirs—tenendum to Brown and his heirs, &c.*

*Point.* This vests a *fee simple* of the legal estate in Mr. Brown, as trustee. Co. Lit., 299, a; 2 Blacks. Com., 298.

This is a purely legal limitation, and the effect of it, as such, cannot be taken away by the language of the *tenendum*, if *conflicting*.

The words, "*during the joint lives of Mary Curtiss,*" &c., limit and define the duration of the special *trust*, and do not cut down the *fee simple*, granted by the premises, and confirmed by the *tenendum*, to an estate simply *pur autre vie*.

The deed contains limitations of two kinds—legal and equitable; the former relating to the estate of the trustee at law, the other to that of the *cestui-que trust* in equity.

Brown had a *fee simple*, as trustee. Mrs. Curtiss had first, a trust estate during the joint lives of herself and husband—a *passive trust*—not executed by the statute of uses. The

trustee was to pay over the rents, &c., to her, &c. This language rendered the trust a creature of equity alone—one which the statute would not execute. 1 Cr. Dig., Lib. xii, S. 14-17.

The second limitation takes effect upon the falling of a life. If that life were the husband's, the trustees were to hold (supplying an evident ellipsis) the lands to the wife; i. e., to the use of the wife, for as a legal limitation of a legal estate, the clause in question could not take effect, for a fee simple already having been invested in the trustee, by the deed itself, a legal limitation upon that could not take effect, but would be void.

To avoid that construction and consequence, the clause in question, must be construed as the limitation of a use. And that construction is supported by the next clause, which declares, that in the other contingency, i. e., the death of the wife, living the husband, the trustee and his heirs should hold the land to the use of Mrs. Curtiss' legal representatives, her heirs, or appointees. Then, upon the event of Curtiss' death, in the life of his wife, the trustee and his heirs were to hold to the use of Mrs. Curtiss, directly, immediately, and not as a passive trust; in that event, the one in Mrs. Curtiss would be active, direct: (*Crise Dig., labi Supra.*) She could take the rents herself, and not the trustee, in order to pay them over to herself, excluding her husband.

But if, on the contrary, the *cestui-que trust*, should die first, the trustee and his heirs were to hold the lands, to the use of such persons as Mary Curtiss should direct or appoint, in default of which appointments, the trustee and his heirs were to hold the lands to the use of her heirs and assigns forever.

The effect of the limitations being to vest in her first, an unexecuted trust during the joint lives of herself and husband; upon the termination of which, secondly, the whole residue of the beneficial ownership, whether a use or a trust, was to be absolutely hers in fee simple, it being limited to herself, her special appointee, or devisee, or if none such, to her heirs at law and assigns forever.

Thus the absolute fee simple at law of the legal estate and title was vested in Brown as trustee, and the whole trust estate in fee simple was vested in Mary Curtiss. No legal interest being left in any one but Brown, and no equitable interest of any description being given to any other person than Mary Curtiss—not even her husband.

Page 2. The intent is certainly clear, and equally clear are the limitations of the different estates.

The actual legal effect of those limitations is the actual and legal intent of the parties—none other can be regarded.

The legal intent in framing the deed, as expressed and set forth in the deed, must prevail over any conjectural intention.

Upon the execution of the deed by Gray, he completely and forever departed with his whole interest in the premises, both at law and in equity. He had no interest whatever when the bill was filed. No relief was asked against him. He had sold the property, and had been paid for it. Mrs. Curtiss was the purchaser, and had paid the consideration—the legal title had been conveyed to Brown, with the trusts declared in favor of the purchaser.

Whether Gray sold the land for value, or created the trust as an act of bounty to Mrs. Curtiss, is of no consequence, either to give the Court jurisdiction over the trust, and the interests of the parties in it, or to defeat its jurisdiction.

It was not necessary to make Gray a party to the proceedings in chancery, because those proceedings did not affect, or aim to affect his interests in any way—they neither affected or diminished his interest in the property, nor changed, altered or affected his liability or obligation in respect of the trust estate.

The relief sought by the bill was not against himself—it sought to make no alteration in the deed, which he had given, to vary its tenor or provisions, nor insert new ones, or to take away old ones; but solely to decide a question between the *cestui-que-trust* and her trustee, involving the rights of

one, and the power and duty of the other. That question was to be decided by the court, either in favor of Mary Curtiss, or in favor of Brown—the court could not strike the case from the docket, and refuse to decide it. The only ground of complaint is, that the decision was in favor of Mary Curtiss, and not against her. She assigns for error, that the court granted her the relief she prayed for, instead of refusing to grant her any relief. It is not competent for the plaintiff in error to assign for error that her own express and solemn prayer was granted by the court, when, as she now says, it should have been refused.

Page 2. Scates assumes that the husband set up equities to the property, and that the bill was filed to transfer his wife's property to himself. The begging of a question which never arose or existed, or did the decree transfer his wife's property to himself. It directed a sale of the property. It changed the land into money—caused the subject or vehicle of the Trust to assume another form; but the money which arose from the sale was in the hands of the trustee, as trustee, subject to the trust for Mary Curtiss, and to the order of the court, and was the new subject or *res* in which the trust estate or fund existed.

He says, "The court had no jurisdiction, and the whole decree and proceeding utterly null and void."

"Court had not jurisdiction to divest the wife of her property, by its own voluntary decree without her act or consent." Page 2, printed argument.

Agree to every word of that proposition, as a proposition of law, but as a statement of fact, it is untrue. Its assumption is absolutely powerless.

1. The court did not assume to deprive Mrs Curtiss of her property of any kind, real or personal, with or without her consent.

By decreeing a sale, it did not take aught from her. The legal title to the land was Brown's—it belonged to Brown. It was

Brown's land, at law, and all that Mary Curtiss had a right to, was to enjoy certain benefits from the use, products, or fruits of that land—i. e., the execution of the trust declared. The land was Brown's, the benefits of it were Mary Curtiss's. It was Brown's land then, that was sold. The decree gave the whole benefits—fruits, products, and benefits of the land to Mary Curtiss. So that she was not deprived of them.

2. The decree was not the voluntary decree of the court, acting of its own motion, as is cunningly insinuated. The court did not act until called upon—until it was compelled *ex necessitate jurisdictionis* to do so. A formal bill was filed by the wife, in her own name, asking relief personal to herself, based upon rights vested distinctly and separately in her, showing by historical statements the origin and ground of them—her husband joining for conformity to the rule requiring a wife to sue with her husband, or by a next friend, no relief being asked for the husband in any the slightest particular, nor any right alleged to exist in him—nor ground for even an interference of right in him.

It was compulsory upon the court to decide the question arising upon the bill filed. It was bound to decide for or against Mary Curtiss. It must either grant the relief, or refuse it, or strike the bill from the docket as a thing of which it could take notice. But this last can never be contended for.

3. Nor was the Decree made without the act or consent of Mary Curtiss. The Bill was filed by her, signed by her own hand. She was the supplicant. She accused the trustee of what amounted to a refusal to do his duty. She alleged the hardship and necessity of her circumstances; her sole virtual ownership of the trust; that she created it and gave it birth, and she asked the court, that in order to answer the original purposes and ends of the trust; in order to confer upon her that measure and mode of benefit, without which, the spirit would be sacrificed to the letter—the substance to the form—the life destroyed, that the food for its support alone should be preserved, to make a decree which should accomplish those purposes; in fact, which should *execute* and not

destroy the trust. In other words, that the land *might* be sold, and the *moneys reinvested* for her benefit.

It was a question before the court, how should certain trusts be *executed*. The court directed the mode of execution. Had it not power to decide? If not, what court could decide? It was matter of actual dispute.

Page 3. Scates says: "The case differs from all cases in the books, in not being a disposition made by her by a power, will, or deed, but by decree of court. Cases may be found where courts have carried into effect a disposition of the wife, but not where the court itself has made a disposition for her."

This is not a case where the court made a disposition of the wife's property without or against her will. It has only carried into effect a previous disposition made by the wife of it herself—relieving both the estate and herself from the embarrassments consequent upon a particular mode in which it had been disposed of by her. The real ground of complaint is, as to the mode in which the court adjudged best, under all the circumstances of the case, to untie the knot.

The cases cited fail to throw any light whatever upon the present question. 8 Vesey, 174. Sperling vs. Rochfort.

O. Kate vs. Calthorpe.

In the older case, the Lord Chancellor refused to interfere, because in that case there was *no ground* to break in upon the particular settlement, not questioning for a moment the power of the court over the *res* in litigation, but asserting by that most pregnant implication in the strongest manner, the jurisdiction and power of the court even to *break in upon a marriage settlement*, in a *proper case made*. In that case, the relief prayed went to an abrogation, and breaking up of a marriage settlement if necessary and equitable, in order to dispense the justice of the court, thus supplying an authority of the strongest possible kind, in opposition to the fundamental position taken by the plaintiff in error, and to her counsel's argument in its support. Not only was that principle sanctioned

by the two cases cited, but the doctrine was never questioned.

B. They say: "The court has no jurisdiction to dispose of the wife's interest without her consent—will not presume consent—but examine her, &c., before any decree affecting her separate property."

It may be observed, that this statement of the rule in the form in which the statement is made, is much too general and vague, to have any meaning, or to be of any practical value, unless it be as a mere truism.

Of course, the court had not jurisdiction to dispose of the wife's interest without her consent, in any arbitrary or voluntary matter, except in a litigation pending before it, calling for its decision, to which the disposition of a wife's interests, without her consent, nay, even very much against her will, may be indispensable.

The court of chancery has not power to dispose of any one's rights or property, unless of a party to a suit pending before it with proper jurisdiction. In which case, upon proper allegation and proof, it has the undoubted power to do so, of right.

Many authorities are cited by Judge Scates in support of the statement, that courts act with caution when asked to give a wife's property to her husband undoubtedly. But in this case, Curtiss did not file a bill asking to have his wife's property given to him, nor setting up, or claiming any interest in it. Nor did the wife ask that her property might be given to her husband. She was asking relief for herself from the court, and there was no need to see if she knew what she was about, or was acting from her own unbiased will.

The other citations relate wholly to cases of direct or indirect transfers of the wife's property to the husband—gifts from the wife to the husband—suits by him for its recovery, and like cases.

C. It is said, "The court had no jurisdiction to order a sale of the fee in this case by the trustee, because, the wife never consented; because, she had no power over it

“with, or without consent. All she could dispose of was her life estate in the rents, and because the deed expressly took away all power to anticipate those rents, or to dispose of the fee.”

A somewhat remarkable assemblage of statements. Some not true as facts, nor quite consistent with each other.

First, it is said, the wife never consented. But she did consent, gave strongest proof of it.

Second, if she did consent, she had no power of disposition over the estate. But her power of disposition over this estate does not effect the question of the power and jurisdiction of the court to dispose of it, in a suit, upon proper allegations, and upon proper proofs in support of these allegations. Grant that she was a married woman, wholly incapacitated to act, yet the court had power to decide the case, when its decision might deprive her of what she had claimed—this in an adverse litigation—*A fortiori*, where the decision, making such disposition, was the actual relief she sought, and was beneficial to her.

The question of her right and power under the deed, will be discussed hereafter.

It is extraordinary to say, that all she could have disposed of would be her life Estate in the rents, when the sole prohibition contained in the deed, exclusively referred to the rents, and not the Estate in fee. And yet to say, in the very next breath, that, all power, of every kind, was absolutely taken away by the deed, under which she claimed.

Page 4. It is said, “The decree in this case did not cut off her right.” It did not, why then complain of it, as if it did cut off her right?

The two citations, from Clancey and Roper, are altogether irrelevant.

The citation from 3 Alkyns 541, is likewise irrelevant. It simply decided, that a married woman should not in preference to loaning money in the common way, on mortgage, grant an annuity for her own life. The most wasteful of all kinds of anticipation and usury.

The next citation from 9 Vesey, 494, is equally foreign to the purpose. In that case, the court of chancery simply refused to enforce a void annuity, granted without any authority.

3 Brown 347, relates to a branch of the subject already fully disposed of—the power of the wife to give, or of the husband to get the wife’s separate property, contrary to the provision of the settlement. The Thurlow clause against anticipation is not disputed by us. But it by no means thence follows, that a clause inserted in any deed, can defeat the jurisdiction of the court of chancery to decide upon a controversy arising on the deed of trust. *Socket vs. Wray*, 4 Brown, c. c. 485, was a bill to compel trustees to pay over the fund to the husband. This the court refused. If James Curtiss had asked the court for the land, or the money which it produced, his prayer would have been denied. In that case the trust fund yielded an income for the wife’s support. In the present case, the estate was unproductive, and could not be made productive by Curtiss, or wife; and unless dealt with by the court, the *cestui-que-trust* and her husband and family might have perished, or lived in distress and wretchedness, but for the action of the court. It is not possible that gentlemen are blind to the obvious distinction between the case at bar, and the case cited to govern it. Besides, in that case, the settlement was an act of bounty from others who had the right to give, and qualify the gift by whatever condition they choose: such was not this case. This was a purchase by Mrs. Curtiss for her own benefit. And it was only right that she should have the full benefit of her purchase.

