No. 13560

Supreme Court of Illinois

Ogden.

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vs.

Haven.

71641  7

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IN SUPREME COURT.

APRIL TERM, 1860.

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WILLIAM B. OGDEN and CHARLES BUTLER,
vs.
CARLOS HAVEN and ISAAC M. GROVER.

Appeal from Superior Court of Chicago.

RECORD PAGE.

2 The Bill in this case was filed on the 23rd day of January, 1856.

It sets forth that on or about the 6th day of May, 1836, one Simon Z. Haven purchased of the United States, for the consideration of one dollar and twenty-five cents per acre, Section 10, of Township 39 north, Range 12 east of the third principal meridian, and the south half of Section 3, of the same Township and Range, in Cook County, Illinois, and received from the United States a proper certificate of purchase: and that afterwards, on or about the 16th day of December, 1836, said Simon Z. Haven, in consideration of the sum of $2,880, sold to one Jeremiah Tooley, one undivided half of said lands, and then conveyed
3 the same in fee to said Tooley by deed of general warrantee, duly executed and delivered by said Haven to said Tooley, which said deed was lost, and after the most diligent search could not be found, and that a copy of the same could not be given. And that afterwards, on the first day of February, 1838, said Tooley made his certain indenture of mortgage, of that date, to said Simon Z. Haven, to secure to him the payment of two hundred and ninety dollars, in three equal annual payments, to be

him, caused a suit in attachment to be instituted in the Circuit Court of said Cook county, in favor of said Butler as plaintiff, and against said Simon Z. Haven, as defendant, and professing to act as the attorney in fact of said Charles Butler, on the said 11th of October, filed his (said Ogden's) affidavit in the office of the clerk of said court, therein setting forth that said Simon Z. Haven was indebted to said Charles Butler in the sum of $4.540, being the amount then claimed to be due from said Haven to said Butler on certain articles of agreement, dated April 28, 1836, by which said articles of agreement said Butler covenanted to sell to said Haven, Lots No. 5 and 6, in Block No. 17, Kinzie's Addition to Chicago, and wherein, as is set forth in said affidavit, said Haven agreed
6 to pay said Butler therefor, the sum of $1,700 on the 28th day of April, 1837, and the further sum of $1,700 on the 28th day of April, 1838, with interest on the whole from the date of said agreement, at ten per cent., and in which affidavit it was alleged that said two payments had not been made by said Haven, and that, together with the interest, there was due thereon the sum of $4,540; and thereupon, said Ogden filed a certain attachment bond in said office, and caused a writ of attachment to be issued in favor of said Butler and against the estate of said Simon Z. Haven, who was the defendant therein, which said writ bore date the 18th day of October, 1839, and was then and there, by said Ogden, delivered to the sheriff of said Cook county, to execute, and was afterwards returned by said sheriff, to said clerk's office, with the following endorsement made thereon by said sheriff: "Executed by attaching the following described property of Simon Z. Haven, Oct. 30th, 1839, 26½ feet of the west ⅓ of west side of Lot 1, Block 24, School Section Addition to Chicago: also the 19-24 parts undivided of Section 10, and the south half of Section 3, Township 39 north, Range 12 east of the third principal meridian;" which said levy was made by said sheriff at the instance of said Ogden and by his direction, and afterwards, by the procurement of said Ogden, there having been publication in said
7 cause, on the 31st day of March, 1840, a declaration was filed therein, counting upon said articles of agreement mentioned in the affidavit of said Ogden hereinbefore referred to, as the sole and only cause of action in said attachment suit, and that afterwards, on the 7th day of May, 1841, judgment was rendered against said defendant who had never been served with process nor entered his appearance in the same, in favor of said Butler, for the sum of $5,109.45 and costs of suit, and for a special execution against the lands attached in said suit, embracing therein the whole of the land now claimed by said complainants, as aforesaid. Copies of which proceedings and those subsequent thereto, are filed with said bill and made a part thereof, marked Exhibit D.

That afterwards, on the 28th day of June, 1841, said Ogden fraudulently caused execution to be issued upon the said judgment, directed to

the sheriff of Cook county to execute, and delivered the same to said sheriff, with directions to execute the same on the said lands claimed by the orators, and the other lands attached as aforesaid; and afterwards the said Ogden procured himself to be appointed one of the appraisers, required by law to appraise and value a part of said lands attached, to wit, the said undivided 19-24, before sale thereof should be made by the sheriff, and did act as one of the appraisers in making said appraisement,
8 as will more fully appear by the sheriff's return on said execution, and the certificate of said appraisement, under the hand of said Ogden, attached thereto; and afterwards, to wit, on the 22nd day of July, A. D. 1841, said Ogden procured the sheriff, without advertisement, to make sale, under said execution, of the lands last aforesaid, and at the sale thereof procured one Henry Smith, a man then without means and in the said Ogden's employment, and who also had notice of said deed from said Haven to said Tooley, to bid off said lands in the name of said Smith, but in reality for the use and benefit of said Ogden, to whom, immediately thereafter, the certificate to said Smith, by the sheriff, was assigned by said Smith, without any consideration whatever; and that afterwards, to wit, on the 17th day of February, 1843, said Ogden procured the sheriff to execute and deliver to him, the said Ogden, a sheriff's deed for the premises last aforesaid; and afterwards, to wit, on the 17th day of June, 1845, caused said deed to be recorded in the Recorder's office of said Cook county; a copy of which said deed, together with the certificates of acknowledgment and record thereon, is filed with and made a part of said bill, marked Exhibit E.

That said Tooley, being entirely ignorant of said attachment suit, and said Ogden, wishing to prevent any redemption from being made from the sheriff's sale aforesaid, and fraudulently to acquire a pretended title to
9 said lands in himself, without the knowledge of the said Butler, in a concealed and secret manner, and undiscovered by the real owners of the same until consummated, after the sale thereof by the sheriff, as aforesaid, and before one year had expired from the time of said sale, and whilst said Ogden held the certificate of purchase thereof, given by said sheriff as aforesaid, to wit, on the 22nd of September, 1841, in consideration of the assignment of said mortgage from said Tooley to said Haven to him, the said Ogden, and of a deed of three lots in the School Section of Chicago, then made by Haven to said Ogden, at his request, and that the lots aforesaid, purchased by said Haven of said Butler, should be retained by said Butler, and forfeited to him as in said agreement sued on in said attachment suit had been provided, agreed with said Haven that said agreement sued on, and all matters growing out of it, should be discharged, considered as paid and at an end, which said agreement was signed by said Ogden, written at the foot of the duplicate of said articles of agreement sued on, and delivered to said Haven, and is in the words and figures following, to wit:

"In consideration of an assignment of a mortgage of Tooley, and of a deed of 3 lots in School Section, Chicago, made to me this day, it is agreed that this agreement above written, between Chas. Butler and S. Z. Haven, is declared paid and at an end, the lots being retained by said Butler.

Sept. 22d, 1841. W. B. OGDEN,
for C. Butler."

A copy of which articles of agreement and the last aforesaid agreement is attached to the bill and made a part thereof, and marked Exhibit Q.

10 That said settlement was, by said Haven, intended to be, and really was, as by the statements of said Ogden said Haven had been induced to believe, a full payment and discharge of said judgment sale, and all proceedings in said attachment suit, and of all liability of said Haven on said articles of agreement, and that if said Ogden, or any one else, did acquire any right or interest in said lands, by virtue of said attachment suit and proceedings therein, the settlement aforesaid was a complete redemption of said lands therefrom.

The bill further states, that said Tooley was, up to the time of said settlement, and long thereafter, entirely ignorant of said attachment suit, and that said Haven, relying on said agreement so made by said Ogden, and his verbal promise at the same time made to dismiss said suit, paid no further attention to the matter. Yet the said Ogden, notwithstanding said agreement in writing and said verbal promise, for the purpose of acquiring a fraudulent title to said lands, including the lands

11 aforesaid claimed by the complainants, procured said sheriff of Cook county, in total disregard and violation of said agreement, to execute and deliver to him the said sheriff's deed above mentioned and referred to, and when the said Haven, years thereafter, on learning of said Ogden's conduct in the premises, reproached him therefor, he deeded back to said Haven, without consideration, all the lands which the said Haven owned in the said 19-24 of the same at the time of the levy of said attachment, that is to say: 6-24 undivided of said Section 10, and of the south half of said Section 3, in order to keep said Haven quiet, and from exposing him, the said Ogden, for his fraudulent conduct in the premises.

The bill further states, that after said Ogden had received from said Haven the assignment aforesaid of said mortgage to said Haven from said Tooley, said Ogden still holding said mortgage, and after the sale by said sheriff, the said Ogden still holding said certificate of purchase for the purpose of acquiring a pretended title to said lands of complainants, and to hinder and prevent the said Tooley and his legal representatives from redeeming the same from said mortgage, by said Tooley to said Haven, suffered the taxes on the same for the year 1841 to remain unpaid, and said lands claimed by the complainants, with other lands, to be sold for taxes, which sale was made

12 on the 28th November, 1842, and afterwards, in pursuance of said sale, on the 15th January, 1845, procured the sheriff of said county to execute and deliver to him, the said Ogden, two instruments in writing, commonly called tax deeds, the one pretending to be a conveyance from said sheriff to said Ogden, of 19-24 undivided of said Section 10, and the other pretending to be a conveyance from said sheriff to said Ogden, of 19-24 undivided of the south half of said Section 3, and afterwards, to wit, on the 21st January, 1845, caused said deeds to be recorded in the Recorder's office of Cook county; copies of which deeds and certificates of acknowledgment, in substance, are filed with said bill, and make a part thereof, marked Exhibits F. and G.

The bill further states, that said Ogden then claimed to hold said land of complainants, (which has never yet been in the occupation or possession of any one) as his own, by virtue of said two deeds, as well as by said sheriff's deed.

The bill further states, that on the day of January, A. D. 1856, the complainants were ready and willing, and offered to pay said Ogden the full amount of principal and interest due on said mortgage, from said Tooley to said Haven, treating the same as if nothing had been paid thereon, to wit, the sum of dollars, and requiring only of the said Ogden that he should, at the cost of the complainants, release and quit-claim to them all the right, title and interest acquired by him in said lands, by virtue of said mortgage and assignment, and said sheriff's deed in said attachment suit; which offer said Ogden refused to accept.

13 The bill further states, that the complainants were then ready and willing to pay said money on said conditions, or as the court should direct.

The bill further states, that the complainants on the same day were ready and willing, and offered to pay said Ogden the sum so due on said mortgage aforesaid, together with all taxes that had ever been assessed on said land, and paid by said Ogden, with lawful interest on said taxes, from the respective times of payment of the same until the time last aforesaid, requiring only of him that he should release and quit-claim to the complainants, at their cost, all the right, title and interest which he had acquired to said lands, by said mortgage and assignment, and said sheriff's deed, and said tax deeds; which offer said Ogden then and there refused to accept.

The bill avers that the complainants were ready and willing to make such payment on such conditions as the court should direct, according to the equity of the case.

An answer, under oath, was waived, and the bill prays that an account
14 may be taken, and that said Ogden release and quit-claim to the complainants, all his title to said premises, or that said sheriff's deed, and said tax deeds, be set aside, cancelled and for nothing held; and for other and further relief.

EXHIBIT A.

14 A mortgage from Jeremiah Tooley and wife, to Simon Z. Haven, to secure the payment of $290, conveys an equal, undivided half of Section 10, Township 39 north, Range 12 east of 3rd P. M., and an equal undivided half of the south half of Section 3, Township 39 north, Range 12 east of 3rd P. M., dated Feb. 10, 1838, acknowledged same day, and recorded Sept. 8, 1838, in the Recorder's office of Cook county.

EXHIBIT B.

18 A Patent from the United States, to Simon Z. Haven, of Section 10, in Township 39 north, Range 12 east, dated Oct. 1, 1839, and filed for record June 17, 1843.

EXHIBIT C.

20 A Patent from the United States, to Simon Z. Haven, for the south half of Section 3, Township 39 north, Range 12 east, dated Oct. 1, 1839, and filed for record June 17, 1843.

EXHIBIT D.

21 A quit-claim deed from Jeremiah Tooley to Carlos Haven and Isaac M. Grover, of the undivided half of Section 10, and the undivided half of south half Section 3, Township 39 north, Range 12 east of 3rd P. M., dated Sept. 29, 1855, and acknowledged same day.

EXHIBIT E.

23 A deed from Samuel J. Lowe, sheriff of Cook county, to William B. Ogden, of 19–24 undivided of Section 10, and the south half of Section 3, Township 39 north, Range 12 east, upon a sale of said property under an execution, the attachment suit of *Charles Butler* v. *Simon Z. Haven*, dated Feb. 17, 1843, acknowledged April 11, 1843, and filed for record June 17, 1845.

EXHIBITS F AND G.

25 A deed from Samuel J. Lowe, sheriff of Cook county, to William B. Ogden, of 19-24 undivided of Section 10, Township 39 north, Range 12 east of 3rd P. M., under a sale of said property for the taxes on the same for the year 1841, dated Jan. 15, 1845, acknowledged same day, and filed for record Jan. 21, 1845.

27 A deed from Samuel J. Lowe, sheriff of Cook county, to William B. Ogden, of the south half of Section 3, Township 39 north, Range 12 east of 3rd P. M., under a sale of said property for the taxes on the same for the year 1841, dated Jan. 15, 1845, acknowledged on the same day, and filed for record, Jan. 21, 1845.

EXHIBIT Q.

29 *Articles of Agreement*, between Charles Butler and Simon Z. Haven, for the sale of Lots 5 and 6, in Block 17, in Kinzie's Addition to Chicago, for the sum of five thousand dollars, as follows:

Sixteen hundred dollars at the date of said agreement; seventeen hundred dollars one year from date; and seventeen hundred dollars two years from date, with interest at ten per cent. per annum, dated April 28, 1836.

On the back of which contract, is this receipt:

"Rec'd April 28, 1836, the first payment of sixteen hundred dollars on this contract in land. WM. B. OGDEN."

Also the following:

"In consideration of an assignment of a mortgage by J. Tooley, and of a deed of 3 lots in School Section, Chicago, made to me this day, it is agreed that this agreement above written, between Chas. Butler and S. Z. Haven, is declared paid and at an end.

Sept. 22, 1841. W. B. OGDEN,
The lots being retained by said Butler. for C. Butler."

33 The answer of the defendant, Charles Butler, was filed Sept. 7, 1856.

34 It admits upon information and belief the purchase of the lands by Haven from the United States, and that Haven received a proper certificate therefor, as set forth in the bill.

35 It denies any knowledge or information, except what is derived from the bill, of the sale from Haven to Jeremiah Tooley, and of the alleged loss of the deed from Haven to Tooley, as set forth in the bill.

It admits, upon information and belief, the execution and delivery of the mortgage from Tooley to Haven, and the recording of the same as alleged in the bill.

It denies any knowledge or information, (except that derived from the statements of the bill) of the patents from the United States to said Haven, as alleged in the bill.

36 It denies that said Tooley became seized in fee simple of the undivided one-half of the whole of said lands so purchased by Haven, and the absolute owner thereof, or any part thereof, subject only to the mortgage particularly described in the bill of complaint, but avers that certain attachments were laid upon said Haven's rights and interests in said

lands, (in the bill more particularly described) long prior to the registration of said pretended deed from said Haven to said Tooley, and without any notice whatever that said lands had been sold by Haven to Tooley, as is pretended in said bill, and that the same were sold under and by virtue of certain executions issued upon said attachments, and purchased by Henry Smith, and the certificates of the purchase thereof assigned to the defendant, William B. Ogden, and that said lands were subsequently conveyed to said Ogden by the proper officer; and said defendant avers that said conveyance to said Ogden was received by him, and that he holds the same subject to the equitable rights of said de-
37 fendant. It also admits, upon information and belief, that said Tooley, on the 29th day of September, A. D. 1855, executed and delivered a deed for said lands to the complainants, but denies that said Tooley, by said deed, conveyed said lands, or any part thereof, to the complainants; and denies that Tooley had any right or title, either in law or equity, to said lands, or any part thereof, and could therefore convey none by said deed.

It admits the assignment by said Haven to Ogden, of the mortgage given by Tooley, as set forth in the bill, subject, however, to the equitable interest of said defendant, as hereinafter set forth.

It admits that on or about the 11th day of October, 1839, (but whether before or after said patents were delivered to said Haven, or received or accepted by him, said defendant does not know, and is not informed save by the bill of complaint,) said defendant, by his attorney in fact, William B. Ogden, did cause a suit in attachment to be instituted, and proceedings to be had therein, as alleged in the bill, and said defendant alleges that said Ogden, as the attorney of said defendant, had full power and
39 right to take the proceedings aforesaid, and said defendant adopts, confirms, and ratifies the same in all things.

It denies that at the time of the institution of said proceedings in attachment, either said defendant, or said Ogden, his attorney, had any knowledge, information, or notice, that said Haven had sold the undivided one-half of said lands to said Tooley, or any part thereof, or that said Haven had received from said Tooley the mortgage aforesaid of $290, on said lands.

The answer denies each and every allegation in said bill contained, of fraud, misrepresentation, or improper or unfair conduct, on the part of said defendant Ogden, in relation to said attachment proceedings, and avers, upon information and belief, that said proceedings were in all respects regular, and that said Ogden, in all that he did therein, acted in good faith and justice towards said Haven and all other persons.

40 The answer admits the issuing of execution on the judgment in said attachment suit, and the sale of said property thereunder; that it was bid off by said Henry Smith, who took a certificate thereof, which he afterwards assigned to said defendant Ogden, who afterwards procured

a deed from said sheriff, which he caused to be recorded in the Recorder's office of Cook county, on the 17th of June, 1845, but said defendant denies that when said Smith bid off said property, he had any notice whatever of said pretended deed from said Haven to said Tooley.

The answer admits the cancellation of said agreement between said Butler and said Haven, as alleged in the bill, but said defendant insists that it was well and distinctly understood and agreed, by and between said Ogden and said Haven, that said agreement was only to discharge said Haven from his liability to make the further and future payments for
41 which he was bound under said articles of agreement, and that the same was not in any manner to affect, prejudice or impair the proceedings aforesaid, in relation to said land, nor the judgment, execution and sale thereof, all of which were to stand, except that said Ogden agreed to convey one hundred and sixty acres of said land to said Haven, or to such person as said Haven might appoint, which has since been done.

The answer admits the sale of said lands for the taxes of the year 1841, and the giving and receiving of the sheriff's deed therefor, and that said deeds were recorded as in said bill alleged.

Said defendant further admits, that said sale took place after said defendant Ogden had received said assignment of said mortgage from Tooley to Haven as aforesaid, and while he still held the same, and after said sale by said sheriff in said attachment proceedings, and while said
42 defendant Ogden still held said certificates of purchase. But said defendant denies all fraud or improper concealment or motives in said defendant Ogden in so doing, and avers, upon information and belief, that at the time said defendant Ogden obtained said certificate of purchase from said Henry Smith, and at the time of said settlement with said Haven, he, said Ogden, supposed the taxes assessed on said land for the year 1841 had been paid by said Haven, but discovered afterwards by the advertisement that they were unpaid, and did bid off and purchase said lands at said tax sale, said Ogden being advised that said taxes were a subsisting lien upon said lands, and that the same had accrued before the said defendant Ogden had obtained his title thereto, and that it was necessary to extinguish the same.

The answer avers that said mortgage from Tooley to Haven was assigned by Haven to defendant Ogden for no other purpose than to quiet said defendant Ogden's title to said lands purchased by said Smith and afterwards conveyed to defendant Ogden by said sheriff.

The answer alleges, avers and claims that the defendant Butler is the actual, beneficial and equitable owner, in his own right, of one-third part of said mortgage from said Tooley to said Haven, and of all the right, title, interest and property of said Ogden therein, acquired by said assignment thereof or otherwise. It also alleges, avers and claims that he is the actual, beneficial and equitable owner, in his own right, of all the lands taken under said attachment, or levied on under said attach-

43 ment, or sold under said executions or tax sales, or the title whereof was conveyed to Ogden by virtue of all or any of the proceedings set forth or referred to in the bill, and also claims that Ogden holds the said mortgage and the lands referred to in the bill, and not already conveyed by him, in trust for said defendant Butler, to the extent of one-third thereof, which one-third of said mortgage and said land, said defendant Butler claims against the plaintiff, the said defendant Ogden and all other persons.

The answer of the defendant William B. Ogden was filed on the 5th day of April, 1856.

44 He admits the purchase of the land in controversy by Simon Z. Haven from the United States, and that said Haven received a proper certificate therefor, as set forth in the bill.

45 He says that as to all that part of the bill alleging the sale and conveyance by said Haven to said Tooley, of an undivided half of said lands, and the loss of the deed from Haven to Tooley, he is not advised and has no knowledge or information in regard to the same, save as derived from said bill, and cannot therefore admit or deny the same.

He admits the execution, delivery and record of the mortgage from said Tooley to said Haven for $290, as is alleged in the bill.

46 He says that he has no knowledge and is not advised in relation to the allegations in the bill concerning the Patents from the United States to said Haven, and cannot, therefore, admit or deny the same.

He denies that said Tooley became seized in fee simple of the undivided one-half of the whole of said lands, so purchased by said Haven, and the absolute owner of the same or of any part thereof, subject only to the mortgages particularly described in said Bill of Complaint, but avers that certain attachments were laid upon the said Haven's rights and interests in said lands long prior to any registration of the said pretended deed from said Haven to said Tooley, without any notice whatever that said lands had been sold by said Haven to said Tooley, as is

47 pretended in the bill, and that the same were sold under and by virtue of certain executions issued upon said attachments and purchased by Henry Smith, and the certificate of the purchase thereof assigned to said defendant, and said lands subsequently conveyed to said defendant by the proper officer.

The answer admits the execution and delivery of the deed from Tooley to complainants, as set forth in the bill, but denies that Tooley had any title to said land.

It admits the assignment, by said Haven, to said defendant, of the mortgage given by Tooley to Haven, and that he still held the same.

The answer states, that on or about Oct. 11, 1839, (but whether before or after said Patents were delivered to said Haven, or received or accepted by him, defendant did not know and was not informed save by

said bill of complaint,) said defendant, as agent and attorney in fact for Charles Butler, caused a suit in attachment to be instituted in the Circuit
48 Court of Cook county, and that proceedings were had therein, as in said
49 bill alleged. But it denies that at the time of the institution of such proceedings, said defendant had any knowledge, information or notice that said Haven had sold the undivided one-half of said lands to said Tooley, or any part thereof, or that said Haven had received from said Tooley the aforesaid mortgage for $290, and also denies that for the purpose of concealing his operations, or for any purpose, he did inform the said Haven that he should be put to no trouble about paying said claim, and expressly denies and repels all allegations of fraud or improper concealment, as stated in said bill of complaint, in regard to the manner of instituting said attachment suit or of prosecuting the same.

The answer admits the issuing of the execution upon the judgment in said attachment suit, and the sale of said lands thereunder; that said Henry Smith purchased the same and took a certificate therefor, which certificate was afterwards assigned to said defendant, and that said defendant procured from the sheriff a deed of said lands, which was recorded at the time and in the manner specified in the bill, all of which
50 proceedings relating to said attachments, said defendant avers were conducted by the attorneys of said Charles Butler, without any special direction or interference on the part of said defendant, and it may be that said defendant did act as appraiser, as is alleged in said bill, but whether he did or not he does not now remember; but if he did so act, said defendant denies all fraud in so acting, and avers that he was competent to act as such, and was wholly disinterested in the matter. The answer also denies that Ogden procured said sheriff to make said sale without advertisement, as is alleged in the bill, and avers that if it was so made, (which is expressly denied) that it was unknown to said defendant, or to said Henry Smith, both of whom supposed and believed the whole proceedings in respect thereto, to be regular and legal, as they had all been under the especial care of the attorneys of the plaintiff in said cause.

51 The answer admits that he procured said Smith to bid off said lands in his own name, at the sale thereof, aforesaid, and he denies that said Smith had any notice whatever, of said pretended deed from said Haven to said Tooley, and expressly denies and repels the imputation of fraud contained in said bill, in respect to said appraisement and sale, and purchase of said lands; and avers that he acted throughout with fairness and honesty.

The answer admits the cancellation of the agreement between Haven
52 and Butler, at the time and in the manner alleged in the bill, but denies that said settlement was by said Haven intended to be, or really was, or that said defendant made any statements to induce said Haven to believe the same was a full payment and satisfaction of said judgment and sale,

and all proceedings in said attachment suit. But the answer admits that said arrangement was intended to discharge said Haven from all liability on said articles of agreement, for the balance due on the same from said Haven, after deducting from the amount due thereon at the time of said sheriff's sale, the sum bid for said lands by said Smith.. And avers that said arrangement was formally proposed to said Haven, by letter from said defendant, and was formally accepted by him, and was entirely understood by him as herein represented, and in no other manner, and that said Haven fully understood at the time that he was to forfeit and abandon all right to said lots mentioned in said articles of agreement, and to convey said three lots in School Section, Chicago, in order to discharge the balance due on said articles of agreement, and that said sheriff's sale of the lands aforesaid was to stand, and this deponent to be entitled to all of the lands so attached and sold aforesaid by said sheriff, except 160 acres thereof, which said Haven represented he had sold to one Brown, and which said defendant gave his bond to said Haven to convey to him or to whoever he should direct, and which said defendant did afterwards convey to said Haven, as will appear by the bond of said defendant, and the receipt of said Haven endorsed thereon, a copy of which is annexed to said answer, marked
53 "Exhibit A," and made a part thereof. The answer denies that if Ogden, or any one else, acquired any right or interest in said lands by virtue of said attachment suit, and the proceedings therein, the settlement aforesaid was a complete redemption and discharge of said lands therefrom, and avers that said settlement was never designed or understood by said Haven to effect any such result.

The answer states that Ogden did not know whether said Tooley was, up to the time of said settlement, and long thereafter, ignorant of said attachment suit or not, and was not informed, save by the bill.

The answer admits that Ogden did afterwards procure the said sheriff of Cook county to execute and deliver to him the deed referred to, but denies that the same was done in violation of any written or verbal agreement or promise made by him, or that in doing so he abused the confidence of said Haven or any other person, or that he was actuated by any fraudulent purpose against said Haven or Tooley, or any other person, but acted in strict conformity with the understanding and settlement aforesaid, between Ogden and said Haven, as will fully appear by reference to the Exhibit A, attached to said answer, and the written correspondence between said defendant and said Haven in relation thereto.

54 The answer further admits that Ogden did afterwards, as before stated, convey back to said Haven 160 acres of said land so as aforesaid sold by said sheriff in said attachment suit, but denies that the same was done in consequence of the reproaches of said Haven, or that he was ever reproached therefor by said Haven, or that it was done to keep said Haven

quiet, or to keep him from reproving the conduct of said defendant, and avers that said conveyance was made to said Haven in conformity with a written agreement entered into by this defendant with said Haven at the time of said settlement, for the reasons hereinbefore stated.

The answer admits that the taxes for the year 1841 on said lands remained unpaid, that the same were sold for said taxes and costs, and purchased by Ogden, and that tax deeds were executed and delivered by
55 the sheriff of Cook county to him, and that he caused said deeds to be recorded at the times and in the manner alleged in the bill, and that said sale took place after Ogden had received said assignment of said mortgage from Tooley to Haven as aforesaid, and whilst he still held the same, and after said sale by said sheriff in said attachment proceeding, and while said Ogden still held said certificate of purchase, but denies all fraud, or improper concealment or motives in so doing, and avers that at the time Ogden obtained said certificate of purchase from said Henry Smith, and at the time of said settlement and arrangement with said Simon Z. Haven, he supposed the taxes assessed on said land for the year 1841, had been paid by said Haven, but discovered afterwards by the advertisement that they were unpaid, and purchased said lands at said tax sale, having been advised that said taxes were a subsisting lien on said lands, and that the same had accrued before said Ogden had obtained his title thereto, and that it was necessary to extinguish the same.

The answer avers that said mortgage from said Tooley to said Haven, was assigned by said Haven to Ogden for no other purpose than to quiet said defendant's title to said lands, purchased by said Smith, and afterwards conveyed to Ogden by said sheriff.

