

No. 14548 $\frac{1}{2}$

Supreme Court of Illinois

Walbridge

vs.

Day et al

133
STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division

No. 1347
Reported

Wallace
vs
Day

1869

14548
1/2

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1863.

ALONZO WALBRIDGE }
 ^{vs.} } *Error to La Salle.*
FREDERICK S. DAY and }
ISAAC C. DAY. }

ABSTRACT OF THE RECORD.

2 Bill in chancery filed 24th September, 1855, by defendants in error against Alonzo Walbridge and Mary Walbridge, his wife, alleging that they bought of Amasa O. Crosiar January 11, 1844, lot 8 of block 15, in the town of Peru, and received a deed therefor.

—“that they acted in good faith, verily believing that they thereby anquired a full, complete and absolute estate, in fee simple, in said lot, and so continued to confide in their title, and paid out for taxes upon said lot a large sum of money, to wit: the sum of fifty dollars, in addition to the original price paid to said Crosiar for said lot until the year 1851, when one George B. Willis set up a claim to said lot, and instituted a suit in ejectment to determine the title thereto, which suit was decided by this Court at the November term, A. D. 1851, on the law side thereof, and a judgment rendered, finding and determining the title of said lot in the said George B. Willis.”

3 The bill then states that said lot belonged to Edward Keys in 1834; that he died seized of the same soon after, leaving a widow and children heirs at law; that about 1849 the widow married defendant, Alonzo Walbridge; that one of said children died; that the others conveyed their interest in the estate to said Alonzo, which vested the legal title of said lot 8 in him and his wife; that he and his wife conveyed the same

by deed to said Willis May 4th, 1850, and that by this title Willis recovered the lot.

- 5 The bill then alleges that Walbridge well knew when buying out the heirs and when conveying to Willis, of "complainant's claim of title and of the just and equitable grounds of the same, as hereinafter represented and set forth; and that it was unjust and unconscionable to convey said land to said Willis, and thereby defeat the rights of your orators in the premises."

That George W. Howe became administrator of Keys in 1837.

That on Sept. 1st, 1847, one Ulyses Spalding gave to said George W. Howe, as administrator of said Keys, a mortgage on said lot for the payment of \$530 on March 1st following.

- 6 "Your orators are ignorant upon what claim of title the said Spalding made said deed, there being no record or other evidence of title in said Spalding, of which your orators have any information, but your orators believe that there had been some sale, or pretended sale, of said lot by said Howe, as such administrator, to said Spalding, and that said mortgage was made to secure the purchase price of said lot, although there does not remain of record in the proper offices any evidence of such sale, nor any deed to said Spalding of said lot."

- 7 Bill then alleges suit by *seire facias* to foreclose said mortgage by said Howe as administrator; February term, 1840, judgment thereon for \$592.27 and costs; execution thereon April 1, 1840; sale of said lot May 16, 1840, to Jesse Williams for \$300; certificate of sale assigned to Crosiar; Sheriff's deed thereon to him 17th May, 1842, and recorded 24th of same month, and under this claim of title he sold to complainants.

"Your orators further represent that in the purchase of said lot from said Crosiar, your orators were aware that said Edward Keys was the original purchaser of the same, and also that said Crosiar's title was under a Sheriff's sale for foreclosure of a mortgage, given by said Spaulding to said Howe, as such administrator, but at the same time your orators, from the fact that said administrator of said Edward Keyes, deceased, had taken a mortgage on said lot and foreclosed the same, were misled, as were also the said Jesse Williams and Amasa O. Crosiar, to confide in the title under said mortgage, having all suspicions that any other title remained in the estate of said Edward Keyes, deceased, quieted entirely by the relation of the personal representative of the said Edward Keyes, deceased, to the mortgage and the proceedings under it."

8 Bill then states that in 1840 Howe, deceased, and Walbridge became administrator *de bonis non*, and having purchased of the heirs was and still is the sole representative of said Edward Keyes, deceased, except as to the separate interest of his wife.

"Your orators aver and charge that in the matter of said mortgage, and the foreclosure of the same and the sale of said lot by said Sheriff for the benefit of said estate, the estate of said Edward Keyes, deceased, received a full consideration for said lot from the persons under whom your orators claimed title, and that, in justice and good conscience, the title should have passed through said Williams and Crosiar to your orators. And your orators charge and aver that said Alonzo Walbridge being possessed of such legal title as far as appears of record, yet well knew that he had not a shadow of equitable title to said lot, and that in so as aforesaid deeding to said Willis and thereby undermining the equitable title of your orators, he was perpetrating a gross fraud upon your orators."