*Hyde vs. Price*, 3 Vesey, Jr. 437, decides that a wife could not grant an annuity out of the dividends of her settlement. *Whistler vs. Newman*, 4 Vesey 129, and *Socket vs. Wray*, 4 Brown, c. c. 485. That in cases under settlements, &c., the wife has no power of alienation but what is given by deed of settlement or trust, and subject to the following observation. Those cases have been overruled by all the sobriquent deci-

sions in England, and that doctrine is now considered exploded besides. It may be conceded, that they are correct in confining the wife to the specific mode and power expressed in the deed, with the qualification added, except where the law gives her such other power, as we contend was the case with Mrs. Curtiss in this case, under the laws of this State, as will be shown hereafter. *Mores vs. Huish*, 5 Ves., 692, seems to have been a refusal of the court to give specific execution of a contract of sale by a married woman, or to carry the sale into effect. It was decided on circumstances, 9 Ves., 524, *in arg.* *Hovey vs. Blakeman*, 9 Ves., 524, refused to uphold an annuity. Moreover, it was a petition, which was dismissed, with leave to *file a bill*.

See Report in Vesey.

*Lee vs. Muggridge*, 1 Ves., B., 118, and *Motley vs. Thomas* *ibid.* only decide, that a woman while married, having no power whatever to alienate or dispose of the settled property, and the property in fact *not being hers*, but in care of survivorship, can exercise no power but that given by the settlement.

In this case, Mrs. Curtiss had full power, by the laws of this State to alienate, by deed, her Real Estate as fully as an unmarried woman or man, by joining with her husband in executing the deed.

But the decision of the case upon the circumstances of it, is very far from deciding that the high court of chancery, cannot, in a proper case, dispose of the body or *corpus* of a trust fund—convert it from realty into personalty, or cause a change in the investment, and to that end, order a sale, when such a disposition of the fund is expedient and beneficial to all concerned in it.

But to meet the exigencies of the gentleman's case, such must be the law. Yet not a decision can be found in support of it.

*Francis vs. Wigzell*, 1 Mad., 147, is not in point. *Richards vs. Chambers*, 10 Versey, 580. *Seaman vs. Duill*, *ibid.* were cases of personal property, where the property settled, be-

longed to the wife, apart from the income for life, *only upon the contingency of survivorship*. Those cases differ from this, because *the wife in this case had the whole property in herself*, absolutely and without any condition of survivorship. In this case, Curtiss did not seek, by a bill filed, to have the trustee transfer his wife's estate to himself.

It was a bill filed by Mrs. Curtiss to compell and empower the trustee to do certain acts as trustee, for her due benefit.

If in *Chambers vs. Richards*, the subject of the trust instead of being a productive fund, yielding an income for her support, had been an unproductive realty, which, under the authority of the court might be made productive for her support, and the bill had sought relief of that kind, the court would undoubtedly have granted it. The nature of the relief in a given case, depends upon the nature of the subject effected, and the rights and circumstances of the funds interested.

The cases referred to are not precedents which govern this case. The decision in *Richards vs. Chambers* was, that in that case, under the circumstances stated in it, as to those parties with such and such rights, the parties ought not to have the relief asked.

P. O. I conceive that the ceremony of taking the wife's consent by personal examination in court, is observed only in cases where the husband sues in equity to get hold of the wife's property, to which he is, by marriage legally entitled; in such cases, the court compels a settlement as a condition of its relief, or of allowing the husband to recover. The wife, in a proper case, may waive her right to a settlement. The court requires to be fully satisfied, and examines her. Her consent, in such cases, may be given, then the husband's legal right prevail free from the obstruction.

Page 7. "But here the power and estate were neither "in her." What power, what estate? The legal estate and title are in Brown, the trustee—the equitable estate in fee simple was wholly in Mary Curtiss. Brown could potentially do acts not authorized by the deed. He could convey the

legal estate in fee simple, the trust might follow it, but the conveyance would not be void at law.

The deed did not take away all power over the fee by anticipation. What is meant by anticipation of a fee? The deed only took away her power to anticipate, or aliene the *rents* during their joint lives. No prohibition against alienation and reinvestment if the trust fund was contained in the deed. The trustee was not forbidden to do this. So that the trustee could, by conveyance vest the title in fee, in a purchaser. Equity might annex a trust to the grantee's title, but if the alienation was sanctioned by the decree of the court, would that trust nevertheless follow the land in the purchaser's hands? That would depend on whether the conveyance was authorized or not—whether it was a mark of trust or not. If authorized by the deed of trust, the trust would be cut off, as to the land thus sold. If authorized by the court on a bill filed, it would not, for the decree would confer an authority equivalent to the deed of trust, whether or not the equity established would require a sale in the matter fixed by the decision of the court in making its decree. It cannot be pretended that because the court rightfully ordered a sale of the subject, it exceeded its power and jurisdiction. A sale is within the power of the court when proper, and the propriety of it is the very fact to be settled by itself. It cannot be said that there is anything in the nature or act of sale to tie up the court, if that be the proper conveyance and means of relief in the particular case.

The power of the high court of chancery to dispose of by sale or otherwise, of the subject matter of litigation, when fully before it, in a suit on a bill, with all parties in interest before the court, whether contesting or consenting to a sale, cannot be questioned, and this is all I contend for.

Page 7. This power is not exercised upon the property of the wife, *as wife—a wife*, as such, is no more subject to the jurisdiction of the court, than a maid, a widow, or a man.

But the power of the high court of chancery in a proper

case to order a sale of real estate, the subject of litigation before it, whether belonging to a wife, an infant, or persons *sui juris*, having jurisdiction of the parties, and of the property, is one of the most undeniable of all its powers.

P. P. 7 and 8. The cases cited, 11 Versey, 17; 9 Versey, 87; 13 do., 190; 3 Mad., 385; 3 Russell, a. 5, 88; 1 Mylne & Craig, 37; 5 Mad., 157; 1 Dick, 341; 1 Atk., 280; 2 Vernon, 401, are all inapplicable.

They are subject to the distinctions, and fall under the principles already stated above.

Lord Eldon says, in *Parkes vs. White*, 11 Vesey, that the cases decided by *Pepper Arden* and *Loughborough*, the cases denying the wife's power to alienate her separate estate, constituted an innovation upon the universal course of decision for a century previous. That while he, himself, doubted for sometime, and his mind was perplexed by those considerations of equitable policy, on which *Arden* and *Loughborough* cited, he was not bold enough to follow their example, and in every case, he overruled them. And the old doctrine, reaffirmed by Eldon, has ever since his time been the doctrine of the English and Irish chancery, and of the appellate jurisdiction, the House of Lords. The exceptional cases quoted, are not now quoted, or considered in England as authorities. And no notice is ever taken of them, now in that country.

And the law in England upon the whole subject may be briefly stated as follows:

1. As to her separate property, a married woman is regarded as a *feme sole* having full power of alienation, as an inherent attribute of property.

2. In order to restrain her power of disposal, there must be positive words, or a manifest intention plainly set forth should do so. *Ad. Doc. Eq.*, p. 45.

This is the latest and most authentic statement of the doctrine, and is supported by all the authorities, that are known to me.

Thus in England, the doctrine asserted rests upon a few

exceptional cases decided towards the end of the last century, by a vice-chancellor of secondary authority, and by a solitary chancellor whose personal authority is not comparable to that of any of his predecessors or successors. It is opposed to the otherwise unbroken course of decision for near two hundred years—to the great personal authority of Nottingham, the founder of the rule, Macclesfield, Hardwicke, Thurlow, Eldon, and all the more recent chancellors, by the current authority of all the approved text writers, and of the profession in Great Britain and Ireland.

In this country, the innovation rests mainly upon the authority of three leading cases which seem to have introduced it, *Methodist Church vs. Jaques*, in New York; *Ewing vs. Smith*, in South Carolina; *Morgan vs. Elam*, in Tennessee. These three cases deserve a careful scrutiny.

The first case, that in New York, was reversed on appeal upon the principal point, and was judicially condemned in its principle, and instance without a dissenting voice, except three laymen whose names are otherwise unknown.

The second case, that in South Carolina, was decided by a bare majority of one, out of five judges—the weight of personal authority preponderating much in favor of the minority.

Chancellor Kent concedes the main ground—that the wife has the power of alienation, unless *restrained by the deed*. All agree to that; the point of separation is, that Kent contends that prescribing a mode of disposition is an implied prohibition on all others. But if no mode were expressed, without more, the right of alienation would exist; thus such expression is inoperative, because the expression of what is implied is void of effect or consequence, had that which in its nature is only an instance illustrative, as an example of others, ought not to be deemed an exclusion of them. Besides, the right of alienation exists, and is made to exist, as a right of property *prima facie*, and is not to be done away with but by the *express* word or *plain intent*, which the pointing out of a mode, is not.

The authorities upon this subject are fully and unanswerably discussed by Breese, in *Swift vs. Castle*. 23 Ill.

P. P. 9 and 10. The authorities are much jumbled up by Scates, i. e. *Hulme vs. Tennant*, 1 Bro. 16., a strong case against him, is cited as sustaining the exceptional cases of *Pepper Arden* and *Loughborough*, diametrically opposed to it.

P. 10, Sec. 84. Can it be contended that Brown had a bare power without an interest, when he had and owned the whole estate at law?

The conclusion of Judge Scates' observation in support of his first point, is merely an anticipation of his second point.

P. 11. *Second Point*. The statement of the proposition as a general statement is unmeaning, or a truism.

The court has not power to transfer by order or decree, or otherwise the real or personal estate of married or unmarried women, or men, or children. But the court of chancery has the power, having perfect jurisdiction of the question, subject, persons in interest, to sell, and to decree a sale of the property, real or personal, involved in litigation, upon a bill filed, containing proper allegations, and sustained by proper points, to sell such property and to convey a legal title to the purchasers in good faith for value, cutting off all trusts attending it.

The words "nor can the court authorize or enlarge the powers of a *feme sole* to do so contrary to a deed or settlement," contain a proposition obviously foreign to the cause now in discussion.

P. 11. The doctrine of fines, etc., is foreign to the subject, and allusions to it are irrelevant.

The power of alienation of *real estate* in this State is given by statute, and the effect of the statute is to make a *feme covert*, joining with her husband, as able to *convey* or *affect* her real estate as a woman unmarried, or a man, giving her complete and unlimited power of alienation.

The long quotation from *Peacock vs. Monk*, 2 Vesey, Sr. 190, is foreign to the case at bar, and the questions it presents. That case recognizes and illustrates a most undoubted rule of

law; i. e. if a woman before her marriage, agrees with her husband, that she shall have the power to make a will and dispose of her land, such agreement shall bind the husband, and bar him of his estate by the curtesy; but yet, shall not relieve her from her disability to convey or dispose of her land as against her heir, such covenant or agreement is held purely executory, and not as effecting by its intrinsic operation what the law does not allow. Her agreement with her husband that she may make a will binds him, yet the moment she is married, she is disabled to make a will, yet her husband by force of his express covenant is concluded to dispute it. But not her heir at law, who is allowed to avail himself of the disobliging operation at law of coverture, to question and annul her act to his prejudice.

P. 13. The right of survivorship is a legal right; and at law a married woman is absolutely disabled to act; she cannot when disabled by law deprive herself of a legal right, or convey away her legal title, or in anywise affect it.

1. Ves. B. 118, is good law, but has no application, nor has 2 Story, Eq. Jurs., Sec. 1413.

Some powers must necessarily be strictly pursued, while others need not.

P. 14. The position reported on this page is only a repetition *de novo* of a matter of discussion already exhausted.

Quoting it literally, "That a married woman is only to be regarded as an unmarried one, so far as the deed makes her so, which creates her separate estate." Grant it true, how far does the deed give her that character? As to such separate property, she is so universally in equity, except so far as such deed makes her otherwise. Such is the universal English doctrine—that of New York. Story, etc., *et supra*.

The true doctrine is that a deed or settlement creating a separate estate, in the absence of express terms, or manifest intent plainly shown, by its intrinsic operation makes such married woman universally a *feme sole* in equity as to such separate estate or property, this is its proper effect and opera-

tion, and is only done away with by what is equivalent to a covenant or deed for that very purpose. A deed of settlement or trust makes her a *feme sole* as to such settlement or trust estate; nothing but another deed can deprive her of that character and capacity in equity, or what is equal in effect and operation to another deed contained in the same deed.