The answer admits that he then claimed to hold the said lands, (which have never yet been in the actual occupation or possession of any one,) as as his own, by virtue of said two tax deeds, as also by said sheriff's deed, and avers that he also claimed it by claim and color of title made in good faith, and the payment of all taxes and assessments for seven consecutive years prior to the filing of said bill.

56 The answer admits the offer of said complainants to pay to Ogden the full amount of the principal and interest of said mortgage, and that said complainants demanded of him a quit claim deed of said property, and that he refused so to do, at the time and in the manner alleged in the bill, for the reason that he could not recognize any legitimate claim which said complainants had or have to said lands, and also for the reason that Ogden conceived he had a good and valid title to said lands made in good faith, and never pretended to hold said mortgage as a debt against said lands, or for any other purpose than to quiet his title thereto.

57 The answer admits that the complainants were ready and willing, and offered to pay to said Ogden, the sum aforesaid named in said mortgage, together with all taxes that had been assessed on said land and paid by Ogden, with lawful interest on said taxes from the respective times of payment till the time last aforesaid, requiring Ogden to release and quit

claim to said complainants, at their cost, all his right, title and interest as aforesaid, and that Ogden did refuse to accept said offer.

58 EXHIBIT "A." referred to in answer of defendant Ogden.

A bond from Wm. B. Ogden to Simon Z. Haven, for the conveyance to said Haven, or whom he should direct, of an undivided 160 acres of land in the tract composed of the south half of Section 3, and all of Section 10, Town 39 north, of Range 13 east, in Cook county, Illinois, said tract together containing 960 acres, more or less, and said Haven's interest in the same to be an undivided $\frac{1}{6}$, or 160 acres.

Deed to be quit claim, with covenants against grantor, and to be executed and forwarded to said Haven at Utica, New York, by mail, or otherwise, within 40 days from this date.

Witness: (Signed) W. B. OGDEN. [L. S.]
D. B. Goodwin.

59 "I hereby agree that the 160 acres, sold Brown by Doct. Haven, shall be released from the sale under the attachment suit brought against said Haven. (Signed) W. B. OGDEN."
"Sept. 22nd, 1841."

"Utica, Oct. 31st, 1845.

"I hereby certify that all the stipulations of the within bond have been fulfilled according to the conditions of said bond, viz:

"The quit claim deed of an undivided 160 acres of land in the State of Illinois, Cook county, etc., has been given with warranty, etc., and within the time specified, etc. etc.

(Signed) SIMON Z. HAVEN."

Affidavit of William B. Ogden, to amend answer.

"WILLIAM B. OGDEN *et al.*, *ats.* CARLOS HAVEN *et al.* } Cook County Court of Common Pleas. In Chancery.

On this seventeenth day of October, A. D. 1857, William B. Ogden, one of the defendants in the above entitled case, being duly sworn, deposes and says: That at the time he was required to file an answer in said cause, he was very much occupied in many business affairs, which required his frequent absence from the city of Chicago, and State of Illinois; that the circumstances and transactions upon which said bill of complaint is founded, are circumstances and transactions which transpired many years since, in reference to which, at the time of filing his said answer, this affiant's recollection was very indistinct, and that this
60 affiant requested E. B. McCagg, Esq., a solicitor of this court, to examine and ascertain the facts as to which this affiant was required to answer, and to prepare for this affiant an answer, setting forth such facts

as he was required to state by said bill of complaint. That this affiant is informed, and believes, that said McCagg employed E. R. Hooper, Esq., also a solicitor of this court, to prepare said answer, and that the answer of this affiant was prepared by said Hooper. That this affiant, presuming that said McCagg had, from the records and otherwise, obtained full and accurate information in relation to the matters which this affiant was required to set forth in his said answer, this affiant, without any examination of said answer, and without reading the same in full, signed the same when handed to him for his signature. After reflecting over the matters to which said bill and answer refer, which, as this affiant has stated, transpired many years since, that is to say, from seventeen to twenty years prior to the date of this affidavit, and which nothing had, for many years, brought to this affiant's mind until the filing of said bill in this cause, and after a careful examination of said answer, filed by this affiant's solicitors in said cause, this affiant has discovered that there are certain erroneous statements in said answer, which may materially prejudice this affiant's cause, and endanger or prevent the administration of an impartial equity and justice in the premises.

61 This affiant has discovered that whilst the said answer, when it speaks of the purchase of the premises in question by Henry Smith, represents said Smith as the purchaser at the sale in said answer set forth, except in which said answer is somewhat obscure, and appears to be inconsistent with itself, as it is certainly at variance with the fact, in which it sets forth as follows:

"This defendant admits that he procured said Smith to bid off said land in his own name, at the sale thereof aforesaid," etc.

This affiant further states, that the said Smith has frequently and at various times, during the last twenty years, acted as this affiant's agent, frequently purchasing for this affiant with and without instructions, and frequently purchasing for himself, and on his own account, and subsequently selling to this affiant and to others, and that this affiant, at the time of filing said answer as hereinbefore set forth, presumed that his said solicitor had ascertained the facts in the premises, as they truly existed; but this affiant, upon careful investigation, since the filing of said answer, has ascertained from said Smith, and investigations by him made, that in the particular sale, said Smith was himself the *bona fide* purchaser of the premises in question, and purchased the same, not as this affiant's agent, or for this affiant, but on his own account, and for himself; and this affiant further says, that he holds the said premises set forth in said bill of complaint in trust: One-sixth interest, for the heirs of William E. Jones, deceased, one-sixth interest for Mahlon D. Ogden, one-third interest for Charles Butler, of New York, the remaining one-third interest belonging to this affiant; which said several interests of said several parties, are not, as he is informed, and believes true, set forth

82 That on the 31st day of March, 1840, another declaration was filed in
92 said cause; that on the 18th day of December, 1840, there was issued an alias writ of attachment, directed to the sheriff of Cook county, which was afterwards returned by said sheriff, with the following indorsement,
94 viz: "Executed by attaching Lots one, two and three, in Block 84, in the School Section Addition to the city of Chicago, this 18th day of December, A. D. 1840."

That judgment was rendered in said cause, on the 7th day of May, 1841, in favor of said plaintiff and against said defendant, for the sum of $5,109.45 and costs, with an order for special executions against the
97 property attached. That an execution was issued on the 28th day of June, 1841, directed to the sheriff of Cook county, which was afterwards returned by said sheriff, satisfied, for the sum of $1,117.68¼, by
99 sale of said lands attached in Cook county, on the 22nd day of July,
102 1841, with the appraisers' certificate attached. That an execution was issued on the 29th day of June, 1841, directed to the sheriff of Will
104 county, which was afterwards returned by said sheriff, satisfied, to the amount of $660.35, by sale of part of the lands attached in said county, with the appraisers' certificate attached.

A deed from Samuel J. Lowe, sheriff of Cook county, to William B.
108 Ogden, of 19-24 parts undivided from Section 10, and the south half of Section 3, Township 39 north, Range 12 east, dated February 17, 1843, acknowledged April 11, 1843, filed for record June 17, 1843, and recorded in Book 16, p. 206, in the Recorder's office of Cook county.

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111 The deposition of JEREMIAH TOOLEY, on behalf of complainants, taken on the 6th day of August, 1856.

112 *Answer to 1st Interrogatory.* Age 59; reside in Sangerfield, Oneida county, New York; farmer.

Ans. to 2nd Int. Never resided in Illinois.

Ans. to 3rd Int. I know plaintiffs, and Wm. B. Ogden. Became acquainted with Carlos Haven, in Sept. 1855, in Chicago, and had some slight acquaintance with him previously at his father's residence in Illinois. I became acquainted with Isaac M. Grover, four years ago this month, at Marshall, Oneida county, New York; he was at my house on business. I first knew William B. Ogden in 1837, at Chicago, having called upon him on business with reference to some purchases I had previously made.

113 *Ans. to 4th Int.* I know Section 10 of Township 38 north, of Range 12 east, and the south half of Section 3, of the same Township and Range.

I once owned an undivided half of said real estate, which is situated in Cook county, Illinois.

Ans. to 5th Int. I purchased an undivided half of said property, of Simon Z. Haven, then of Oneida county, New York, in 1836, in December, at $6 per acre. Said Haven gave me a common warranty deed, signed by himself and wife. The deed was acknowledged before one Husbands, who then resided at Waterville, Oneida county, New York, and who was a Supreme Court Commissioner.

The deed was delivered to me at Waterville at the time it was acknowledged, and it was executed at or about the same time, and at the time of the purchase in December aforesaid.

I do not know what has become of the deed. It has been missing some five or six years, or longer. When delivered, it was filed away with my other papers, and remained there, as I supposed, until when wanted upon some occasion within ten years, it was not to be found. At this
114 time I made a most thorough and diligent search for it among my own papers without success, and subsequently searched the office of Mr. Husbands and Mr. Carpenter, both of whom, as lawyers, had done some business for me, and was not able to find it among their papers. I have searched and examined every place where it was possible to have been found, and cannot find it. I never, to my recollection, have passed it from my possession, and have no doubt it was lost and destroyed, with some other valuable papers which I missed at or about the same time, by some of my small children in my absence from home.

Ans. to 6th Int. I gave, in July, 1837, to William B. Ogden, information of the purchase mentioned in the fourth and fifth foregoing answers. At this time, at his office in Chicago, I stated to said Ogden that I had purchased said undivided half of said property of said Haven, at the recommendation of said Haven, and that I wished to inquire of him the value of said property, and said Ogden gave me information of the value, and stated to me his opinion that the purchase was a safe one. I had other conversations with said Ogden at or about the same time about said property and the purchase thereof. I purchased said property without having seen the same, and went to Chicago, in the summer of 1837, to see about it. I was recommended to Mr. Ogden by an old acquaintance, Mr. Clarke, who then resided in Chicago. .

115 *Ans. to 1st Cross-Int.* I gave such information to said Ogden in the month of July, 1837, at his office in Chicago. The information was oral, and communicated in conversation with said Ogden. I had purchased the property without personal knowledge of the same, and was at Chicago with a view particularly to make inquiries concerning the same, as to value and situation. Haven, at this time, held my obligation for a part

of the purchase money. Mr. Clarke, before referred to, said Ogden professed also to be well acquainted with the property; and these were the reasons of my communicating said information to said Ogden. Such communication was not made by accident, and was not the result of any business arrangements other than those specified above, and in answer to the sixth direct Interrogatory. Such communication was not made pending any negotiations between myself and said Ogden other than those I have heretofore specified. I called upon him with a view to information, advice, and counsel relative to the value of said property.

118 The deposition of SAMUEL ALLEN, on behalf of defendants, taken on the 8th day of April, 1857.

Answer to 1st Interrogatory. I do not know either of the parties.

Ans. to 2nd Int. I reside in the town of Augusta, Oneida Co., N. Y.

119 *Ans. to 3rd Int.* I am acquainted with Jeremiah Tooley, and have known him about 30 years. He resides in Oneida county, and has so resided for about 30 years.

Ans. to 4th Int. I am acquainted with the general reputation for truth and veracity of said Jeremiah Tooley. It is bad; and from that reputation, I would not believe him on his oath.

120 The deposition of JEDEDIAH CHESBROUGH, on behalf of defendants, taken on the 8th day of April, 1857.

Answer to 1st Interrogatory. I do not know either of the parties.

Ans. to 2nd Int. I reside in Augusta, Oneida county, N. Y.

Ans. to 3rd Int. I am acquainted with Jeremiah Tooley, and have known him about 20 years. He resides in Oneida county, and has resided there about 30 years.

121 *Ans. to 4th Int.* I am acquainted with the general reputation for truth and veracity of said Tooley among his neighbors. It is bad; and from that reputation I would not believe him on his oath.

The deposition of ANDREW SARGENT, on behalf of defendants, taken on the 8th day of April, 1857.

Answer to 1st Interrogatory. I do not know either of the parties.

122 *Ans. to 2nd Int.* I reside in Augusta, Oneida county, N. Y.

Ans. to 3rd Int. I am acquainted with Jeremiah Tooley, and have been for about seventeen years. He resides in Oneida county, and has so resided for about seventeen years.

Ans. to 4th Int. I am acquainted with the general reputation for truth and veracity of said Tooley among his neighbors. It is bad; and from that reputation I would not believe him on his oath.

123 The deposition of JOHN HAZARD, on behalf of defendants, taken on the 8th day of April, 1857.

Answer to 1st Interrogatory. I do not know either of the parties.

Ans. to 2nd Int. I reside in Augusta, Oneida county, N. Y.

124 *Ans. to 3rd Int.* I am acquainted with Jeremiah Tooley, and have been for about eighteen years. He resides in Oneida county, and has so resided for about eighteen years.

Ans. to 4th Int. I am acquainted with the general reputation for truth and veracity of said Tooley among his neighbors. It is bad; and from that reputation I would not believe him under oath.

127 The deposition of CHARLES C. BACON, on the part of complainants, taken on the 13th day of July, 1857.

Answer to 1st Interrogatory. My name is Charles C. Bacon; age, 44; am a manufacturer.

Ans. to 2nd Int. I reside in Oneida county, New York.

Ans. to 3rd Int. I am acquainted with Jeremiah Tooley, and have been for the last thirty years or more. Since a year ago last April, I have lived within two miles of him; for fifteen years previously thereto, I lived within four miles of him, and the most of the remaining portion of the time I have lived not to exceed six miles from him.

128 *Ans. to 4th Int.* I do know his general reputation among his neighbors for truth and veracity. It is good; and from that reputation I would believe him on oath.

The deposition of ERASTUS A. WALTER, on the part of complainants, taken on the 13th of July, 1857.

Answer to 1st Interrogatory. My age is 62; my occupation a farmer.

Ans. to 2nd Int. I reside in Oneida county, New York.

129 *Ans. to 3rd Int.* I am acquainted with Jeremiah Tooley, and have been for twenty years or more. Since a year ago last April I have lived within two miles of him; for seven years previously thereto, I lived within six miles of him, and the most of the remaining portion of the time I have lived not to exceed eight miles from him.

Ans. to 4th Int. I know his general reputation among his neighbors for truth and veracity. It is good; and from that reputation I would believe him on his oath.

130 The deposition of JULIUS CANDEE, taken on part of complainants, on the 13th of July, 1857.

Answer to 1st Interrogatory. My age is 57. I am a merchant.

Ans. to 2nd Int. I reside in Oneida county, New York.

Ans. to 3rd Int. I am acquainted with Jeremiah Tooley, and have been for the last twenty years. For four years I lived within one and a half miles from him. The balance of the twenty years I have lived within five miles of him.

131 *Ans. to 4th Int.* I know his general reputation among his neighbors for truth and veracity. It is good; and from that reputation I would believe him on his oath.

The deposition of SETH BASS, on the part of complainants, taken on the 13th day of July, 1857.

Ans. to 1st Interrogatory. My age is 60 years; my occupation a farmer.

132 *Ans. to 2nd Int.* I reside in Oneida county, New York.

Ans. to 3rd Int. I am acquainted with Jeremiah Tooley and have been for more than thirty years. For ten or fifteen years of the time I have lived within one and a half miles of him; the balance of the time I have lived within three miles of him.

Ans. to 3rd Int. I know his general reputation among his neighbors for truth and veracity; it is good, and from that reputation I would believe him in oath.

134 The deposition of LUCIUS SPENCER, on part of complainants, taken on the 16th day of July, 1857.

Ans. to 1st Interrogatory. My age is fifty years; my occupation a farmer.

Ans. to 2nd Int. I reside in the town of Madison, county of Madison, State of New York, immediately adjoining Oneida county, and within half a mile of the line of Oneida county, New York.

Ans. to 3rd Int. I am acquainted with Jeremiah Tooley, and have known him for the last ten or fifteen years. I have lived within three miles of him during such acquaintance.

135 *Ans. to 4th Int.* I know his general reputation among his neighbors for truth and veracity. It is good; and from that reputation I would believe him on oath.

The deposition of HORACE TUCKER, on part of complainants, taken on the 16th day of July, 1857.

Ans. to 1st Interrogatory. My age is 48; my occupation a carpenter and joiner.

136 *Ans. to 2nd Int.* I reside in Oneida county, New York.

Ans. to 3rd Int. I am acquainted with Jeremiah Tooley, and have been for the last nine and a half years. For eight years I lived within one mile of him; the remainder of the time, within six miles.

Ans. to 4th Int. I know his general reputation among his neighbors, for truth and veracity. It is good; and from that reputation I would believe him on oath.

137 The deposition of ZERAH A. TODD, on part of complainants, taken on the 16th day of July, 1857.

Ans. to 1st Interrogatory. My age is 38; my occupation a manufacturer.

Ans. to 2nd Int. I reside in Oneida county, New York.

Ans. to 3rd Int. I am acquainted with Jeremiah Tooley, and have been for eight years. For seven years I have lived about half a mile from him, and for the last year and a quarter I have lived about five or six miles from him.

138 *Ans. to 4th Int.* I know his general reputation among his neighbors for truth and veracity. It is good; and from that reputation I would believe him on oath.

The deposition of AMOS ALLEN, on part of complainants, taken on the 16th day of July, 1857.

Answer to 1st Interrogatory. My age is 52 years; my occupation a farmer.

Ans. to 2nd Int. I reside in Oneida county, N. Y.

139 *Ans. to 3rd Int.* I am acquainted with Jeremiah Tooley, and have been for the last twenty-five years. Fifteen years I lived within two miles of him; the remainder of the time, within six miles.

Ans. to 4th Int. I know the general reputation of said Tooley among his neighbors, for truth and veracity. It is good; and from such reputation, I would believe him on his oath.

The deposition of ROBERT YOUNG, on part of complainants, taken on the 16th day of July, 1857.

140 *Answer to 1st Interrogatory.* My age is 61 years; my occupation a farmer.

Ans. to 2nd Int. I reside in Oneida county, N. Y.

Ans. to 3rd Int. I am acquainted with Jeremiah Tooley, and have been for the last fourteen years. For twelve years I lived within one and a half miles of him; for the last year and a half, within six miles.

Ans. to 4th Int. I know his general reputation among his neighbors for truth and veracity. It is good; and from that reputation I would believe him on oath.

141 The deposition of JAMES ALLEN, on part of complainants, taken on the 16th day of July, 1857.

Answer to 1st Interrogatory. My age is fifty years; my occupation a farmer.

Ans. to 2nd Int. I reside in Oneida county, N. Y.

142 *Ans. to 3rd Int.* I am acquainted with Jeremiah Tooley, and have been for the last fourteen years. For twelve and a half years I lived within one and a half miles of him, and for the remainder of the time within six miles.

Ans. to 4th Int. I know his general reputation among his neighbors for truth and veracity. It is good; and from that reputation I would believe him on oath.

143 The deposition of LEONARD HOLMES, on part of complainants, taken on the 16th day of July, 1857.

Answer to 1st Interrogatory. My age is fifty-six. I am a farmer.

Ans. to 2nd Int. I reside in Oneida county, N. Y.

Ans. to 3rd Int. I am acquainted with Jeremiah Tooley, and have been for the last sixteen years. I lived for fourteen years within one mile of him; for the remainder of the time, within six miles.

Ans. to 4th Int. I know his general reputation among his neighbors, for truth and veracity. It is good; and from that reputation I would believe him on oath.

144 The deposition of JOHN VON SWOLL, on part of complainants, taken on the 16th day of July, 1857.

Answer to 1st Interrogatory. My age is 55 years. I am a farmer.

Ans. to 2nd Int. I reside in Oneida county, N. Y.

Ans. to 3rd Int. I am acquainted with Jeremiah Tooley, and have been for the last twenty years. For eighteen years I lived within two miles of him; for the balance of the time I have lived not to exceed seven miles from him.

Ans. to 4th Int. I know his general reputation among his neighbors, for truth and veracity. It is good; and from that reputation I would believe him on oath.

145 The deposition of ELIPHAZ B. BARTON, on part of complainants, taken on the 16th day of July, 1857.

Answer to 1st Interrogatory. My age is 62. I am a farmer.

Ans. to 2nd Int. I reside in Oneida county, N. Y.

146 *Ans. to 3rd Int.* I am acquainted with Jeremiah Tooley, and have been for fifty years. For twenty years I lived not to exceed two and a half miles from him, for twenty-three years within four miles of him, and for the balance of the time within six miles.

Ans. to 4th Int. I know his general reputation among his neighbors for truth and veracity. It is good; and from that reputation I would believe him on oath.

147 The deposition of HORACE H. EASTMAN, on part of complainants, taken on the 21st day of July, 1857.

Answer to 1st Interrogatory. My age is fifty years. I am a farmer.

148 *Ans. to 2nd Int.* I reside in Oneida county, New York.

Ans. to 3rd Int. I am acquainted with Jeremiah Tooley, and have been for forty years. For twenty years I lived within one and a half miles of him; the balance of the time, within six miles.

Ans. to 4th Int. I know his general reputation among his neighbors for truth and veracity. It is good; and from that reputation I would believe him on oath.

149 The deposition of AMASA S. NEWBERRY, on part of complainants, taken on the 21st day of July, 1857.

Ans. to 1st Interrogatory. My age is fifty-four. I am a farmer.

Ans. to 2nd Int. I reside in Oneida county, New York.

150 *Ans. to 3rd Int.* I am acquainted with Jeremiah Tooley, and have been for twenty-seven years. For the past three years I lived within half a mile of him; for the balance of the time, within three miles of him.

Ans. to 4th Int. I know his general reputation for truth and veracity among his neighbors. It is good; and from that reputation I would believe him on oath.

151 The deposition of CHAUNCEY BUELL, on part of complainants, taken on the 21st day of July, 1857.

Ans. to 1st Interrogatory. My age is 61 years. I am a farmer.

Ans. to 2nd Int. I reside in Oneida county, New York.

Ans. to 3rd Int. I am acquainted with Jeremiah Tooley, and have been for the last thirty years; for ten years I lived within three miles of him, for four years within two miles, and for the balance of the time within four miles.

Ans. to 4th Int. I know his general reputation among his neighbors for truth and veracity. It is good; and from that reputation I would believe him on oath.

152 The deposition of DAVID L. BARTON, on part of complainants, taken on the 21st day of July, 1857.

Ans. to 1st Interrogatory. My age is fifty-nine years. I am a farmer.

Ans. to 2nd Int. I reside in Oneida county, New York.

Ans. to 3rd Int. I am acquainted with Jeremiah Tooley, and have been for the last fifty years. For twenty-five years I lived within one and a half miles of him, for fifteen years, within five miles, and the balance of the time within four miles of him.

153 *Ans. to 4th Int.* I know his general reputation for truth and veracity among his neighbors. It is good; and from that reputation I would believe him on oath.

The deposition of HORACE D. TOWER, on part of complainants, taken on the 21st day of July, 1857.

Answer to 1st Interrogatory. My age is sixty-three years. My occupation, a gentleman.

Ans. to 2nd Int. I reside in the county of Oneida, N. Y.

154 *Ans. to 3rd Int.* I am acquainted with Jeremiah Tooley, and have been for the last forty years. For fifteen years I lived within two and a half miles of him; the balance of the time, within five miles.

Ans. to 4th Int. I know his general reputation among his neighbors for truth and veracity. It is good; and from that reputation I would believe him on oath.

The deposition of NATHANIEL PUTNAM, on part of complainants, taken on the 21st day of July, 1857.

155 *Answer to 1st Interrogatory.* My age is seventy-one years. My occupation a farmer.

Ans. to 2nd Int. I reside in Oneida county, N. Y.

Ans. to 3rd Int. I am acquainted with Jeremiah Tooley, and have been for the last fifty years. For ten years I lived within one and a half miles of him; for the balance of the time I have lived within five miles of him.

Ans. to 4th Int. I know his general reputation among his neighbors for truth and veracity. It is good; and from that reputation I would believe him on oath.

156 The deposition of JOHN HAVEN, on part of complainants, taken on the 21st day of July, 1857.

Answer to 1st Interrogatory. My age is sixty-eight years. I am a farmer.

Ans. to 2nd Int. I reside in Oneida county, N. Y.

Ans. to 3rd Int. I am acquainted with Jeremiah Tooley, and have been for the last thirty years. For four years I lived within one and a half miles of him; the balance of the time, within five miles.

Ans. to 4th Int. I know his general reputation among his neighbors, for truth and veracity. It is good; and from that reputation I would believe him on oath.

157 The deposition of LORENZO ROUSE, on part of complainants, taken on the 21st day of July, 1857.

Answer to 1st Interrogatory. My age is fifty-three years. I am a farmer.

Ans. to 2nd Int. I reside in the county of Oneida, State of New York.

158 *Ans. to 3rd Int.* I am acquainted with Jeremiah Tooley, and have been for the last thirty years. For ten years I lived within three miles of him; for the balance of the time, within seven miles.

Ans. to 4th Int. I know his general reputation among his neighbors for truth and veracity. It is good; and from that reputation I would believe him on his oath.

161 The deposition of LESTER BARKER, on part of defendants, taken on the 27th day of March, 1857.

162 *Answer to 1st Interrogatory.* I do not know either of the parties.

Ans. to 2nd Int. I reside in Kirkland, Oneida county, New York.

Ans. to 3rd Int. I am acquainted with Jeremiah Tooley, and have been for the last thirty years. He resides at present in the county of Oneida, and has resided in that county for the last thirty years.

163 *Ans. to 4th Int.* I am acquainted with his general reputation among his neighbors. It is bad. I would not believe him on his oath.

165 The deposition of SIMON Z. HAVEN, on part of complainants, taken on eighth day of August, 1856.

166 *Answer to 1st Interrogatory.* My name is Simon Z. Haven. I am sixty-one years old and upwards. I reside in Buffalo, Erie county, New York. I am a practicing physician and surgeon.

Ans. to 2nd Int. I did reside in the State of Illinois. I moved into that State in 1835, and resided in Will county until the fall or winter of that year. I then moved to Chicago, and remained there with my family until the latter part of June, or fore part of July, 1836. I then moved my family to Oneida county, New York. I have been occasionally in Illinois since, but have not permanently resided there.

Ans. to 3rd Int. I am acquainted with the parties to the abovenamed suit. I have known Carlos Haven from his infancy. I have seen him occasionally for the last twenty years. I first became acquainted with Isaac M. Grover within a few days last past, and my acquaintance with him is but slight. I became acquainted with William B. Ogden after I moved to Chicago, as above stated. I have seen him occasionally since, but not within the last few years. I first saw Charles Butler in the city of New York, in the fall of 1836, and I think I have seen him but once since.

167 *Fourth Interrogatory.* Have you any acquaintance or knowledge of Section 10, Township 39 north, of Range 12 east of 3rd principal meridian, and the south half of Section 3, of the same Township and Range, Cook county, Illinois? If so, state what acquaintance or knowledge you have of the same, and how long you have had such acquaintance or knowledge.

Ans. to 4th Int. I am acquainted with the lands mentioned in the 4th direct interrogatory. I went round and over the whole of said premises, in the spring of 1836; that was my first knowledge of the premises, or any part thereof.

Ans. to 5th Int. I purchased the whole of said premises of the United States. I think I made the purchase in May, 1836. The price was $1.25 per acre, and I paid that price. The patents for said lands first came into my possession in 1842, or 1843, but I cannot give the precise date. I don't know where I found the patents; I found them somewhere in Cook county, Illinois. They were left for record at the Re-
168 corder's office, in Cook county, by myself, or by some friend at my

request. The last time I got possession of them, I obtained them at William B. Ogden's office, in Chicago, and have had them ever since. He obtained possession of them without my consent.

Ans. to 6th Int. I did sell an equal undivided one-half of the whole of said premises to Jeremiah Tooley, of the county of Oneida, and State of New York. I sold to him at the price of six dollars per acre. The aggregate amount of his purchase was $2,880. I made the sale in December, 1836. I gave him a warranty deed in the usual form, executed and acknowledged by myself and wife. I do not now recollect before whom it was acknowledged. I have no recollection about the delivery of said deed. I presume and have no doubt it was delivered soon after it was executed.

Ans. to 7th Int. I am the same Simon Z. Haven, who, in the spring of 1836, purchased of Charles Butler, through Wm. B. Ogden, his agent, two lots in Kinzie's Addition to Chicago, and against whom the suit mentioned in the 7th direct interrogatory, was brought, but I cannot state, and do not recollect the number of either of said lots.