9 That said lot, at the time Walbridge conveyed to Willis, was worth \$1,600, and that said Walbridge should pay them this amount, with interest thereon.

10 "That Howe, in taking and foreclosing said mortgage, held out to the world, and particularly the purchasers under said mortgage, that the estate of Edward Keyes, deceased, had no other interest in said lots, and thereby induced the said Jesse Williams, and the others under him as aforesaid, to purchase the same; and thereby the said Howe obtained from the said Williams the amount of said Williams' bid aforesaid, for the use of said estate; and the estate has actually had the right and enjoyed the advantage of the money so paid by said Williams, without in reality having given or parted with any consideration, but instead thereof, the consideration upon which said money was paid by said Williams and received by said Howe, as administrator, has been defeated by the subsequent acts of said Walbridge, so being successor to said Howe, as administrator, and so representing the heirs of said estate. And your orators show and charge that it is against equity and good conscience for the estate of said Edward Keyes, deceased, or for the said Alonzo Walbridge, as such administrator, or the said Alonzo and his wife, as the heirs and representing the heirs of said estate, to retain the money so paid at said Sheriff's sale by said Williams;" and then ask that Walbridge refund to them the amount of Williams' bid, with annual interest, because money was worth more than double 6 per cent. and taxes.

11 Prayer for relief from Walbridge personally, the value of the lot, or else as representative of the estate, the amount of Williams' bid, interest and taxes as aforesaid. Sworn answer waived.

12 Exhibit "A."—Copy of deed, Crosiar to complainants, date, 11th January, 1844; consideration, \$150; quit-claim and release of all right at law or equity; no covenants except as to his own acts and those claiming under him.

15 Exhibit "B."—Mortgage by Ulysses Spalding to George W. Howe, administrator of Keyes; date, 1st September, 1837, to secure \$580 March 1st following.

Acknowledged before George W. Howe, J. P.

17 Exhibit "C."—Deed of Sheriff on sale on *scire facias* on said mortgage to Crosiar, assignee of Williams; date, May 17, 1842; consideration not mentioned.

20 Summons served October 30th, 1855.

21 Defendants file demurrer to bill in usual form, and the following answer:

"And for answer to so much of said bill of complaint as charges these defendants with fraud, covin, collusion and combination, these defendants, answering jointly, say that said charges in said bill contained are not true as therein set forth."

22 Demurrer overruled.

23 The answer of defendants: They admit the title was in Keyes; admit the allegations as to his death, his heirs, Howe as administrator, his death; that Alonzo Walbridge married Mary Keyes, the widow, and became administrator *de bonis non* as alleged; "that said Alonzo bought out the interests of said Sarah and Elias in the estate of said Edward, and thereby acquired the legal title of said lot, except the part owned by said Mary, and these defendants conveyed said lot to George B. Willis, substantially as set forth in said bill of complaint."

24 They deny the allegations concerning the sale of said lot to Spalding and mortgage by him, and reception of money by Howe. "That said Alonzo in purchasing said lot of the heirs, acted entirely for himself and not as administrator or representative of the estate of said Edward Keyes; that he held the same for his own use; that in like manner he and his said wife sold the same (with other lots) to said George B. Willis as their own property, as they believed they might lawfully do."

Deny all fraud or attempt to injure complainants, and not liable to them in any way.

25 Deny all knowledge about the ejectment suit, except hearsay, "but these defendants insist as to said suit, that the title to said lot was no better or stronger in the hands of said Willis than in the hands of these defendants; that said Willis, at the time he purchased said lot, had in fact, and was bound in law to have, full notice of all of complainants' claim and title to said lot; that he knew all matters and things pertaining to said lot that said defendant did, at the time of said sale by them of said lot; and if for any reason it were iniquitable for these defendants to obtain, claim and dispose of the title to said lot (as is claimed by complainants in their bill of complaint,) said complainants might have enjoined said Willis from proceeding to judgment." &c., and were guilty of *laches* in not doing so.

26 "These defendants allege the truth to be as to said suit and judgment, that the same was had by collusion and contrivance and agreement between them and said Willis, for the purposes of this suit and obtaining money from these defendants or one of them; that before said suit was brought, arrangements were made between them by which they divided, or were to divide, said lot, or the proceeds of said lot upon sale, equally between them, or nearly so, and that said suit was brought at the instigation of complainants and at their expense."

All other matters denied.

Insist complainants not entitled to relief on case made by their bill.

27 Plea of statute of limitations, "as more than five years elapsed after the supposed commission of that fraud which is complained of by complainants, and more than two years elapsed from said Alonzo's undertaking said administration, and also from his closing the same, before the beginning of this suit."