Manifestly silence or omission cannot have, and has not that effect. For to have that effect express words must be used in, or manifest intent shown by the deed. The wife's power of disposition grows out of her separate character and capacity, and from the fact of her having a separate estate created for her. Ad. Doc. Eq. pp. 43, 44, 45.

It is true that prohibitions are legal—and are sustained by the court. But the law is, that they shall not be implied unless *necessarily*. Ad. Eng. 45.

Whether a voluntary settlement shall be set aside or not, depends upon circumstances. If by it rights are fixed and vested in others, the settler alone cannot revoke it, all interested in it must consent. If its *uses are still all his own, he may revoke it*.

P. 15. "The court has no power to change the contract of parties." *True*, but in case of doubt or conflict of interests, the court may execute it and decide the rights of parties under it. It cannot be pretended, that property conveyed and sold by the court, as guardian of a trust in the very execution of the trust, is so conveyed in violation of the trust.

The court has not assumed to deal with a contingent remainder of a married woman; she had no contingent remainder. The deed did not forbid the alienation of the estate in fee, it only forbade its dismemberment by a separation of the rents from the *corpus* of the estate. It is untrue that the court gave or allowed the husband any power or right over the property or its proceeds. If that was done it was by the free act of the plaintiff herself. If a parallel to the argumen-

tation, statement, and *perversions* of this pamphlet can be found, it is a great wonder and unknown to me.

Ad. Ped. p. 15. The act of making title is twofold. Brown who had the legal title passed it by this deed, Mary Curtiss who had an equitable *fee simple*, passed it by her deed in which her husband joined. If she had been unmarried, it cannot be denied, that, by joining with the trustee the whole equitable and legal title in *fee simple* passed. By force of the statute, her husband joining with her, made her deed as good, valid and operative, in law, as it would have been, if executed by her as an unmarried woman. Consequently it conveyed the whole legal and equitable title to these premises.

P. 16. Judge Scates says that the plaintiff, Mary Curtiss, being the absolute, unconditional owner, and sole *cestui que trust* in *fee simple* of this property, that too by her own purchase, not by others gift, and her benefit, right, and advantage being the sole object of creating the trust, neither her wants nor her wishes were to be taken into account or regarded by the court, upon the hearing of a cause upon a bill filed, setting forth the nature, origin, and object of the trust, and her own circumstances, which were the grounds on which she sought relief.

The zeal, or want of consideration on the part of counsel, may account for such positions, but can never justify them or make them valid.

Without further comment, I proceed to my affirmative argument in support of the decree, and in defence of the right of innocent purchasers in good faith, who reposed faith and confidence in the power of the court, and who now ask its protection against the most ruthless and atrocious attack ever made in a judicial proceeding.

ARTHUR W. WINDETT,  
*Of Counsel with Defendants in Error.*

Supreme Court of the State of Illinois  
Third Grand Division

April Term 1862

Mary Curtis widow &c  
Plff in error  
vs  
William H Brown et al  
Deft in error

And the said Mary Curtis plff in error by Scates McAllister & Jewitt her attorney comes and as to the plea of the defendants aforesaid, to the errors by the said plff above assigned as aforesaid, says that the said pleas and the matters and things therein contained in manner and form as aforesaid <sup>is</sup> insufficient to bar or preclude the said plff from having the aforesaid decree reversed for the errors assigned as aforesaid, and she is not bound to answer the same.

Aid for causes of demurrer she shows and assigns the following viz:

1<sup>st</sup> The said defendants by averring that the said Court of Common Pleas in making said decree had all the proper parties before the said Court, to wit said Mary Curtis with her husband & said William H Brown that such suit was commenced and prosecuted in manner & form usual in Chancery proceedings & the Court had full jurisdiction &c

do thereby make averments contrary to the Record & proceedings aforesaid and of the land of the land.

That the said bill of complaints by joining the said James Curtis with her and not making said James defendant is, & is the mere bill of complaints of said James Curtis, and doth improperly assume to change the character thereof by averment against the record,

2 That the said plaintiff as appears by the said pleas, was during all and singular the transactions set out in said pleas a married woman and incapable of making any such deed or doing such acts in relation to the real estate in said Deed of Trust mentioned as would operate as an Estoppel upon her.

3 The debts in and by the said pleas have improperly set up and joined several distinct matters,

4<sup>th</sup> The said defendant, improperly set up and rely upon the Decree aforesaid, whereas in truth the said decree does not bind or affect her interest in the property in question. That she being improperly joined with her husband in the said bill of Complaint

as complainant the same is to be deemed  
his bill and does not affect her rights  
That the court had no power or jurisdic-  
-tion if p[er]f had been properly before it, to  
make said decree

5<sup>th</sup> The said de[fe]n[de]nt in and by the said pleas  
attempt to set up matters in pais as an  
Estoppel, and which are not properly pleadable  
as such.

6<sup>th</sup> The said pleas <sup>are</sup> double inasmuch as  
the de[fe]n[de]nt therein set up matters of record,  
sealed instruments, and receipts not under  
seal in the same pleas.

The said pleas do not contain any legal  
or proper answer to the errors assigned, because  
a married woman cannot bind herself  
by any such instruments as are set out and  
the same & each & every thereof are void.

And the said pleas <sup>are</sup> argumentative, ~~an~~ uncer-  
tain and otherwise defective, and this  
the p[er]f is ready to verify wherefore &c

Scats, McAllister & Jewett

Attys for p[er]f

Insider

And the said de[fe]n[de]n[ts] say that the said pleas  
above pleaded & the matters therein contained be not sufficient  
in Law

Mathew & Depp  
de[fe]n[de]nt's attys

Return to Widdett placed with de[fe]n[de]nt in Exec -

Supreme Court  
Mary Curtis widow  
vs

Wm H Brown et al  
Demurrer to  
Bill's plea

Filed May 6. 1842

J. Selma  
Clerk

STATE OF ILLINOIS, }  
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Sheriff of the County of

Cook \_\_\_\_\_ Greeting:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Superior Court of Chicago, Cook County, before the Judge thereof, between James Curtiss and Mary Curtiss

plaintiffs and William H. Brown

defendant..... it is said that manifest error hath intervened, to the injury of the said Mary Curtiss

as we are informed by her complaints the record and proceedings of which said judgments we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law:

And it appearing by affidavit on file in the Clerk's office of said Supreme Court in this cause that

Wm. H. Brown, John E. Throop, Samuel Miles, Lewis Derundeau, Samuel B. Haggard, John W. Lalor, Geo. Chacksfeld, Theodore Rogers, Geo. T. Abbey, Thos. Goodjohn, Josiah H. Bross, John A. Bross, A. L. Chapin, Edwin Zimmerman, George Dodge, William Case, Maurice Donovan, Joseph Shaw, John McGilvra, Mary Ann Lloyd, Thomas Hardcastle, Hunt O. Hills, Chicago Building Association, Wm. D. Perkins, Larina H. Perkins, Andrew Wemple, James Otis, John F. Farnsworth, Lemuel P. Crawford, and Levi P. Crawford.

are interested in the premises in controversy in this cause as terre tenants.

Therefore, We Command You, That by good and lawful men of your County you give notice to the said

Wm. H. Brown, John E. Throop, Samuel Miles, Lewis Derundeau, Samuel B. Haggard, John W. Lalor, Geo. Chacksfeld, Theodore Rogers, Geo. T. Abbey, Thos. Goodjohn, Josiah H. Bross, John A. Bross, A. L. Chapin, Edwin Zimmerman, George Dodge, William Case, Maurice Donovan, Joseph Shaw, John McGilvra, Mary Ann Lloyd, Thomas Hardcastle, Hunt O. Hills, Chicago Building Association, Wm. D. Perkins, Larina H. Perkins, Andrew Wemple, James Otis, John F. Farnsworth, Lemuel P. Crawford, and Levi P. Crawford.

that they be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next to hear the record and proceedings aforesaid, and the errors assigned, if

STATE OF ILLINOIS, }  
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Sheriff of the County of

Cook Greeting:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Superior Court of Chicago, Cook-County, before the Judge thereof, between James Curtiss and Mary Curtiss

plaintiffs, and William H. Brown

defendant..... it is said that manifest error hath intervened, to the injury of the said Mary Curtiss

as we are informed by her complaints..... the record and proceedings of which said judgments we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law:

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are interested in the premises in controversy in this cause as terre tenants.

Therefore, We command You, That by good and lawful men of your County, you give notice to the said

Wm. H. Brown, John E. Throop, Samuel Miles, Lewis Derundean, Samuel B. Haggard, John W. Lalor, Geo. Chacksfeld, Theodore Rogers, Geo. T. Abbey, Thos. Goodjohn, Josiah H. Bross, John A. Bross, A. L. Chapin, Edwin Zimmerman, George Dodge, William Case, Maurice Donovan, Joseph Shaw, John McGilvra, Mary Ann Lloyd, Thomas Harcastle, Hunt O. Hills, Chicago Building Association, Wm. D. Perkins, Larina H. Perkins, Andrew Wemple, James Otis, John F. Farnsworth, Lemuel P. Crawford, and

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

Wm. H. Brown, John E. Throop, Samuel Miles, Lewis Derundean, Samuel B. Haggard, John W. Lalor, Geo. Chacksfeld, Theodore Rogers, Geo. T. Abbey, Thos. Goodjohn, Josiah H. Bross, John A. Bross, A. L. Chapin, Edwin Zimmerman, George Dodge, William Case, Maurice Donovan, Joseph Shaw, John McGilvra, Mary Ann Lloyd, Thomas Harcastle, Hunt O. Hills, Chicago Building Association, Wm. D. Perkins, Larina H. Perkins, Andrew Wemple, James Otis, John F. Farnsworth, Lemuel P. Crawford, and

Witness, The Hon. John D. Eaton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 13<sup>th</sup> day of September in the Year of Our Lord One Thousand Eight Hundred and Sixty one.

L. Leland

Clerk of the Supreme Court.  
by J. D. Rice Deputy

199 59  
Mary Curtis

as 59  
Williams H. Brown  
Father

Scin Fucius

Filed April 24. 1862  
L. Leland  
Clerk

Scates McAllister &  
Law to attys for self



21/10/1862

1862

1862

STATE OF ILLINOIS, }  
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Sheriff of the County of De Kalb Greeting:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Superior Courts of Chicago Cook County, before the Judge thereof, between James Curtiss and Mary Curtiss

plaintiffs and William H. Brown

defendant....., it is said that manifest error hath intervened, to the injury of the said Mary Curtiss

as we are informed by her complaints the record and proceedings of which said judgments we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law:

and it appearing by affidavit on file in the Clerk's office of said Supreme Court in this cause that

William H. Brown, John E. Throop, Samuel Miles, Lewis Derundeau, Samuel B. Haggard, John W. Lalor, Geo. Chacksfeld, Theodore Rogers, Geo. T. Abbey, Thos. Goodjohn, Josiah H. Bross, John A. Bross, A. L. Chapin, Edwin Zimmerman, George Dodge, William Case, Maurice Donovan, Joseph Shaw, John McGilvra, Mary Ann Lloyd, Thomas Hardeastle, Hunt O. Hills, Chicago Building Association, Wm. D. Perkins, Larina H. Perkins, Andrew Wemple, James Otis, John F. Farnsworth, Lemuel P. Crawford, and Levi P. Crawford.

are interested in the premises in controversy in this cause as terre tenants

Therefore, We Command You, That by good and lawful men of your County, you give notice to the said

Wm. H. Brown, John E. Throop, Samuel Miles, Lewis Derundeau, Samuel B. Haggard, John W. Lalor, Geo. Chacksfeld, Theodore Rogers, Geo. T. Abbey, Thos. Goodjohn, Josiah H. Bross, John A. Bross, A. L. Chapin, Edwin Zimmerman, George Dodge, William Case, Maurice Donovan, Joseph Shaw, John McGilvra, Mary Ann Lloyd, Thomas Hardeastle, Hunt O. Hills, Chicago Building Association, Wm. D. Perkins, Larina H. Perkins, Andrew Wemple, James Otis, John F. Farnsworth, Lemuel P. Crawford, and Levi P. Crawford.

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

Wm. H. Brown, John E. Throop, Samuel Miles, Lewis Derundeau, Samuel B. Haggard, John W. Lalor, Geo. Chacksfeld, Theodore Rogers, Geo. T. Abbey, Thos. Goodjohn, Josiah H. Bross, John A. Bross, A. L. Chapin, Edwin Zimmerman, George Dodge, William Case, Maurice Donovan, Joseph Shaw, John McGilvra, Mary Ann Lloyd, Thomas Hardeastle, Hunt O. Hills, Chicago Building Association, Wm. D. Perkins, Larina H. Perkins, Andrew Wemple, James Otis, John F. Farnsworth, Lemuel P. Crawford, and Levi P. Crawford.