169 *Ans. to 8th Int.* According to my best recollection, said Ogden said to me, that I must go on and do as well as I could, and make out the payments, and in the meantime, sell the lots if I could, in order to enable me to make the payments.

Ans. to 9th Int. I paid $1,600 down at the time of such purchase. I afterwards paid nine dollars on account of a tax on said premises; that is all.

Ans. to 10th Int. At the time the attachment suit was commenced, I owned an undivided 160 acres, part of said Section 10, and south half of Section 3, and that was all.

Ans. to 11th Int. I conveyed to Silas Meacham, of Illinois, an undivided 200 acres, part of said Section 10, and south half of Section 3. I
170 can't tell when I conveyed to him. It might have been two years more or less after I sold to Tooley. I also sold an undivided 120 acres to Ozias Holmes. I can't say when I gave him the deed therefor. I think, but am not positive, that it was before I sold to Meacham. It was before the commencement of the attachment suit.

Ans. to 12th Int. I don't know that said Ogden, prior to the commencement of the attachment suit, received any information that I had previously made said sale to Tooley.

Ans. to 13th Int. I did inform William B. Ogden of the sale to Tooley. I gave him that information at his request, by letter. I wrote

the letter and sent it to him by mail. In that letter I informed him of all the particulars and facts in relation to said sale. I think it was near the commencement of the year 1841 that I sent the letter.

171 *Ans. to* 14*th Int.* I settled said attachment suit and the demand for which it was instituted, in full. I made said settlement in Utica, New York, Sept. 22, 1841. The terms of said settlement were: that I was to, and did relinquish the sixteen hundred and nine dollars which I had paid, as above stated. I also assigned a mortgage against Jeremiah Tooley for, I think, $290, and some interest. This mortgage was upon the land I sold him, as above. I also conveyed to Ogden, as Butler's agent, sub lots 1 and 7 of lots 2, 3 and 4, in block 84, Chicago, (School Section); also, 26½ feet of west side of lot 1, block 24, of School Section, Chicago. That is the entire of what I paid, and it was to satisfy the attachment suit in full, as I understood it, and that is all I did in pursuance of said settlement. I took a discharge on the bond given by me, and upon which said attachment suit was brought, but I did not then know that said attachment suit had been prosecuted to execution. That settlement was made with said Ogden, acting as agent for Butler. I mean, also, to be understood, that by the terms of said settlement, I not only relinquished the sixteen hundred and nine dollars, but also my interest in the two lots in Kinzie's Addition. I took said discharge of said bond on the 22nd day of September, 1841. By the terms of said settlement, my interest in said Section 10, and south half of Section 3, were to be released from the effect of said attachment, and said discharge of said bond was indorsed on the bond itself. By my interest in said Section 10, and south half Section 3, I mean the undivided 160 acres, part thereof, which I still own, as stated above.

172 *Ans. to* 15*th Int.* Said Ogden ultimately, and sometime in the year 1845, sent me a quit claim deed of said 160 acres. The consideration of said deed was, that at the time of the settlement, it was agreed, and was a part of the terms of said settlement, that said 160 acres undivided, was to be released from the effect of said attachment, and a sufficient instrument for that purpose. Subsequent to that settlement, I provided said Ogden with funds, and appointed him my agent to pay taxes on said 160 acres. He suffered the same to be sold for taxes, and perfected title in himself, and I afterwards ascertained this fact, and required of him that he should give me a deed thereof. There were no other considerations for said quit claim deed, and the above were the only reasons for his giving it to me.

173 *Ans. to* 16*th Int.* Before the making of the settlement above referred to, Ogden informed me in conversation, that he had attached all the lands which he found by records of conveyances had been conveyed to me, in Will and Cook counties, and which he did not find by the records

had been conveyed to others by me. He asked who really owned them, and stated to me that the effect of said attachment was, that it operated as a lien upon all said lands, whether the same had in fact been conveyed by me to third persons or not, in all cases where my grantees had not procured my deeds to them to be recorded prior to the issuing of said attachment, and that the lien of said attachment was paramount and superior to the title of such of my grantees as had not procured their deeds to be recorded when said attachment issued. I cannot state precisely when he stated this to me, but it was in the course of the negotiations which resulted in said settlement.

Ans. to 17*th Int.* Said Ogden did, before said settlement, make propositions to me for a settlement of said attachment suit. He made different propositions to me, to which I refused to accede. They were generally made by letter. I do not now recollect of any verbal proposition for such settlement, made by him to me in person, except at the time of the settlement at Utica. He made propositions to my brother. The import of the propositions to me by letter will be seen from the letters themselves, which I now here produce, and which are marked
174 Exhibits A. and B. I say also that I never accepted any proposition mentioned in said letters, as the same is therein stated. I presume I wrote to Mr. Ogden that I would accept his proposition to relinquish to me the undivided 160 acres of Section 10, and south half of Section 3, but I never in any manner accepted his proposition, that he should use the attachment suit to perfect title to property I had conveyed, and which I understood to be the meaning of the letter of 11th December, 1840. I believe these letters contain all the propositions which he made to me by letter.

Ans. to 18*th Int.* At the time of the settlement between Ogden and myself, he gave me, in addition to the discharge of my liability upon the bond whereon said attachment suit was brought, a short instrument, which contained, I should say, not more than four or five lines, signed by him,
175 to the effect that he released to me from the effect of said attachment, my undivided 160 acres, part of said Section 10, and south half of Section 3. This release was the instrument which, as stated in my answer to the 15th interrogatory, he agreed to give me at that time. Subsequently, and in 1845, he gave me another agreement or obligation, that he would, within forty days thereafter, give me a deed of said 160 acres, which would effectually protect me against all his acts. This last agreement was subsequent to the sale of said lands for taxes. He sent me the deed within the forty days, and I gave him an acknowledgment that he had done so. I had, after he suffered the lands to be sold for taxes, applied to him for such a deed, (the title having been got into himself,) but he delayed sending it or giving it to me, until after I finally got his agreement to do so in forty days.

Ans. to 19th Int. Ogden did request me to assist him in getting up the mortgage given by said Tooley to said Hezekiah C. Smith, on the undivided half of Section 10, and south half of Section 3. He so requested
176 soon after the settlement was made at Utica. He repeated his request during several years, and we had several conversations on the subject. It was kept up until the last interview we had. At one of these interviews he authorized me to pay $200 to get up the mortgage. I understood his object was to get rid of that mortgage; so that the mortgage for $290, which I assigned to him, should not be subject to said Smith mortgage; so that he could collect the $290 mortgage.

Answer to 1st Cross-Interrogatory. I did not state, in answer to the 12th direct interrogatory, that said Ogden had received any information that I had previously sold and conveyed to said Tooley.

Ans. to 2nd Cross-Int. My answer to the 13th interrogatory states as fully as I can state, when, where, and how such information was communicated, and why. The connection said Ogden had with said lands, was through what he claimed to be the effect of the attachment suit. Said communication was not made accidentally, but at his request, by letter. It resulted from the fact that he had attached the lands, and did not know
177 who they belonged to. It was communicated to him after the commencement of the attachment suit, and pending that suit, and I think the first information I had of its commencement, and my reason for communicating it to him, was, that he asked me if I owned the lands he had attached.

Ans. to 3rd Cross-Int. The settlement may have been first proposed by my brother, but I cannot say positively. I cannot tell from whom any proposition for a settlement first emanated. Ogden did comply with the terms of the settlement, but at the time of the settlement, he agreed to act as my agent in taking care of said 160 acres, and received money from me, to pay taxes thereon, and in suffering said land to be sold for taxes, and getting the title in himself, he violated his agreement with me.

183 The deposition of JESSE THOMSON, on part of defendants, taken on the 27th day of March, 1857.

184 *Answer to 1st Interrogatory.* I do not know either of the parties.

Ans. to 2nd Int. I reside in Utica, Oneida county, New York.

Ans. to 3rd Int. I am acquainted with Jeremiah Tooley, and have been for fifteen years or over. He resides at present in Oneida county, and has so resided for the last fifteen or twenty years.

185 *Ans. to 3rd Int.* I am acquainted with his general reputation among his neighbors. It is bad; and from that reputation I would not believe him on oath.

The deposition of NELSON ROTH, on part of the defendants, taken on the 27th day of March, 1857.

186 *Answer to 1st Interrogatory.* I do not know either of the parties.

Ans. to 2nd Int. I reside in Utica, Oneida county, New York.

Ans. to 3rd Int. I am acquainted with Jeremiah Tooley, and have been for about fifteen years. He resides at present in Oneida county, and has resided there for the last fifteen years.

Ans. to 4th Int. I am acquainted with his general reputation among his neighbors. It is bad; and from such reputation I would not believe him on oath.

188 The deposition of JONATHAN BROWN, on part of the defendants, taken on the 28th day of March, 1857.

Answer to 1st Interrogatory. I do not know either of the parties.

Ans. to 2nd Int. I reside in Augusta, Oneida county, New York.

189 *Ans. to 3rd Int.* I am acquainted with Jeremiah Tooley, and have been for the last fifteen years. He resides at present in Oneida county, and has resided there for the last fifteen years.

Ans. to 4th Int. I am acquainted with his general reputation among his neighbors. It is bad; and from that reputation I would not believe him on oath.

191 The deposition of WILLIAM P. CLEVELAND, on part of defendants, taken on the 28th day of March, 1857.

192 *Answer to 1st Interrogatory.* I am not acquainted with any of the parties, except William B. Ogden, with whom I have been slightly acquainted since 1850.

193 *Ans. to 2nd Int.* I reside in Sangerfield, Oneida county, New York.

Ans. to 3rd Int. I am acquainted with Jeremiah Tooley, and have been for the last thirty years. He resides at present in Oneida county, and has resided there for the last thirty years.

Ans. to 4th Int. I am acquainted with his general reputation among his neighbors. It is bad; and from that reputation I would not believe him on oath.

195 The deposition of BRADFORD C. MONTGOMERY, on part of defendants, taken on the 28th day of March, 1857.

196 *Answer to 1st Interrogatory.* I do not know either of the parties.

Ans. to 2nd Int. I reside in Marshall, Oneida county, New York.

Ans. to 3rd Int. I am acquainted with Jeremiah Tooley, and have been for about twenty-five years. He resides at present in Oneida county, and has resided there for the last twenty-five years.

Ans. to 4th Int. I am acquainted with his general reputation among his neighbors. It is bad; and I would not believe him on his oath.

198 An order, made on the 11th day of January, 1855, overruling the motion of defendant Ogden, for leave to file a supplemental answer.

199 A chattel mortgage from George S. Butler to James F. Draper, upon property in the "Hamilton House," Chicago, to secure the payment of a promissory note for the sum of $2,125.00, dated November 21st, 1856, acknowledged on the same day, and recorded in Book 6 of Chattel Mortgages, page 16.

205 Articles of agreement between Charles Butler and Simon Z. Haven, set out at page 29 of the record, and at page 8 of the Abstract.

The following letters were also filed as Exhibits, and read in evidence in said cause:

Waterville, Nov. 26, 1838.

DEAR SIR:

Have this morning rec'd yours, dated Nov. 23rd, '38. I perceive that you have not seen a letter which I wrote to you a few days since. I directed to New York city, and I would refer you to that letter, in which I make a proposition to give up the $1,600 which I have paid on the Chicago lots, and exchange papers, from my total inability to pay the $4,000 which remains due, together with some interest. I was in New York in May last, and waited at your office (where I saw Mr. C. Butler, Esq. frequently) some days to see you, but did not, though you was expected home every hour. The contract with Tooley, as I believe I mentioned to you in my letter last fall, is given up. I refunded what he had paid. I know you said I should have a deed, but Mr. Bronson said differently. My power of attorney was from him; and besides all this, Mr. Tooley refused to consummate the bargain or give up the house and lot, which was included, without a suit in chancery, and I was not in a condition, on my part, to compel payment, allowing he was able to pay, which was very doubtful. I have sold none of the land in question; don't know as there is a prospect of selling any at present. You will please write.

Yours, SIMON Z. HAVEN.

WM. B. OGDEN, ESQ.

Chicago, 11 *Dec.*, 1840.

DR. S. Z. HAVEN,

Dear Sir:

Your brother, of Joliet, has been to see me respecting your debt to Mr. Butler, for which certain property was attached, proposing to settle the matters, &c., and I have looked into the matter with B. and Collins, to whom I said that I would propose to you as follows, to wit: That I would take from you an assignment of Tooley mortgage without recourse to you, a deed from you of the 26½ feet of the west side of lot 1, bl'k 24, and a deed of lots 1 and 7 in bl. 84, all in School Section, and what I could realize from the attachment beside, and release you altogether from your liability for the two lots, Mr. Butler taking the lots back, which are at present of but little value, nor are your three lots in S. Section all worth $400.

I make this proposition on condition that Tooley's mortgage to Smith is no lien, or is paid, or on the conditions stated in your letter, that Tooley owes Smith but $150, and that the mortgage is fraudulent, and that Smith will so state on oath when necessary, and in writing now; you remark in your letters that he so stated the fact to be to you.

The result of the attachment suit will be, of course, to convert this property to the payment of your debt due Mr. Butler, and still leave a large balance due from you, but if you please to convey at once that to which you have title, I will agree to have recourse to you no further than to perfect the title in the property attached more certainly, by conducting the suit to the end—but without any further personal responsibility on your part. I repeat, that if this was the only transaction between us, I might be disposed more favorably; but I have bled so freely in other bargains with you, and paid all money to boot, that you can't complain of my asking a good portion of what is due to me on this. And then in your settlement with Tooley, the money you had received of him on account of the sale of Kankakee lands, for mine and others' benefit, you applied to your own account. Surely, under all the circumstances, you can't but think my proposition to release you for what I have already secured to me, and Tooley's bond and mortgage to boot only, is very liberal and favorable to you. By the by, if you should accept my proposition, is Tooley's personal responsibility anything?

I should be glad to receive your reply about New Year, as I may go East after, and if any arrangement is to be made, might take Utica in my way instead of a more Southern route.

Very truly yours,

W. B. OGDEN.

Utica, *Dec.* 18, 1840.

WM. B. OGDEN, ESQ.,

Dear Sir:

I have received no communication from you since Jan. 15, 1840. Have written to you twice since that time—wrote last, I believe, in October last. My brother, from Joliet, informs me that he has had some conversation with you lately at Chicago; that you informed him that you wrote a letter in July last for Collins to copy to me, (which I have not received,) in which you say, as near as he can

recollect, "Say to Doct. Haven, that if he will relinquish his title to what property we have attached, and give the Tooley mortgage, we will say even, withdraw, and give up the papers." Now if you made this offer, I will accept it, if the property attached is the following, a copy of which was sent me as taken from the clerk's office, with the agreement that Bela Brown have a deed of an undivided 160 acres from sec. 10 and 3, which he has nearly paid for, but a deed has not been delivered. This I mentioned before in my offers; justice requires that he should have this deed, and as there was something due, the deed was not given—a demand against him was good for nothing.

Copy, property attached in Cook county:

Charles Butler, *vs.* Simon Z. Haven. } 26½ feet on the west ⅓ of the west side of lot 1, block 24, school sec. addition to Chicago; also, 19-24 part undivided from sec. 10, S. ½ sec. 3, township (39) N., range 12 E. of the third principal meridian. In Will county, the N. E. qu. sec. 18, T. 34 N., R. 11 E. Fractional half of sec. 15 in T. 33 N., R. 10 E., and S. W. qu. sec. 15, in T. 33 N., R. 10 E. of the 3rd P. M.

If I understand this offer, it will differ from the one I made to C. Butler, and subsequently to you, in my letter, in this: it includes the 26½ feet of lot 1, bl. 24, of which I have a deed, free from incumbrance, on record. I have no interest whatever in the land in Will county which the attachment covers, by deed, mortgage, or otherwise. I have not a foot of landed property, nor a mortgage of one dollar, which has the remotest connection with any trade we ever made, or that was ever purchased with any money, or avails of money, received from you or Mr. C. B. The qur. sec. in 18 Will county, T. 34, I sold soon after I entered it; I received only part payment in cabinet work, and the remaining claim was long since relinquished. The other land which is mentioned, in sec. 15, Will county, was purchased for another man, with his money entirely, and I never owned it or any interest in it; he gave me something for the trouble, that is all. You will, I trust, answer this without delay, and state whether we understand each other.

Yours,

SIMON Z. HAVEN.

P. S. You will recollect that I received but a small part of the money you paid me for land; it principally went to Jones, H. B. Clarke, and Doct. Maxwell; it was mostly theirs. I made only one dollar per acre on that. I think you are mistaken in saying to my brother, that this was all one trade; the two trades were perfectly distinct. I took the two lots and paid you half a section of land towards them, and the other contract was perfectly distinct, and a cash trade afterwards.

S. Z. H.

Chicago, Dec. 31, 1840.

DR. S. Z. HAVEN,

Dear Sir:

Your favor of the 18th inst., written before the receipt of mine to you of the 11th inst., came to hand this morning.

I refer you to my letter of the 11 for particulars as to my proposition to settle with you. Your brother is mistaken in understanding me to say that our bargains were all at one time. I stated to him precisely what I wrote to you. He is also mistaken in the list of property attached.

The property attached appears on the writ as follows:

WILL COUNTY.

E fractional ½ of 15, 33 N. 10 E.
S. W. ¼ of 15, 33 N. 10 E.
N. E. ¼ of 18, 34 N. 11 E.

COOK COUNTY.

19-24 of Sec. 10 and of S. ½ of S. 3, T. 39 N., R. 12 E. Sub-Lots 1 and 7 of Lots 2, 3, and 4, in B. 84, School Sec. Chicago.

26½ ft. of W. Side of L. 1, B. 24, " "

The above comprises the property attached, and in addition to the inquiries and information asked for in my letter of the 11th, I want to know how it is that the title of each of the foregoing tracts and lots appears in you and unencumbered if it be otherwise. Were not the lots in Will Co. entered in your name, or a title made to you to them in some way?

Do you not know the sub-lots 1 and 7, of 23 and 4, in 84, in S. S.?

Please give me the particulars in relation to each tract in your reply.

Should you desire to close with my offer, you may convey to me all your interest in 19-24 of S. 10, and of the S. ½ of 3, reserving therefrom 160 acres undivided, &c.

Please reply particularly to my enquiries as to Tooley's responsibility, and as to the origin and present situation of his mortgage to Smith.

I am very truly yours,

W. B. OGDEN.

Utica, Jan. 18, 1840.
(Should be "Jan. 18, 1841.")

WM. B. OGDEN, ESQ,

Dear Sir:

I have waited one week since I rec'd yours of the 31st Dec. in hope that I should have an answer to my second letter, but as I do not yet obtain one, I will answer this so far as it requires an answer. I believe my letter contains a full answer to all your inquiries except what relates to the Tooley mortgage. I have stated to you the leading facts, in relation to that, in some of my previous letters. I have had no conversation with Smith or Tooley for more than a year—do not know whether Smith has rec'd from Tooley the $150.00 which he owed him or not; but I will take the first opportunity to learn respecting that or any other facts connected with that subject, though I have no expectation of learning anything that will alter the complexion of that affair in the least. A person has lately told me, that knows something of Tooley's affairs, that he supposes him to be worth more than $10,000. He owns now, I suppose, and has always owned a large real estate—is a farmer, and lives on a large and valuable farm; so I am told. Before my settlement with Tooley I had a mortgage on this land in question, (3—10) as security; he goes to Smith and persuades him to take this $2000 mortgage, enjoining secrecy on him and the attorney, and then

comes to me and effects the settlement, giving me the mortgage, $290.00 without a bond, which he afterwards boasted was good for nothing—confessing the trick which he had played, and refusing even to pay one cent on the mortgage. Esq. Carpenter, of Sangerfield, is perfectly acquainted with the whole transaction; we talked it all over before him after the disclosure of the $2000. I asked him, I think in Tooley's presence, if it was not swindling. He said he thought it smelt hard of it. Smith had lent Tooley $200, $50 of which had been paid—for this Smith held Tooley's note. Tooley goes to Smith one evening, after getting the writings all prepared, and says, "Smith, don't you want a mortgage on my Western lands? Smith says, "Why, what for?" "You know," says Tooley, "that I owe you." "Yes," says Smith, "but I have your note." "Well," says Tooley, "it will do you no hurt to take the mortgage, and it may do me some good;" so Smith took the mortgage, without paying one farthing in consideration, or giving up the note. After this, in conversation at Tooley's house between Tooley and Smith, Tooley tore up this note of Smith's without Smith's consent. He complained of this, and Tooley says, "You need not be alarmed, Smith; you have this $2000 mortgage." If I understand, I have complied with your offer in every respect, (giving no guaranty in relation to Tooley) in my last communication, with the exception of the Sub-Lots 1 and 7, Bl. 84, and what I have said in relation to these is simply this: you may have these, if you cancel the remaining dues on the lots. This is relinquishing my interest in said lots, considering the note in the light of a lien on the lots; this, I think, you will say is right. If this meets your views, and I hope it will, you will so inform me, and I will, without delay, make over interest in the property before mentioned.

Yours truly,

SIMON Z. HAVEN.

Utica, Mar. 11, 1840.
(Should be "Mar. 11, 1841.")

WM. B. OGDEN, ESQ.

Dear Sir:

I have not heard from you since 31 Dec. last, though I have written you since. I say distinctly in this communication, that I comply with your offer for a settlement in your letters of Dec. last, if you have not accepted with my offer conveyed to you in my last; and further, if you have not, I will leave it to your liberality, as to lots 1 and 7, in 84. If you can do anything as to the balance due Goodhue & Goodrich, for me, on these lots, I hope you will. You are at liberty to take possession of the property in question, and as soon as I can hear from you, I will make out the necessary titles to the land, and you can give up the papers in your hands.

Yours,

SIMON Z. HAVEN.

Smith says, his mortgage and his affairs with Tooley, are exactly as they were when he first took the mortgage.

Chicago, 20 *Apl.*, 1841.

S. Z. HAVEN, ESQ.

Dr Sir:

I am in receipt of your favor of 11th March, and am glad that you accede to my proposal of the 11th Dec. last, for settlement of our affairs.

I shall go East in July, and will take Utica in my way, expecting to find you at home; will bring all the papers with me, and we will close the business, as acceded to.

Very truly Yours,

W. B. OGDEN.

P. S. Shall I find you at Utica, through the month of July, and when? W. B. O.

New York, *Oct.* 27, 1841.

DOCT. S. Z. HAVEN.

Dr Sir:

I neglected, in consequence of my illness, when we arranged our matters in Utica, to make the necessary memorandums, and forget all the particulars of the settlement. Will you please make me a brief statement of them, and direct to me at 20 Nassau street, N. Y., and if private opportunity offers, please send me the papers that you was to execute for me. I shall return by Utica, and go and see Tooley, as I proposed to you, and shall probably want you to go with me.

Very truly Yours,

W. B. OGDEN.

P. S. Have you written the parties interested, about paying me costs and recovering back their titles to the property you sold them, but of which sales no record appeared when I attached? I want their attention to that matter as soon as may be.

W. B. O.

Utica, *Oct.* 30, 1841.

WM. B. OGDEN,

Dear Sir:

In answer to yours of the 27th inst., I will reply: you take Tooley's mortgage which I have assigned to you, the sub-lots 1 & 7 in bl. 84, School Sec. to Chicago, and 26½ feet of lot 1, blk. 24, and I relinquish the two lots which I purchased of you, and you give up the contract which you have against me, which you said was in N. York. You relinquish to me, for Bela Brown, of N. York,

160 acres of the 960 undivided acres on the O'Plain river, (Sec. 10 and S. ½ of Sec. 3, T. 39 N., R. 12 E.,) owned as follows:

Tooley,	480	(Tooley would be subject to your attachment if his deed was not recorded.)
Dr. Meacham,	200	
S. Z. Haven,	160	for B. Brown.
Ozias Holmes,	120	
	960	

This accounts for all the property attached in Cook Co. I had no interest in any property which you attached in Will Co. The E. fractional ½ of 15, 33 N., 10 E., and the S. W. ¼ of 15, 33 N., 10 E., I entered for my brother-in-law, and deeded to him long since. The N. E. ¼ of 18, 34, 11 E., I deeded 4 years since to Alvinza Andrews, of Waterville, Oneida Co.—this is all. I wrote to the persons concerned immediately after you left me—they can only wait for you to say how much each one has to pay to be released. You will please to execute to me the proper release from the attachment, &c. I think I can send your papers by private conveyance.

Yours truly,

S. Z. HAVEN.

Chicago, 8 *Dec.*, 1843.

DOCT. HAVEN,

Dr Sir:

On the other side is a statement of the costs made and paid out in carrying to conclusion the attachment suit of C. Butler *vs.* S. Z. Haven.

Mr. Holmes came to me and desired to purchase back his tract, and I conveyed it to him, he paying me $57 37-100, as is stated on the other side. No other person has applied to purchase back any of the property attached.

If I receive within 60 days the $116 43-100 disbursed by me, together with the costs of conveyance, say $1.50 for each deed and acknowledgment, I will convey the property to whom you have conveyed it, that is, the lands in Will, and the 160 to B. Brown. But I will not convey it on speculation or to any other than the sufferers by purchase from you.

And if the thing is not attended to within 60 days, I do'nt propose to continue the above propositions.

As to the lands on the O'Plane, I think a division had best be made before conveying it to Brown.

How stands matters with Tooley? Is Smith's $100 or $150 mortgage paid? or have I got to proceed in chancery to show and prove the fraud attending the giving of that mortgage?

I had an impression that I did not propose to reconvey the Will county lands for a sum equal to my costs in obtaining them, but the Bela Brown tract (160 acres,) only.

Was not such the fact?

Yours, very truly,

W. B. OGDEN.

P. S. The $3 bill you gave me at Utica was on a broken bank, and I have never got anything for it. W. B. O.

Statement of expenses incurred in perfecting title to lands of S. Z. Haven, attached by Ch. Butler, to wit:

Paid Will Co. Sheriff's charges,	$30.32½	
" Expenses of search of records in Will Co.,	7.50	
" Cook Co. Sheriff's charges,	47.31	
" Costs of Court,	13.56	
" Attorney's fees,	35.00	
		133.69½
Rec'd of O. Holmes,		57.37
Bal. of costs,		$76.32½
Int. on same 3 yrs., 7½		13.92
		$90.24½
Add. exp. of Sheriff, deeds and rec. 3 deeds *a* 1.75 each, and recording, *a* 1.50 each,		9.75
Paid taxes 1841, Cook Co.,	$5.25	
" " 1842, " "	3.50	
" " 1843, " "	4.00	
" " 1842, Will Co.,	3.60	
" " 1843, " "	12.29	
	$28.64	
Rec'd of Dr. Haven,	12.20	
		16.44
		$116.43

Balance of expenses incurred to perfect title to the above lands, $116.43. Dr. Haven's credit of $12.20 is made at $50.00 in Co. orders, had of him, over amount used in paying Cook Co. taxes of 1843. The proportion of expenses can easily be proportioned to each tract from above account.

Utica, Dec. 21, 1843.

WM. B. OGDEN, ESQ.