"The complainants are required to answer the following interrogatories (attached to the answer:)

"Was not the suit of ejectment mentioned in your bill of complaint as brought by George B. Willis, brought by you, or at your expense and by your request, by virtue of some agreement between you and said Willis; and, if so, state what said agreement was; if it was in writing give a copy of it; and was it not for the purposes of this suit?

"Had you not at the time of bringing said suit, or had you at any time, made an agreement with said Willis to divide said lot, or the proceeds of said lot on sale; and, if so, state said agreement; if the same was in writing, give a copy of it; and have you perfected said agreement, and state all concerning it?

ALONZO WALBRIDGE,
MARY WALBRIDGE."

28 General replication.

29 Motion by complainants to strike said interrogatories from the files.
Sustained by the Court.

45 On the hearing, complainants called C. H. Hook, who being sworn, testified that he was deputy Clerk of the Court; "that he had searched the records of said Court; that the old records were in great confusion, that he found no record of proceedings by the administrators of Elias Keyes, pertaining to the sale of lot 8, block 15, Peru, except an entry on the Court docket of the May term, A. D. 1837, and a decree among the papers of said term, in words and figures following, to wit:

46 'La Salle Circuit Court, May Term 1837. Wednesday, May 10, 1837.

'GEORGE W. HOWE, Administrator of Edward Keyes, deceased, <i>vs.</i> The heirs of Edward Keyes deceased.	} <i>In Chancery. Petition</i> } <i>for the sale of Real Estate.</i>
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'This day came George W. Howe, administrator of Edward Keyes, deceased, and after reading the petition, and other exhibits filed herein, it appears to the satisfaction of the Court that the said heirs of the said Edward Keyes, deceased, have been duly notified of the time and place of presenting said petition; and it also appearing that the money arising from the sale of lots sold by order of this Court made at the last September Term, is insufficient to satisfy the debts established against said estate, it is therefore decreed, ordered and directed, that the said administrator sell at public sale according to law, two town lots in the Town of Peru, belonging to said estate, to wit:

'Lot 8 in block No. 11, and lot 8 in block No. 15, on a credit of six months, provided it is necessary to sell so much for the purpose of paying the said debts of the said deceased; otherwise so much thereof as may be necessary for the purposes aforesaid."

Copy decree.

47 "An inventory, from the papers of the office of the County Court, of the Keyes estate by Howe, administrator, noticing lot 8, block 15, of Peru—opposite to it the word 'sold' written in pencil, was read in evidence."

49 Complainants then read his documents offered as exhibits A, B, & C; also a writ of *seire facias* from said Circuit Court, judgment, execution and sale, by order of Howe, to Jesse Williams, Aug. 1840; also declaration in ejectment by said Willis against said Days, served Nov. 3, 1851, by J. D. Taylor, attorney for Willis.

Plea of not guilty by Wm. Chumasero, attorney for the Days. Trial by the Court and judgment for plaintiff Willis, Nov. 20, 1851.

51 Complainants here rested their case.

"The defendants then read in evidence, without objection, the evidence used in said ejectment case, being in writing, and found among the papers of the case in words and figures following."

Title of suit.

"*Agreed Case*"

52 Then follows a statement of the title to the lot; abstracts of the deeds by heirs of Keyes for \$225 each, of their interest in Keyes' estate to Alonzo Walbridge; deed of Alonzo Walbridge and wife to Willis, of this lot for \$100, date May 4, 1850, as before set forth.

54 Then a statement of defendant's claim of title under Keyes, that Howe was administrator, &c.

"3d. At the May Term, 1837, of La Salle County Circuit Court, an order was entered for the sale of the lot in question, and one other lot, for payment of debts, a copy of which order is made a part hereof.— There is, however, no petition to be found on the files of Court, nor any report of sale, neither is defendant able to produce any deed to the purchaser, there being no record of any conveyance in La Salle County."

The Spaulding mortgage, and proceedings thereon; sale and deed to Crosiar, and Crosiar to defendants, as heretofore set forth.

55 "Agreed to Nov. 14, 1851.

"J. D. TAYLOR, *Attorney for Plaintiff*."

"WM. CHUMASERO, *Attorney for Defendants*."

56 "Defendants then called as a witness William Chumasero, attorney for complainants in this case, who was sworn and testified that he was attorney for the defendants in said ejectment case; that all the testimony offered in said case was reduced to writing by James D. Taylor, attorney for Willis, and was read by him on trial, and was the same just read in this case; that said Taylor deceased about A. D., 1855; and said George B. Willis deceased about A. D. 1854. On being asked by defendant's counsel to state what he knew, if anything, about an agreement made between said Willis and said Days as to bringing said ejectment suit, and dividing the property, or the proceeds of the lot on sale, between them, he stated that he knew something about an agreement between them, but whatever he knew he knew as attorney for the said Days, and he declined on that ground to testify.