Witness, The Hon. John D. Baton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 13<sup>th</sup> day of September in the Year of Our Lord One Thousand Eight Hundred and Sixty one

L. Deland  
Clerk of the Supreme Court.  
J. M. Rice Deputy

1866

subpoena

subpoena

1866

146

Mary Curtis

vs  
William H. Brown  
et al.

No.

vs.

Scire Facias

Crawford

SCIRE FACI

FILED

Filed April 22nd 1867

L. L. Lewis  
Clerk

Scates McAllister & Jewett  
attys for Plaintiff

I have duly served the within Scire Facias by reading the same to the within named Lewis & Crawford this 9th day of October A.D. 1867 Baldwin Madam's Office at Crawfordsville 11/4 1867

Wm. Lewis

Ret

11/4 1867

State of Illinois  
Supreme Court

As The People of the State of Illinois  
To the Sheriff of the County of Cook County:

Because in the record and proceedings  
and also in the rendition of the Decree  
upon a bill in Chancery, which was filed in the  
Cook County Court of Common Pleas of  
Cook County, before the Judge thereof in  
Chancery sitting between James Curtis and  
Mary Curtis his wife Plaintiffs and William  
H Brown defendant, and because since the  
rendition of said Decree the said James Curtis has  
departed this life leaving him surviving his child,  
and heirs at law James Curtis, Mary K Curtis  
(now Mary K McArthur) Sarah Curtis Lucy M  
Curtis Charles C Curtis Laura M Curtis and  
George M Curtis, and because the said Mary  
K Curtis has intermarried with Alonzo L  
Mc Arthur it is said that manifest error  
hath intervened to the injury of the said  
Mary Curtis.

as we are informed by her

complaints the record and proceedings of  
which said judgments we have caused to be brought into our Supreme  
Court of the State of Illinois, at Ottawa, before the Justices thereof,  
to correct the errors in the same, in due form and manner, according to law:

Therefore, We Command You, That by good and lawful men of  
your County, you give notice to the said William H. Brown - James Curtis  
Jr - Mary K. McArthur - Alonzo L. McArthur - Sarah Curtis  
Lucy M. Curtis - Charles C. Curtis - Laura M. Curtis - George M. Curtis

that they be and appear before the Justices of our said  
Supreme Court, at the next term of said Court, to be holden at Ottawa,  
in said State, on the first Tuesday after the third Monday in April  
next, to hear the record and proceedings aforesaid, and the errors assigned, if

they shall see fit; and further to do and receive what said Court  
shall order in this behalf; and have you then there the names of those by  
whom you shall give the said ~~plaintiffs~~ ~~defendants~~

William H. Brown, James Curtis, Mary K. McArthur, Alonzo L. McArthur  
Sarah Curtis, Lucy M. Curtis, Charles C. Curtis, Laura M. Curtis and  
George M. Curtis notice, together with this writ.

Witness, The Hon. John D. Eaton, Chief Justice of our  
said Court, and the Seal thereof, at Ottawa, this ~~Second~~  
day of April in the Year of Our Lord One  
Thousand Eight Hundred and Sixty one

Alonzo Adams  
Clerk of the Supreme Court  
By Adams Deputy

16<sup>h</sup> <sup>59</sup>  
Mary Curtis  
196  
William H. Brown  
Father

S-2-100  
Mo-4 200  
K-1 1,300

Special by reading this mail to the authors names  
Wm H Brown & James Curtis Jo-ns the 1<sup>st</sup> day of April  
1861 (the other of molars no Journal in my journal)

Wm H Brown  
J. P. Hanning  
J. J. Hanning  
J. J. Hanning

Sciurus fuscus  
Filed May 1 1861  
L. Leland  
Clerk

Done in William H. Brown



To the Sheriff of the County of Kane Greeting:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Superior Courts of Chicago Cook County, before the Judge thereof, between Mary Curtiss and James Curtiss

plaintiffs and William H. Brown

defendant....., it is said that manifest error hath intervened, to the injury of the said Mary Curtiss

as we are informed by her complaints the record and proceedings of which said judgments we have caused to be brought into our Supreme Court Ill. Dec. 1861 Justices thereof;

And because it appears by affidavit on file in the Clerk's office of said Supreme Court that John V. Throop, Samuel Miles, Lewis Deroudeau, Samuel B. Haggard, John W. Lalor, George Chacksfeld, Theodore Rogers, George T. Abbey, Thomas Goodjohn, Josiah H. Cross, John A. Cross, A. L. Chapin, Edwin Zimmerman, George Dodge, William Case, Maurice Donovan, Joseph Shaw, John McGilvra, Mary Ann Lloyd, Thomas Hardeastle, Hunt O. Hills, Chicago Building Association, William D. Perkins, L. Larina, H. Perkins, Andrew Wemple, James Otis, John F. Farnsworth, Lemuel P. Crawford and Levi P. Crawford are interested in the premises in controversy in this writ of error as terre tenants

Therefore, We Command You, That by good and lawful men of your County, you give notice to the said John F. Farnsworth one of said terre tenants

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

notice, together with this writ.

Witness, The Hon. John D. Paton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this Seventh day of September in the Year of Our Lord One Thousand Eight Hundred and Sixty one.

L. Lelan  
Clerk of the Supreme Court.  
by J. D. Rice Deputy

146 59 570

Mary Curtis

No. vs.

William H Brown & others

SCIRE FACIA

L. J. Farnsworth

FILED April 22 1862

L. Leland  
Clerk

Sherriff fees	
Service	50
Travel 3	15
Return	<u>10</u>
	75
Postage	<u>6</u>
	81

Person by whom this writ delect 11 the 1861  
 By reading the same to John H. Farnsworth  
 Sheriff's Office  
 by J. H. Multiple  
 Sheriff's Office



Served by reading this writ to the within named  
 John H. Harmsworth, George Abbey, Mary Ann Lloyd,  
 John A. Brass, Josiah W. Brass, John E. Goup the  
 2<sup>nd</sup> day of April 1862. Served the within named  
 Arizona Building Association by reading this writ to  
 J. M. Checkering President, and several Samuel B. Hazard,  
 Thomas Ward Noble, William Case, John W. Ligon George  
 Dodge & James Ellis & George Chalkfield the 21<sup>st</sup> day  
 of April 1862 by reading the same to the

Servives - 14 -	\$ 7.00	A. C. Hosney Sheriff
Miles - 38	1.40	By Frank Lumbard Deputy
R	1 \$ 8.50	

The other defendants not found in my county

A. C. Hosney Sheriff

By Frank Lumbard Deputy

Due paid by plaintiffs  
 Attorneys

State of Illinois }  
Supreme Court } ss.

The people of the State of Illinois  
To the Sheriff of the County of ~~Cook~~ <sup>Champaign</sup> Greeting; -

Because in the Record and proceedings and also  
in the rendition of the Decree upon a bill in Chancery  
which was in the Cook County Court of Common Pleas  
of Cook County, before the Judge thereof in Chancery  
sitting between James Curtiss and Mary Curtiss his  
wife Plaintiffs and William H. Brown defendant, and  
because since the rendition of said Decree the said  
James Curtiss has departed this life leaving him surviving  
his children and heirs at law James Curtiss Jr. Mary  
K. Curtiss (now Mary K. McArthur) Sarah Curtiss,  
Lucy M. Curtiss, Charles C. Curtiss, Laura M. Curtiss  
and George M. Curtiss, and because the said Mary  
K. Curtiss has intermarried with Alonzo L. McArthur  
it is said that manifest error hath intervened to the  
injury of the said Mary Curtiss

as we are informed by her -  
complaints - the record and proceedings of  
which said judgments we have caused to be brought into our Supreme  
Court of the State of Illinois, at Ottawa, before the Justices thereof,  
to correct the errors in the same, in due form and manner, according to law:  
Therefore, We Command You, That by good and lawful men of  
your County, you give notice to the said William H. Brown - James  
Curtiss Jr. - Mary K. McArthur & Alonzo L. McArthur - Sarah Curtiss  
Lucy M. Curtiss - Charles C. Curtiss - Laura M. Curtiss George  
W. Curtiss -  
that they - be and appear before the Justices of our said  
Supreme Court, at the next term of said Court, to be holden at Ottawa,  
in said State, on the first Tuesday after the third Monday in April  
<sup>1861</sup>  
next, to hear the record and proceedings aforesaid, and the errors assigned, if  
they shall see fit; and further to do and receive what said Court  
shall order in this behalf; and have you then there the names of those by  
whom said judgment was rendered, ~~William H. Brown, James Curtiss, Mary K. McArthur, Alonzo L. McArthur,~~  
~~Sarah Curtiss, Lucy M. Curtiss, Charles C. Curtiss, Laura M. Curtiss and~~  
~~George W. Curtiss~~ notice, together with this writ.

Witness, The Hon. John D. Eaton, Chief Justice of our  
said Court, and the Seal thereof, at Ottawa, this second  
day of April - in the Year of Our Lord One  
Thousand Eight Hundred and Sixty One

L. Leland

Clerk of the Supreme Court.  
By J. B. Rice Deputy

Mary Curtis  
196 59 is 156  
William H. Brown  
Father

Sci fa

I return this writ  
without service for  
want of time

R. C. Wright  
Sheriff

W. W. Brasell  
Deputy

Filed April 18. 1861  
L. Leland  
Clerk

~~and~~

*[Faint, mostly illegible handwritten text, likely bleed-through from the reverse side of the page.]*

*[Faint, mostly illegible handwritten text on the right side of the page, possibly bleed-through or additional notes.]*

Superior Court of Illinois  
Third Grand Division  
April Term AD 1861

Mary Curtis, widow of  
James Curtis dec'd

Comptroller in error

vs

William H. Brown, and  
James Curtis Sr. Mary K.

McArthur & Mary S. McArthur  
his husband, Sarah Curtis

Lucy M. Curtis, Charles C.

Curtis, Laura M. Curtis

+ George W. Curtis, Heirs at

Law of said James Curtis dec'd

Defendants in error

Error to the Superior  
Court of Chicago -

You will please

specify a writ of error in above entitled cause  
also, <sup>the writs of</sup> specify to the said defendants in  
error one dec'd to Cook County, and the  
other to Champagne County -

Seals McAllister & Merrill

Decls. & Compt. in error

To  
J. S. Clark Esq  
Clerk of

196 156 54  
Superior Court of Illinois

Mary Curtis Widow vs  
vs Comptroller

William H Brown vs  
vs Deft in error

---

Receipt -

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

Scalis G. Callister & Smith  
Solcts for Comptroller

Chicago April 5 1861

Sheriff of Champagne Co }  
Urbana Ill }  
Sir

We enclose you  
a Sci. fa. from Supreme Court, which  
we wish you to serve on all the  
children of the late James Courtiss  
now residing in your County. And  
we want it served tomorrow (Saturday)  
if possible - Then serve it and  
send us back of you for and we  
will remit them

Yours Respectfully  
Scott W. Allister Smith

April 16<sup>#</sup> 1861  
I have but just received the within  
Summons, and return it without service  
for want of time

~~136~~  
59

Mary Cuttiss }  
v } Error to Superior Court  
Wm H. Brown } of Chicago.  
et al }

The Clerk of the Supreme Court  
will issue a Scifa in this cause  
to Cook County for -

John E. Throop, Samuel Miles,  
Lewis Demondean, Samuel B. Haggard,  
John W. Galor, George Chaetefeld,  
Theodore Rogers, George J. Abbey,  
Thomas. Goodwin, Josiah H. Cross,  
John A. Cross, A. S. Chapin  
Edwin Gruenerman, George Dodge,  
William Case, Maurice Donovan  
Joseph Shaw, John McIlvra  
Mary Ann Lloyd, Thomas Hardcastle  
Hunt O. Hills - Chicago Building Association  
William D. Perkins, Larina H. Perkins  
Andrew Wemple, James Otho

Also a Scifa to Kane County  
for John F. Jamesworth

Also a Scifa to DeKalb County  
for Samuel P. Crawford &  
Levi P. Crawford returnable  
to next Term

Ottawa Sept 6. 1861.

Walter B. Scates of  
Counsel for Plaintiff in Error

W. B. Scates being duly sworn deposes & says that he is informed & believes that the several parties named in the foregoing receipt, are interested as claimants, Trustees or incumbrancers of the premises in controversy <sup>as to the</sup> ~~tenants~~ and that upon inquiry he has not been able to ascertain any other person or persons, corporation, or other, who has or claims to have any interest - and further says that

Subscribed & sworn before me this  
sixth day of September A.D. 1861  
L. Ireland Clerk  
J. P. Rice Deputy

Walter B. Scates

Remondan &  
Rogers live in N. York  
(S. by city)  
A. L. Chapin lives in  
Beloit Wisconsin  
John J. McPherson is  
Secretary of State of  
Washington Territory

59  
May 6 1861  
Mr H. Brainerd  
Receipt

Filed Sept. 6. 1861  
L. Ireland Clerk

W. B. Scates  
for P. P. P.

State of Illinois } ss.  
Third Grand Division }

Of the April Term of the  
Supreme Court A.D. 1862.