Dear Sir:

I was very much surprised at the contents of your letter, which I have just received, bearing date Dec. 8, 1843, (notwithstanding my journey to Chicago, and the great pains I have taken to see you). When you was here in Sept. 1841, I made a full settlement with you as far as I was concerned, and on my part I assigned a certain mortgage to you and deeded to you 3 lots in Chicago, giving up two lots as you know which had been in part paid for, and on your part you endorsed satisfied, (or your words were, "abandoned and at an end,") the demand on which you commenced the attachment suit, and you further gave me a writing in which you agree to release to me the 160 acres for Mr. Brown, and for which he had paid in part. Now I made this contract in good faith, and delivered to you the deed, and paid for the acknowledging of the same, and supposed that you would send me my deed as soon as you reached Chicago, which I am confident you agreed

to; this, I then supposed, and now suppose, was the contract; at the time, you observed that you should require of those persons whose lands you had attached, under my name, and in which I had no interest (as I had always told you from the commencement of your suit) that they should each pay his proportion of the costs, which you said were some 40 or 50 dollars. This demand I observed to you, I believed to be wrong and unjust, whether unlawful in Illinois or not I cannot say, and so I now think, though I say it respectfully. The land on which you claim costs in Will county, I suppose, are 6 lots, belonging to my wife's brother, in Sec. 15, T. 33—which I never invested one cent in, though I entered them for him in my name, and assigned the certificates to him, and afterwards gave him a deed, which I suppose was given and not recorded before the suit commenced, though I do not know when this was, exactly; and 2 lots in Sec. 18, T. 34, which were deeded to Alvinza Andrews of Waterville, Oneida county, N. Y., and paid for a year or more before the said suit was commenced. Mr. Andrews had a conversation with me on this subject last fall, when Martin Demmond of Joliet was in this county, and I understood him that he had appointed him or some other person to attend to this affair; he is anxious to have it arranged. I have written to Jairus Moffit of Perry, Wyoming county, N. Y., my brother-in-law, who lives 150 miles from me, and whom I have not seen since I settled with you in Sept. 1841. What he will say or do, I cannot say; I have observed to him that it would be impossible for me to pay the amount of cost which you require, and if I could, I did not think it belonged to me so to do. My agent, G. W. Woodruff, Esq., of Joliet, writes me that you "will give title to my 160 acres on the payment of my proportion." Now, is this so? If it is, I have totally mistaken your meaning heretofore? Was I to pay anything to entitle me to a deed of the undivided 160 acres of the Sec. and one-half (10 and ½ of 3) free from any encumbrance? The writing which I have mentioned and which I supposed entitled me to a deed in the following words, "I hereby agree that the 160 acres sold Brown by Doctor Haven shall be released from the sale under the attachment suit brought against said Haven." Signed by your name, Sept. 22, '41.

This land had not been deeded to Mr. Brown. I had given him a bond for a deed and he had paid me only in part, and by releasing from the sale I understood that it was to be released to me, so as to enable me to consummate my agreement with Mr. Brown. If costs were to be paid on this, why was it released in preference to the other parcels. I hope when you reflect upon the subject you will not refuse to give me this deed, in my own name, as it can make no difference with you, if nothing was to be paid you on giving it, and this certainly was my understanding of the contract. You perhaps recollect that when we made this settlement you was sick, and was to start East, a few minutes in the morning, and that what was written, on that account, was extremely brief; that the deeds were made out afterwards. The money which I left for you was left for taxes on said 160 acres, and not to pay costs, as appears to be applied from the credit on your bill of costs, and I wish to have it retained for that purpose. If you did not so understand me, please inform me. You asked whether you agreed to release the land in Will county by the costs being paid. I answer, yes. I have learnt nothing in relation to Smith or his demand against Tooley. The writing on our agreement is in the words following: "In consideration of an assignment of a mortgage J. Tooley of a deed of 3 lots in School Sec-

tion, Chicago, made to me this day, it is agreed that this agreement above written, between Charles Butler and Simon Z. Haven, is abandoned and at an end. Sept. 22, 1841." Signed by W. B. Ogden, for C. Butler. Now I was holding a certificate from government for said 160 acres, and if I had not supposed that the above endorsement and the release of the land from the suit as given above, would have brought it into my hands to all intent and purposes, I should not have given up additional property which I did at the settlement. I wish not to weary you, and I wish to be understood as writing in the kindest *spirit*. I am now poor and have no means for defending equity suits. You have the lots back, you have the (1600, 320 acres in Will Co.,) you have 3 lots which cost me $1000 each, and the assigned mortgage, and are you not willing to give me or allow me to retain it, the last foot of land on which I have any claim in Cook Co., if Brown did not take it from me? You must not be harder with me as agent than you would be if you were principal. Mr. C. Butler promised me in Utica that he would not take from me everything that I had on that $500 debt. If he knows what I have paid, I am confident he does not wish it. Should you do it, you wound me deeply. If you think proper, you will make me out a deed and leave it to be recorded, and apply the money I left your clerk towards future taxes. If otherwise, you will have the goodness to inform me immediately what is your determination. If the land is mine or comes into my hands, I will take for my share the ⅓ of 3 next the river, which fell to me on division with Mallory—should you consent. Yours truly,

SIMON Z. HAVEN.

My brother Moffit has a brother, and a small property which he accumulated by laboring by the month almost wholly. Please inform me of the date of the attachment suit.

S. Z. H.

Utica, Aug. 12, 1845.

WM. B. OGDEN, ESQ.

Dear Sir:

I am glad to learn by Mr. Denman that you are probably in the city of New York. Now, will you inform me when you shall return, and whether you shall return through this city; and if so, will you call and see me; please tell me, so that I may be in the city when you come; it may save me a journey to Chicago.

I sincerely hope, after all the delay which we have had, and I hope I may say after all the mutual good feelings which have been exchanged, you will not refuse to comply with a written stipulation, which you made on our last settlement, as I cheerfully complied with every iota on my part, and had no doubt you would on yours. If no individual has redeemed any of the land held by the attachment, I do not see how that should affect the agreement, to give me a release on said 160 acres. Your exact words are these: "I hereby agree that the 160 acres sold Brown by Dr. Haven, shall be released from the sale, under the attachment suit brought against said Haven;" signed by you, Sept. 22, 1841. Will you give me this deed? Will you call at Utica and see me? Shall I make a journey to New York? I believe I have always paid the tax on said 160 acres, and have money with G. W. Merrill, Chicago, for that purpose.

Yours truly,

SIMON Z. HAVEN.

P. S. Mr. Brown owes me note on this land some $500.00. I have his notes for $394.90 and int.

New York, Dec. 27, '45.

DR. HAVEN,

Dr Sir:

I wrote home to have accurate surveys and plan of divisions of our land made, to be submitted to you, but doubt if it arrives before I leave for Chicago, some three weeks hence.

You did not say in any of your letters whether you had seen Tooley, as you proposed when we met at Utica.

I have a tax title to the land mortgaged by him, and shall hold it, of course, but had rather his mortgage to Smith were cancelled, and the one I hold given up, and his deed given me for the property, if he pleases to do so; if not, I think I shall file a bill in chancery, to get Smith's mortgage set aside as fraud. Shall you see Tooley or Smith, or had you best write them? Please let me hear from you about it before I return.

Yours very truly,

W. B. OGDEN.

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225 Bond for deed of 160 acres of land, from William B. Ogden to Simon Z. Haven. Set out in the Record at page 58, and in the abstract, at page 15.

226½ A deed from Samuel J. Lowe, sheriff of Cook county, to William B. Ogden, dated February 17, 1843. Set out in the Record at page 23, and in the abstract at page 7.

A deed from Samuel J. Lowe, sheriff of Cook county, to William B. Ogden, dated January 15, 1845. Set out in the Record at page 25, and in the abstract at page 7.

A deed from Samuel J. Lowe, sheriff of Cook county, to William B. Ogden, dated January 15, 1845. Set out in the Record at page 27, and in the abstract at page 8.

227 A decree, made on the 3rd day of April, 1858, which is as follows:

That the complainants be permitted to redeem the premises in controversy, from the mortgage of Jeremiah Tooley to Simon Z. Haven, and assigned by him to said Ogden, and that it be referred to L. C. P. Freer, master in chancery of Cook county, to take an account of what is due to defendants on said mortgage for principal and interest, and for taxes paid on said premises since the assignment of the said mortgage, by

228 Simon Z. Haven to William B. Ogden, and interest on the same from the times of payment thereof till the time such an account shall be taken by said master in chancery; and what shall be certified by said master to be due to said defendants, for principal and interest and taxes and interest, it is ordered that the complainants pay to the defendant Ogden within six months after the said master shall have made his report, and

the same shall have been confirmed; and that upon such payment, the defendants do convey and surrender the said mortgaged premises unto the complainants, or unto such other person as they shall direct, free and clear of all incumbrances done by them, or any person or persons claiming by, through or under them. But, in default of such payment, ordered, that complainants stand dismissed from court with costs.

229 An order, made on the 30th day of November, 1858, that the name of L. C. P. Freer be inserted in the above decree, and that he carry the same into effect.

230 The report of L. C. P. Freer, master in chancery, dated June 1, 1859, was filed, June 15, 1859.

233 By which it appears that the amount due from complainants to defendants, upon said mortgage, principal and interest, for taxes paid and interest thereon, is - - - - - $1,3

which sum is made up as follows:

Principal sum of mortgage debt, - - -	$2
Interest thereon for 20 years and 4 months, at 7 per cent.,	41
Taxes paid on the land in question, from 1842 to 1857 inclusive, with interest on same to Feb. 1, 1859,	61
Interest on last item, from Feb. 1 to June 1, 1859, -	1
	$1,32

And that the master was of opinion that an order should be entered, directing the payment, by the complainants to the defendants, of the above sum of $1,328.55, with interest from June 1, 1859, until paid in full, for the redemption of said mortgaged premises, as against the mortgage debt and interest thereon and all taxes and disbursements on account of said premises, and interest thereon up to said 1st day of June, 1859.

238 The final decree, confirming in all things the report of the master, was made on the 23rd day of July, 1859.

From which decree the defendants prayed an appeal, which was granted upon filing bond in the sum of $1,000 within 30 days, with Mahlon D. Ogden as surety.

The appeal bond was filed August 19, 1859.

265

William B. O[illegible]
&
Charles Butler
vs
Haven et al

Abstract

Filed May 4. 1860
S. Leland
Clerk

Carlos Haven and
Isaac M Groves
215 vs
William B Ogden &
Charles Butler

In the Supreme Court
Ottawa Illinois

Apeal from Cook

Argument for appellees

This was a bill in Chancery brought in the Cook County Court of Common Pleas by Haven & Groves as grantees of Jeremiah Gooley vs Ogden & Butler to redeem a mortgage made by Jeremiah [illegible] then having title to one Simon L Haven on the 1st day of February AD 1838 on the undivided half of Sec 10 & S/2 of Sec 3 T 39 N, range 12 E in the County of Cook, to secure to said Simon L Haven $290 with interest at 7 per cent payable in three years, interest payable annually which mortgage was recorded in the Recorders office of Cook County Sept 6th 1838. and was on the 22 day of Sept 1840. assigned by the said Simon L Haven to the defendant Ogden who has ever since held the same — Before the Commencement of the suit a proper tender of the amount necessary to redeem was made to Ogden — This title about which there is no dispute was proved by the

complainants on the trial or admitted by the defendants & was of itself sufficient to entitle the defendants to a decree of redemption unless a valid defence was interposed by the defendants — The complainants to anticipate the defence, alleged in their bill that although Ogden pretended to hold said lands by the proceedings in a certain attachment suit, wherein Charles Butler was plaintiff and ~~[illegible]~~ Simeon L Haven defendant and also by tax titles, that he acquired such pretended titles under such circumstances and in such a manner that they can be no defence, and were ~~are~~ in fact a fraud on the rights of Gooly — Both the defendants answered setting up these pretended titles, as is shown to the suits

That part of the defence which rested on the tax titles, ~~by the defendants in the Court below~~ in the court below was abandoned, and as a consequence no proof of the payment of ~~the payment of taxes~~ was taken or read in evidence ~~by them~~ — and is therefore disposed of and not before this Court —

The court below considered the title by the attachment suit acquired by said Ogden — as constituting under the circumstances shown in the proof, no defence to the relief sought by the complainants

and ordered a decree permitting them to redeem the premises. From which decree the defendants appealed to this Court —

The objections which the appellants urge for the reversal of said decree (it is believed, by the Counsel for the appellees) have not been stated either in their printed brief or on the oral argument before the Court in such a manner as to be fully understood by the Court unless it possessed a most intimate and accurate knowledge of the state of the case presented by the record —

But To prevent any misunderstanding as to the nature of the objections urged and to meet them fairly we will state two propositions which it is supposed cover all the objections made — and render them intelligible — 1st Ogdens title acquired by the attachment suit must be regarded as a complete defence to the present suit unless some fact on the evidence which by the law would render such title invalid against the complainants —

2d — no such fact on the evidence —

The first of these propositions the appellees admit — The second they deny — and found such denial on what is contained in the record and to be shown to the Court therefrom

The appellees contend *first* that it is shown by the evidence in the record that Ogden, and through him Butler had *before* the commencement of the attachment, *notice* that Sooby had purchased from Simon D Haven the patentee and defendant in the attachment the lands in Controversy —

Sooby swears that in the *Summer of 1837*. having purchased the lands in the winter previous of Haven on his representation *alone* at Oneida County N.Y. he came to Illinois to look after them, and was recommended by an old acquaintance of his, a Mr Clark to call on Mr Ogden in relation thereto. as a proper man to give him the desired information, and that he Sooby did thereupon call on Mr Ogden inform him of his purchase from Haven &c. and that Ogden then informed him in substance that the purchase was a safe one &c

(See ans of Sooby to 6th Int abstract page 19 —)

It is not pretended that he is *impeached* all that could be done in that direction was to get *four vagabonds*. (not appearing to be his neighbors)

who would swear that from Gooly's general reputation for truth and veracity they would not believe on oath, and six men who would swear "that from his general reputation", above they would not believe him on oath — while the complainants have twenty one witnesses, the immediate neighbors of Gooly who have known him for many years and many Merchants, Manufacturers, Mechanics and farmers & as respectable men as in Oneida County. (and could have easily have increased the number to Hundreds were it not for the expense) to swear that Gooly's reputation for truth and veracity was good — (which is the fact beyond all controversy) —

In his testimony he is explicit and his evidence is not to be frittered away by the supposition of forgetfulness — He was at the time of his interview with Ogden, a farmer resident as now in Oneida County — and to him a trip to the then almost far west was an incident likely to make a deep and lasting impression on his memory and the things he then saw and heard would become indelibly fixed therein — The testimony of Gooly is so artless

natural and probable, that it cannot be doubted —

What was the position of Ogden at the time this notice was given to him by Brady —?

Going back from this time a little we find him on the 28th of April 1836 as the atty in fact of Charles Butler of N.Y. entering into a written contract with Simon L Haven, (the same who entered the whole land one undivided half of which is now in controversy) the substance of which was that Haven agreed to pay $5000^{00} per lot 5 & 6 in Kinzies addition to Chicago - $1600^{00} of which was then paid in land and the residue was to be paid in one and two years thereafter with interest at ten per cent, and upon such payment the lots were to be conveyed to Haven - (See Ex 2 ab 8) - and going forward a little we see Haven from Onuda Co NY. when he had resided since July 1836 corresponding with Ogden about his Havens inability - to meet the Contract (See Havens letter of Nov 26 1838 ab- 35. and his ans to 2d int ab 291 and proposing to Ogden ~~after he had seen Butler~~ as the only one who controlled the claim to give up the lots, (and this was

after Haven had seen Butler) and Ogden
telling Haven that he must do the best he
could by selling land &c to meet the claim,
(See ans to 8 int. at 30.) And Ogden
commencing the attachment suit, (See ab 9 & 12)
and treating the claim thereafter in all respects
as if his own — Throughout the whole
of this continued transaction of selling
the Kinzie lots, taking other lands in
part payment, bringing the attachment, negotiating
with the ~~buyer~~ purchaser, Haven, both before and after
the attachment. Ogden, & Ogden alone is
the controlling spirit — If not part owner
of the debt due from Haven to Butler, (which is difficult to be believed)
he was at least the attorney (not at law)
but in fact, of Butler, to control and collect that
debt from the time it was contracted in
1836 till the commencement of the attachment
and during that time Tooley informed him, as we
have before seen that he had bought the land
in question of Haven —

Now What rule of law applies to these facts?

In the case of Le Neve v Le Neve
2 White and Tudor, Leading cases in
Equity page 149 (pt 1) the American
annotator says. "It is well settled under
" the doctrine held in the principal case
" and universally followed — that notice

" ~~notice~~ to the agent is notice to the prin-
"cipal Astor v Wells 4 Wheat 466
"Jackson vs Sharp 9 Johnson 163
"Jackson vs Winslow 9 Cow 13
"Jackson vs Leek 19 Wend 339
"Westervelt v Huff 2 Sand. 98
"Griffith v Griffith 2 Paige 315
"Blair vs Owles 1 Munford 38
" This rule prevails whether the agency
"be expressed or implied and hence when
"land is conveyed to two partners in
"satisfaction of a partnership debt notice
"to one will be sufficient to affect both
" Watson vs Wells 5 Conn 468. In
"order however to produce this result
"the notice to the agent must be in
"the course of the transaction in which
"he is acting on behalf of his principal:
"for otherwise it will have no legal or
"necessary connection with the latter
" Bracken v Miller 4 W&S 102
" Hood vs Fahnestock 8 Watts 489—
"For the same reason notice to a trustee
"before his appointment will not affect
"a subsequent purchase by him, ~~before~~
"~~his appointment will not a subsequent~~—
"~~purchase by him~~ on behalf of the cestui
"que trust. Henry vs Morgan 2 Binn 497—
and when taken in any connection which

And when taken in this connection with
" this limitation notice to an agent would
" seem rather to be <u>actual</u> than Constructive
" to the principal, for the act of the one
" within the scope of the agency are in point
" of law the acts of the other and the prin-
" cipal cannot be allowed to avail
" himself of an intrust a gained by the fraud
" of his agent in prejudice of the rights of
" third persons —"

The question of the memory of the agent cannot out any figure in a case when he receives the notice in the course of the transaction in which he is acting on behalf of his principal. If an agent is employed as lately as Savannah in Gibraltar Shandy and while ~~about the~~ the business is in fieri, about which he has been employed he receives notice affecting that business - is the principal to ~~shield~~ the legal effect of that notice under pretence (whether true or false) that his agent cannot remember from one minute to another, what is told him? Such a proposition when seriously urged provokes a smile. ~~and is suggestive of fraud, bad faith~~

Memory ~~and credit~~ of the agent would

undoubtedly be very material if the notice
but otherwise it cannot be material
was decided upon the agency commenced -
(for hints on this subject and also as to
how long and under what circumstances
the same transaction may be contemned
see opinion of V.C. Wigram in case
of Fuller vs Bennett 2 Hare 394 - copi-
ously extracted in 2 White and Tudor Lead-
ing Cases in Equity Vol 2 (pt II pag 140
and subsequent -)

The case of Hamilton v Rouse 2 Sch &
Lef 327 referred to in the oral argument of the
appellants with a sort of triumph and the only case it is supposed
to referred to - it is evident was mis-
apprehended by them - Lord Redesdale in
delivering the opinion in that case
says, "But if as in the present case a man
" agrees to purchase under limitation in a deed
" which make it necessary for him to look
" into that deed - and that deed contains
" recitals of judgments affecting the lands he
" has to agreed to purchase - he is bound by
" those judgments, for he had a right to see
" the whole deed under which he purchased
" and therefore must be taken to have seen
" the whole and must consequently
" be presumed to have taken notice of every
" thing contained in the deed affecting his purchase

Let it be observed that his Lordship says
"the purchaser is bound by those judgments
"stated in the deed under which he holds"
no distinction is made whether the
purchaser had read his deed or not, nor
whether he remembered its contents or not -
he is bound absolutely -

Then his Lordship says in the same
opinion by way of dictum - Such a
case not being before him "If a man
"purchases an estate under a deed which
"happens to relate to lands not comprised
"in that purchase, and of those lands purchased
"the other lands, to which an apparent title
"is made independent of that deed - the former
"notice of the deed will not affect him
"in the second transaction, for he was not
"bound to carry in his recollection those parts
"of a deed which have no relation to the subsequent
"other object - nor to take notice of more
"of the deed than affected his then purchase"

It will be seen on looking attentively to
the dictum of his Lordship that he does only discussing
the legal effect as notice of the purchase under the first
deed, ~~as notice~~. and ~~that he was bound~~ and that
too without any reference to the fact
whether the purchaser had ever actually known the
contents of that deed or not - His concluding

words are the purchaser was not bound to notice more of the deed than affected his own purchase and by the phrase "former notice etc" he evidently means only the naked fact that the purchaser had taken the former deed — the remarks of his Lordship read by the appellants are at most only clumsy dicta ~~the remarks quoted by the other side but clumsy dicta of his Lordship~~

But be it as it may whether memory is material or not. it is submitted that Ogden did not forget the notice given him by Tooly — At the time it was given nearly 2000^{ds} of the debt from Havens to Butler, then in Ogdens hands was several months past due, and unpaid, and the debtor a non-resident, and if then, not actually insolvent he became so soon thereafter; it may with truth be said that the only hope of Ogden to make that debt, was by means of Havens property in Illinois — So circumstanced news to Ogden that Haven had sold 480 acres of valuable land would not be likely to be forgotten —

If further evidence of notice was needed it is supplied from the fact that Ogden before commencing the attachment suit searched the records to see what land had been conveyed to Haven — (see Havens ans to 18th Int abstract page 32) and so searching must have seen the mortgage from Tooly to him: this was sufficient to put him on inquiry whether

Haven had conveyed that land to Tooly.

The levy by Ogden on the fractional part 19/24, exactly all the land not included in Havens deed to Meachum then on record can be accounted for on no hypotheses except that he searched the records before the levy was made —

Secondly ~~Again~~, it is contended on the part of ~~the part~~ of the appellees that Haven paid his debt aforesaid in full, by relinquishing to Butler the lots for which the debt was contracted and the $1609 he had paid on them and conveying to Ogden three other lots in Chicago and assigning to him the mortgage of Tooly for $290 on the land in question.

This settlement was agreed on between Haven and Ogden as early as April 20 1841 and before judgment had been entered in the attachment suit, and was concluded when the parties met at Utica in Sept 1841

Was this a full settlement and payment of the debt? Haven swears positively that it was (see his ans to the 14th int Abstract 31). Ogden on the contrary

now contends that it was only a satisfaction of so much of the debt as should remain after appropriating about 2/4 sections of other persons lands.

Now which is the most probable of these positions?

Ogden rests his pretensions entirely upon his letter of Dec 11 th 1840. He insists upon the strict letter of his bonds.

It is true there is something in that letter that looks like he intended to release to Hansen 160 acres of his, Hansens land and discharge him from all personal liability — & to indemnify himself by appropriation to his own use and benefit the residue of the Cook and Lake County lands. But such a dishonest purpose ought not to be ascribed to him without clear and unequivocal evidence.

Looking to the whole letter as explained by his subsequent Correspondence, it is susceptible of a construction consistent with honesty and fair dealing —

The Correspondence for the settlement of this debt commenced as early as Nov 24 1838. In a letter of that date Hansen proposed to to Ogden to give up the $600. which he paid on the Chicago lots and exchange papers

Whilst the attachment was pending in the winter of 1840 Ogden made a proposition to Warren Trotter for the settlement of this debt, which being reported to Warren by his brother, he on the 18th of December 1840 wrote "My brother from Joliet informs me that he has had some conversation with you lately at Chicago, that you informed him that you wrote a letter in July last for Collins to copy for me (which I have not received) in which you say that, as near as he can recollect, I say to Dr Warren if he will relinquish his title to what property we have attached & give up the Kinzie mortgage we will say even, withdraw, and give up the papers. Now if you made this offer I will accept it if the following a copy of which was sent me as taken from the Clerks office, is a list of the land attached with the agreement that Bela Brown have a deed of an undivided 160 acres from Sec 10 & 3 which he has nearly paid for but a deed has not been delivered & as there was something due & deed was not given & a demand against him was good for nothing", then follows the list of the property attached containing all that was attached except lot 17 in Chicago — he then adds. "If I understand this offer it will

differ from the one I made to C Butler & subsequently to you in my letter, in this, it includes the 26½ feet of lot 1 Block 24 of which I have a deed free from incumbrance on record. I have no interest in the land in Will County which the attachment covers, by deed, mortgage, or otherwise" - It will be seen that the proposition communicated to Warren by his brother, was to relinquish his title to the property attached - (there is not a word about appropriating the property of other men), and they were to lay even, withdraw and give up the papers", And although Ogden construes the statement of Warrens brother about other matters, he makes no intimation whatever that this part of it is incorrect, as will be shown presently.

When Warren wrote this letter he had not received Ogdens of 6th December 1840. In this letter Ogden says he had said to Butterfield and Collins "that I would propose to you as follows to wit, that I would take from you an assignment of Hoolys Mortgage without recourse on you, a deed from you of the 26½ feet off the west side of Lot 1 B 11 & a deed of lots 177 in Bl 84 all in School Section And that I could realize from the attachment beside

& release you altogether from your liability for the two lots, Mr Butler taking the lots back". Now the appellants enter reliance rests upon the words ~~the words~~ underscored

They it is contended embraced not only the land in question, but a section in Will and a half section in Cook besides.— The words What I could realize is justly subject to two constructions - They may mean what he could realize from Haven's property — In this sense the proposition was an honest one. and consistent with the offer communicated to Haven by his mother and the subsequent conduct of the parties — and they may mean What he could realize from the property of other men - In this sense the offer was a dishonest one, and inconsistent with the subsequent conduct of the parties - this of itself is sufficient to condemn the latter construction

In another part of that letter he says" if you please to convey at once that to which you have title I will agree to have recourse to you no further than to perfect the title in the property attached more certainly by conducting the suit to an end but without any further personal responsibility to you"

By his attachment he would have realized from the property of Haven the value of the 160 acres or at least the $800 due on it from Brown —

Haven is to convey that to which he had title and for the purpose of securing his title to it more certainly Ogden would prosecute the suit to the end, The object of this undoubtedly was that Ogden would prosecute the suit to the end, to protect himself against incumbrances done or suffered by Haven, —

On the 31st of Dec 1840 (abstract 3778) Ogden replies to Havens of the 18th of the same month correcting his brothers statement of the land owned by adding to the list Lots 147 in School Section Chicago, but does not correct his brothers statement as to the terms of the settlement — He says "Should you choose to close with my offer you may convey to me all your interest in E/2 of Section 16 & of the N/2 3 reserving therefrom 160 acres conveyed &c"

It will be observed that there is not one word about any thing but Havens interest, after reserving 160 acres Haven had no interest except the Cooley mortgage and this by the agreement Haven was to let Ogden have, —

Haven in his answer of Jany 18 1841. (abstract 3789) says "if I understand, I have complied with your offer in every respect (giving no guarantee in relation to Cooley), in my last communications with the exception of Sublots 147 BC 84. What I have said in relation to these is simply this. you may have these if you cancel the remaining dues on the lots

On the 11th of March 1841 (Abstract 39) Hansen wrote to Ogden again. "In this letter he says I say distinctly in this communication that I comply with your offer for a settlement in your letters of December last." "you are at liberty to take possession of the property in question — & as soon as I can hear from you I will make out the necessary titles to the land and you can give up the papers in your hands". This was before judgment had been taken in the attachment suit. and if the papers were to be given up on which the suit was founded it would put an end to the suit — In his answer of April 20 1841 (Abstract 40) Ogden says that "I am glad you accede to my proposal of the 11th Dec last for settlement of our affairs. [illegible] and will take notice in my way expecting to find you at home, with them all the papers with me & we will close the business as acceded to"

Ogden treats this as an acceptance of his offer of the 11th of Dec 1840, — ~~the~~ now this is a mistake — By this in this offer Hansen was to convey his title to the attached lands in Cook, but by Ogdens letter of the 31 of Dec 1840 Hansen was to retain 160 acres of the land, Hansens acceptance then of Ogdens offer is to be taken as Hansen understood it, and that understanding is to be determined not by cavilling over the meaning of particular words and phrases in a single letter but by the general scope and tenor of the whole correspondence

Hansen states (Abstract 39) Ogdens offer to be as

of communication to him by his brother, to be that if he Haven would relinquish his title and give the Leahy mortgage — Ogden would say even withdraw and give up the papers — In his Answer of the 31st of December (abstract 37) Ogden corrects Havens understanding as to the amount of the lands attached, but does not correct his understanding in any other respect —

After receiving Ogdens letters of the 11th and 31st of December 1840. Haven repeats his understanding of Ogdens letter by stating that he Haven had complied with it in every respect in his last communication except as to Dubois 187 & as to them he accepted with some limitations.