"The Court sustained said witness in such position, and he did not answer said question."

The defendants then read in evidence the statement of T. D. Brewster, on file, taken by agreement as follows:

31 Statement of the agreement.

"*Interrogatory 1st.*—State whether or not you were the agent of the Chicago and Rock Island Railroad Company in purchasing lot eight, of block fifteen, of the old town of Peru, La Salle county. And if so, state what you did in the matter?

Question objected to by plaintiff.

"*Answer.*—I was. I purchased said lot of Frederick and Isaac C. Day; it was either of both or of Frederick S. Day, for said company. This was in 1851 or 1852. James D. Taylor, of Peru, was the attorney of said company in looking up title and making out title deeds. The company were to pay for said lot sixteen hundred dollars, one-half in stock of said road and one-half in money. My impression is that this agreement of the Days was reduced to writing and signed by the Days, but by nobody else.

"*Interrogatory 2d.*—State what you know, if anything, as to any claim that George B. Willis had on said lot, and what arrangement, if any, was made between said Willis and said Days as to said lot, or as to the amount paid, or to be paid, by said company for said lot.

Objected to.

33 "*Answer 2d.*—Mr. Frederick S. Day came to me after the purchase had been made of said lot, and said that Mr. Willis claimed the title to said lot, and that he had arranged the matter with Mr. Willis by paying him \$800, and requested me to pay him so much out of the purchase money, and I did so by paying him \$400 in stock and the balance in cash or stock, my impression is that it was cash. The balance I paid to the Days. I think it was all stock. This was probably done at the time the deeds were made. I think the Days and Willis made deeds to the company. I think the Days said also something about another hundred dollars, and something about a suit commenced, or to be commenced, by them against a man by the name of Walbridge, and that upon the determination of that suit said one hundred dollars was either to be paid to said Willis, or refunded by said Willis to said Days, I am not positive which, but my best recollection is that the \$100 was to be paid by the Days to Willis, if the Days won the suit. All this was some time after the first contract.

"*Interrogatory 3d.*—State what was the value of said lot at the time of the purchase of said Days, what the value one year before that time,

what the value in the fall of 1855, and what the value at the present time.

"Objected to.

"*Answer.*—At that time about \$1,200 cash, one year before that worth from \$300 to 600, in the fall of 1855 worth about \$800, and now worth about \$500.

"*Interrogatory 4th.*—State if you made any special agreement subsequent to the first, as to paying all stock to said Days, instead of half stock and half money?

"*Answer.*—The proposition was made by Mr. Day, that if I would pay Willis \$400 in stock and \$400 in cash he would take all his in stock."

56 Defendants then read in evidence the deed of Alonzo Walbridge and wife to George B. Willis, date, May 4, 1850; filed for Record same day; consideration named, \$100; release deed, no covenants.

59 Defendants then read in evidence a deed of Willis and wife to the Chicago and Rock Island Railroad Company dated July 9th, 1852, recorded Jan. 1, 1853, consideration \$1600, full covenants of warranty, acknowledged before Frederick S. Day, Notary Public.

61 Also deed by said Days and wives to said Co., dated Dec. 15, 1852, consideration \$100, quit claim, no covenants, acknowledged and recorded.

63 Defendants then gave in evidence a deed by complainants, Frederick S. Day and Isaac C. Day and his wife to William F. Day, of this lot and another, date Nov. 2, A. D. 1846, consideration \$1500, with full covenants of warranty, with all interest at law or equity, duly acknowledged
64 and recorded, Dec. 19, 1846.

66 Defendants rested their case.

67 Complainants then read in evidence a deed of William F. Day and wife to complainants, of this lot, date July 22, A. D. 1851, recorded May 10, 1852, consideration \$600, release deed, with covenant against any act of the grantors.

This was all the testimony in the case.

43 The Court entered a decree against Alonzo Walbridge for \$704.75, and costs, and execution therefor.

ERRORS ASSIGNED.

- 77 1. The Court erred in overruling defendant's demurrer to the bill of complaint.
2. The Court erred in sustaining complainant's motion to strike the interrogatories from defendant's answer.
3. The Court erred in not sustaining the defendant's defense of the Statute of Limitations.
4. The Court erred in finding for the complainants, either in the sum found, or in any sum whatever.
5. The Court erred in rendering a decree against defendants, and in not dismissing said bill of complaint; and for these, and other errors, the plaintiff in error prays that said decree may be reversed and annulled.