Mary Curtiss }  
or } Error to Superior  
William H. Brown } Court of Illinois  
et al }

Walter B. Seater, being first  
duly sworn deposes & says that  
he is one of the Counsel of the  
Plaintiff in this case - that he is  
informed, and believes that  
Levin Derumdeau, Theodore  
Rogers, A. S. Chapin and  
John M. Gilroy, have, or  
claim, some title or interest  
in & to a part of the premises  
in controversy in this suit -  
and that he is informed &  
believes that each of them is  
a non-resident of this State -  
and therefore prays an order of publi-  
cation in this behalf - further saith not.

Subscribed & sworn  
to before me this 6<sup>th</sup> Sept  
1861 L. Leland Clerk of Sup. Court  
by J. B. Brown Deputy  
Walter B. Seater

176  
Mary Britton

vs  
Wm H. Brown et al  
Affidavit Nonresidence

Filed Sept. 6 1861  
L. Leland  
Clerk

W. B. Scates  
for Plaintiff

Chicago Jan. 22. 1869.

Dear Samuel May,

Dear Sir,

Will you do that the persons  
to look up the suggestion in Curtis & Brown 1867,  
making some - correct parties, and send me  
a copy of it and approval.

In case of Hogler is now docketed last term, I shall  
have to make purchase parties, and wish to  
follow the precedent in that case,

I am owing you a dollar fee in this case, and  
will send with your fee for copy; please read  
me it to-morrow - for I fear I have no time to spare  
and may have to bring down only publications.

Your immediate attention will greatly  
help your friend

Arthur N. Winsett.

United States of America  
State of Illinois  
County of Cook.

Now before the Honorable  
Judge of the Cook County  
Court of Common Pleas within and for the  
County of Cook and State of Illinois, at a  
regular Term of said Court begun and  
holden at the Court House in the City of  
Chicago in said County and State on the  
first Monday being the sixth day of  
September in the year of our Lord One  
thousand eight hundred and fifty-two,  
and of the Independence of the United  
States the twenty seventh.

Present, the Honorable Mark Skinner Judge,  
Daniel McShay Esquire Prosecuting Attorney  
William L. Church Sheriff

Attest,  
Walter Kimball, Clerk.

Be it remembered that heretofore,  
to wit, on the sixteenth day of September  
in the year of our Lord One thousand  
eight hundred and fifty-two, and of the  
Independence of the United States the  
twenty seventh being one of the days of the  
September Term of said Court, James  
Curtis and Mary Curtis in their  
own proper persons Complainants, and  
their Bill of Complaint in said  
Court against William H. Brown Defendant  
and which said Bill of Complaint is

in words and figures following, to wit:

State of Illinois }  
Cook County } ss.

Of the September Term of  
the Cook County Court of Common Pleas  
Held A. D. 1855.

To the Honorable Mark Shinn, Judge of the  
Cook County Court of Common Pleas,  
in Chancery sitting:

Humly complaining shew  
unto your Honor that your Orator and  
Oratrix, James Curtiss of the City of Chi-  
cago in the County of Cook aforesaid,  
and Mary Curtiss his wife.

That your Orator James Curtiss was  
heretofore seized in fee simple of a great  
number of tracts and parcels of land  
situated in Cook County, Illinois, and  
partly in the City of Chicago aforesaid, which were  
sold on Execution in satisfaction of  
judgments against your Orator, and that  
the said pieces and parcels of land by  
virtue of the said sale, and otherwise  
became vested in one Harrison Gray  
of the City of Boston in the State of  
Massachusetts. And your Oratrix Mary  
Curtiss being entitled to the said  
pieces and parcels of land, and  
Harrison Gray being desirous  
of obtaining a relinquishment of her said right

3  
of Brown entered into an agreement to  
and with your Orator and your Oratrix  
by which your Oratrix was to release  
her right of dower aforesaid, and  
the said Harrison Gray in consideration  
thereof was to convey to your Orator and  
your Oratrix or to some third person  
for the use of your Oratrix, Blocks forty  
four (44) and forty five (45) in Carpenters  
Addition aforesaid.

And your Oratrix, in pursuance  
of said agreement, did release and  
convey unto the said Harrison Gray  
her right of dower in and of the  
said several pieces and parcels of land  
aforesaid, and the said Harrison Gray  
and Clarissa Gray his wife did thereupon  
convey Blocks forty four (44) and forty  
five (45) in Carpenters Addition aforesaid  
unto William H. Brown Esquire in trust  
for the sole use and benefit of your  
Oratrix, which said conveyance is in  
the words and figures following, that  
is to say:—

Know all men by these presents  
that Harrison Gray of the  
County of Suffolk and State of  
Massachusetts, Merchant, and Clarissa  
Gray my wife, in consideration of a  
sum of one hundred dollars to me in  
and paid by William H. Brown of  
Chicago, in the County of Cook, and  
State of Illinois, the receipt whereof

is hereby acknowledged, do by these presents grant, remise, release and forever quit claim unto the said William H. Brown, his heirs and assigns all my right, title, interest and estate in and to the following described premises, to-wit: Blocks forty four (44) and forty five (45) in Carpenter's Addition to the Town of Chicago, as the same is laid down and designated upon the plat of said Addition recorded in the Recorder's Office of Cook County, the said premises being in the County of Cook and State of Illinois.

I have and to hold the above granted premises with all my right, title, interest and estate, in and to the privileges and appurtenances to the said land, and tenements belonging, unto the said William H. Brown, and his heirs during the joint lives of Mary Curtiss and James Curtiss her husband upon trust, to pay the rents, issues and profits thereof to the said Mary Curtiss, or to such person or persons, as she by writing should direct to receive the same, during the joint lives of the said Mary Curtiss and James Curtiss, for their sole and separate use, so that the said Mary Curtiss shall not call or demand, or otherwise dispose of the same in any way, of anticipation, and give and immediately after the decease

5

of the said James Curtiss her husband  
 in case the said Mary Curtiss shall survive  
 him, then to the said Mary Curtiss her  
 heirs and assigns forever: but in case  
 the said Mary Curtiss should die in  
 the lifetime of the said James Curtiss  
 then to the use of such persons, for such  
 estates and charges, as the said Mary  
 Curtiss by her last Will and Testament,  
 in writing, or by any writing in the  
 nature of or purporting to be her last  
 will and testament, executed in the  
 presence of three witnesses, should direct,  
 limit or appoint, and in default thereof,  
 then to the use of her heirs and assigns  
 forever, but so that in no event whatever  
 shall the said James Curtiss have or  
 exercise any authority, power, right or  
 estate in said premises.

In testimony whereof I have  
 hereunto set my hand and seal this  
 tenth day of August in the year of  
 our Lord One thousand eight hundred  
 and forty three.

Witness my hand and seal  
 this tenth day of August 1843  
 Charles G. Smith

Warren Gray Esq.  
 Charles Gray Esq.

Charles G. Smith  
 Elizabeth J. Smith

State of Massachusetts }  
 Suffolk County: City of Boston } ss.  
 On the twenty

eighth day of August in the year of our  
 Lord one thousand eight hundred and  
 forty three, before the subscriber Henry Clark  
 Notary Public duly Commissioned and  
 sworn and residing in the City of  
 Boston personally appeared Harrison  
 Gray and Clarissa Gray his wife to me  
 known to be the real persons described  
 in and who executed the annexed Quit  
 Claim deed, and the said Harrison Gray  
 and Clarissa Gray his wife acknowledged  
 that they executed the same freely  
 and voluntarily for the uses and  
 purposes therein expressed; and the  
 said Clarissa Gray being by me exam-  
 ined separate and apart from her  
 said husband and the contents of  
 said Quit Claim deed having been by  
 me fully explained to her, acknowledged  
 that she executed the same and relin-  
 quished her dower to the premises  
 therein mentioned voluntarily and  
 freely, without the compulsion of her  
 said husband.

In testimony whereof I  
 have hereunto set my hand and  
 affixed my official seal at  
 the City of Boston this  
 eighth day of August 1843

And your Honor and you the  
 further shew unto your Honor, that  
 was their intention to have the foregoing

7) conveyance so drawn and executed as to secure to you Oratrix Blocks forty four and forty five (44) and forty five (45) of Carpenters Addition as her property to the same extent as her right of dower in the several pieces and parcels of land first mentioned would have been secure, had the same not been relinquished to the, to the said Harrison Gray, and so that the same might be disposed of by her to the same extent that her right of dower might have been. And that the conveyance by the said Gray and wife to the said William H. Brown again was drawn up under the direction of your Orator and your Oratrix for that purpose and no other. And that neither the said William H. Brown, Harrison Gray nor any other person contributed any part of the consideration for the execution of said conveyance or are in any way interested therein except in consenting to receive the legal title as aforesaid for the use and benefit of your Oratrix.

And your Orator and your Oratrix further shew unto your Honor that the said Blocks forty four (44) and forty five (45) of Carpenters Addition aforesaid have now become of great value, and are now so situated as to be entirely unavailable and unproductive to your Oratrix and that the interests of your

8  
estate would be greatly promoted by the  
mortgage or sale thereof, and the applica-  
tion of the proceeds to some productive  
property, business or pursuit. And  
your Orator and your Oratrix further  
shew unto your Honor that they have  
frequently applied to the said William  
H. Brown to sell or mortgage the lands  
or conveyed to him in trust as aforesaid  
in order that the proceeds might be  
invested in some productive property  
or business. And your Orator and  
Oratrix well hoped that the said  
William H. Brown Equivoc would have  
complied with such their reasonable  
request as in justice and equity he  
ought to have done. But now so  
it is may it please your Honor that  
the said William H. Brown refuses to  
comply with such your Orator and  
Oratrix reasonable requests as aforesaid  
pretending that by the terms of the said  
conveyance to him, the said property  
was not intended to be sold or mort-  
gaged, but was to remain unproductive  
and unavailable in his hands until  
the contingencies mentioned in said  
conveyance should arise. Whereas  
your Orator and your Oratrix charge  
unto your Honor that the said  
conveyance was not intended to  
operate further or otherwise, than  
secure to your Oratrix the same. He

9)

rights and property in said Blocks forty four (44) and forty five (45), which were had of Rover and relinquished to the said Harrison Gray in consideration of the execution of the conveyance given to the said William H. Brown, and that the sale or mortgage of the said premises would be of great benefit and advantage to your Oratrix. But the said Defendant absolutely refuses to make any such mortgage or conveyance. All which doings, doings, pretences and refusals are contrary to equity and good conscience, and tend to the manifest injury of your Oratrix in the premises. In consideration whereof and for as much as your Orator and Oratrix can only have adequate relief in the premises in a Court of Equity where matters of this sort are properly cognizable and relievable. Your Orator and your Oratrix pray that the said William H. Brown require may fully, true and perfect answer make to all and singular the matters aforesaid, and that he be fully and particularly as if the same were here repeated and he should be interrogated thereto. And that the said Blocks forty four (44) and forty five (45) in Carpenters Addition aforesaid may be decreed to be sold, mortgaged or disposed of, and

that the said William H. Brown thereupon  
make, execute, and deliver all necessary  
conveyances to perfect such sale or  
mortgage and that your orator and  
Pratry may have such further  
other relief in the premises as the  
nature and circumstances of the case  
may require and to this Honorable Court  
shall seem meet.

And as in duty bound &c.  
James Curtis  
Mary Curtis.

William H. Brown defendant  
vs.  
James Curtis & Mary Curtis Complainants } In Chancery.

And the said William H.  
Brown defendant by John O. Brown his  
attorney hereby waives service of process  
and enters his appearance herein  
and consents that a rule to plead,  
answer or demur in default be entered  
herein.

W. H. Brown by  
J. O. Prop. 8th. Solicitor.

And thereupon on the same day,  
the following proceedings were had and  
entered on the Record of said Court, to wit.

James Curtis  
Mary Curtis  
vs.  
William H. Brown } Bill in Chancery

11) This day come the said  
Complainants in their own proper persons  
and file their bill of Complaint herein,  
and thereupon comes the said Defendant  
William H. Brown by John A. Brown his  
Solicitor and retaining services of process  
enters his appearance, and consents that  
a rule to plead, answer or demur instantly  
be entered herein, and thereupon on motion  
of the said Complainants, it is Ordered  
that the said Defendant William H. Brown  
plead, answer or demur to the said Com-  
plainants bill of Complaint by the  
coming in of Court on Tuesday morning  
next."