Now the compliance spoken of was, that Haven should relinquish his title to the lands attached, and that Ogden would relinquish the debt and give up the papers and by his letter of March 18 1841 Haven only does unconditionally what he had previously done conditionally. Haven owed Ogden a debt which he wished to pay and throughout the whole negotiation his attention was directed simply to the payment of the debt and had much property he would have to give for that purpose, and his attention was not attracted to the correct meaning of particular words or phrases looking to the appropriation of other means property to the payment of his debt — The

leading idea with him is that he was paying his own debt with his own property — And I propose now to show that this idea was carried out in the consummation of the settlement — & was that Warren on his part should relinquish the lots purchased and the $600 which he had paid on them; convey to Ogden three lots in Chicago & all his title to 19/24 of the Cook lands, except 160 acres, (which was nothing more than the Cooley mortgage thereon for $290) and that in consideration thereof Ogden should relinquish to Warren the debt and give up the papers — Well, when they met at Aurora in September to carry out this settlement agreed on previously in April, what do they do?

Warren on his part relinquishes to Butler the two lots which he had purchased of him & the $600 which he had paid thereon — & conveys to Ogden the three Chicago lots, and also assigned to him to him the Cooley mortgage — & in consideration thereof Ogden acknowledged satisfaction of the debt on the back of the Contract & delivered it to Warren — the endorsement on the bond is as follows "In consideration of an assignment of a mortgage by O Cooley and a deed of three lots in School Section Chicago made to me this day, it is agreed that the agreement above written between Chas Butler & W L Warren is declared paid and at an end Sept 22 1841 (the lots being retained)

W B Ogden
per C Butler"

Now if Ogden received any thing more in payment of said bond, then the above recital is not true, and if under the magic words "What I can realize from the attachment", he received one section of land in Will and all of 19/24 of a section and a half of land in Cook except 160 acres, it should have been recited as a part of the consideration.

But Ogdens subsequent correspondence shows that he looked to these lands only as a means of paying the costs, and of collecting the Healy mortgage

Then if there was nothing else in the case it would be evident that Haven intended the settlement as he swears as a full payment of the debt and costs and that Ogden knew he so intended it

But Havens evidence dispels every shadow of doubt on this point. He says the settlement was in satisfaction of the bond & attachment in full as he understood it and that he never consented that Ogden should use the attachment to perfect title to property which he Haven had conveyed away — (See his ans to 14 & 17 Int abt 31 & 32)

It is said the 8 Chicago lots were of little value — This assumption rests on the statement of Ogden when he is seeking to drive what he concedes to be a hard bargain on the part of Haven. It is also said that the Will & Clark county lands

not worth [illegible]

and this assumption rests for its support on the fact that they were struck off at the Sheriffs sales for sums which in the aggregate amounted to about that ~~sum~~ — Every person knows that a Sheriffs sale of land subject to redemption is no index of its value — No inference then can be drawn as to the real value of the land ~~from the values~~ or lots, because the record is silent on that subject.

Now Ogden himself in his letter of the 11th Dec 1840 (abstract 36) says "Surely under all the circumstances you cant but think my proposition ~~very liberal~~ to release you for what I have already secured to me and Gooleys Mortgage to boot only, is very liberal and reasonable to you".

Now for a man ~~make~~ to take back the property sold & retain $1600 which had been paid on it & three other lots in Chicago & a mortgage for $290 them amounting to $400.00, to boot in satisfaction of the balance of the purchase money may be very liberal & fair but surely Mr Ogden could not have the effrontery to say that to take in addition to all that Twelve hundred and forty acres of valuable land in Will & Cook Counties, would be very liberal or fair — He could not mean any such thing.

So when he says the result of the attachment suit will be to convert this property to the payment of your debt due Mr Butler & still have a large balance due from you, he meant

~~[illegible]~~ the property attached, which belonged to Haven and did not include the property belonging to other persons that is the 1240 acres of land that was also attached - He had not at that time conceived ~~even~~ the idea of subjecting them to the payment of costs, that was an afterthought -

If Ogden had really been so greedy for property and so unconscientious as to insist in the settlement with Haven as one of the "Conditions" of that settlement that he Ogden should be allowed to proceed with the attachment suit and make what he could out of the lands of other persons sold by Haven to them and the deeds not recorded, notwithstanding Haven and his own land was to be released, how, in the name of common sense did he, after getting his attachment title, come to deed back, to Ozias Holmes, (one of the sufferers) for the paltry consideration of \$57.37 his 3/24 of the Cook County lands bid off at the Sheriffs sale for \$200.00? And again, how under such circumstances came he to offer, on the payment of \$116.43 being costs interest and taxes as he said, ~~to offer~~ to deed back to the owners the Will County lands bid off by him at the Sheriffs sale for \$600.00 (see Ogdens letter of Dec 8 1843 abstract 41.42

~~The [illegible] was [illegible]~~

To recapitulate, Hawen in 1838
proposes to Ogden to relinquish the lots
purchased and the $1600 paid on them in
satisfaction of the balance then due
on them

Ogden in his letter of the 31 Dec 1840
informs Hawen that his Ogdens answer includes
lots 187 School Section also, Hawen in ~~another~~
his answer of Jany 18 1841 to this and another
letter of Ogden of Dec 11 1840 states that he
has in his previous communications complied
with Ogdens offer as he Hawen understood it
in every respect with the exception of said lots
187 and that he might have them also if
he would cancel the remaining dues on them.
On the 11th of ~~December~~ March he waived this condition
and accepted Ogdens offer unconditionally.

This acceptance of Ogdens offer was
of course on Hawens construction of it,
which had been so clearly announced
that Ogden could not have misunderstood
it

And that construction was, that Hawen
should relinquish to Butler the lots pur-
chased and the $1600 paid on them
and convey to Butler three other lots
in Chicago and also assign to him the
Healy mortgage in satisfaction of

of the debt. And Ogden knowing this to be Hawes understanding, should if he intended any thing more, have so informed Hawes.

And as he did not do so, he must be understood to have adopted or acquiesced in Hawes construction.

If Ogden dissent from Hawes in the construction of the terms of the proposed settlement as they were announced by Hawes he should have given information of the difference, because if after persons, land, were taken to pay Hawes debt he would be liable to them for the value thereof

The agreement for the settlement then was not as the appellants contend, but was as we say —

And the reason why Ogden is silent about during back Godleys land, is not because he held it, and intended to hold by the attachment the proceedings in the attachment suit, but because he held Godleys mortgage on it and by deeding it back to him, & he would have cancelled that mortgage —

~~Cook Gooly's~~ and ~~attached with the other, is not because~~ he ~~held it by the attachment~~; ~~but because he held~~ a ~~mortgage on~~ it ~~from Gooly and deeding it back to him would have cancelled that mortgage~~.

Thirdly

Let us now examine the effect of the settlement made between Haven & Ogden with the construction contended for by the appellants.

Their construction of that settlement is substantially this: that it was effected entirely by correspondence between Haven & Ogden, and concluded so far as its terms were concerned on the 11th of March 1841, the date of Havens letter then addressed to Ogden — that its terms were in substance — that Haven should relinquish to Butler the two lots he had purchased of him, and the $500 he had paid on them, assign to Ogden the Gooly mortgage, deed to him three lots in Chicago, and be released from all personal liability on the debt, which was the foundation of the attachment suit, and have all the Cook County lands in which Haven had any interest (160 acres included) cleared from the attachment, which afterwards was to be prosecuted by Ogden, for the purpose

of making what he could out of other persons, (owners of the attached lands by unrecorded deeds from Haven). whose rights he Ogden was well aware of.

The character of such a transaction needs no new definition. It is confessedly a fraud — It is admitted to be such, by the defendants, who however try to excuse themselves, and escape its legal consequences under the plea that it is only a little one. Rather a novel excuse in a court of Equity: and rare also elsewhere, except in the single instance, ~~except whose attempted~~ where Vice attempted to cover its shame under the plea that ~~that~~ the little illegitimate was under common weight: only a very small one !!! But does not the bold avowal of the paternity of this little one create a suspicion of anterior intercourse and confirm the other evidence showing that Ogden when he commenced that attachment suit well knew Tooley's rights in the premises — and intended a fraud from the beginning?

If the court that rendered the judgment in the attachment suit had been apprized that the debt had been settled off, the debtor released from personal responsibility, and the suit going forward for the only purpose of making money out of other persons lands. would it not (instead of rendering a judgment) have dismissed the suit, on its

"non caedas" to the maxim ...

non laedas" is the maxim that guides all this class of cases. and even if the the transaction had not been intentionally fraudulent, it would at least be such a fraud in law upon the rights of the purchasers from Warren as to discharge their lands from the attachment—

When a creditor releases his principal debtor he thereby discharges the security

Nicholson vs Revell 4 Adolph & Ellis 675—

Eng com Law 116.

1 Story Equity Jurisdiction 498a & note 3

This rule applies to all cases where a creditor has a right to collect his debt from the person or property of another, whether that right arises out of contract or other legal liability independent of contract — This is so held as a general principle of equity, that he who has wilfully occasioned a loss, ought to bear it and not throw the consequences of his own wrong on the shoulders of others — Aldrich vs Cooper, Equity Leading Cases Vol 2 pt 1. 229 notes —

Tested by these principles Hoskins land was clearly discharged from the attachment. Ogden by the settlement — not only released Warrens personal liability, but also released 160 acres of Warrens land — that land was Warrens, per although he had contracted to sell it to Brown yet he had not paid for it — and Ogden agreed to

& did afterwards actually convict him —

In the case of Nicholson & Revell above referred to the credi^tor^ held two notes against a principal and surety, and upon the payment of a sum of money by the principal less than the amount of the notes, he gave up one of the same and erased from the other the name of the principal but retained the note showing thereby a clear intention to hold the security. But the court held that the security was discharged — *

And although the authorities in the books may be conflicting whether by the discharge of one surety another is discharged in toto or only pro tanto — there is no conflict in the authorities, in respect to a discharge of the the principal debtor operating ^to discharge^ the surety in toto — absolutely from all liability

In the case of Taylor Exrs v Maris 5 Rawle 51. Sargent J in delivering the opinion of the court says "An act which is perfectly legal and innocent in itself may become improper if the party has notice that the ~~the~~ rights of third persons may be impaired by it, as if a covenantor or releasor is apprised beforehand that a portion of the land is bound by a subsequent mortgage in favor of another person, and that if he discharge a different portion and reserves his lien against the part bound by the mortgage, thus loading it with a double burden, the claim of the mortgagee will be sacrificed by his privity — It is manifest that,

* In 2 Breckenbrough 215 [illegible]. The creditor held a demand against a principal & surety and a mortgage on the lands of another person, as collateral; and Chief Justice Marshall said that the release of the mortgage would discharge the surety.

"that it is inequitable and unfair, that he should do an act voluntarily producing these consequences. Sic utere tuo ut alienum non laedas. — Thus in an analogous case a person may buy a title free from all secret trusts, but if he has notice of a trust although he may have paid his money, Equity will make him the trustee for the party beneficially interested" cited in 2 Leading cases in Equity pt 1, 227. and further on in the same page it is said " Thus it was decided in Stevens v Cooper 1 John Chy that where lots of ground bound by the same mortgage were sold to different purchasers a release of one of the lots was a ~~release~~ discharge protanto of the others, for the mortgagee could neither be entitled, to throw the burden of the whole debt on one of the purchasers nor to render the other liable to a suit for contribution to the payment of a debt which had been released — This case was followed in Gouverneur v Lynch 1 Paige 300 and Guion v Knapp 6 do 35 and by the Supreme court of Pennsylvania in Paxton v Harrier 1 Jones 312 where it was decided that a mortgagee cannot enforce his mortgage against a purchaser of part of the mortgaged premises, after having released a subsequent purchaser of the residue" — "and the general principle that an encumbrancer shall not vary the rights of the owners of the land encumbered as between themselves. and that if he does so the loss will be thrown on him

was adopted by the Circuit Court of Massachusetts Parkman v Nelson. 19 Pick 231. "

Fourthly

Let it, for the sake of the argument be admitted, that by the levy of the attachment in October 1839 a valid lien was created on the lands in controversy. Still this lien was only an incipient, inchoate and imperfect right, that might or might not ripen into a title, and might be waived like other such liens by parol contract or any act done inconsistent with the intention to prosecute and retain it –

The attachment suit was based on the foundation that the lands attached belonged to Haven – Ogden was apprised that they were not Havens, but were in fact Gooleys. – Knowing this, and when as yet no judgment had been rendered on the debt in the settlement with Haven he takes from him the mortgage from Gooly on the same lands and puts himself in Havens place in respect to that mortgage – Now Havens position was such both, with respect to the mortgage and the debt to Butler, that he ought to have extinguished the debt and the attachment lien on the lands. ~~He did extinguish the debt~~, ~~and the holding & retaining~~ the lien ~~to be asserted~~ against ~~the lands~~ as ~~Havens~~, ~~was inconsistent~~ ~~with holding the land as by that he consented to tender the Gooly mortgage and as Goolys~~ –

As the creditor and holder of the attachment lien, he could not in the settlement of the debt on which it was founded, & in part payment thereof, take the Bailey mortgage on the same lands, without at the same time virtually waiving and abandoning, so far as the mortgaged land was concerned, the attachment lien, and agreeing that thereafter those lands were to be held by him subservient to the title of the mortgagor —

The title by the attachment was diametrically opposed to the title by the mortgage. and they could not coexist in the same person, and one must go to the ground — And as a consequence the voluntary acquisition of the mortgage (taken in part payment of the debt for which the lands were attached) clearly indicated an intention on the part of Ogden to waive and abandon the attachment so far as the lands covered by the mortgage were concerned

If the lands were subject to the attachment the mortgage would be extinguished by it and be worthless. then why was it purchased, taken in part discharge of the attachment debt —?

If the mortgage was to be regarded as any account whatever it could be so only because the attachment so far as the mortgaged lands were concerned was to be waived and no longer in the way —

This is not the case, as the counsel for the appellants suppose, of a creditor having an elder and a junior lien on the same premises. both of which may well exist at the same time — neither is the effect of the acquisition of the mortgage by Ogden to be discussed (as the appellants have attempted) under the supposition that it was acquired by him after the sale under the attachment. In substance and fact it was acquired, when the agreement for settlement between him and Haven was concluded, which was before Ogdens letter to him of Apl 20 1840.

That it was the intention of Ogden to release the attachment lien so far as concerned the land covered by the mortgage, and hold by that alone at the time he acquired the mortgage acquired it from Haven all doubt is abundantly shown by the record — In his letter to Haven of Dec 11 1840 he says "I make this proposition on condition that Eagleys mortgage to Smith" a prior lien on the same premises "is no lien or is paid, or on the conditions stated in your letter that Eagley owes Smith but $150 &c" (Abstract 36) In his next letter of the 31 Dec 1840 he inquires about Eagleys responsibility personally thus "Please reply particularly to my enquiries as to Eagleys responsibility, and as to the origin and present situation of his mortgage to Smith" — But

Correspondence he manifests a great and continued anxiety about that Smith Mortgage, perfectly harmless to him (by the way) if he was holding under the attachment, but in his way as a prior lien if he was holding under the mortgage — In his letter of Dec 27 1845 (abstract 45) he says "You did not say in any of your letters whether you had seen Gooly as we proposed when we met at Utica — I have a true title to the land mortgaged by him, and shall hold it of course but had rather his mortgage to Smith were cancelled and the one I hold given up and his deed given me for the property if he pleases to do so If not I think I shall file a bill in Chancery to get Smiths mortgage set aside for fraud" &c. This letter was written almost three years after he got his attachment deed, and it will be observed that neither here nor elsewhere in his correspondence does he ever claim or pretend to claim that he is holding the mortgaged land under the attachment title — If he ever had a lien on these lands by the attachment he waived it in the settlement made with Haven and he acquired no rights by the attachment lien — and once being waived it never revived.

Holding the land then as Mortgagee

of Hasty it might be shown if deemed necessary that he could not set up an adverse title to defeat the redemption.
acquired after the acquisition of the mortgage

2 Spence Eq. Ju 654. 657 - 658(9) (bottom). 808. (title)

It is not denied that as mortgagee Ogden might, had it been necessary purchase to protect the estate of the mortgage, have purchased in an outstanding title or incumbrance, & he held not for himself however but for the mortgagor and to be given up to him on the payment of the expense incurred in the purchase.

The attachment title it will be remembered is not set up in this way by the defendants (sent up as an adverse title) and there is neither averment, nor proof that Ogden in the acquisition of it ever incurred one dollar of expense.

In conclusion; It is submitted that if either of the four positions taken by the appellees in this argument are tenable, the attachment title in the hands of Ogden is invalid as against them, and the decree below cannot

D M Grover

205-104

Wm B Olden
& Chas Butler
v
Carlos Warren &
D M Graves

Argument of
D M Graves

Filed May 11, 1860
L. Leland
Clerk

STATE OF ILLINOIS—THIRD GRAND DIVISION.

Supreme Court thereof, April term, 1860.

WILLIAM B. OGDEN and
CHARLES BUTLER
vs.
CARLO HAVEN and
ISAAC M. GROVER.

The defendants in error filed their bill against the plaintiffs in error to redeem the undivided half of the south half of section three and of section ten, town 39 north, range 12 east of the third principal meridian from a mortgage executed by Jeremiah Tooley, in 1838, to Simon Z. Haven, for $290, and which was assigned by said Haven to said Ogden on the 22nd of September, 1841.

The plaintiffs in error deny the right of the defendants in error to make such redemption, on two grounds —

1st. Because the plaintiff, Ogden, as they allege, has acquired an absolute title to the land under certain proceedings in an attachment suit, commenced by Ogden in the name of Butler on the 11th of Oct., 1839, against Simon Z. Haven; and

2nd. Because said Ogden bought said land at tax sale for the taxes of 1841, and procured tax deeds for the same, which they allege constituted claim and color of title made in good faith, under which they say Ogden paid all the taxes assessed for more than seven years.

It is admitted that the defendants have a right to redeem unless they are barred by one of these causes. I propose to examine each in its order, and

1st. The claim of title under the attachment.

The writ of attachment was issued Oct. 18, 1839, and was levied on the land Oct. 30, 1839. It does not appear that the Sheriff filed any certificate of his levy in the Recorder's office. Judgment was entered in the attachment suit May 7, 1841, and execution issued June 28, 1841,

under which the Sheriff sold the land to Henry Smith, who purchased for Ogden, July 22, 1841, and the Sheriff, in pursuance of said sale, conveyed the land, Feb. 17, 1845, to Ogden, and the deed was recorded June 17, 1845. Haven conveyed the land to said Tooley Dec. 16, 1836. Independent of our recording acts, it is clear that Ogden, by the foregoing proceedings against Haven, could acquire no title to the land, because Haven had parted with all his interest prior to the institution of the attachment. But it is insisted that as Tooley's deed was not recorded, and Butler and Ogden had no notice of it until after the levy of the attachment, that Butler, as a creditor of Haven, acquired a *lien* on the land, and that Ogden is entitled to hold it, as a subsequent purchaser, under our recording act.

Ogden acquired no title, first, because he had actual notice of the conveyance by Haven to Tooley prior to the institution of the attachemnt. Tooley gave him that notice in the summer of 1837, whilst he held the claim upon which the attachment was founded, and of which he was part owner; and being acquainted with Haven and the land, the information so given him would make an impression that he would not be likely to forget in *two years!* Besides he must have had actual notice, by an examination of the records, of the mortgage from Tooley to Haven, and that was sufficient to recall to his memory the information previously given him by Tooley, and to put him upon inquiry. Ogden told Haven that he levied the attachment upon all the lands which the records showed had been conveyed to him and which he had not conveyed away; and of course as he was searching the records to see what lands had been conveyed to Haven, he must have discovered the Tooley mortgage; and the fact that he wrote to Haven inquiring who owned the land shows, at least, that he had reason to suppose that they did not belong to him. There is nothing improbable in the statement of Tooley as to the information which he gave to Ogden, and the attempt to discredit him is, as the Court will see from the evidence, an entire failure.

LeNeve vs. LeNeve, Equity Leading Cases, vol. 2 part 1, 139, 142. 140. 141. 149. 157 & Cases there cited

* these case refer to a point made on next page which are marked thus *

* Stevens vs. Cooper, 1 John. Ch., 430;
Gouveneur vs. Lynch, 2 Paige, 300;
Gwin vs. Knapp, 6 Paige, 39;
Paxton vs. Harrier, 1 Jones, (Pa.) 315;
Howard Ins. Co. vs. Halsey, 4 Sand. (sup.) 570;
Baker vs. Briggs, 8 Pick., 129.

But it is not denied that Ogden had notice of the said conveyance to Tooley long before the said judgment was obtained. In the answers both of Ogden and Butler, they say they had no notice prior to the institution and levy of the attachment. A creditor within the meaning of the recording act, is one who has instituted such proceedings as give him a lien on the land. That lien is not acquired by the levy of an attachment, until a certificate thereof is filed in the Recorder's office.

Jewett vs. Palmer, 7 John., 67;
Gaty, Cune & Gladsby vs. Pittman, 17 Ill., 21, 22;
Martin vs. Dryden *et als*, 1 Gil., 217;
Story vs. Windsor, 2 Atk., 630.

And as no such certificate was filed in this case, no lien was acquired till the entry of the judgment, and it is not denied that Ogden had notice of the conveyance to Tooley before that time.

Brown *et al* vs. Welch, 18 Ill., 346.

But if any lien was acquired on said land, it was discharged by the settlement between Ogden and Haven, agreed to on the 20th day of April, 1841, and consumated on the 22d day of September, 1841. The settlement was, in fact, made before the judgment was rendered, and when it was consumated, Haven did not know that the attachment had been prosecuted to execution and sale. Haven swears positively that it was a settlement in full of the attachment suit and of the bond upon which it was founded, and that he never accepted any proposition in the letters of Ogden as the same is therein stated; that he never, in any manner, accepted his proposition that he should use the attachment suit to perfect title to property which he had conveyed, and which he understood to be the meaning of his letter of December 11th, 1840. And in this he is supported by the circumstances and admitted facts of the case, as well as by the presumptions of law arising on those facts and circumstances.

1st. As to the facts and circumstances: The suit was brought to recover part of the price of TWO LOTS which Ogden had sold to Haven, and upon which Haven had paid $1609.00. Ogden considered his proposal to settle this balance very liberal and favorable. This *liberal* and *favorable* proposition, according to Haven's understanding of it, was that Ogden should retain the $1609.00 paid, as well as the lots for which it had been paid, and should also have three other lots and the Tooley mortgage. But according to Ogden's present pretensions he was to have, in addition to the above, two and one-quarter sections of valuable land. Ogden, five days after the settlement, had forgotten its terms, and for a long time afterwards did not claim anything more than the costs of said attachment. By the settlement Haven was to have one hundred and sixty acres, being all that belonged to him of the attached lands.

These are the facts in the case. The presumption of law is, that Ogden and Haven, in making said settlement, acted honestly; a presumption altogether inconsistent with the pretension of Ogden that he gave up to Haven his own land, and took in payment of Haven's debts two and one-quarter sections of land belonging to other persons. This pretension can only be sustained on the supposition that both Haven and Ogden intended to perpetrate a gross fraud upon the rights of other persons. If the transaction was as is sworn to by Haven, then the parties acted in good faith; but if it was as now pretended by Ogden, it was such a fraud upon the rights of others as renders it utterly void.

* See authority referred to in next pleading

1 Story Equity Jurisprudence, sections 333, 633 and note 634 a, 638, 324, 325, 326, 498, 499 a, 499 b. 2 Brockenbrough 215. 16 Cited 2 White & Tudor 827. (pet.) and cases there

Haven, in his letter of the 18th Jan., 1840, (1841,) to Ogden, speaking of his former letters—"If I understand, I have complied with your offer in every respect (giving no guaranty in relation to Tooley) in my last communication, with the exception of the sub-lots 1 and 7, bl. 84, and what I have said in relation to these is simply this: you may have

hese if you *cancel the remaining dues.* This is relinquishing my interest in said lots, considering the notes in the light of a lien on the lots; this I think you will say is right. If this meets your views, and I hope it will, you will so inform me, and I will, without delay, make over my interest in the property before mentioned."

Again, on the 11th of March, 1841, referring to a former letter, he says: "I say distinctly in this communication, that I comply with your offer for a settlement of your letters of Dec. last, if you have not accepted with my offer conveyed to you in my last; and further, if you have not, I will leave it to your liberality as to lots 1 and 7 in 84. * * You are at liberty to take possession of the property in question, and as soon as I can hear from you, I will make out the necessary titles to the land, and *you can give up the papers in your hands.*"

On the 20th of April, 1840, Ogden wrote to Haven: "I am in receipt of your favor of 11th March, and am glad that you accede to my proposal of 11th Dec. last, for settlement of our affairs. I shall go east in July, and will take Utica in my way, expecting to find you at home; *will bring all the papers with me,* and we will close the business as acceded to."

All this was before judgment was entered in the attachment case, and it is very evident that the arrangement was to be a full payment of the debt.

In the first letter, Ogden was to *cancel the remaining dues on the lots,* and in the second he was to *give up the papers in his hands.* It is evident that Ogden, at the time of the settlement, did not contemplate getting anything more from the owners of the attached lands than the costs of the attachment. He enquired on the 27th of October, 1841, whether he had written to the owners about paying *costs and getting back their lands.* He refers to the subject again Dec. 8, 1843, and states that *Holmes had paid* $57.37, *his part of the cost, and that the costs remaining to be paid by the others was* $116.43, *and that if it was paid within* 60 *days he would convey the land, &c.*

Haven, in his answer of Dec. 21, 1843, expresses his surprise at the contents of Ogden's letter, and adds: "When you was here in Sept., 1841, *I made a full settlement with you as far as I was concerned, and on my part I assigned a certain mortgage to you and deeded to you* 3 *lots in Chicago, giving up two lots as you know had been in part paid for,* and on your part you endorsed satisfied (or your words were abandoned and at an end) the demand on which you commenced the attachment suit; and you further gave me a writing in which you agree to release to me the 160 acres for Mr. Brown, and for which he had paid in part. *Now I made this contract in good faith, and delivered to you the deed and paid for acknowledging the same, and supposed that you would send me my deed as soon as you reached Chicago, which I am confident you agreed to; this I then supposed and now suppose was the contract. At the time you observed that you should require of those persons whose lands you had attached, under my name, and in which I had no interest,* (as I had always told you from the commencement of your suit,) *that*

they should each pay his proportion of the costs, which you said were some 40 or 50 dollars. This demand, I observed to you, I believed to be wrong and unjust, whether unlawful in Illinois or not I cannot say, *and so I now think.*"

Now suppose the bargain had been that Ogden took the Tooley mortgage and the three lots in full payment of the debt, except the costs of the attachment, $40 or $50 as he then stated it to be, or $186 as he stated it in Dec. 8, 1843, and that he would release Haven and his land from the payment of that part of his debt and collect it out of the lands of other persons. There was due to Haven from Brown on the 160 relinquished to Haven, $500; that amount was justly and legally subject to the payment of his remaining debt of $186, and to relinquish it to him and collect the debt of other persons would be fraudulent.

It is very evident that Ogden did not claim the Tooley land under the attachment. Why, if he did, his great and continued solicitude about Tooley's mortgage to Smith? That mortgage could have no effect on a title derived under the attachment against Haven. He enquires, Dec. 8, 1843, "how stands matters with Tooley? Is Smith's $100 or $150 mortgage paid? or have I got to proceed in chancery to show and prove the fraud attending the giving of that mortgage?" He writes to the same effect Dec. 27, 1845. It is true that in this last letter he claims the land as his own under a tax deed, but does not intimate that he claims it under the attachment.

2nd. As to the claim and color of title, &c., it is sufficient to say that there is no proof that Ogden paid the taxes for seven years; and if he had paid the taxes and occupied the land, his possession would not have been adverse to the title of Tooley. As mortgagee he was entitled to the possession, and whilst the relation of mortgagor and mortgagee continued, neither of them could do anything to the prejudice of the other.

2 Spence Eq. Jurisdiction, 654, 656, 668 and 807;
Bakestraw *et al* vs. Brewer, 2 P. Williams, 512;
Foster vs. Marriott, 2 Ambler, 668;
Godfrey vs. Watson, 3 Atk., 518;
Choteau vs. Jones *et al*, 11 Ill., 322;
Voris *et al* vs. Thomas, 12 Ill., 444;
Ralston vs. Hughes, 13 Ill., 481.