By E. S. HOLBROOK,
His Attorney.

123
No 134

Waltham

Day & Day

Wm Abbot

Filed May 5. 1863

L. Leland
Clerk

"

The Court refused all said motions but gave leave to said defendants attorney to file a certificate of all the testimony used in the case.

Whereupon it is now certified by the Court now sitting that the above evidence was offered and read as set forth and was all the evidence used at the hearing, and the Clerk is ordered to file this certificate as of the Nov term A 1862

W. E. Hollister

Judge &c "

State of Illinois }
La Salle County }^{ss} I Abraham D. Moore
Clerk of the Circuit Court in
and for said County do hereby certify that the
above and foregoing is a true full and complete copy
of that portion of the record in a certain Cause
between Frederick S. Day & Isaac C. Day were
Complainants & Alanzo Walbridge & Mary Walbridge
were defendants, which was omitted by the Clerk
of said Court, as will more fully appear by reference
to a writ of Certiorari hereto attached.

Witness my hand and the Seal
of said Court at Ottawa this
1st day of May A.D. 1863

A. D. Moore Clerk

C. W. Nook Deputy



STATE OF ILLINOIS, SS.)

Supreme Court, Third Grand Division, at Ottawa :

The People of the State of Illinois,

To the Clerk of the Circuit - Court of La Salle County.

GREETING

WHEREAS, in a certain plea between

Fredrick S. Day & Case

6. Day Complainants

~~Plaintiff~~ and Howzo Walbridge & Harry Walbridge

defendant, lately depending in the Circuit Court of said
County, wherein judgment was rendered for the said

Fredrick S. Day & Isaac C. Day -

and against the said *Howzo Walbridge and Mary Walbridge* 211 1 has.

Walbridge and the said Alonzo Walbridge ^{has} ~~have~~ sued out a writ of error in _____ the judgment of said Court, rendered against him & said Eliza Walbridge

as aforesaid, to the Supreme Court, held at Ottawa, on the first Tuesday after the first Monday in April, 1863, and in pursuance of the said *Writ of error* — a transcript of the record and the proceedings in the plea aforesaid was transmitted. And, also, whereas it hath been suggested, on the part of said

George Walbridge

that the said record has been diminished, inasmuch as said Circuit Clerk omitted the words *James is the holder* certificate following, to wit:

that the said record has been diminished, inasmuch as said Circuit Clerk omitted the words & figures in the Judges certificate following, to wit:

"The Court refused all of said motions, but gave leave to said defendants attorney to file a Certificate of all the testimony used in the case - Whereupon it is now certified by the Court now sitting that the above evidence was offered & read as set forth & was all the evidence used at the hearing, and the Clerk is ordered to file this certificate as of the Nov. Term A.D. 1862

Chas. E. Hollister
Judge &c

Chas. E. Hollister
Judge &c 11

lath not been sent up; and forasmuch as the said Supreme Court are not satisfied that there is a sufficient record sent in the plea aforesaid, but in the record there is a diminution: You ARE, THEREFORE, HEREBY COMMANDED, That, without delay, the said *diminution* — therein you cause to be transmitted to the Supreme Court, ~~to be held at Ottawa, on the~~ *now a' Session at the* *Court House* — ~~next~~, without any diminution or addition whatsoever, to the end that speedy justice may be done in the premises, according to law; whereof you are in no wise to fail; and send you then there this writ.

Witness The Hon. JOHN D. CATON, Chief Justice of said Court.

and the seal thereof, at Ottawa, this 28th day of April
in the year of our Lord one thousand eight hundred and ~~eighty~~ ^{eighty} ~~seven~~ ^{thirteen}

L. Keland
Clerk of the Supreme Court.

134
Walbridge
Day & Day
Cutlery.

Filed May 1st 1883
L. Leland
Clerk



Case No 134.

Walkridge }
vs } Error to Lasalle
Day & Day }

Argument on behalf of
plaintiff in Error.
May it please the Court.

A brief statement of the case
may be advantageous.

Keyes in 1834 owned Lot 8.
Bl. 15 of Perm.

He deceased, leaving chil.
dren, heirs, and a widow,

Geo W. Howe became his ad.
ministratoe.

There is found among the
papers of the Circuit Court,
what purports to be an order
of court for sale of said lot
in 1837, if necessary.

There is a mortgage on
said lot recorded, to said
Howe, Ad. &c by one Spaulding
for \$520. = foreclosure of mort-
gage by Scire facias: sale for
\$300. to Jesse Williams; deed

thereon to Annasa Q. Brosian,
and deed by Brosian to the
complainants below Jan 11,
1844.