And afterwards, to wit, on the  
twentieth day of September, in the year  
of our Lord one thousand eight  
hundred and fifty two, the said  
day being one of the days of the said  
September Term of said Court, the  
following further proceedings were  
had in said cause, to wit:

John Curtis  
Mary Curtis  
vs.  
William H. Brown } Bill

And now at this day  
again come the said Complainants, and  
the said Defendant having failed to  
plead, answer or demur to said

12)

Complainant's Bill as heretofore ordered herein, and the said Defendant being three times solemnly called in Open Court comes not, nor any one for him, but makes default herein, and on motion of said Complainant it is ordered that said Complainant's Bill of Complaint be taken as confessed against the said Defendant, and that said Bill be referred to George Marniere Esq. Master in Chancery of Cook County to take proofs as to the material facts in said bill set forth, and to report the same to this Court with all convenient speed, and it is further ordered that the said Master in Chancery examine the said Complainant James Curtiss and the said Defendant William H. Brown upon Oath touching the matters set forth in said Bill of Complaint.

And afterwards, to wit, on the twenty ninth day of September in the year last aforesaid, the said day being one of the days of the September Term of said Court, George Marniere Esq. Master in Chancery of Cook County filed in said Court his Report in said cause, which is in words and figures following to wit:

Master's Report.

"State of Illinois } Office of Master in Chancery  
Cook County } s.s. Chicago, September 27, 1852

13)

In the Cook County Court of Common Pleas,  
of the September Term, 1852.

James Curtis and Mary Curtis  
his wife

vs.

William H. Brown

Wm. Mark Skinner, Praying Judge of said Court,  
in Chancery, sitting:

In pursuance of an Order made by said  
Court in the above entitled cause, by which  
it was referred to me to take proof of the  
material facts and allegations set forth  
in the Complainant's Bill and report  
my opinion thereon, I, George Manierre  
Master in Chancery, of said County, do  
hereby report, that on the 29<sup>th</sup> day of  
September, 1852, the complainant appeared  
before me in person and by  
their solicitor, at my office in the City of  
Chicago, at which time and place the  
following examination was had, and  
proofs taken.

Stephen S. Gale being first duly sworn  
deposes and says.

I am acquainted with late  
Harrison Gray of Boston, Mass. and  
also with defendant Brown, and  
know the facts connected with the  
conveyance executed by said Harrison  
Gray to W. H. Brown as stated in  
Complainant's bill.

Mr Gray as one of the assignees of  
Jm. Hyde became the owner of a

number of blocks of land in Carpenters  
 Addition to the City of Chicago, sometime  
 in 1842 or 1843. At the time of his  
 becoming the owner of said real estate  
 the wife of the Complainant held an inchoate  
 right of dower in all of said land.  
 And in consideration of her release of  
 such interest and in order to procure  
 the said Harrison Gray recited to the de-  
 fendant the conveyance mentioned in the  
 complainant's bill. I know the fact that  
 there was no other consideration for  
 said conveyance than said release of  
 dower. Mr. Gray had no interest in  
 controlling the property after it passed  
 from him to Brown. He was not  
 even acquainted with Mrs. Curtis.  
 The negotiation for the conveyance of  
 the property to defendant, as set forth  
 in the bill, was conducted by com-  
 plainant James Curtis solely so far  
 as I know and the conveyance was  
 so made by his consent and direction.  
 Mr. Gray had no interest in the subject  
 any further than in procuring said  
 release of dower, and it was purely  
 a question of business with him.  
 Mr. Gray received no other consideration  
 for his deed than the one  
 and the form of the conveyance  
 dictated as aforesaid, and Mr. Gray  
 executed it entirely in conformity with  
 the wishes of Complainant and for

157

no other reason or consideration.  
sworn & subscribed } Stephen F. Gale.  
before me this 29th day  
of September 1852.

George Manierre  
Master in Chancery  
of Cook Co. Ills.

William H. Brown being first duly sworn  
deposes and says:

I gave no consideration of money  
or otherwise to Harrison Gray for the deed  
executed to me by him as stated in the  
Complainants bill, for the benefit of  
Mrs Mary Curtis the wife of James  
Curtis. That I have no cognizance  
of the transaction at this time except  
being requested to act as trustee for  
Mrs Curtis, and giving my consent  
thereto. That request was probably made  
by Mrs Curtis, though I have no recol-  
lection of the fact. I have no objection  
to the granting of the prayer of complain-  
ants bill, and know no reason why  
it should not be granted.

sworn & subscribed } William H. Brown.  
before me this 29th  
day of September 1852  
George Manierre  
Master in Chancery

James Curtis being likewise duly  
sworn deposes and says:

The bill of Complaint filed in this cause was drawn by me and I know the facts therein set forth to be true as therein stated; and I do hereby further say and testify that the conveyance mentioned in said bill, was made to William H. Brown solely by my consent and direction upon consultation with Miss my wife. I spoke to Mr. Brown about receiving the title as trustee before the deed was drawn up, and he consented to do so. My object in having the title made to Mr. Brown was to secure my wife an equivalent for the release of her dower in the other real estate held by Harrison Gray as stated in the bill, my own circumstances being at that time embarrassed. I think the consideration to my wife, have been a Quit Claim Deed signed by myself and wife jointly. He had no interest in controlling the property after the title left him, and would as readily have executed a deed to me for the property so conveyed to Brown, as to him if such had been my desire and that of my wife. We never saw my wife in reference to the transaction but myself. The deed was drawn under my direction, and being submitted to me was sent to Mr. Gray who was then residing in Boston, Massachusetts, and was there

17)  
executed by himself and wife, and  
returned to me. There was no consid-  
eration given to Gray for the conveyance  
mentioned in the bill either direct  
or indirectly, but the deed was  
executed by myself and wife to Gray.  
Known to & Subscribed James Curtis  
before me this 29th day  
of September 1852

George Mamore  
Master in Chancery

And I do further report that the  
following facts have been proven before  
me by the foregoing evidence.

1<sup>st</sup> That previous to the execution of  
the deed to Brown by Gray, Gray owned  
several blocks of land in Carpenter's  
Addition, to which Mary Curtis had  
an inchoate right of dower.

2<sup>nd</sup> That in order to obtain her  
release of dower to the real estate so held,  
Gray agreed to and did convey the prop-  
erty described in the deed to Brown  
in such manner and form and upon  
such trusts as the said Mary and her  
Curtis should require: this was to be  
and was the sole consideration for  
the said conveyance to Brown; & the  
deed was accordingly so made.

3<sup>rd</sup> That the deed to Brown  
was drawn up under the direction  
and with the advice of said James

18)

Curtis with the concurrence and consent of Mary his wife, and having been drawn was sent to Mr Gray who was at that time a resident of Boston, Mass. and having been executed by him was returned to Mr. Curtis.

4<sup>th</sup> That Gray had no interest in controlling the title to the land, and that the trust created in the deed was so created by the desire of said James & Mary Curtis and not by him: that it was merely a business transaction with him, and he would have executed any other deed if such had been requested by the parties interested.

All of which is respectfully submitted.

George Manning.

And thereupon on the said twenty ninth day of September aforesaid, the following further proceedings were had and entered on the Record of said Court, to wit:

James Curtis and  
Mary Curtis

vs.

William H. Brown

Chancery.

This day again the said complainants by Collins the Solicitor, and it appearing from the Report of the Master on file herein

19)

that the conveyance set forth in said Com-  
plainant's bill of Complaint, by which  
Harrison Gray and wife conveyed to  
William A. Brown, Receiver of the City of Chicago,  
and by which said City of Chicago conveyed to  
the City of Chicago in Trust for the  
benefit of the said Complainant Mary  
Curtis, was executed in consideration  
of the release by the said Mary Curtis  
to the said Harrison Gray of her right of  
Power of and in divers other pieces and  
parcels of land in said City of Chicago,  
and for no other consideration or  
inducement whatever. And that no  
part of the consideration for said  
conveyance was paid or contributed  
by any person whatever other than  
the said Complainant, and it fur-  
ther appearing to the Court that neither  
the said Harrison Gray, William A.  
Brown, nor any other person or persons,  
except the said Complainant are now  
or were at any time heretofore, interes-  
ted either directly or remotely in the  
title of said conveyance, and it  
further appearing to the satisfaction  
of the Court that the Complainant  
desire to control the said premises  
more effectually than can be done  
through the intervention of a Trustee,  
and it further appearing that  
the said Trustee and the said  
certain que trust are desirous that

20)

the trusteeship should be set aside, and that the legal title to the said premises should be vested in the said complainants, or in such other person or persons as the said Mary Curtis may direct.

It is thereupon on motion of the said Complainants solicitor ordered, adjudged, and decreed, that the said Blocks forty four (44) and forty five (45) in Carpenters Addition to the City of Chicago as set forth in the said Complainants bill of Complaint herein, be sold or mortgaged as the said Complainant Mary Curtis may in writing direct, and that upon such sale or mortgage the said William H. Brown execute and deliver all necessary and proper conveyances to the purchaser or mortgagee, and it is further ordered, adjudged and decreed that the proceeds of such sale or mortgage be paid over to the said Complainant Mary Curtis or to such person or persons as she shall in writing direct and appoint, and it is further ordered that the said Complainants pay the cost of this proceedings.

State of Illinois &  
County of Cook & C.

I Walter Kimball Clerk  
of the Superior Court of Chicago within & for the  
County & State aforesaid, do hereby Certify that the  
above and foregoing is a full true and  
correct Transcript of the Bill and Master's  
Report, and also of the Orders and Decree entered  
on the Records of said Court, and now on file in  
my office in the case of James Curtis & Mary  
Curtis Complainant, and William A. Brown  
Defendant in Chancery

In Testimony whereof I hereunto  
set my hand and affix the Seal  
of said Court at the City of Chicago  
in said County this 11<sup>th</sup> day of April  
A. D. 1851

Walter Kimball  
Clerk



in form of the said Complaint in error. but  
in reality - against the said Complaint in  
error. she being then a Justice Court, and  
without her consent or authorization in  
Court or otherwise, upon the request and at  
the instance of the said James Curtis - whereby  
the separate Property of said Complaint in error  
was changed and transferred and put within the  
control of said James Curtis, contrary to the  
Powers and Provisions of the Act securing  
said Property to the said Complaint in error.

Second - That the Court below in and by the  
Decree recited in said Cause, without any  
allegations or proofs of contempt or neglect  
or other grounds for Equitable interference  
undertake to set aside and annul the former  
provisions of said decree for the benefit of  
the Complaint in error. then being a  
Justice Court, without her consent or author-  
ization and upon the petition of the said  
James Curtis. her Husband. alone -

Third - The Bill of Complaint in said  
Cause does not set forth or show any  
such facts or circumstances, as authorized  
the Court below to make said Decree.

Fourth - It appears from the allegations  
and statements of the said Bill of  
Complaint, that the Court has no

power or authority to grant the relief  
sought for by the said James Curteis  
Fifth. That by the Record aforesaid it  
appears that a decree was rendered in favor  
of said James Curteis, according to the  
Prayer of said Bill of Complaint. Whereas  
by the Law of the Land, the relief sought for  
in and by said Bill of Complaint should  
have been refused and said bill dismissed.

And the said Mary Curteis, Complainant,  
and in error, prays that the decree aforesaid  
in the said Bill of Complaint, and other errors  
in the Record and Proceedings aforesaid, may  
be reversed, annulled and altogether held  
for nothing, and that she may be restored  
to all things which she hath lost by ac-  
cession of the said decree &c.

Scilicet et Callidus Curteis

Sal De Pro Compt. in error

<sup>+</sup>  
At the April Term 1862 That is to say on the 6th day of  
May in said Term of April the complainant in  
error having summoned other defendants the  
two tenants occupying & holding in possession  
the premises in dispute in this cause & did continue  
as to the children of Mary Curteis & that Court having  
allowed the argument of this case on the merits  
as on an issue of in nullo est error pleaded  
or joined in error to the above assignment  
of error to proceed simultaneously with

The argument on ~~the~~ the plea  
in bars by way of Estoppel & Demurrer  
thereof without prejudice to the matters  
of said plea & Demurrer

The defendants William H Brown  
and others the tenants aforesaid  
reversing all their rights under said plea  
& Demurrer do hereby join in  
error and say that there is no  
error in the record & proceedings  
aforesaid or in giving the decree  
aforesaid wholly in favor of the defendants  
rights & interests in the premises the same  
should be in any wise vacated reversed or  
set aside to their injury or damage  
nor is there any error whatsoever therein  
and they pray that the said decree may be  
in all things affirmed

Mathew T Tapt  
Sol & of Counsel for  
Depts in error

196 ~~156~~ 59

Supreme Court of Illinois

Mary Curtiss, Widow &c  
Compl't in rem

vs

William H. Curtiss, Adm  
Def't in rem

---

Record

Filed April 4, 1861  
L Leland  
Clerk

Index May 6, 1862

Jameson & Morse, Printers, Chicago.

# SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, 1862.

MARY CURTIS, Comp't in Error, }  
vs. }  
WM. H. BROWN et al., Def'ts in Error. }

## POINT I.

The *direction* by Mrs. Curtis, requiring her trustee, Brown, to sell, in pursuance of the decree made for that purpose, and *the sale* made by her trustee, thus imperatively required to proceed and sell, and *her acknowledgment or receipt of proceeds in full*, altogether constitute a *release of errors*, if any, in the decree. She is thereby *estopped* from alleging error.

*2d Gilm. R.*, 414, *Morgan vs. Ladd*.

In this case the acceptance of the amount of a decree was pleaded in bar, on error brought by the party thus accepting.

*Curia per Treat. Just.*

"The plea is good. The acceptance of the money operated as a *release of errors*; a party who voluntarily receives the benefit of a decree, shall not be afterwards allowed to allege that it was erroneous," ("nor even be permitted to tender back the money.")

*So in 2 Gilman R.*, 703, *Thomas vs. Negus*.

The court say, per Treat J. "The receipt of the money under the circumstances of the case, necessarily operated as a release of errors.

*21 Ill. R.*, 267, 604.

## POINT II.

The coverture of Mrs. Curtis, at the date of all the transactions pleaded, is no bar of her estoppel resulting from her acquiescence in and voluntary execution of the decree, and receipt of the proceeds.

22 *Ill. R.*, 349, *Cochran vs. Harrow*.

This is a case of equitable estoppel, (silence, &c.,) not involving coverture.

14 *Ill. R.*, 269, *Higgins vs. Ferguson is do.*

14 *Ill. R.*, 268, *Bradley vs. Snyder*.

In this case, *Caton C. J.* applies the same principle to shut the mouth of a *feme covert*, and estop her.

1 *Story Eq. Jur.*, § 385.

"Neither *infancy* nor *coverture* will constitute any excuse, for "neither *infant* nor *feme covert* are privileged to practice deceptions or "cheats on other innocent persons."

8 *B. Monroe*, 539, *Davis vs. Tingle*.

*Fomb. Eq. B.* 1, *Ch.* 3, § 1, p 164.

9 *Mod.*, 35, 38, *Savage vs. Foster*.

1 *Bro. Ch. R.*, 353-8, *Becket vs. Candy*.

2 *Sugd. Vend.*, p. 515, *sec.* 30, *bottom of page 1023*.

6 *Johns. Ch.*

In this case (*Storrs vs. Barker*) *Chan. Kent* says that *ignorance* of the law will not protect any one from an operation of a rule of equity, when the circumstances would otherwise create an equitable bar.

2 *Madd.* 51, *Corey vs. Gertchken*.

2 *Eq. Car. Ab.*, 489, *Esroy vs. Nicholas*.

8 *Texas*, 243.

9 *Texas*, 297, *Cravens vs. Booth*.

17 *Senj. & Rawle*, 364.

*Estoppels* are favored when they promote equity.

## Point 3

The decree cannot be reversed so as to affect the title of the defendants who are bona fide purchasers under it — 21 *Ill. R.* 279 *Case of Rockwell vs. Jones* — *Sci. fa. pour bonne cause* *Riley S. C. Rep.* 102 — 17 *Ill. R.* 95 — 2 *Howard U. S. R* 339 *Hignous vs. Astor* & numerous cases then cited

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59-196

Coultet  
vs  
Brown et al  
-----  
Depts. Poins

Filed May 10. 1862  
J. Leach  
CM

*[Faint, illegible handwriting]*  
Arthur W. Van Wert  
Glasgow with MS  
-----

In the Supreme Court of Illinois  
3<sup>d</sup> Grand Division

April Term 1862

Mary Curtiss widow of James  
Curtiss Complainant in error  
Versus

~~James Curtiss~~ R. ~~Mary Kelle~~ ~~Arthur H. Brown~~ ~~Edith A. Brown~~  
~~Samuel Brown~~ ~~George W. Curtis~~ ~~Charles Curtis~~ ~~George W. Curtis~~  
Wm. H. Brown, John E. Throop, Samuel Miles, Lewis Derundeau, Samuel B. Haggard, John W. Lalor,  
Geo. Chacksfeld, Theodore Rogers, Geo. T. Abbey, Thos. Goodjohn, Josiah H. Bross, John A. Bross, A.  
L. Chapin, Edwin Zimmerman, George Dodge, William Case, Maurice Donovan, Joseph Shaw, John Mc-  
Gilvra, Mary Ann Lloyd, Thomas Harcastle, Hunt O. Hills, Chicago Building Association, Wm. D. Per-  
kins, Larina H. Perkins, Andrew Wemple, James Otis, John F. Farnsworth, ~~Lemuel P. Crawford~~, and  
Levi P. Crawford.

Defendants in error

And now at this day that is to say on the Sixth  
day of May in the Term of April A.D. 1862  
before the honorable the Justices of the Supreme  
Court of the State of Illinois come the defend-  
ant <sup>by all others & says their attorneys</sup> in error above named, and for a plea in law  
by way of a release of errors and estoppel  
against the said Mary Curtiss, say that she  
the said Mary Curtiss, <sup>has no right to</sup> to be heard by the Court  
in her said allegation of error in said decree  
rendered in the Cook County Court of Common  
Pleas because they say that by the terms of said  
decree entered on behalf of herself & her  
husband James Curtiss since deceased  
& whom she hath survived, and upon their  
prayer jointly & severally it was ordered  
adjudged and decreed that Blocks Forty  
four (44) and Forty five (45) in Carpenters

# They the said defendants protesting nevertheless that there is  
no error in the decree upon which she in her said  
Complaint has alleged error

Addition to Chicago as set forth in the Complainants bill of Complaint therein be sold and mortgaged as the Said Complainant Mary Curtiss in whose behalf the Same was made and entered might direct in writing; and that upon each Sale or mortgage the Said William H. Brown execute and deliver all necessary and proper conveyances to the purchaser and Mortgagee; and it was further thereby ordered adjudged and decreed that the proceeds of such sale or mortgage be paid over to Said Mary Curtiss the Complainant or to such person or persons as she should in writing direct and appoint; and the Said defendants in error avers that the Said Court of Common Pleas Or Chancery sitting on the making up and entering of said decree had all the proper parties in interest in & to the Subject matter of said Suit in Equity in and before the Said Court that is to say the Said Mary Curtiss with her husband James Curtiss appeared then living as complainants and the Said William H. Brown her Trustee as defendant; that the said suit was commenced & prosecuted in the manner and form usual in Chancery proceedings in this State by bill & answer duly filed, reference to a master & his reports of proofs taken in the cause and that Said Court had full & ample jurisdiction

of the parties aforesaid and of the Subject Matters  
in controversy in Said Cause and made Said decree  
accordingly

And the said defendants in error  
in fact further say that afterwards to wit on the  
15th day of October A.D. 1852 at Chicago  
in Cook County & State of Illinois the said Mary  
Curtiss by a writing under her hand and seal  
made signed and sealed by her and delivered  
to the said William N. Brown the Trustee  
as aforesaid & defendant in said Suit as well as  
one of the defendants in error did direct the  
said William N. Brown to sell and convey the  
said Blocks Forty four (44) and Forty five  
(45) to such person or persons & for such sum or  
sums as he might deem expedient which said  
writing or direction under seal was in the words  
& figures following that is to say: "Whereas  
the Cook

" the Cook County Court of Common Pleas in a  
" certain cause therein pending did on the nineteenth day  
" of September A.D. 1852 order & decree that  
" Blocks Forty four (44) and Forty five (45)  
" in Carpenters addition to the City of Chicago in the County  
" of Cook and State of Illinois (the title to said  
" blocks being vested in William N. Brown Esq.  
" of said City of Chicago in trust for the benefit  
" to the use of Mary (Curtiss) should be sold as

<sup>the said</sup> "Mary Curtis" <sup>in writing</sup> "may direct" and that upon such sale  
"the said William N. Brown execute and deliver  
" all necessary and proper conveyances" and that  
"the proceeds of such sale" be paid over to said Mary  
"Curtis" Now therefore I the said Mary  
"Curtis do by these presents in pursuance of the decree  
" aforesaid direct the said William N. Brown  
" to sell and convey the said blocks forty four  
(44) and forty five (45) to such person or persons  
and for such sum or sums as he may deem expedient  
Witness my hand & Seal at Chicago in the County  
of Cook and State of Illinois this 15<sup>th</sup> day of Oct<sup>r</sup> 1852  
Mary Curtis 

In presence of  
John C. Miller

And the said defendants  
in error in fact further say that in pursuance of the  
aforesaid direction and decree the said defendant  
in error William N. Brown proceeded to sell and  
convey by deeds in fee executed by him (wherein  
also the said Mary Curtis & her husband James  
Curtis aforesaid then living also joined as grantors)  
a large number of the lots included in & constituting  
the two blocks before mentioned the deeds of convey-  
ance in that behalf given from time to time  
to purchasers being duly acknowledged by all the  
parties thereto as grantors to wit the said William  
N. Brown and the said James Curtis and

Mary Curtiss and whenever and as far as sales were so made the purchase price or consideration obtained on such sales was duly & fully paid over by said William H. Brown to her the said Mary Curtiss and after sales had been made as aforesaid to the extent next herein after mentioned & the purchase price paid over as aforesaid she the said Mary Curtiss made executed Signed Sealed with her proper Seal and delivered to the said William H. Brown a receipt in full or acquittance whereby she on the 30<sup>th</sup> day of November 1855 at Chicago aforesaid acknowledged that whereas said William H. Brown had sold and conveyed in pursuance of said decree & order and also in pursuance of her direction all of Block Forty four (44) above mentioned except Lots Twenty five (25) and Twenty Six (26) and all of Block Forty five (45) except Lot Seven (7) & had paid over the proceeds of said sales to her the said Mary Curtiss & to her written order Therefore she the said Mary Curtiss did thereby acknowledge the receipt of the entire proceeds of the sales aforesaid & did by these presents ratify & confirm all the acts of the said William H. Brown which he had done in the premises

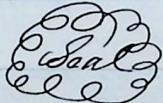
Which said receipt or acquittance is in the words & figures following that is to say  
 Whereas William H. Brown,

Clerk of the City of Chicago in pursuance of the above mentioned decree and order of the Cook County Court of Common Pleas and of the above written directions has sold & conveyed all of Block Forty four (44) except Lots Twenty five (25) and Twenty Six (26) and all of Block Forty five (45) except Lot Seven (7) and has paid over the proceeds of said Sales to me & to my written order

Now thereupon I the said Mary Curtis do hereby acknowledge the receipt of the entire proceeds of the Sales aforesaid and I do by these presents ratify and confirm all that the said William H. Brown has done in the premises

Witness my hand & Seal at Chicago in the County of Cook and State of Illinois this third day of November A.D. 1855

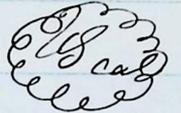
In presence of  
John C. Miller

Mary Curtis 

Subjoined whereto was and still is remaining the Sanction or approval of said James Curtis Clerk Signed Sealed & Delivered in the words and figures following That is to say  
"The foregoing papers having been executed with my consent and approbation as the husband of the said Mary Curtis I do hereby concur in the same. Witness my hand

and Seal at Chicago appeared this 5<sup>th</sup> day  
of November A.D. 1855

In presence of

Mary Curtin 

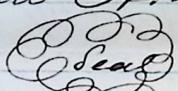
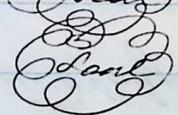
And afterwards that is to say on Nov. 7.  
1857 when the said Lot Number Seven had  
been sold by said William N. Brown and the  
money charged & paid or obtained therefor  
paid over to said Mary Curtin as the said defen-  
dants aver that it was on such sale the said Mary  
Curtin gave to said William N. Brown her  
receipt in full therefor signed by her in the  
words & figures following that is to say  
" Lot No. 7 Block N<sup>o</sup> 4<sup>th</sup> Carpenter  
" Add<sup>n</sup> to Chicago having also been sold  
" Since the giving of the last receipt I hereby  
" acknowledge that I have received the amount  
" paid for the same by the purchaser  
" Nov. 7. 1857 Mary Curtin

And the said Defendants in error  
in fact further say that afterwards that is to say  
on the 5<sup>th</sup> day of June A.D. 1853 the same in  
the hands of said William N. Brown as Trustee  
of said Mary Curtin a number of mortgages  
executed to said William N. Brown as  
such trustee to secure unpaid portions of the  
purchase money or price of Lots sold as aforesaid  
from said Block. And the said Mary Curtin

thereupon made signed sealed and delivered  
to said William H. Brown as he has by a  
requisition & appointment signed & sealed  
by her with the approbation of her former  
husband James Curtis in his life time  
whereby she ordered & appointed the said  
mortgages to be sold and transferred by  
the said Trustee to Charles P. Williams of  
Stonington Connecticut & the proceeds of  
such sale to be paid over to her husband  
James Curtis for the purpose of carrying out  
the objects contemplated in the sale of said  
lots & which said order and appointment  
is in the words & figures following to wit