The purchase being by, and in the name of Smith, even if he had purchased for himself, can make no difference.

2 Story Eq. Jur., sec. 1264;
Kennedy vs. Daly, 1 Sch. & L., 379;
Armstrong vs. Campbell, 3 Yerg., 231;
Oliver *et al* vs. Piatt, 3 Howard, 401;
Nolen *et al* vs. Gwyn, 16 Alabama, 727.

ARCHIBALD WILLIAMS.

The suit was brought in apt time.
2nd Story's Eq. Jurisprudence 1520.
10 Wheaton 56.
Cook vs Arnham 3 P. Wms 283.
Demerest vs Wyncoop 3 Johns Ch 136.
Cases there cited
Gordon vs Hobart 2 Sumner 408,
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William B. Ogden et al
265-31
vs Error to Cook.
Carlos Heaven et al
Defendants Brief.

Filed May 2 1860
L. Leland.
Clerk

Haven & Grover

-vs-

Ogden & Butler

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United States of America
State of Illinois. Cook County } ss.

Pleas before the Honorable the Judges of Superior Court of Chicago within and for the County of Cook and State of Illinois, at a regular term of said Superior Court of Chicago, begun and holden at the Court House in the City of Chicago in said County and State on the first Monday being the fourth day of July in the year of our Lord one thousand eight hundred and fifty nine and of the Independence of the United States of America, the Eighty fourth

Present The Hon: John M. Nelson . . Chief Justice of Superior Court of Chicago.
Van H. Higgins and Grant Goodrich .. Judges
Carlos Haven . . . . Presenting Attorney
John Gray . . . . . Sheriff of Cook County.

Albert
Hall vs Kimball Cook.

Be it remembered that heretofore to wit on the Twenty third day of January A. D. 1856 came Carlos Haven and Grace N. Grover Complainants, and filed in the Office of the Clerk of the Cook County Court of Common Pleas, their certain Bill of Complaint in the Chancery side thereof, Which said Bill of Complaint is in words and figures as follows, to wit.

"To the Hon: John M. Wilson, Judge of the Cook County Court of Common Pleas of the State of Illinois, in Chancery sitting:

Humbly Complaining plew unto your Honor, your Orators Carlos Haven and Grace N. Grover both of the State of Illinois that heretofore to wit, on or about the sixth day of May A. D: 1836 one Simon Z. Haven now a resident of the State of New York purchased of the United States for the consideration of One dollar and twenty five Cents per acre the following described tracts of Land situate in the County of Cook aforesaid to wit, Section Ten (10) of Township Thirty nine North, Range Twelve East, of the third principal Meridian, and the South half of Section Three of the same Township and Range and received from the United States a proper Certificate of said purchase - That afterwards to wit on or about the twenty sixth day of December A. D. 1836 the said Simon Z. Haven in the consideration of the sum of $2550. paid to one Jeremiah Foley then and now a resident of Oneida County, State of New York One undivided half of said Lands and then transferred and conveyed the same in fee to said Foley by Deed of General

Warranty duly executed and delivered by said Haven to said Tooby which said Deed is lost, and after the most diligent search cannot be found, so that your Orators cannot give a Copy of the same. And that afterwards on or about the first day of February A. D. 1838 the said Tooby made his certain Indenture of Mortgage bearing date the day and year last aforesaid to the said Simon Z. Haven, to secure to him the payment of Five hundred and Twenty dollars in Three Equal Annual payments to be made from the first day of February 1838 with annual interest from said day at Seven per Cent and delivered the same to the said Haven, who caused the said Mortgage to be recorded in the Recorders Office of said Cook County on the 6th day of September 1838. A Copy whereof, together with the Certificates of acknowledgment and record is hereto attached marked Exhibit A and made a part hereof

And your Orators further show that afterwards on the first day of October A. D. 1839 Patents were issued by the United States to the said Haven for the said tracts of Land purchased by him as aforesaid which Patents were nine Months afterwards delivered to the said Haven but were not received nor accepted by him till long after the Commencement of the attachment suit hereinafter mentioned, nor till long after the levy hereinafter mentioned. Of which Patents Copies are hereto attached, marked Exhibits B and C. and made a part hereof.

And your Orators further show that by reason of the premises the said Tooby became seized in fee simple of the undivided one half of the whole of the Lands so purchased by the said Haven, and the absolute owner of the same subject

only to the Mortgage hereinbefore mentioned and another prior Mortgage which the said Tooley had made to one Hezekiah G. Smith and owned and held by your Orator the said Grover and being so seized aforesaid the said Tooley on the 29th day of September A.D. 1836 by his Deed of that date duly executed and delivered, conveyed the said Lands so purchased by him as aforesaid to your Orator. A copy of which Deed together with the Certificate of acknowledgment thereon is hereto attached marked Exhibit D, and made a part hereof.

And your Orator further shew that before the Conveyance of the said Tooley to your Orator as aforesaid on the 29th day of September A.D. 1841, the said Simon Z. Haven assigned without recourse to him all his right title and interest in & to the said Mortgage given by the said Tooley to him, to one William B. Ogden of the County of Cook and delivered the same to him, who now still holds the same.

And your Orator further shew that the said William B. Ogden well knowing that the said Simon Z. Haven had sold the undivided one half of the Lands purchased by him as aforesaid to the said Tooley as aforesaid, and that the interest of said Tooley was not subject to attachment for the debts of said Haven, and that said Haven had received from said Tooley the said Mortgage aforesaid for the said $290. on the said Lands yet purposing and intending fraudulently to acquire to himself title to said Lands, and having in his hands a claim belonging to one Charles Butler of the State of New York (and for whom the said Ogden was then acting as Agent) and against the said Simon Z. Haven, and having suit in order to recover his

intended operations informed the said Haven who was then a resident of the State of New York that he should be put to no trouble about having said claim but might pay it along as he could, in the meantime perhaps selling some of the Lots from the Date of which by said Butler to said Haven the said claim had originated, & the better to accomplish his said fraudulent intent and to cheat and defraud the said Darby and his legal representatives and others, and without the knowledge of the said Butler, on or about the Eleventh day of October A. D. 1839 and before the said Patents were delivered to the said Haven or received or accepted by him caused a suit in attachment to be instituted in the Circuit Court of said Cook County on the law side thereof in favor of the said Butler as plaintiff, and against the said Simon Z. Haven as defendant, and professing to act as the Attorney in fact of the said Charles Butler on the said Eleventh of October, filed his the said Ogdens Affidavit in the Office of the Clerk of said Court thereon setting forth among other things that the said Simon Z. Haven was then indebted to the said Charles Butler in the sum of $14540 being the amount then claimed to be due from the said Haven to the said Butler on certain Articles of Agreement under the respective hands and seals of the said Haven bearing date the 28th day of April A. D. 1836, by which said Articles of Agreement the said Butler covenanted to sell to said Haven Lots No 8 & 9 in Block No 17 in Knoxs Addition to the Town of Chicago, and wherein, as it is set forth in said Affidavit, the said Haven agreed and covenanted to pay to said Butler therefor the sum of Seventeen hundred dollars on the 28th day of April 1837 and the further sum

of Seventeen hundred dollars on the 28th day of April 1838 with interest on the whole from the date of said agreement at ten per Cent, and in which said Affidavit it was alleged that the said two payments had not been made by the said Haven and that together with the interest there was then due thereon the sum of Four thousand five hundred and forty dollars and thereupon the said Ogden then filed a certain Attachment Bond in said Office purporting to be executed by the said Charles Butler by his Attorney in fact the said Ogden as principal and the said Ogden as security and thereupon there caused a Writ of Attachment to be issued by the Clerk of said Court in favor of the said Butler and against the Estate of the said Simon Z Haven who was the Defendant therein: Which said Writ bore date the 18th day of October 1839 and was then and there by the said William B. Ogden delivered to the Sheriff of said Cook County to execute and was afterwards returned to the said Clerks Office by said Sheriff with the following indorsement made thereon by said Sheriff "Executed by attaching the following described property of Simon Z. Haven Oct. 30th A.D. 1839. 24 1/2 feet on the West 1/3 of West side of Lot 1 Block 24 School Section Addition to Chicago also the 19/24 part undivided from Section 10 the South half of Section 3 Township 39 North Range 13 East of the Third principal Meridian: Which said levy was made by the said Sheriff at the instance and request of the said Ogden and by his directions. and afterwards by the procurement of the said Ogden there having been publication of Notice in said cause, on the 31st day of March

A. D. 1840 a Declaration was filed therein counting upon the said Articles of Agreement mentioned in the Affidavit of the said Ogden hereinbefore referred to as the sole and only causes of action in said attachment suit, and that afterwards to wit on the 27th day of May A.D. 1841 the said Ogden caused such proceedings to be had in said suit that among other things a Judgment was rendered against said Defendant who had never been served with process nor entered his appearance in the same, in favor of said Butler for the sum of $5106.45 and Cost of said suit, and for a Special Execution against the Lands attached in said suit, embracing therein the whole of the Lands now claimed by your Orators as aforesaid. Copies of which proceedings, and those subsequent thereto in said suit are herewith filed and made a part hereof and marked Exhibit B.

And your Orators further show that afterwards to wit on the 28th day of June A. D. 1841 the said Ogden fraudulently caused Execution to be issued out of said Court, directed to the Sheriff of said Cook County to execute, upon the Judgment aforesaid and delivered the same to said Sheriff with directions to execute the same on the said Lands claimed by your Orators, and the other Lands attached as aforesaid, and afterwards the better to carry out the fraudulent intent aforesaid, the said Ogden procured himself to be appointed by said Sheriff one of the appraisers required by law, to appraise and value a part of said Lands attached, to wit, the said undivided 14/211, before Sale thereof should be made by said Sheriff, and did act as one of the appraisers to make such appraisement as will more fully appear by the Sheriffs return on

said Execution and the Certificate of said appraisement, under the hand of said Ogden attached thereto, and afterwards to wit on the 22d day of July A. D. 1841 the said Ogden procured the said Sheriff without advertisement to make Sale under said Execution of the lands last aforesaid and at the Sale thereof procured one Henry Smith a Man then without means, and in the said Ogden's employment, and who also had Notice of the said Deed from said Hawes to said Farley, to bid off said Lands in the Name of said Smith, but in reality for the use and benefit of said Ogden, to whom immediately thereafter the Certificate of said Smith by the said Sheriff for the said purchase was assigned by said Smith without any consideration whatever and that afterwards to wit on the 17th day of February A. D. 1843 the said Ogden procured the Sheriff of said Cook County in pursuance of said pretended Sale to execute and deliver to him the said Ogden a Sheriffs deed for the premises last aforesaid and afterwards to wit, on the 14th day of June 1845 caused said Deed to be recorded in the Recorders Office of said Cook County a Copy of which said Deed, together with the Certificate of acknowledgment and Record thereon is herewith filed and made a part hereof marked Exhibit "E."

And your Orators further show that the said Ogden the better to carry out his fraudulent purposes aforesaid, the said Farley being entirely ignorant of said Attachment suit, and said Ogden wishing to prevent any presumption from being made from the Sheriffs Sale aforesaid and fraudulently to acquire a pretended title to said Lands to himself, without the Knowledge of the said

Butler, in a concealed and secret manner and undiscovered by the Real owners of the same, until Consummated. after the Said Sheriff by said Sheriff as aforesaid, and before one year have expired from the time of such Sale and whilst the said Ogden held the Certificate of purchase thereof given by said Sheriff as aforesaid in said Sale, to wit, on the 22d day of September A. D. 1841 in Consideration of the Assignment of the said Mortgage from said Tooley to said Hamen, to him the said Ogden and of a deed of three Lots in the School Section of Chicago then made by Hamen to said Ogden at his request and that the Lots aforesaid purchased by the said Hamen of the said Butler should be retained by the said Butler and forfeited to him as in said Agreement fully in said attachment suit have been provided, agreed with said Hamen that said Agreement fully and all matters growing out of it should be discharged, considered as paid and at an end, which said agreement was signed by the said Ogden, written at the foot of the duplicate of said Articles of Agreement-fully, and delivered to the said Hamen, and is in the words and figures following, to wit, "In consideration of an Assignment of a Mortgage of Tooley and of a Deed of 3 Lots in School Section Chicago made to me this day, it is agreed that this agreement above written between Chs. Butler and S. F. Hamen is declared paid and at an end, the Lots being retained by said Butler . . . . } Sept: 22: 1841.

H. B. Ogden
for C. Butler."

A copy of which said Articles of Agreement and the last aforesaid agreement is hereto attached marked Exhibit D and made a part hereof.

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And your Orators further show that the said Settlement was by the said Haven intended to be and really was as by the Statements of the said Ogden the said Haven had been induced to believe a full Payment and Satisfaction and discharge of the said Judgment Sale and all proceedings in said attachment suit and of all liability of the said Haven on said Articles of agreement and that if the said Ogden or any one else did acquire any right or interest in said Lands by virtue of the said attachment suit and the proceedings therein, the Settlement aforesaid was a complete redemption and discharge of said Lands therefrom

And your Orators further aver that the said Farley was up to the time of said Settlement and long thereafter entirely ignorant of said Attachment suit, and that the said Haven relying on the said agreement so made by the said Ogden and his verbal promise at the same time made to dismiss said suit paid no further attention to the matter and notwithstanding said Ogdens previous conduct as aforesaid, being as very confiding, man wholly omitted to watch and dog the said Ogden to keep him from fraudulently acquiring the Lands of the said Haven and others by the machinery of the Courts of Law. Yet the said Ogden notwithstanding said agreement in writing and said verbal promise the better to carry out his aforesaid fraudulent intent of acquiring a pretended title to the Lands of said Haven, Farley & others, including the lands aforesaid claimed by your Orators, and for the purpose of hindering and obstructing the said Farley and his legal representatives from the said Lands of your Orators from the said Mortgage given by the said Farley to the said Haven after

procured the said Sheriff of Cook County in total disregard and violation of said agreement to execute and deliver to him, the said Sheriffs deed before mentioned and referred to, and when the said Hawes years thereafter on learning of said Ogdens conduct in the premises reproached him therefor, he deeded back to the said Hawes without consideration all the Lands which the said Hawes owned in the said 19/24 at the time of the levy of said attachment, that is to say, 5/24 undivided of said Section Ten and of the South half of said Section Three in order to keep the said Hawes quiet and from so exposing him the said Ogden for his fraudulent conduct in the premises.

And your Orators further aver that after the said Ogden had received from the said Hawes the assignment aforesaid of the said Mortgage to the said Hawes from the said Tooley the said Ogden also belong said Mortgage - and after the said Sale by the said Sheriff the said Ogden also belong the said Certificate of purchase in order the better to carry out his fraudulent intention of acquiring to himself a perfect title to said Lands of your Orators and to hinder and prevent the said Tooley and his legal representatives from redeeming the same from said Mortgage made as aforesaid by the said Tooley to the said Hawes & suffered the taxes on the same for the year 1841 to remain unpaid, and the said Lands claimed by your Orators with other Lands to be sold by the Sheriff of said Cook County for the said taxes interest and cost, which Sale was made on the 26th day of November A.D. 1842, and afterwards in pursuance of said Sale on the 15th day of January

11

A. D. 1845 procured the Sheriff of said County to execute and deliver to him the said Ogans two instruments in writing so commonly called two deeds, the one pretending to be a Conveyance from said Sheriff to said Ogans of 19/24 undivided of said Section Five, and the other to be a Conveyance from said Sheriff to said Ogden of 19/24 undivided of the South half of said Section Three, and afterwards to wit on the 21st of January A. D. 1845 caused said Deeds to be recorded in the Recorders Office of said Cook County. Copies of which said Deeds and Certificates of acknowledgment in substance are herewith filed marked Exhibits "F. & G." and made a part hereof.

And your Orator further show that the said Ogdens now claim to hold the said Lands of your Orators (which has never yet been in the occupation or possession of any one) as his own by virtue of the said two deeds as well as by said Sheriffs Deed.

That your Orators further show that on the day of January A. D. 1846, they were ready and willing and offered to pay to the said Ogans the full amount of the principal and interest due on the said Mortgage from the said Foley to the said Hayes treating the same as if nothing had been paid thereon to wit, the sum of dollars and requiring any of the said Ogans that he should at the cost of your Orators release and quit claim to them all the right title and interest acquired by him in their said Lands by virtue of said Mortgage and assignment and said Sheriffs deed in said attachment suit, which offer the said Ogans then and there refused to accept.

final hearing of this Cause it may be decreed that upon payment being made by your Orators to said Ogden of what shall be found due by such accounting that the said Ogden release and quit claim to your Orators all the right title and interest in said Lands which the said Ogden holds therein by virtue of the said Mortgage and the said assignment thereof the said Sheriffs deed in said attachment suit and said tax Deeds, or (if it shall seem better to your honor on the hearing of said Cause, your Orators pray that it may be decreed that upon payment being made as aforesaid, the Mortgage aforesaid, the Sheriffs deed aforesaid and said tax deeds be set aside, for naught held and cancelled.

And your Orators further pray for such other and further relief in the premises as justice and Equity may require And your Orators as in duty bound will ever pray &c

C. Haven } Solicitors
T. M. Grover } Pro Se. P
A Williams
their Solicitor."

"Exhibit A"

"Jeremiah Tooley
to
Simon Z. Haven"

This Indenture made the tenth day of February in the year of our Lord one thousand eight hundred and thirty eight between Jeremiah Tooley and Eliza his

Wife of the Town of Sangerfield County of Oneida and State of New York parties of the first part and Simon H. Haven of the same place of the second part Witnesseth that the said parties of the first part for and in consideration of the sum of Five hundred and sixty dollars Current Money of the United States to them in hand paid, the receipt whereof is hereby acknowledged have granted bargained sold released enfeoffed and confirmed and by these presents do grant bargain sell release enfeoff and confirm unto the said party of the second part in his actual possession now being and to his heirs and assigns forever One equal undivided half of Section Number Ten (10) in Township Number Forty three North of range Number Twelve East of the Third principal Meridian, the whole of said Section containing of Six hundred and forty acres more or less; Also one equal undivided half of the South half of Section Number Three in Township Number Forty three North of range Number Twelve East of the Third principal Meridian said half Section containing of Three hundred and twenty acres of land be the same more or less; said pieces of land are situate in the State of Illinois

To have and to hold the above bargained premises to the said party of the second part his heirs and assigns to the sole and only proper use, benefit and behoof of the said party of the second part his heirs and assigns forever Provided always and these presents are upon this express condition, that if the said parties of the first part their heirs executors administrators or assigns, shall well and truly pay

or cause to be paid to the said party of the second part his heirs executors, administrators or assigns, the sum of Two hundred and Ninety dollars in three equal annual payments from the first day of February 1838 with annual interest from said last mentioned day at Seven per Cent, then these presents shall cease and be null and void, And the said Jeremiah Tirley party of the first part for himself his heirs executors and administrators doth covenant promise grant and agree to and with said party of the second part his heirs executors or administrators and assigns that he will well and truly pay or cause to be paid unto the said party of the second part his heirs executors administrators or assigns, the said sum of Two hundred and Ninety dollars and interest thereon at the time and in the manner above mentioned, and that in case of the non payment of the said sum of Two hundred and Ninety dollars and the interest thereon or any part thereof at the time or times above limited for the payment thereof, then and in such case it shall and may be lawful for the said party of the second part his heirs executors administrators or assigns and the said parties of the first part do covenant and agree and by these presents empower and authorize the said party of the second part his heirs, executors, administrators or assigns to grant bargain, sell release and convey the said premises with the appurtenances thereunto belonging at Public Auction or vendue, and at such Sale to make and execute to the purchaser or purchasers his her or their heirs and assigns forever, good ample and sufficient Deeds of Conveyance in the Law pursuant to the Statute

in such case made and provided, rendering the surplus moneys if any there be to the said parties of the first part, their heirs Executors, administrators or assigns, after deducting the costs and charges of such Sendure and Sale as aforesaid.

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 the presence of . . . . } Jeremiah Fosley (Seal)
Electa A. Fosley (Seal)."

"State of New York
Oneida County . . } ss.

Be it remembered that on this 10th day of February A. D. 1838 personally came before me the undersigned, Jeremiah Fosley & Electa his wife to me known to be the persons described in and who have executed the within Mortgage and acknowledged that they severally executed the within Mortgage for the uses and purposes therein mentioned And the said Electa being by me examined separate and apart from her said husband acknowledged that she executed the said within Mortgage freely and without any fear or compulsion of her said husband.

Joseph D. Husbands. Sup Court
Com of Oneida County. N.Y."

"State of New York
Oneida County . } ss.

I James Dean, Clerk of the said County of

Cecilia Do Certify that Joseph. D. Husbands Esq. whose Name is subscribed to the Certificate of the proof or acknowledgment of the annexed instrument in writing and indorsed thereon was at the time of taking such proof or acknowledgment a Commissioner of the Supreme Court, in and for said County & duly authorized to take the same, and that I am well acquainted with the handwriting of said Commissioner and verily believe that the signature to the said Certificate of proof or acknowledgment is genuine

In witness whereof I have hereunto set my hand and affixed my Official Seal the first day of June 1838.

(Seal.) Henry Guthrie. Dep Clerk."

"Filed the 6th day Recorded the 8th September 1838
No 6434. Richd. L. Hamilton. Clerk"

"Exhibit B"

United States to Simon Z. Haven.
Certificate No 3405.

The United States of America
To all to whom these Presents shall Come Greeting:

Whereas Simon Z. Haven of Cook County, Illinois, has deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Chicago Illinois it appears that full payment has been made by the said Simon Z. Haven according to the provisions of the Act of Congress of the 24th April 1820 entitled an Act making further provision for the

Filed the 17th day of June A.D. 1843
Eli B. Williams Recorder."

"Exhibit 6"

Certificate No 3409.

The United States of America

To all to whom these presents shall come Greeting:
Whereas Simon Z. Hawes of Cook County, Illinois, has deposited in the General Land Office of the United States a certificate of the register of the Land Office at Chicago, whereby it appears that full payment has been made by the said Simon Z. Hawes according to the provisions of the Act of Congress of the 24th of April 1820 entitled an Act making further provision for the Sale of Public Lands for the South half of Section Three in Township Thirty Nine North of range Twelve East in the District of Land subject to Sale at Chicago, Illinois, containing Three hundred and twenty acres" according to the Official Plat of the Survey of said Lands returned to the General Land Office by the Surveyor General, which said tract has been purchased by the said Simon Z. Hawes

Now know ye that the United States of America in consideration of the premises and in conformity with the several Acts of Congress in such case made and provided have given and granted and by these presents do give and grant unto the said Simon Z. Hawes and to his heirs the said tract above described To have and to hold the same together with all the rights privileges immunities & appurtenances of whatsoever

nature thereunto belonging unto the said Simon Z. Hawes his heirs and assigns forever.

In testimony whereof I Martin Van Buren President of the United States of America have caused these Letters to be made Patent and the Seal of the General Land Office to be hereto affixed.

Given under my hand at the City of Washington the first day of October in the year of our Lord one thousand eight hundred and thirty nine and of the Independence of the United States the Sixty fourth.

Martin Van Buren

(Seal) By M. Van Buren: Secy:

H. M. Garland, Recorder of the General Land Office.

Recorded Vol 8 page 26.

Filed 17th day of A. D. 1843.

Eli B. Williams. Recorder"

"Exhibit. D."

"This Indenture made the 29th day of September in the year of our Lord one thousand eight hundred and fifty five Between Jeremiah Tooley and Eliza A. his wife of the one part and Carlos Haven of Chicago and Isaac M. Grover of Quincy State of Illinois parties of the second part Witnesseth The said parties of the ~~second~~ first part for and in consideration of the sum of One dollar in hand paid by the said party of the second part the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged there

from has granted released sold conveyed and quit claimed and by these presents does grant release sell convey and quit claim unto the said party of the second part his heirs and assigns forever all the right title interest claim and demand which the said party of the first part has in and to the following described Lot piece or parcel of land, to wit, The undivided one half of Section Ten (10) and the undivided one half of the South half of Section Three (3) Township Thirty nine (39) North range Twelve (12) East of 3rd P. M. to each of the said grantees an equal undivided one fourth part of said Section 10, South half of said Section 3.

To have and to hold the same together with all Hereditaments the appurtenances & privileges thereunto belonging or in any wise thereunto appertaining, and also the State right title interest and claim whatever of the said party of the first part either in law or Equity to the only proper use benefit and behoof of the said party of the second part their heirs and assigns forever.

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

Signed Sealed and delivered } Jeremiah Cooley (Seal)
In presence of ". . . . . }

" State of Illinois }
Cook County . . } ss.
City of Chicago }

I George C. Rugales a Notary Public in and

for the City of Chicago in said County in the State aforesaid Do hereby Certify that Jeremiah Tooby who is personally known to me as the same person whose name is subscribed to the foregoing instrument of writing appeared before me this day in person and acknowledged that he signed sealed and delivered the said instrument of writing as his free and voluntary act; for the uses and purposes therein set forth.

Given under my hand and Seal Notarial this 29th day of September A. D. 1855

George A. Ingalls
Notary Public.

(Seal)

"Exchibit E"

"Samuel D. Lowe. Sheriff
vs.
William B. Ogden . . .

Whereas Charles Butler did at the April Term of the Circuit Court for the County of Cook and State of Illinois for the year 1841 recover a judgment against Simon Z. Hanes for the sum of Five Thousand one hundred and Nine 45/100 dollars damages, and costs and charges of suit, upon which Judgment a Second Alias Special Writ of Fieri Facias was issued dated the Twenty eight day of June 1841 directed to Arbele Steele late Sheriff as aforesaid, ~~and upon~~ County of Cook to execute and by virtue of said Writ the said Arbele Steele late Sheriff as aforesaid levied upon the lands hereinafter described and the same was struck off and sold to Henry Smith for One Thousand one hundred Forty dollars he being the

highest and best bidder therefor and the time and place of the sale thereof having been duly advertized according to law, and the said Henry Smith having duly assigned his Certificate of purchase to William B. Ogden Now therefore Know all by this Deed That I Samuel A. Lowe, Sheriff of said County of Cook in consideration of the premises have granted bargained and sold and do hereby convey to the said William B. Ogden assignee as aforesaid his heirs and assigns the following described tract or parcel of Land situated in the County of Cook and State of Illinois and known as Number twenty fourth parts of Section Ten (10) and the South half 1/2 of Section Three (3) Township Thirty nine (39) North range Twelve (12) East To have and to hold the said described premises with all the appurtenances thereto belonging to the said William B. Ogden assignee as aforesaid his heirs and assigns forever

Witness my hand and seal this fourteenth day of February A. D. 1843, the words "for One thousand one hundred and forty dollars" interlined, and the words "and of One thousand one hundred and forty dollars to me in hand paid the receipt whereof is hereby acknowledged" erased before signing.

Sealed and delivered } Samuel A. Lowe. Sheriff
In presence of .. } Cook Co. Ills. ("Seal")

"State of Illinois }
County of Cook } Ss.

I Henry G. Hubbard Clerk of the Cook Circuit Court do hereby Certify That on this Eleventh day of

April A. D. 1843 personally appeared before me Samuel D. Lowe who acknowledged that he executed the same as his Official act and deed. In witness whereof I have hereunto set my hand and seal Official the day and year first above written.

(Seal.) H. G. Hubbard Clerk"

Filed this 17th June A. D. 1845. No. 13384".

"Exhibit F. to G."