In 1840 Morse dec. and Wal-
bridge became Ad^r de bonis nov.

Complainants say, they trusted
to their title till 1850. ~~At~~ When
Walbridge & wife conveyed to Geo.
B. Willis ~~who set~~ having pur-
chased of the heirs, himself know-
ing of their ^(complainants) equitable title.

So they say Walbridge com-
mitted a fraud upon them
and defeated their title.

Geo B Willis brought suit
and recovered the lot from
them. (complainants)

And they file this Bill in
Sept 1855 to get compensation
either the \$300, that Williams
gave & interest, or the value
of the lot which they say
was \$1600. (Walbridge's wife was
joined, as she by death of one of the children
had a part of the estate - but the decree
dismisses Bill as taken - and decree a-
gainst Walbridge, not as Ad^r and ex^{tra} awarded)

The answer ^{denies their claim} sets up the Statute of frauds: and that there was some collusion between said Days and Willis: that they sold the lot the Days getting more than cost and interest, denying all fraud, &c. or sale by Howe, or notice &c. &c.

Such facts, ^{collusion in &c} were proved, and also it was shown that the Complainants conveyed away said lot in 1846 to Wm F Day.

Then it was shown that W. F. Day conveyed to them in 1851, and they and Willis conveyed to the Rail road Co. in 1852, before suit: ~~According to the same logic the railroad Co. by such deed acquired the right of~~
~~particular (if any)~~

In proceeding with the argument I will commence with what will most easily dispose of the case.

1. (The 4th point of the Brief) The Complainants (below) have no cause of action (although such right may exist on behalf of some one, which is not admitted) Let it be admitted for the sake of the argument that complainants had a right of action according to their statement, by virtue of the deeds set forth, yet it is plain that that which was acquired by deed was granted away by deed to W. F. Day in 1846. Then the act complained of was done while W. F. Day had such interest. The act of Walbridge, if it violated any body's rights violated his, and he alone has the right of action.

Shall it be said that when William F. Day conveyed to them that he conveyed the right of action in equity? I deny it. I know

of no such assignable quality of right of action accrued.

But if it be held that there could be, or that there was such an assignment of the right of action by virtue of a deed of the lot, then I say that the deed of complainants to the lot, which was before suit brought, carried with it the right of action.

Again — The complainants alleged that they, at the time of Walbridge's conveyance, by virtue of their deed ^{were}, the equitable owners of the lot, and that such act of Walbridge was a fraud on them.

The proof shows that they were not. The proof does not sustain the allegation, so they have no right to a decree.

This cannot be made any clearer by what I can say than can a mathematical problem that has been solved —

But if the Court will proceed further I will make suggestions on other points.

- 2 I urged in the Court below, on general demurrer, that complainants did not show a right of action against Wallbridge and wife, or either, in any capacity, (for it will be observed that the Bill has something of a fishing quality - aiming at Wallbridge either as an individual, or an administrator - an administration undertaken more than 10 years before he made his deed -)
and I insist on the same here.
I hold that an Ad^r does not guarantee the title, nor his authority to sell, expressly, or implicitly - but if he is held implicitly to warrant his power, it is personal to himself, and he alone shall answer it: that the subsequent Ad^r is Ad^r de bonis non and not bound by his warranties, nor responsible for his shortcomings.

To the right of action, if any ex-
ists, cannot be against Wal-
bridge.

I have not been furnished with
any brief or authorities by defen-
dants in error, and know not on
what they rely here = but in the
court below quite an effort was
made to get authority, and only
these were found,

Case in Pincad & Mar. (I think
I quote from memory)

An ad^r sold, assuring pur-
chases that he had power to -
it turned ^{out} he had not = on bill
against him compensation
was given on the ground that
he had committed a fraud in
assuring the bidders and cons-
oling them to rely on his word that
all proceedings were regular.

This then is not applicable be-
cause it was against the same
man, and if now this Bill should
be good against Walbridge, you
are making one man answer-
able for the fraud of another.

Case in 1 Dev.^x Ch. 30 Bill for
compensation against executors
for breach of express warranty
in a deed - which ^{case} of course has
no analogy to this,

Case in 4th Paige Ch. 52. but
but I cannot make any thing
out of it.

And there are all I do not ap-
prehend that a single authority
can be found to sustain the
case made by the Bill,

There is nothing in the Bill to
show that the heirs, of whom Wal-
bridge purchased, knew of the pro-
ceedings of the first Ad^r, nor is
it charged that they conveyed
without consideration ^{or with fraudulent intent}. They had
a right then to sell to all the
world; and Walbridge although
he had notice of fraud, if the heirs
~~did not~~ ^{had} not, could purchase of them
on the same footing with others.