"Whereas certain Mortgages made to some  
" the unpaid portion of the purchase money of lots in Block  
" Forty four (44) and Forty five (45) in Car-  
" penters addition to the City of Chicago were to  
" William H. Brown as Trustee of Mary Curtis  
" and whereas the proceeds of the Sale of said Lots  
" are required by a decree of the Cook County Court  
" of Common Pleas to be appropriated and used  
" in accordance with my appointment and  
" direction And whereas it has become necessary  
" to complete the purposes for which the said Lots were sold  
" that the said Mortgages should now be sold  
" Now therefore I the said Mary Curtis in  
" accordance with the said Decree and with the

" consent of my husband James Curtis evinced  
 " by his signing these presents do hereby direct  
 " and appoint that the mortgages executed  
 " as aforesaid by Sylvester Smith, James Brown  
 " Morris Donovan, Joseph W. Brown and  
 " Edwin Zimmerman be sold as aforesaid and  
 " transferred to Charles P. Williams of Stoughton  
 " Connecticut and that the proceeds of such sale  
 " be paid over to my said husband James Curtis  
 " for the purpose of carrying out the objects  
 " contemplated in the Sale of said Lots

" Witness my hand and Seal at Chicago  
 " aforesaid this twenty fifth day of June A.D.  
 " 1853  
 " Signed Sealed Mary Curtis   
 " Signed Sealed James Curtis   
 " and delivered in presence  
 " of Mary C. Curtis

And the said defendants in error further  
 in fact say that on the 23<sup>d</sup> day of June A.D. 1854  
 at Urbana in Champaign County Illinois  
 the said Mary Curtis made under her hand  
 & Seal & delivered to the defendants William H.  
 Brown her receipt or acquittance in the words  
 & figures following (signed by her & Sealed with  
 her proper seal) that is to say  
 " Urbana, Champaign Co. Ill.  
 " June 23<sup>d</sup> 1854

" I hereby acknowledge the receipt from William  
" H. Brown Esq. of the entire proceeds of the sale  
" of Lots One to Sixteen (1 to 16) inclusive in  
" Block Forty four (44) and also of Block Forty five  
" (45) in Carpenters addition to Chicago which prop-  
" erty was held by him in trust for my use and has  
" been sold under a decree of the Cook County  
" Court of common pleas and the proceeds invested  
" in a farm and the necessary stock & implements  
" at this place  
" Mary Curtis (Seal)  
" Witness

Lucy M. Curtis

with the approbation and  
consent of James Curtis her husband signified  
at the foot of her receipts in the words following  
" This receipt is given with my knowledge  
" approbation & consent James Curtis

And the said defendants in error  
further in fact say and aver that each and  
every of the receipts documents directions &  
acquittances stated & set forth in substance  
and in form as above was made signed &  
sealed and delivered in good faith and in  
accordance with the facts in each case  
& state & set forth payments & receipts actu-  
ally & truly made as in each & all of them is  
stated & specified and each & every of said receipts

and papers set forth above as aforesaid were executed signed Sealed & delivered by her the said Mary Curtis freely & voluntarily she the said Mary Curtis being at the several times the same were made under no fear constraint or duress whatso ever

And so the said dependants in error aver that the said dependant in error William H. Brown has in the manner & to the extent above specified in all things proceeded & conducted himself in good faith and in accordance with & obedience to the said Decree & the directions orders and appointments of the said Mary Curtis in pursuance of & under & in virtue of the same And that she the said Mary Curtis is therefore and thereby estopped notwithstanding the subsequent decease of her said husband James Curtis leaving her a widow no longer under coverture from alleging error in said Decree whereas she by this suit is seeking to avail herself

of the said Decree and of the said  
Matters & Facts 11th J. S. for W. H. Brown & the dependants who are

his grantees in execution of the Trust & others holding under him or them being true tenants in possession of the premises or some part thereof

Supreme Court

Mary Curtis  
 Widow &c

vs  
 Wm. H. Brown  
 Et al

---

Plea

Filed May 6. 1862

J. Leland  
 Clerk

Mathew & Duff  
Deputy Clerks

And for a further plea by the said defendants  
impleaded with said William H. Brown  
as Lessee-Tenants to the said several Errors  
and matters in said Record of Judgment  
and proceedings alleged and assigned  
for Error, the said defendants, their  
Attorneys Nathan W. Woodhull and  
Mother & Tapp, say, that, protesting  
that in giving said Judgment and  
Decree there was no Error in any wise  
done, or committed by the said Court,  
yet nevertheless, the said Judgment  
and Decree of the said Court below  
by reason thereof, or of any thing in the said  
Record and Judgment contained,  
ought not to be in any wise called  
in question, impeached, avoided,  
or set aside. Because they say -  
That immediately after the making of  
said final Decree, and the giving  
of said Judgment by the said Court,  
below, the said Mary Curtis Plaintiff  
in Error freely and voluntarily, by  
her own orders and directions in  
writing in that behalf, procured,  
ordered, and directed the said  
William H. Brown to proceed in ac-  
cordance with the terms of said Decree  
and in pursuance thereof, to make

Sole of said lands and Premises re-  
ferred to in said Decree and  
proceedings, to their Dependents;  
That in pursuance of said Decree,  
and of said written directions of  
said Mary Curtis, the said Brown  
made sale of all of said Premises  
and lands aforesaid, except viz:  
twelve of the lots into which the same  
had been subdivided, to their  
said Dependents, also in faith of  
said Decree and proceedings,  
and in faith of the acts of said Brown  
and of said Mary Curtis, in good  
faith bought the Premises so as afo-  
resaid sold and paid therefor into  
the hands of said Brown, the price and  
consideration money - then of, viz: One  
hundred thousand dollars - and  
then upon received from said Brown  
deeds of conveyances of said Premises  
as aforesaid sold to, and bought by,  
these dependents all and singular  
of which deeds were signed, sealed,  
acknowledged, and delivered by  
the said Brown as Trustee under the  
said Decree, and also of said  
Mary Curtis as the equitable party,  
in fee simple who truly and

voluntarily executed, acknowledged,  
 and joined in the delivery of said  
 deed and by James Curtis her hus-  
 band duly joining with the said  
 Mary Curtis therein in conformity  
 to the Statute in such case made  
 and provided. one of which said  
 deeds the said dependants here  
 set forth as being in all material  
 respects and particulars a copy  
 and sample of the other Family.  
 This Indenture made this first day of  
 November in the year of our Lord one  
 thousand eight hundred and fifty  
 five between William H. Brown of  
 the city of Chicago in the County of Cook  
 and State of Illinois Executor of Mary Curtis  
 wife of James Curtis acting under the  
 Authority and direction of the Cook  
 County Court of Common Pleas and  
 pursuant to a decree of said Court  
 made and entered of Record in  
 the premises and the said Mary  
 Curtis and James Curtis her hus-  
 band of the County of Macoupin  
 and State of Illinois, concurring with  
 the said William H. Brown in this  
 Indenture as parties of the first part  
 and John A. Trapp of the city of Chicago

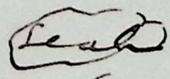
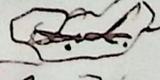
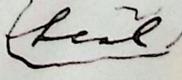
" against party of the second part  
 " Witnesseth that the said parties of the first part  
 " in consideration of the sum of three thousand  
 " one hundred and twenty-five dollars to  
 " them in hand paid the receipt whereof  
 " is hereby acknowledged have remised  
 " released and forever quit-claimed  
 " and by these Presents do remise, release  
 " and forever quit-claim unto the said  
 " John A. Broop his heirs Executors and assigns  
 " lots numbered twenty-one (21) and  
 " twenty-two (22) in Block forty-four  
 " (44) of Carpenter's addition to the city of  
 " Chicago governed according to the  
 " recurvey and subdivision of said  
 " Block made by William H. Torson  
 " and duly recorded in the recorder's  
 " office in the County of Cook of record  
 " being fifty (50) feeting on May Street by  
 " one hundred and fifteen deep and  
 " bounded on the south by the south alley  
 " running East and West through  
 " said Block To Have and to Hold  
 " the said lots with all the privileges  
 " and appurtenances to the same belonging  
 " to the said John A. Broop his heirs  
 " Executors, Administrators and assigns  
 " and to his seed their sole and forever  
 " to hold neither the said parties of the

first part. nor any person claiming an-  
der them or either of them shall at any  
time hereafter by any way or means have  
claim or demand any right or title  
to the said lots or any parts or parcels  
thereof forever.

And the said James Curtis party of the  
first part agrees for himself  
his heirs Executors and Administrators  
doth by these presents covenant with  
the said Wm. A. Brown his <sup>heirs,</sup> Executors,  
and Assigns that the said parties of  
the first part have a good and per-  
fect title to the lots aforesaid. that  
they have good right to sell and convey  
the same. that they are free from all  
incumbrances, and that he will, and  
his heirs, Executors, and Administrators  
shall forever warrant and defend  
the same against all lawful claims  
from any party whatsoever.

In witness whereof the said parties of the first  
part have hereunto set their hands and  
seals the day and year first above written

signed sealed and  
delivered in  
presence of  
Walter Kimball.

James Curtis   
Mary Curtis   
W. H. Brown 

Acknowledgment in common form.

And then dependent thereon, that the said  
lands were so sold and conveyed at  
and for the highest and best price  
and valuation of Real Estate in the city  
of Annapolis, and for the full value thereof  
prior to the Crisis of 1857. and the sub-  
sequent great depreciation of Real Estate  
in said City wherein said lands are  
situate and for more than the same  
are now worth and would sell for  
together with the improvements since  
thereon placed and made by these  
decedents upon faith of said former  
Deed and Deed of Conveyance -  
And the said Dependents do further  
aver that the whole and entire amount  
and sum of Money realized from, and  
produced by said Sale of said premises  
and amounting to the said sum of one  
hundred thirty and Dollars &c. of said  
Town or such Treasurer as of or in obe-  
dience to the order and decree of said  
Court below paid over to the said Mary  
Curtis for her own use and enjoyment  
and for disposition thereof upon  
her own written order, direction and  
receipt therefor freely and voluntarily  
signed and given by her ~~and~~  
~~that otherwise to any other person~~

And these defendants say that by reason  
 of the premises or as aforesaid set  
 forth the said judgment and Decree  
 was in all things duly and completely  
 executed and obeyed by said  
 Brown in good faith by and with  
 the entire concurrence and Cooperation  
 of the said Mary Curtis - And the  
 said defendants further aver  
 that by causing said Decree to be  
 had and made freely and voluntarily  
 for her own use and benefit by  
 causing and procuring the same  
 to be in all things carried out and exe-  
 cuted by said Brown in the manner  
 aforesaid by freely and voluntarily  
 joining with him and with her  
 said husband in making and  
 in causing to be made said sales of  
 said premises and in the execu-  
 tion acknowledgment and delivery  
 of said deed of conveyance of said land  
 had and conveyed as aforesaid  
 and by voluntarily receiving from  
 said Brown the said monies for  
 which said land were sold  
 and by directing and ordering in  
 writing the disposition thereof and  
 of her own acts and conduct in the

premises in the manner as above stated  
 and set forth the said Mary Curtis  
 both released and discharged  
 and did release and discharge  
 any and all each and singular  
 whatever Errors and misprisons  
 if any intervened and happened  
 in the rendering of said Decree and  
 judgment and in the said Record  
 of proceedings of the Court below and  
 there dependants. It further says and  
 insinuates that by the acts conduct and  
 premises aforesaid of the said Mary  
 Curtis by her party and voluntarily  
 done and performed she is concluded  
 and estopped from alleging or saying  
 or setting forth any Error or pretended  
 ground of Error in the said judgment  
 Decree and Record of proceedings  
 as aforesaid as against these depend-  
 -ants.

Wherefore they pray that  
 upon consideration both of the premises  
 and of said Record of judgment  
 and of the just rights of these depend-  
 -ants in equity and good conscience  
 the said judgment Order and  
 Decree of said Court below and  
 the proceedings in said Record contained

May not be reversed annulled or in  
ought set aside but that the same  
and all things therein contained  
may be confirmed and forever  
established.

Arthur W. Windett  
Atty for defts in Error.

Arthur W. Windett  
of Counsel with defts in Error.

Attorney & Trust  
Atty & of Counsel  
for defts  
In Error

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Supreme Court

May Curtis  
Complete in error

on  
Wm Brown  
& others

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Filed May 6 1862  
L. S. Leonard  
clerk