"Sheriff of Cook County to William B. Ogden,

Know all Men by these presents That whereas at the November Special Term 1842 of the Circuit Court of Cook County a Judgment was obtained in said Court in favor of the State of Illinois against Nineteen Twenty fourths undivided of Section Ten (10) in Township Number Thirty nine (39) North of range Number Twelve (12) East of the Third principal Meridean for the sum of Sixteen dollars and forty eight cents, being the amount of taxes interest and costs assessed upon said tract of land for the year 1841 And whereas on the twenty eighth day of November 1842 I Samuel D. Lowe Sheriff of the County aforesaid by virtue of a Precept issued out of the Circuit Court of the County aforesaid dated the Twenty sixth day of November 1842 and to me directed did expose to Public Sale at the door of the Court House in the County aforesaid in conformity with all the Requirements of the Statute in such case made and provided the tract of land above described for the satisfaction of the Judgment so rendered as aforesaid And whereas at the time and place

aforesaid William B. Ogden of the County of Cook and State of Illinois having offered to pay the aforesaid sum of Sixteen dollars and forty eight cents for the whole of said tract of land which was the least quantity bid for, the said tract of land was stricken off to him at that price Now therefore I Samuel A. Lowe, Sheriff of the said County of Cook for and in consideration of the said sum of Sixteen dollars & forty eight cents to me in hand paid by the said William B. Ogden at the time of the aforesaid sale, and by virtue of the Statute in such case made & provided have granted bargained and sold and by these Presents do grant bargain and sell unto the said William B. Ogden his heirs and assigns Twelve twenty fourths undivided of Section No. Two (2) in Township Number Thirty nine (39) North of range Number (12) Twelve East of the Third principal Meridian

To have and to hold unto him the said William B. Ogden his heirs and assigns forever. Subject however to all the rights of redemption provided by Law.

In witness whereof I Samuel A. Lowe. Sheriff as aforesaid, by virtue of the authority aforesaid have hereunto subscribed my name and affixed my Seal this fifteenth day of January 1845

Samuel A. Lowe

Sheriff of Cook Co: Ills."

"State of Illinois }
Cook County ... } ss

Be it known that on the day of the date hereof personally appeared before me Samuel Hoard, Clerk of the Circuit Court within and for said County, Samuel A. Lowe personally known to be the real person whose name appears to

subscribed to the foregoing Deed of Conveyance as having executed the same in the capacity of Sheriff of said County & acknowledged the execution to be his free act and deed for the uses Purposes therein expressed.

In witness whereof I have hereunto set my hand & Seal of said Court at Chicago this 15th day of January A. D. 1845.

Samuel Hoard Clerk of C. C. C."

(Seal)

Filed this 21. Jany 1845.

H. B. Egan Recorder."

Sheriff of Cook County to William B. Egan

"Know all Men by these Presents that whereas at the November special Term of the Circuit Court of Cook County a judgment was obtained in said Court in favor of the State of Illinois against Nineteen twenty fourths undivided of the South half of Section Three (3) in Township Number Thirty Nine (39) North of Range Number Twelve (12) East of the Third principal Meridian for the sum of Eight dollars & forty eight cents being the amount of taxes interest and costs assessed upon the said tract of land for the year 1841 And whereas on the 28th day of November A. D. 1842 I Samuel D. Lowe Sheriff of the County aforesaid by virtue of a writ issued out of said Circuit Court of the County aforesaid dated the Twenty sixth day of November 1842 and to me directed, did expose to Public Sale at the Door of the Court House in the County aforesaid in conformity with all the requisitions of the Statute in such case made and provided the tract of land above described for the satisfaction of the judgment so rendered as aforesaid And whereas at the time

and place aforesaid Wilson B. Ogden of the County of Cook and State of Illinois having offered to pay the aforesaid sum of Eight dollars & forty eight cents for the whole of said tract of Land which was the least quantity bid for, the said tract of Land was struck off to him at that price Now therefore I Samuel A. Lowe, Sheriff of the said County of Cook for and in consideration of the said sum of Eight dollars & forty eight cents to me in hand paid by the said William B. Ogden at the time of the aforesaid sale, and by virtue of the Statute in such case made and provided have granted bargained Sold and by these presents do grant bargain Sell unto the said William B. Ogden his heirs & assigns Nine(9) twenty fourths undivided of the South half of Section Three (3) in Township Thirty nine (39) North of range Number (12) Twelve East of the third principal Meridian.

To have and to hold unto him the said William B. Ogden his heirs & assigns forever subject however to all the rights of redemption provided by law.

In witness whereof I Samuel A. Lowe Sheriff as aforesaid by virtue of the authority aforesaid, have hereunto subscribed my name & affixed my seal this fifteenth day of June 1845.

Samuel A. Lowe

Sheriff of Cook Co. Ills.

"State of Illinois }
Cook County .. } ss

Be it remembered that on the day of the date hereof personally appeared before me Samuel Hoard, Clerk

of the Circuit Court within and for said County, Samuel A. Lowe personally known to me to be the same person whose name appears subscribed to the foregoing deed as having executed the same in the capacity of Sheriff of said County and acknowledged the execution to be his free act and deed.

In witness whereof I have hereunto set my hand and seal of said Court at Chicago this 15th day of January A.D. 1845

(Seal) Samuel Hoard Clerk of C.C.C."

Filed this 21. Jany 1845.

H.B. Egan. Recorder."

"Exhibit D"

"Articles of Agreement made and concluded the twenty eighth day of April in the year of our Lord one thousand eight hundred thirty six Between Charles Butler of the City County & State of New York by his Attorney H.B. Egan by virtue of a power of Attorney executed by said Charles Butler and Eliza A. his wife bearing date the first day of January one thousand eight hundred thirty six, of the first part and Simon Z. Mann of Chicago of the second part: Witnesseth that the party of the first part at the request of the party of the second part, and in consideration of the Money to be, and the Covenants as herein expressed to be performed by the party of the second part hereby agrees to sell to the said party of the second part all that certain lot and parcel of land situate in the Town of Chicago in Cook County, in the State of Illinois known & distinguished on the Map or Plat of Kinzies Addition to Chicago

on file in the Office of the Recorder of Cook County as Lot 5th in Block Seventeen in said Addition with the privileges and appurtenances thereto belonging

And the said party of the second part in consideration of the premises hereby agrees to pay to the said Charles Butler or to his Attorney executors administrators or assigns the sum of Five thousand dollars as follows, to wit:-

Sixteen hundred dollars this day, Seventeen hundred dollars one year from date, and Seventeen hundred dollars two years from date, with interest at the rate of Five per Cent per annum to be paid annually on the whole sum from time to time remaining unpaid.

And also that he will well and faithfully in due season pay or cause to be paid all taxes and assessments ordinary Extraordinary for any purpose whatever upon the said premises or appurtenances.

And the said party of the first part further covenants and agrees with the said party of the second part that upon the faithful performance by the said party of the second part of his undertakings in this behalf and of the payment of principal and interest of the sum above mentioned in the manner specified by the said party of the first part shall and will without delay well and faithfully execute & deliver in person or by Attorney duly authorized a good and sufficient deed or deeds and thereby assign or convey to the said party of the second part his heirs and assigns a good perfect and unencumbered title in fee simple to the above described premises

with their appurtenances.

And it is mutually covenanted and agreed by and between the parties hereto that in case default shall be made in any of the payments of principal or interest at the time or any of the times above specified for the payment thereof and for sixty days thereafter this agreement and all the preceding provisions hereof shall be null and void and no longer binding at the option of the said party of the first part his representatives or assigns And all the payments which shall have been made hereon or on insurances hereof absolutely and forever forfeited to the said party of the first part, or at the Election of the said party of the first part his representatives and assigns the Covenants and liability of the said party of the second part shall continue and remain obligatory upon the said party of the second part and may be enforced and the consideration money, and every part thereof with the Annual interest, as above specified, be collected by proper proceedings in Law or Equity from the said party of the second part his heirs executors administrators or assigns.

And it further mutually covenanted and agreed by & between the parties hereto, that in case of default in the payments stipulated to be made by the said party of the second part or any thereof and the Election of the party of the first part his representatives or assigns to enforce the foregoing Contract if sale at any time and prior payments forfeited the said party of the second part his heirs representatives or assigns who may have possession or the right of possession of said premises at the time of such default or at

any time thereafter shall be considered and are hereby agreed and declared to be in Law and Equity the tenant and tenants at will of the said party of the first part his representatives and assigns at a rent equal to an interest of Ten per Cent per annum on the whole amount of the purchase Money above specified payable quarterly yearly from the day of such default in payment of principal or interest

And after such default in payment and Election to consider the above Contract of Sale as void, the said party of the first part his representatives and assigns shall and may have and exercise all the powers rights and remedies provided by Law or Equity to collect such rent or to remove such tenant or tenants like power as if the relation of Landlord and Tenant hereby declared was created by an Original absolute Lease for that sole purpose at a Specific rent to be payable quarterly or a tenure at will

And that in such case the said tenant or tenants shall and will pay or cause to be paid all taxes & assessments Ordinary and extraordinary which may be laid or assessed on said premises or any part thereof during the continuance of such tenancy and will not commit or suffer any waste or damage to said premises or the appurtenances, but will keep and deliver up on the determination of such tenancy, the said premises and appurtenances in as good order and repair (ordinary wear and decay and unavoidable injury by the Elements excepted) as they were in at the commencement of such tenancy. In witness whereof the party of the first part

by his said Attorney and the party of the second part in his proper person have hereunto respectively set their hands and seals the day and year first above written.

Sealed and delivered
In presence of
A. E. McClure.

Charles Butler (Seal)
by his Attr (Seal)
O: B. Ogden
Simon Z. Haven (Seal)."

on the back of which Contract is this receipt

"Rec'd April 28, 1836 the first payment of Sixteen Hundred dollars on this Contract in Land.

O. B. Ogden"

and this other writing

"In consideration of an assignt of a Mortgage on S. Foster ½ of a tract of 3 Lots in School Section Chicago made bond this day it is agreed that this agreement above written between Chs Butler & S. Z. Haven is declared paid and at an end. Sept. 22. 1841. } O. B. Ogden
The lots being retained by said Butler } for C. Butler."

And thereafter to wit on the seventh day of September A. D. Eighteen hundred and fifty two came the said Defendant Butler by his Solicitor and filed in the office of the Clerk of said Court his answer to said Bill: Which said answer is in the words and figures following, that is to say.

" Carles Haven and
Isaac N. Grover
vs
William B. Ogden
and Charles Butler

In Cook County Court of Common Pleas.

State of Illinois
In Chancery.

To the Honorable John N. Wilson, Judge of the Cook County Court of Common Pleas. In Chancery.

The Genral Answer of Charles Butler, a Defendant to the Bill of Complaint, above entitled against him and William B. Ogden in this Honorable Court Exhibited

This Defendant now and at all times, saving and reserving to himself all manner of benefit and advantage of Exception which can or may be had to the many errors uncertainties and other imperfections in the said Complainants Bill contained for answer thereunto or unto so much, and such parts thereof, as this defendant is advised, it is are material or necessary for him to make answer unto, this Defendant, answering saith.

That he admits upon his information and belief, that on or about the Sixth day of May A. D. 1836 one Simon Haven, now a resident of the State of New York purchased of the United States, for the consideration of One dollar Twenty five cents an acre, the following described tracts of Land, situate in the County of Cook aforesaid, to wit, Section, ten (10) of Township Thirty nine (39) North range Twelve (12) East of the Third principal Meridian, and the South half

of Section Three (3) of the same Township and Range, and received from the United States, a proper Certificate of such purchase.

This defendant further answering says that he has no knowledge whatever and no information except what is derived from the statements in said Bill of Complaint contained, whether the said Simon Z. Hawes, in consideration of the sum of $2880 paid to Jeremiah Fosley in said Bill mentioned, an undivided half of said Lands, and thus transferred and conveyed the same in fee to the said Fosley, by deed of general Warranty duly executed and delivered by said Hawes to said Fosley, or whether said Deed is lost, or whether said deed after the most diligent search cannot be found, and therefore he can neither admit or deny the allegations in that behalf in said bill contained but leaves the Complainants to such proof thereof, as they may be advised.

This defendant upon his information and belief admits, that on or about the first day of February A.D. 1838, the said Fosley made his Mortgage to the said Simon Z. Hawes to secure the payment of Five hundred and Ninety dollars to the tenor & Effect as set forth in said bill, and that said Mortgage was delivered to said Hawes, who caused the same to be recorded, as alleged in said Bill.

This defendant further answering says that he has no knowledge whatever and no information except what is derived from the statements in the said Complainants bill, whether on the first day of October 1839 Patents were issued by the United States, to the said Hawes for the said tracts of Land purchased

by him as aforesaid, nor whether said Patents were some Months afterwards delivered to the said Haven, nor whether the same were not received or accepted by him until long after the Commencement of the attachment first mentioned in said Bill, and long after the Levy therein mentioned, and he can neither admit nor deny the allegations in that behalf, in said Bill contained.

This Defendant further answering denies that the said Foley became seized in fee simple of the undivided one half of the whole of said Lands. so purchased by said Haven, & the absolute owner of the same, or of any part thereof, subject only to the Mortgages particularly described in said Bill of Complaint, but this Defendant on his information and belief avers that certain attachments were laid upon the said Haven's rights and interests in said Lands (in said Bill more particularly described) long prior to the registration of the said pretended Deed from said Haven to the said Foley and without any Notice whatever that said Lands had been sold by said Haven to said Foley as is pretended in said Complainants said Bill of Complaint, and that the same were subsequently by virtue of certain Executions issued upon said attachments and purchased by Henry Smith and the Certificates of the purchase thereof assigned to the Defendant William B. Ogden and that the said Lands were subsequently conveyed to the said Defendant Ogden by the proper Officer as will be more particularly shown hereafter, and this Defendant avers that the said Conveyance to said Ogden was procured by him and that he holds the same subject to the Equitable rights of this Defendant as hereinafter set forth and this Defendant also

admits upon his information and belief, that the said Tooley on the 29th day of September A. D. 1835 executed and delivered a Deed for said Lands to the said Complainants, but this Defendant denies that the said Tooley by said Deed conveyed said Lands or any part thereof to said Complainants and he also denies that said Tooley had any right or title either in Law or Equity to said Lands or any part thereof and could therefore convey them by said Deed.

This Defendant further answering admits that on the 22d day of September A. D. 1841 the said Simon Z. Hamen assigned without recourse to him, all his right title and interest in & to the said Mortgage given by the said Tooley to him to the said Defendant William B. Ogden and delivered the same to said Ogden, and that the said Defendant still holds the same subject however to the Equitable claim and interest of this Defendant thereon as hereinafter set forth.

This Defendant further answering states that on or about the 11th day of October A. D. 1839 (but whether before or after the said Patents were delivered to the said Hamen or received or accepted by him this Defendant does not know and is not informed save by the said Bill of Complaint) this defendant by the said Defendant William B Ogden as his agent & attorney in fact did cause a suit in attachment to be instituted in the Circuit Court of said County of Cook on the Law side thereof in favor of this Defendant as Plaintiff against the said Simon Z. Hamen as Defendant and that on the said 11th day of October the said Defendant William B. Ogden did file his Affidavit

in the Office of the Clerk of said Court thereof, setting forth according to the fact and the truth, among other things, that the said Simon Y. Hawes was then indebted to the Defendant in the sum of Four thousand five hundred & forty dollars ($4540) being the amount then claimed to be due from the said Hawes to this Defendant on certain Articles of agreement particularly described in said Complainants Bill of Complaint, and that the said Ogden did file a certain Attachment Bond in said Office executed as is alleged in said Bill of Complaint by this Defendant by said Ogden as his Attorney in fact, as principal, and by the said Ogden as surety and thereupon caused a Writ of Attachment to be issued by the Clerk of said Court in favor of this Defendant and against the Estate of the said Simon Y. Hawes who was the Defendant therein which said Writ bore date the 18th day of October 1839 and was delivered by the said Defendant Ogden to the Sheriff of the said County of Cork to execute, and was afterwards returned to said Clerks Office by the said Sheriff with the endorsement thereon as stated in said Complainants Bill of Complaint, which said levy was made at the instance and request of said Ogden and by his direction and that after the publication of Notice in said Cause on the 31st day of March A.D. 1840 a Declaration was filed therein as alleged in said Bill of Complaint and that on the 7th day of May A.D. 1841 the said Defendant Ogden caused such proceedings to be had in said suit, that among other things, a judgment was rendered against said Hawes, as is alleged in said Complaint for the sum of $5109 44/100 and costs of said suit

and for a Special Execution against the Lands attached in said suit as is alleged in said Bill of Complaint, and this Defendant alleges, that the said Defendant Ogden as the Attorney of this Defendant had full power and right to take the proceedings aforesaid, and this Defendant adopts confirms & ratifies the same in all things.

This Defendant further answering denies that at the time of the institution of said proceedings in attachment against said Mason in favor of this Defendant, either to this Defendant, or the said Defendant Ogden his Attorney, had any knowledge or information or notice that said Mason had sold the undivided one half of the Lands, purchased by said Mason as aforesaid to said Farley or any part thereof, or that said Mason had received from said Farley the Mortgage aforesaid, for the sum of $290 on the said Lands.

This Defendant further answering denies each and every allegation in the said Bill of Complaint contained, of fraud, fraudulent representation or improper or unfair conduct on the part of said Defendant Ogden, in relation to the said Attachment proceedings, the levy on said Lands, the appraisement thereof, or the acquisition by him of the title thereto and this Defendant alleges and avers upon his information and belief that the said proceedings were in all respects legal and regular, and that in all that he did in and about the said proceedings, or the said Lands, or in the acquisition of the title to said Lands, the said Defendant Ogden acted in justice, and good faith towards said Mason, and all other persons.

This Defendant further answering admits that on the 28th day of June 1841 by his Attorneys he caused execution to be issued on said Judgment and that afterwards the Sheriff of Cook County, made Sale under the Decree of the Lands referred to in said Bill of Complaint, that Henry Smith bid off said Lands, and took a Certificate of purchase thereof, which he afterwards assigned to said Defendant Ogden, who afterwards in pursuance thereof, procured a Deed thereof from said Sheriff which afterwards on the 14th day of June 1845, he said Ogden, caused to be recorded in the Recorders Office of Cook County aforesaid.

This defendant also denies that when said Smith bid off the said Lands he had any Notice whatever of said pretended Deed from said Hamer to said Tooley.

This Defendant further answering admits, that on the 22d day of September, in the year 1841, in consideration of the assignment of said Mortgage (from said Tooley to said Hamer) to the said Defendant Ogden, and of a Conveyance of three Lots, in the Second Section of Chicago, from said Hamer to the said Ogden, if that the Lots aforesaid, purchased by said Hamer from this Defendant, should be retained by him and forfeited to him, as in said agreement referred to, was provided, the said Ogden acting as the Attorney of this Defendant, did agree with said Hamer, that said Agreement should be considered as at an end, but this Defendant alleges and insists that it was well and distinctly understood and agreed by & between the said Ogden and the said Hamer that said agreement was only to discharge the said Hamer, from his liability to make the further and future payments

for which he was bound under said Articles of Agreement, and that the same was not in any manner to affect, prejudice or impair the proceedings aforesaid which had been taken in relation to said Land, nor the Judgment Execution and Sale aforesaid, all of which were to plead, except that said Ogden agreed to convey One hundred and Sixty acres of said Land to said Haven, or to such person as said Haven might appoint, which has since been done.

This Defendant further answering admits that the taxes for the year 1841 on said Lands, did remain unpaid, and that the same were sold by the Sheriff of said Cook County, for said taxes interest and cost on the 28th day of November A.D. 1842 and were purchased by the said Defendant Ogden, who afterwards in pursuance of said Sale on the 15th day of January A.D. 1845 procured the Sheriff of said County to execute and deliver to him said Ogden, two instruments of writing commonly called Tax Deeds one a Conveyance from the said Sheriff to the said Defendant Ogden of 19/214th undivided of said Section Ten (10) and the other a Conveyance from the said Sheriff to the said Ogden of 19/24th undivided of the South half of said Section Three (3) & afterwards on the 21st day of January A.D. 1845 caused said Deeds to be recorded in the Recorders Office of said Cook County,

This Defendant also admits that said Sale took place after the said Defendant Ogden had received said assignment of said Mortgage from Fooley to Haven as aforesaid, and while he still held the same, and after said Sale by the said Sheriff in the said attachment proceedings and while the said Defendant Ogden still held said Certificate of purchase. But this Defendant

denies all fraud or improper concealment or motives in said Defendant Ogden in so doing, and avers on information & belief that at the time the said Defendant Ogden obtained said Certificate of purchase from said Henry Smith, and at the time of the said settlement and arrangement with said Simon Z. Haven, he said Ogden supposed the taxes assessed on said Lands for the year 1841 had been paid by the said Simon Z. Haven, but discovered afterwards by the advertisement that they were unpaid and did buy off and purchase said Lands at said Tax Sale, said Ogden having been advised that said taxes were a subsisting Lien on said Lands, and that the same had accrued, before the said Defendant Ogden had obtained his title thereto, and that it was necessary to extinguish the same,

And this Defendant also avers that the said Mortgage from said Fosdick to said Haven was assigned by said Haven to the said Defendant Ogden, for no other purpose than to quiet the said Defendant Ogden's title to said Lands purchased by said Smith and afterwards conveyed to the said Defendant Ogden by said Sheriff.

And this Defendant further answering alleges avers and claims that he is the actual beneficial & equitable owner in his own right of one third part of the said Mortgage, from said Fosdick to said Haven and of all the right title interest & property of said Ogden therein acquired by the said assignment thereof or otherwise, He also alleges, avers & claims that he is the actual beneficial and equitable owner in his own right of all the lands taken under said attachment, or levied on under said attachments.

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or pld under paid Executors or Law Sales, or the Title whereof was conveyed to paid Ogden by virtue of all or any of the proceedings set forth or referred to in said Bill of Complaint, the this Defendant claims that said Ogden holds the said Mortgage and the Lands, referred to in said Bill of Complaint, and not already conveyed by him, in trust for this Defendant to the extent of one third thereof, which one third of said Mortgage and said Lands, this Defendant claims against the Plaintiffs, the said Defendant Ogden and all other persons.

And this Defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said Bill charged, Without this that there is any other matter cause or thing in the said Complainants said Bill of Complaint contained, material or necessary for this Defendant to make answer unto, and not herein and hereby well and sufficiently answered confessed, traversed and avoided or denied is true to the knowledge or belief of this Defendant All which matters and things, this Defendant is ready and willing to and, maintain and prove as this Honorable Court shall direct, and humbly prays to be hence dismissed with his reasonable Costs and charges in this behalf most wrongfully sustained.

Charles Butler."

And thereafter to wit on the Twenty fifth day of April A. D. Eighteen hundred and fifty six came the said Defendant Ogden and filed in the Office of the Clerk of said Court, his Answer to said Complainants Bill, in words and figures following to wit.

"Carlos Haven and
Isaac M. Grover
vs
William B. Ogden
and Charles Butler

In Cook County Court of Common Pleas
In Chancery.

To the Honorable John M. Wilson Judge
of the Cook County Court of Common Pleas.
In Chancery.

The general Answer of William B. Ogden
to the Bill of Complaint above entitled
against him and Charles Butler to this
Honorable Court exhibited.

This defendant now and at all times hereafter saving
and reserving unto himself all benefit and advantage of exception
which can or may be had or taken to the many Errors uncertainties
or other imperfections in the said Complainants said
Bill of Complaint contained for answer thereunto or unto so
much and such parts thereof as this Defendant is advised is or
are material or necessary for him to make answer unto, this
Defendant answering saith.

That he admits to be true as stated in said Complainants
said Bill of Complaint that on or about the 6th day of May
A. D. 1836 one Simm. Z. Haven now a resident of the State
of New York purchased of the United States for the Consideration
of One Dollar and twenty five Cents per acre the following
described Tracts of land situate in the County of Cook

aforesaid to wit- Section two (10) of Township Thirty nine (39) North range Twelve (12) East of the Third Principal Meridian and the South half of Section Three (3) of the same Township and Range and received from the United States a proper Certificate of said purchase.

Further answering this Defendant saith that as to all that part of said Complainants said Bill of Complaint in which it is alleged that on or about the 16th day of December A.D. 1836 the said Simon G. Hamm in consideration of the sum of $2880. sold to one Jeremiah Tooley then and now a resident of Oneida County, State of New York, the undivided half of said Lands and then transferred and conveyed the same in fee to said Tooley by Deed of General Warranty duly executed and delivered by said Hamm to said Tooley, which said Deed is lost and after the most diligent search cannot be found- this Defendant is not advised save by the said Complainants said Bill of Complaint and has no knowledge or information in regard to the same, except as aforesaid, and what he has derived from Common rumor and cannot therefore admit or deny the same.

Further answering this Defendant states that as to that part of said Complainants said Bill of Complaint in which it is alleged that on or about the first day of February A.D. 1838 the said Tooley made his Certain Indenture of Mortgage bearing date the day and year last aforesaid, to the said Simon G. Hamm to secure to him the payment of Two hundred and Ninety dollars in three equal annual payments to be made from the first day of February A.D. 1838 with annual in-

interest from said day at Same per Cent and delivered the Same to the said Hamen, who caused the said Mortgage to be recorded in the Recorders Office of said Cook County on the 6th day of September A.D. 1838, this Defendant admits the Same to be true as is alleged,

Further answering this Defendant says that as to all that part of said Complainants said Bill of Complaint in which it is alleged that on the 1st day of October A.D. 1839 Patents were issued by the United States to the said Hamen for the said Tracts of Land purchased by him as aforesaid, which Patents were some Months afterwards delivered to the said Hamen, but were not received nor accepted by him, till long after the Commencement of the Attachment Suit mentioned in said Bill of Complaint, nor till long after the levy in said Bill of Complaint mentioned, this Defendant has no Knowledge and is not informed in relation thereto, except except by the said Complainants said Bill of Complaint and cannot therefore either admit or deny the truth of said allegation

Further answering this Defendant denies that the said Foley became seized in fee simple of the undivided one half of the whole of the said Lands so purchased by the said Hamen and the absolute owner of the Same, or of any part thereof, Subject only to the Mortgages particularly described in said Bill of Complaint, but this Defendant avers that certain Attachments were laid upon the said Hamens rights & interests in said Lands (hereinafter particularly described) long prior to any registration of the said pretended Deed from the said Hamen to the said Foley and without any notice whatever

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that said Lands have been sold by said Haven to said Farley as is pretended in said Complainants said Bill of Complaint, and that the same were sold under and by virtue of certain executions issued upon said attachments and purchased by Henry Smith and the Certificates of the purchase thereof assigned to this Defendant and the said Lands subsequently conveyed to this Defendant by the proper officer, as will be more particularly shown hereafter. And this Defendant admits that the said Farley on the 24th day of September A. D. 1855 executed and delivered a Deed for said Lands to the said Complainants, but this Defendant denies that the said Farley by said Deed conveyed said Lands or any part thereof to said Complainants, and denies that said Farley had any right or title either in law or equity to said Lands or any part thereof, and could therefore convey none by said Deed.

Further answering this Defendant admits that on the 22d day of September A. D. 1841 the said Simon Z. Haven assigned without recourse to him all his right title and interest in and to the said Mortgage given by the said Farley to him & this Defendant and delivered the same to him and this Defendant still holds the same.

Further answering this Defendant states that on or about the 11th day of October A. D. 1839 (but whether before or after the said Patents were delivered to the said Haven or received or accepted by him this Defendant does not know and is not informed save by the said Bill of Complaint) this Defendant as Agent and Attorney in fact for Charles Butler of the City of New York did cause a suit in attachment to be instituted

in the Circuit Court of said Cook County on the law side thereof in favor of the said Butler as Plaintiff and against the said Simon Z. Haven as Defendant and on the said 11th day of October this Defendant did file his Affidavit in the Office of the Clerk of the said Court therein setting forth among other things that the said Simon Z. Haven was then indebted to the said Charles Butler in the sum of Four Thousand five hundred and forty dollars ($4540) being the amount then claimed to be due from the said Haven to the said Butler on certain Articles of Agreement particularly described in said Complainants said Bill of Complaint, and this Defendant did file a certain Attachment Bond in said Office executed as is alleged in said Bill of Complaint by the said Charles Butler by this Defendant as his Attorney in fact as principal, and by this Defendant as surety, and thereupon caused a Writ of Attachment to be issued by the Clerk of said Court in favor of the said Butler and against the Estate of the said Simon Z. Haven who was the Defendant therein, which said Writ bore date the 18th day of October 1839 and was delivered by this Defendant to the Sheriff of said Cook County to execute and was afterwards returned to the said Clerks Office by the said Sheriff with the Endorsement thereon as stated in said Complainants said Bill of Complaint, which said levy was made at the instance and request of this Defendant and by his direction and after the Publication of Notice in said Cause on the 31st day of March A. D. 1840 a declaration was filed therein as is alleged in said Bill of Complaint and that in

the 7th day of May A. D. 1841, this Defendant caused such proceedings to be had in said suit, that among other things a Judgment was rendered against said Haven as is alleged in said Bill of Complaint for the sum of $3109 45/100 Cents & said suit, and for a Special Execution against the Lands attached in said suit as is alleged in said Bill of Complaint But this Defendant utterly and unequivocally denies that at the time of the institution of such proceedings in attachment against said Haven in favor of said Butler that this defendant had any knowledge, information or Notice that said Haven had sold the undivided one half of the Lands purchased by said Haven as aforesaid to said Dolby or any part thereof, or that said Haven had received from said Dolby the Mortgage aforesaid, for the said $390 on the said Lands, and this defendant also denies, that for the purpose of concealing his interest therein or for any purpose he did inform the said Haven that he should be put to no trouble about paying said claim, and expressly denies and repels all allegations and insinuations of fraud or improper concealment as stated in said Bill of Complaint in regard to the manner of instituting said Attachment suit or of prosecuting the same.