No authority is needed on
this point.

But as a stronger case is made on proof than on de-
murrer I will not pursue this
matter further here.

Let it be observed that there
was no proof of actual knowledge,
or actual knowledge fraud on
the part of Wallbridge. Whatever there
is is simply implied from his
position. Neither is there any proof
of his administration except that
he became Sd^r in 1840.

3. The next point in order is the
defence of the Statute of Limita-
tions = (Let the 1st point be aban-
doned = being a mere matter
of practice, & not decisive of the case)

I cannot see why this should
~~enforced~~ not be enforced. The
cause of action was over five
years old, and neither repli-
cation or proof to avoid it.
Courts of equity follow the law
and their decisions on this sub-
ject are about as regular and

peremptory as courts of law.
Is true sometimes they allow
longer periods than courts of
law, and sometimes a less
length of time, sometimes vary-
ing according to the nature of
the claim, What time shall
be given here? Is this ^{case} one to be
favored? Here we find complain-
ants asking the favor of a court
of equity because they assert that
they have been defrauded, and
yet they have colluded and
contrived with another, to make
a strong winning law suit
against Cobbridge, although
they have received more than
twice the money they paid and
interest, to bleed him to a large
amount, after a long period when
such witnesses as would and
would testify are deceased. If
ever there were a ^{defendant} case that is
in equity that was entitled to
~~reason~~ receive the protection of
the statute from a state uncon-
scionable claim, surely this
defendant is the one, I have
quoted authorities on this point.

according to the usual practice, but I can't feel that there is any occasion to advert to them.

Will the Court, according to the practice of courts of equity, give the defendant below the protection of the Statute?

I cannot feel it necessary, and so not advisable to pursue the argument further. There are, according to my judgment errors all the way through, and of so flagrant a character, as to be clearly evident. The brief is full, and unless I am very greatly mistaken, they are shown so clearly as not to require the aid of argument, and I will rest the case.

E. P. Holbrook
Attorney for H. J. ^{and} Evans

¹²³ Case No 13 ~~4~~ 123

Walbridge

¹²³
Day Day.

Agreement for
Huntly in Carr.

Given May 17. 1863

J. J. Land
cm

E. J. Holbrook

but gave leave to said defendants attorney to file a certificate of all the testimony used in the case.

Whereupon it is now certified by the court now in session sitting that the above evidence was offered and read as set forth and was all the evidence used at the hearing; and the clerk is ordered to file this certificate as of the Nov. Term 1862.

M E Hollister
Judge Lc"

Said plaintiff in error moves for a writ of certiorari to the clerk of the Circuit Court of LaSalle County, commanding him to certify a full record to and said Hollbrook states on oath that he thinks it necessary to have said record corrected, as the counsel for defendants in error have moved to strike the certificate of the testimony from the

record on the ground (among
others) that said certificate does
not appear to be signed by
the Judge

Subscribed & sworn to
before me this 23rd day
of April A.D. 1883

E. J. Holbrook.
Atty. f.

L. L. Leland
J. P. Notary Public

123 No 134

Walbridge

^{vs}
Days.

Motion for cer-
tiorari. Affidav-
its of E. Hollbrook

Filed April 23 1883

L. L. Lind
clerk

Howell

examined motion
to strike and sub-
= duce.

Supreme Court of the State of Illinois
3^d Grand Division - April Term AD 1863
Henry Walbridge Plff in error
vs
Frederick J. Day
Isaac O. Day
Plffs in Error

Enon
to La Salle

And now comes the said Defendant
in Error by J. S. Sedgwick their Attorney
& Now the Court to Exclude or strike
from the Record in this case,
what purports to be the Certificate
of Evidence filed in the Cause at
the instance of the Plaintiff in Error
contained in the same from
pages 45 to 75 inclusive
for the following reasons
1. Said Certificate of Evidence is not
signed by the Judge & does not appear
to have been docketed by the Court to be
filed, & is not a part of the Record
2. The Record was made up at the
November Term AD 1862, and
the Cause was docketed at the February
Term AD 1863 & the Certificate
in question filed during said
February Term AD 1863 - ~~thus~~
much posterior as of the 15th of November
1862, when the Court had no
authority to docket the same
for any purpose whatever, & the

the adjournment of the term for at
which the Deem was made,
the Court had no further juris-
diction over the case for any
purpose & could not ^{legally} entertain
a motion to undo the cause & file
& furnish a certificate of record
to be filed in

O'Connor or Mullin 11 Ill 57
Cameron or McRobert 30 Ill 591
Cook or Wood 24 Ill, 295-297
& authorities there cited
G. S. Edwards
for Rept in Error