Further answering this Defendant admits that on the 28th day of June A. D. 1841 he through his Attorneys caused Execution to be issued out of said Court directed to the Sheriff of Cook County to execute upon the judgment aforesaid and that the same was delivered to the said Sheriff with directions to levy the same on said Lands attached as aforesaid and that afterwards on the 22d day of July A. D. 1841 the

said Sheriff made Sale under said Execution of the said Lands referred to in said Bill of Complaint and that Henry Smith bid off said Lands and took a Certificate of Purchase therefor and afterwards assigned said Certificate to this Defendant, and that afterwards on the 14th day of February A.D. 1843 this Defendant procured a Deed from the Sheriff of the premises referred to in the said Bill of Complaint and afterwards on the 14th day of June 1844 caused said Deed to be recorded in the Recorders Office of said Cook County, all which proceedings relating to said Attachments, this Defendant avers were conducted by the Attorneys of said Charles Butler without any special direction or interference on the part of this Defendant, And it may be that this Defendant did act as appraiser as is alleged in said Bill of Complaint, but whether he did or not, he does not now remember. But if he did so act this Defendant denies all fraud in so acting and avers that he was competent to act as such, and was wholly disinterested in the matter, And this Defendant also denies that he procured said Sheriff to make said Sale without advertisement as is alleged in said Bill of Complaint, and avers that if it was so made (Which is expressly denied) that it was unknown to this Defendant, or to the said Henry Smith both of whom supposed and believed the whole proceedings in respect thereto to have been regular and legal as they had all been under the Special care of the Attorneys of the Plaintiff in said cause.

And this Defendant admits that he procured said Smith

to bid off said Lands in his own name at the Sale thereof aforesaid, and he denies that said Smith had any Right whatever of said preference and from said Name to said Tooley and this Defendant expressly denies and pefels the imputation of fraud contained in said Bill of Complaint in respect to said appraisement and Sale and purchase of said Lands, and avers that he dated throughout in all fairness and honesty.

Further answering this Defendant admits that after said Sale by said Sheriff and before the year had expired from the time of such Sale, and whilst this Defendant held the Certificate of purchase thereof, to wit, on the 23rd day of September A. D. 1841 in consideration of the assignment of said Mortgage (from said Tooley to said Name) to this Defendant and of a Conveyance of Three Lots in the School Section of Chicago, from said Name to this Defendant, and that the Lots aforesaid purchased by the said Name from said Butler should be retained by the said Butler and forfeited to him as in said Agreement referred to was provided, this defendant did agree with said Name, that said Agreement should be considered at an end. And thereupon this Defendant attached to said agreement a written Memorandum in the following words and figures, to wit; "In consideration of an Assignment of a Mortgage viz. S. Tooley and of a deed of Three Lots in School Section, Chicago, made to me this day it is agreed that this Agreement above written between Charles Butler and S. Z. Name is declared paid and at an end, the Lots being retained by said Butler Sept 23 1841 - (Signed) H. B. Ogden for C. Butler."

But this Defendant denies that the said Settlement was by the said Hanes intended to be and really was, or that this Defendant made any statements to induce the said Hanes to believe the same was a full payment and satisfaction and discharge of the said Judgment. Said and all proceedings in said attachment suit, but this Defendant admits that said arrangement was intended to discharge said Hanes from all liability on said Articles of Agreement for the balance due on said Articles of Agreement from said Hanes after deducting from the amount due thereon at the time of said Sheriffs Sale the sum bid for said lands by said Smith. And this defendant avers that said arrangement was formally proposed to said Hanes by letter from this defendant and was formally accepted by him and was entirely understood by him as it is herein represented and in no other manner, and that said Hanes fully understood at the time that he was to forfeit and abandon all right to said lots mentioned in said Articles of Agreement and to convey said three lots in School Section, Chicago in order to discharge the balance due on said Articles of agreement And that the said Sheriffs Sale of the lands aforesaid was to stand And this defendant to be entitled to all of the Lands so attached and sold as aforesaid by said Sheriff, except One hundred and sixty acres thereof which the said Hanes represented he had sold to a certain Brown, and which this defendant gave his Bond to said Hanes to convey to him or to whomever he should direct, and which this Defendant did afterwards convey to the said Hanes as will appear by the Bond of this defendant and the receipt of the said Hanes endorsed thereon a Copy of which is here annexed Marked Exhibit "A" and

praises to be taken as a part of this answer. And this defendant denies that if he or any one else acquired any right or interest in said lands by virtue of the said Attachment suit and the proceedings therein the Settlement aforesaid was a complete redemption and discharge of said Lands therefrom and avers that said Settlement was never designed or understood by said Hanna to Effect any such result.

Further answering this Defendant states that he does not know whether the said Foley was up to the time of said Settlement and long thereafter ignorant of said attachment suit or not, and is not informed save by the allegations of said Complainants said Bill of Complaint, and is utterly unable to perceive what Consequence it is in the cause whether he was ignorant of it or not.

Further answering this Defendant admits that he did afterwards procure the said Sheriff of Cook County to execute and deliver to him the deed as aforesaid referred to, but this defendant utterly denies that the same was done in violation of any written or verbal agreement or promise made by him or that in doing so he abused the confidence of the said Hanna or any other person or that he was actuated by any fraudulent purpose against the said Hanna or Foley or any other person, but acted in strict conformity with the understanding and Settlement aforesaid between this Defendant and the said Hanna as will fully appear by reference to the Exhibit "A" hereto attached and the written correspondence between the said Hanna and this defendant in relation thereto.

And this Defendant further admits that he did afterwards as hereinbefore stated convey back to the said Hawes One hundred and sixty acres of said land &c as aforesaid sold by said Sheriff in said attachment proceeding but this defendant denies that the same was done in consequence of the reproaches of the said Hawes or that he was ever reproached therefor by said Hawes or that it was done in order to keep the said Hawes quiet, or to keep him from reproving the conduct of this Defendant in the premises, but this Defendant avers that said conveyance was made to said Hawes in conformity with a written agreement entered into by this defendant with said Hawes at the time of said Settlement for the reasons hereinbefore stated.

Further answering this Defendant admits that the taxes for the year A.D. 1841 on said Lands did remain unpaid, and that the same were sold by the Sheriff of said Cook County for said Taxes, interest and Cost on the 28th day of November A.D. 1842 and were purchased by this Defendant who afterwards in pursuance of said Sale on the 15th day of January A.D. 1845, procured the Sheriff of said County to execute and deliver to this defendant two instruments of writing commonly called Tax deeds, one a conveyance from the said Sheriff to this Defendant of 19/211ths undivided of said Section two (10) and the other a conveyance from the said Sheriff to this Defendant of 19/211 undivided of the South half of said Section three (3) and afterwards on the 31st day of January A.D. 1845 caused said Deeds to be recorded in the Recorders Office of said Cook County, this defendant also admits that said Sale

last place after this defendant had received said assignment of said Mortgage from Hosby to Haven as aforesaid and so whilst he still held the same, and after said Sale by the said Sheriff in the said Attachment proceedings and while this Defendant still held said Certificate of purchase But this Defendant denies also fraud or improper concealment or motive in so doing and avers that at the time he obtained said Certificate of purchase from said Henry Smith, and at the time of said Settlement and arrangement with said Simon Z. Haven he supposed the taxes assessed on said Land for the year 1841 had been paid by the said Simon Z. Haven, but discovered afterwards by the advertizement that they were unpaid, and did buy off & purchase said Lands at said tax Sales, having been advised that said taxes were a subsisting lien on said land and that the same had accrued before this Defendant had obtained his title thereto, and that it was necessary to extinguish the same.

And this Defendant also avers that the said Mortgage from said Hosby to said Haven was assigned by said Haven to this Defendant for no other purpose than to quiet this defendants title to said Lands purchased by said Smith and afterwards conveyed to this Defendant by said Sheriff.

Further answering this Defendant admits that he now claims to hold the said Lands (which has never yet been in the actual occupation or possession of any one) as his own by virtue of the said two tax deeds, as also by said Sheriffs deed, and avers that he also claims it by claim and color of title made in good faith, and the payment of all taxes and assessments

for seven consecutive years prior to the filing of said Complainants bill of Complaint.

And this Defendant further admits that on the day of January A.D. 185[illegible] the said Complainants were ready & willing and offered to pay to this defendant the full amount of the principals and interest of the said Mortgage from said Foley to said Hamm to wit the sum of dollars and required of this Defendant that he should at their cost release and quit claim to them or the right title and interest acquired by him in said Lands by virtue of said Mortgage and assignment and said Sheriffs deed in said attachment suit. Which offer this Defendant then and there refused to accept for the reason that he could not recognize any legitimate claim, which the said Complainants had or have to said lands, and also for the reason that this Defendant conceived he had a good and valid title to said land made in good faith, and never intended to hold said Mortgage as a debt against said Lands, or for any other purpose than to quit his title thereto.

Further answering this Defendant states he knows nothing of the readiness or willingness of the said Complainants to pay said Money on said Condition and cannot conceive what right they have to a Compliance with such conditions, and denies that he is under any moral or legal obligation to comply with such Conditions. That being the sole and bona fide bona owner of said Lands this Defendant at least may claim the privilege of selling his Lands or not as may best accord with his own views

Further answering this Defendant admits that on the same day the said Complainants were ready and willing and offered to pay to this Defendant the sums aforesaid named in said Mortgage together with all taxes that had been assessed on said land and paid by this Defendant, with lawful interest on said taxes from the respective times of payment till the time last aforesaid requiring this Defendant to release and quit claim to said Complainants at their cost all his right title and interest as aforesaid, and that this Defendant did refuse to accept said offer for the reasons hereinbefore set forth, and it may be that the said Complainants are still ready and willing to make such payment on said conditions, but this Defendant submits that he is unwilling to dispose of his own property except upon his own terms. and resognizes no claim on the part of said Complainants and no obligation on his own part to them that should cause him to surrender the right of refusing or accepting any offer made for said Lands by the said Complainants, certain it is that he would show himself very regardless of his own interest to dispose of said Lands at a small Mouety of what he paid for the same in the year 1841, when through advantageous circumstances the value of them has been largely increased, and cannot consent to forfeit what reputation he may have earned for business sagacity and prudence by such an unwise and profitless operation

And this Defendant denies all and all manner of unlawful Combination and Confederacy whereunto he is by the said Bill charged. Without this that there is any other matter

cause or thing in the said Complainants said Bill of Complaint
contained, Material or Necessary for this Defendant to Make answer
unto and not herein and hereby well and sufficiently answered
confessed, traversed and avoided or denied, is true to the knowledge
or belief of this Defendant All which matters and things this
Defendant is ready and willing to and Maintain and prove as
this Honorable Court shall direct, and humbly prays to be
hence dismissed with his reasonable Costs and charges in this
behalf most wrongfully sustained.

"E. R. Hooper (signed) "H. B. Cogdal."
Sols for Deft C."

Exhibit "A"

"For value received and in consideration of One dollar
to me paid I hereby agree and bind myself my heirs Passigns
to convey or cause to be conveyed to Simon Z. Hamm or to
whom he shall direct and undivided One hundred Twenty acres
of land in the following tract supposed to comprising the South
half of Section Three and all of Section Ten in Town 39 North
of range 13 East in Cook County Illinois said tract together
containing 960 acres more or less and said Hamms interest is
same to be an undivided interest 1/4 or 160 acres.

Deed to be Quit Claim with Covenants against Grantor
and to be executed and forwarded to said Hamm at Utica Ill
by Mail or otherwise within 10 days from this date.

Witness "D. B. Goodwin" (signed) "H. B. Cogdal" (L.S.)

"I hereby agree that the 160 acres Sold Brown by Doct. Hamer shall be released from the Sale under the attachment suit brought against said Hamer.

(Signed W. B. Ogden"

Sept: 22d 1841."

"Chicago Sept: 21st 1841.

I hereby Certify that all the Stipulations of the within Bond has been fulfilled according to the Conditions of said Bond viz:

The Suit claim made of an undivided 160 acres of Land in the State of Illinois, Cook County &c has been given with Warranty &c and within the time Specified &c &c.

(Signed) "Isaac. Z Hamer"

Affidavit of William. B. Ogden to answer to Answer

"William. B. Ogden et al
——— als ———
Carlos Hamer et al

Cook County Court of Common Pleas
In Chancery

On this Seventeenth day of October A.D 1844 William B. Ogden, one of the Defendants in the above entitled cause being duly Sworn deposes and says: That at the time he was required to file an answer in said cause, he was very much occupied in many business affairs which required his frequent absence from the City of Chicago and the State of Illinois; That the Circumstances and transactions upon which said Bill of Complaint is founded, are Circumstances and transactions which transpired many years since in reference to which, at the time of filing his said answer, this affiants recollection was very indistinct

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and this affiant requested E. B. McBagg Esqr. a Solicitor of this Court, to examine and ascertain the facts, as to which this affiant was required to answer, and to prepare for this affiant an Answer setting forth such facts as he was required to state by said Bill of Complaint: That this affiant is informed and believes that said McBagg employed E. B. Hooper Esqr. also a Solicitor of this Court to prepare said answer and that the answer of this affiant was prepared by said Hooper: That this affiant presuming that said McBagg had from the records and otherwise obtained full and accurate information in relation to the matters, which this affiant was required to set forth in his said answer, this affiant without any examination of said answer, and without reading the same in full signed the same when handed to him for his signature. After reflecting over the matters to which said bill and answer refer which as this affiant has stated, happened many years since, that is to say from Seventeen to Twenty years prior to the date of this affidavit, and which nothing has for many years brought to this affiants mind, until the filing of the said Bill in this cause, and after a careful examination of said answer filed by this affiants Counsel in said cause, this affiant has discovered that there are certain errors in statements in said Answer, which may materially prejudice this affiants cause and endanger or prevent the administration of an impartial Equity and justice in the premises.

This affiant has discovered that whilst the said

Answer, when it speaks of the purchase of the premises in question by Mary Smith, represents said Smith as the purchaser at the sale in said answer set forth except in which said answer is somewhat obscure and appears to be inconsistent with itself, as it is certainly at variance with the fact, in which it sets forth as follows.

"This Defendant admits that he procured said Smith to bid off said Land in his own name at the Sale thereof aforesaid" &c.

This affiant further states that the said Smith has frequently, and at various times during the last Twenty years acted as this Affiants Agent - frequently purchasing for this affiant, with and without instructions and frequently purchasing for himself and on his own account & subsequently selling to this affiant and to others - and that this affiant at the time of filing said answer as hereinbefore set forth, presumed that his said Solicitor had ascertained the facts in the premises as they truly existed; but this affiant upon careful investigation, since the filing of said answer has ascertained from said Smith and investigation by him made that in the particular Sale - said Smith was himself the bona fide purchaser of the premises in question and purchased the same not as this Affiants agent, or for this affiant, but on his own account and for himself

And this affiant further says that he holds the said premises set forth in said Bill of Complaint in trust; one sixth interest for the heirs of William S. Jones, deceased

6.

One fourth interest for Mahlon D. Ogden - One third interest for Charles Butler of New York - the remaining one third interest belonging to this affiant, which said several interests of said several parties is not as he is informed and believes true set forth in his said answer, and he is desirous that the said answer should be amended so as to state and show the several interests of said several parties above named.

And this affiant further saith that the said Charles Butler has no notice of the several matters charged in said Bill of Complaint except the Commencement of said suit in Attachment and the proceedings in said suit and he also prays that his said Answer may be amended to state and show the last recited facts.

Subscribed and Sworn
to this Eighteenth day of
November A. D. 1854
before me . . . . . .

H. B. Ogden.

Franklin Hathaway
Notary Public

Seal

"Filed November 23d 1854.
H. Kimball Clerk."

And thereafter to wit on the fifth day of November A.D. Eighteen hundred & fifty seven the said Complainants filed in said Office their Replication to said Answer of said Butler, in words and figures as follows to wit:-

"Carlos Hamen & Isaac M. Grover vs William B. Ogden & Charles Butler } In the Cook County Court of Common Pleas, State of Illinois. In Chancery

The Replication of Carlos Hamen & Isaac M. Grover Complainants to the second answer of Charles Butler defendant

Repliants saving and reserving to themselves now and at all times also and all manner of advantage of exceptions that may be had or taken to said Answer for replication thereunto say that they will ever maintain and prove their said Bill to be true certain and sufficient in the Law to be answered unto and that said Answer of said Defendant Butler is untrue, uncertain and insufficient to be replied unto without this that any other matter or thing whatsoever in said Answer contained material to be replied unto and not hereby well and sufficiently replied unto confessed and avoided traversed or denied is true, all which matters and things repliants will be ready to aver and maintain and prove as this Honorable Court may direct and pray as in their said Bill they have already prayed

Carlos Hamen — I. M. Grover

Solrs for Pls."

And also on the sixteenth day of June A. D. Eighteen hundred and fifty five the said Complainants filed their replication in said Court, to the Answer of the said Defendant Ogden in words and figures following; to wit:-

Carlos Haven & Isaac M. Grover
vs
William B. Ogden & Charles Butler

In the Cook County Court of Common Pleas
In Chancery.

The replication of Carlos Haven & Isaac M. Grover Complainants to the several Answer of William B. Ogden Defendant.

These Repliants saving and reserving to themselves now and at all times hereafter all and all manner of benefit or advantage of exception, which may be had or taken to the manifold insufficiency of the said Answer for replication thereunto say that they will aver maintain and prove their said Bill of Complaint to be true certain and sufficient in the Law to be answered unto and that the said answer of the said Defendant is uncertain untrue and insufficient to be replied unto Without this that any other matter or thing whatsoever in the said answer contained, material or Effectual in Law to be replied unto and not herein and hereby well and sufficiently replied unto confessed and avoided traversed or denied is true All which matters and things these Repliants will be ready to aver maintain and prove as this Honorable Court may direct and humbly pray as in their said Bill they have already prayed

Carlos Haven. Isaac M. Grover
Solicitors pro se !"

And on the Twenty third day of January A. D. Eighteen hundred & fifty six, there was filed in said Court in said Cause a Certain Transcript of proceedings in the Circuit Court of Cook County in a certain Suit therein wherein Charles Butler was Plaintiff & Simon Z. Haven, defendant Which Transcript is in words & figures as follows, to wit

State of Illinois
Cook County } ss. Cook County Circuit
Court Held before
the Honorable John Pearson Judge
of the Seventh Judicial Circuit of the
State of Illinois and presiding Judge
of the Cook Circuit Courts at a term thereof
begun & held at the Court House in the
City of Chicago in & for said County on the
fourth day of November in the Year of our
Lord one thousand eight hundred and
thirty nine, it being the first Monday
in said month and the Independence of
the United States the sixty fourth year.

Present

Hon. John Pearson Judge, Abonya
Huntington States Attorney, Isaac
R. Gavin Sheriff.

Attest

Richard J. Hamilton Clk.

Be it remembered that heretofore to wit, on the
Began on the
~~Eleventh~~ day of October in the Year of our Lord
one thousand eight hundred and thirty nine
there were filed in the Office of the Clerk of the
Circuit Court in & for the County of Cook & State of
Illinois a certain bond, Security for Costs,
affidavit and attachment Bond which are in the

words & figures following to wit,

Bond for Costs —

Cook Cir. Court
Charles Butler
vs
Simon L. Haven

I do hereby enter myself security for costs in this cause & acknowledge myself bound to pay or cause to be paid all costs which may accrue in this action either to the opposite party or to any of the officers of this Court in pursuance of the Laws of this State. Dated October 14th A.D. 1839

W. B. Ogden.

Affidavit for Attachment.

State of Illinois
County of Cook } ss.

1839

This day personally appeared before the undersigned Richard J. Hamilton Clerk of the Circuit Court, within and for the County and State aforesaid, William B. Ogden agent & Attorney of Charles Butler of the County of Cook and State of Illinois. who is about to apply for a writ of Foreign attachment against Simon L. Haven of the County of and State of New York and who being first duly sworn according to Law deposes and says that the said Simon L. Haven is justly indebted to him the said Charles Butler in the sum of four

Thousand five hundred & forty dollars lawful money of the United States, being the amount now due to the said Butler from the said Haven on certain articles of agreement, under the respective hands & seals of the said Haven & Butler & dated the 28th day of April A.D. 1836. by which said articles of agreement the said Butler contracted to sell to the said Haven, Lots No. five & six, in Block No. seventeen in Kinzie's addition to the Town of Chicago— & the said Haven among other things agreed & Covenanted to pay to said Butler therefor the sum of Seventeen hundred Dollars on the 28th day of April A.D. 1837, & the further sum of Seventeen hundred dollars the 28th day of April A.D. 1838 with interest on the whole from the dates of said agreement & which said two payments have not been paid by said Haven & which with the interest thereon amounts to the said sum of Four thousand five hundred & forty Dollars. And this deponant further says that the said Haven is an inhabitant of the State of New York without the limits of this State so that process cannot be personally served upon him— & that he the said Haven does not reside in this State but in the State of New York— so that process from this State cannot be personally served upon him— & that he has as this deponant believes property & real estate in Cook County liable to attachment. This deponant therefore prays for an attachment at the

suit of said Butler against said Haven according to Law.

Sworn to and Subscribed before me this 15th day of October 1839

W. B. Ogden

Rich'd J. Hamilton Clk

Bond for Attachment

Know all men by these Presents, That we Charles Butler of the City & State of New York by William B. Ogden my Attorney in fact, & William B. Ogden of Cook County Illinois are held and firmly bound unto Simon L. Haven of the State of New York in the penal sum of Nine thousand & Eighty dollars lawful money of the United States, the payment of which said sum well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents. Sealed with our seals and dated this fifteenth day of October A.D. 1839.

The condition of the above Obligation is such, That whereas the above bounden Charles Butler by William B. Ogden his agent has on the day of the date hereof, prayed an attachment at the suit of him the said Charles Butler against the estate of the above named Simon L. Haven

for the sum of Four thousand Five hundred & Forty dollars lawful money of the United States. and the same being about to be sued out, returnable on the First Monday of November next to the November term of the Circuit Court, then and there to be holden, in and for the County of Cook, at Chicago, in said County. Now if the said Charles Butler shall prosecute said suit with effect, or in case of failure therein, shall well and truly pay and satisfy the said Simon L. Haven all such costs in said suit, and such damages as shall be awarded against the said Charles Butler, his heirs, executors, and administrators, in such suit or suits, which may hereafter be brought for wrongfully suing out the said attachment, then the above obligation, to be void, and of no effect, otherwise to remain in full force and virtue.

Signed, Sealed, and delivered in presence of
Richd. J. Hamilton

Charles Butler (seal)
by W. B. Ogden his Atty
W. B. Ogden (seal)

And afterwards to wit, on the 18th day of October in the year last aforesaid there issued out of the office of the Clerk of the Court aforesaid, the Peoples writ of attachment directed to the Sheriff of said County & clothed in the words and figures following to wit.

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State of Illinois }
County of Cook }

The People of the State of Illinois to the Sheriff of Cook County – Greeting)

Whereas William B. Ogden, Agent and Attorney for Charles Butler of the County of Cook and State of Illinois, hath complained on oath to Richard J. Hamilton, clerk of the Circuit Court of Cook County that Simon L. Haven of the State of New York is justly indebted to him the said Charles Butler in the sum of four thousand five hundred and forty seven Dollars lawful money of the United States, And the said Charles Butler having given bond and security according to the Act in such case made, and provided;

We therefore, command you that you attach so much of the estate real or personal, of the said Simon L. Haven to be found in your County as shall be of value sufficient to satisfy the said debt and costs, according to the said complaint; and such estate so attached in your hands to secure, or so to provide, that the same may be liable to further proceedings thereupon according to law, at a circuit Court to be holden at Chicago, within and for the County of Cook on the first Monday of November next, so, as to compel the said Simon L. Haven to appear and answer the complaint of the said Charles Butler

when and where you shall make known to the said Court how you have executed this writ. And have you then and there this writ.

Witness Richard J. Hamilton Clerk of our said Court, and the Seal thereof, at Chicago, this 18th day of October A.D. 1839

Richard J. Hamilton
Clerk

Seal

The aforesaid writ was afterwards returned to the Office of the Clerk aforesaid by the Sheriff aforesaid with his return indorsed thereon, which is in the words & figures following to wit

Executed by attaching the following described property of Simon L. Hanes Oct. 36th A.D. 1839 26 1/2 feet on the West 1/3 of West side of Lot 1 Block 24 School Section addition to Chicago also the 19/24 part undivided from Section 16 the South half of Section 3 Township 39 North Range 12 East of the third principal meridian

Fees

1 Service	0.50
1 mile	0.6 1/4
Return	0.12 1/2
	$ 0.48 3/4

S. M. Gavin Sheriff. C.C. Ills
by N. H. Davis Depty Sheff.

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and afterwards to wit, on the seventh day of November in the year last aforesaid there was filed in the Office of the Clerk aforesaid a certain precipe which is in the words & figures following to wit,

Charles Butler
vs
Simon L. Hyaren } Please issue alias attacht in this cause to Will County

Nov^r 7^th 1839

Arnold & Ogden

And afterwards to wit, on the day & year last aforesaid there issued out of the Office of the Clerk aforesaid in this cause the people alias writ of attachment directed to the Sheriff of the County of Will in said State clothed in the words & figures following to wit,

State of Illinois
County of Cook } Sct.

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

Whereas William B. Ogden agent and attorney for Charles Butler of the County of Cook, and State of Illinois, hath complained on oath to Richard J. Hamilton Clerk of the Circuit Court of Cook County, that Simon L. Hyaren of the County and State of New York

is justly indebted to him the said Charles Butler in the sum of four thousand five hundred & forty Dollars according to a certain agreement in writing, and the said Charles Butler having given bond and security according to the act in such cases made and provided,

We therefore command you, that you attach so much of the estate real or personal of said Simon L. Haven to be found in your County, as shall be of value sufficient to satisfy the said debt and costs according to the said complaint; and such estate so attached in your hands to secure, or so to provide, that the same may be liable to further proceedings thereupon, according to law, at a Circuit Court to be holden at Chicago within and for the County of Cook, on the Sixth Monday after the first Monday of March next; so as to compel the said Simon L. Haven to appear and answer the complaint of the said Charles Butler; when and where you shall make known to the said Court how you have executed this writ, And have you then and there this writ; Witness Richard J. Hamilton Clerk of our

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said Court and the Seal thereof, at Chicago, this Seventh day of November A. D. 1839

Richard J. Hamilton
Clerk

Seal

And afterwards to wit, on the Eleventh day of November in said year the Sheriff aforesaid returned said writ to the office of said Clerk with his endorsement thereon which is in the words and figures following viz.

By virtue of the within writ I have levied, seized upon, and attached the following described lands, to wit, The North East quarter of Section Eighteen in Township Number thirty four North of Range Number eleven, East of the third principal Meridian. And the East fractional half of Section Number fifteen, in Township Number thirty three North of Range Number Ten, East of the third principal Meridian and the Southwest quarter of Section number fifteen, in Township Number thirty three North of Range Number Ten. East of the third principal Meridian

Dated this 11th day of November 1839

S. Aldrich
Sheriff of Will Co. Ills
pr J. Finch Jun
Deputy

Fees
1 Service & = 50
Return & writ = 12½