134
Sup. Court
George Wallace

Wm. H. S. Day
et al

Wm. to Stead's certificate
of record from
the files Record

Filed Apr 23 1863
J. S. Edwards

Malbidge or Day - The reasons submitted
on the motion to strike the certifi-
cate of evidence in this case
from the Record, apply equally
in opposition to the motion for
a certiorari. ~~The certificate~~
~~of evidence could not be filed~~
~~without leave of the Court.~~
The Court had no authority
to undo the case as a subse-
quent term & order the certifi-
cate to be filed none per time
All jurisdiction of the Court
over the case ceased after the
adjournment of the term at
which the decree was rendered.
(See authorities cited on the motion
to strike the certificate from the
Record) - ~~The~~ The Cert. is no part of the
^{record}

2. This Court has repeatedly
decided that an appearance for
the purpose of resisting an appli-
- cation does not confer jurisdic-
tion - a motion to quash a writ
does not confer jurisdiction -

The certificate shows that I
appeared to resist the motion
to undo & file a certificate of
evidence (see Recd p. 72) The

"Certificate" is no more a part
of the Record than any other
paper outside of the case & the
Court below had not the authority
to make it. Such - It could only
be filed at the Term at which
the case was heard

G. P. Eldredge

Suggestions in
Opposition to
a motion for a
continuance

Walbridge 134
7
Day

123 134
Walbridge
5
Day et al

Security for costs

Filed May 4, 1863
J. L. Lander
cm

On the motion of defendants in this case to strike from the record the certificate of the evidence used at the hearing, plaintiff discovers that it is true that a part of the record is omitted, and will ask to have it corrected. The decision of this motion for this reason then better be deferred till this is done.

The other reason offered by defendants in support of said motion cannot obtain. The record, page 69, shows notice was given by defendant to complainant's counsel, of the motion intended, and that he appeared.

A strong reason was given as shown by the affidavit of E. Holbrook, and defendant Bulbridge, why a certificate of evidence was not filed before, page 70, and to strike the certificate from the files will operate as an utter denial of

ms Nov 134

Walbridge

as

Days.

Suggestions on
motion of Defto
to strike City from
HC from the record.
= Day Plaintiff

Tues April 29 1823
L. Leland
Clerk

no to strike and
cancel

justice. The proposition
of defendant, simply to
for leave to file a certifi-
cate of the evidence ~~are~~ not
within the authorities cited
showing that a court can-
not set aside its decree at
a subsequent term. This is
merely a question of practice,
and probably discretionary
with the court.

E. P. Hollbrook
att'y for Plaintiff
in error.

Sup Court. 2d Grand Division
April Term 1863

Longo Walbridge
vs
H. P. Key & C. Day

State of Illinois

vs
Laurel Emily P. William

Chumassers being duly sworn
say that he is one of the Attorneys
of the Defendants and that
the Plaintiff herein is as
this affiant has been informed
and truly believes insolvent and
that the officers of this Court
will be in danger of losing their
funds unless said Plaintiff be
required to give Security for costs.

Subscribed & sworn to
before me April 28, 1863 -

Sealand Clerk

134

Sub cont

Wellman

Long }

off for sea for Aug

Filer Apl. 28, 1863,
St. Land
Ch.

Rule 80-50-40
may

Supreme Court of the State of Illinois
Third Grand Revision - April Term AD
1863 -

Along Malbidge Plaintiff in Error

or

Defendants. H. Day & Isaac

C Day - Defts in Error

And now comes the
said Defendants in error by
J. H. Eldredge their Attorney say
that ⁱⁿ the record & proceedings aforesaid
said in the audit of the record
aforesaid in manner so
that there is no error, wherefore they
say the said record should be
in all respects affirmed & so
J. H. Eldredge & Wm. Chambers
Attys for Defs in error

-134-
Lupinus Conch

Alonzo Walbridge
9

Edward A. Day
et al

found in sea

Filed May 4, 1863.
Leland
Clerk

Supreme Court 2^d District
Division April Term 1883.

Alonso Walbridge
vs. Defendant

Fredrick S. Day

Isaac Day Defendant

State of Illinois

LaSalle County, Ill.

William Chumaceiro. One of the
attorneys in error briefest duly
sworn deposes and says that the Certifi-
cate of Evidence of M. E. Hollister
Judge of the Circuit Court before
whom this cause was originally
tried is defective in many im-
portant respects. That a large amount
of Evidence which was introduced
on the part of the Complainants
below is entirely omitted in said
Certificate and other Evidence
very meagerly and insufficiently
set forth. That on the hearing
before said Circuit Judge the Com-
plainants below introduced the
records of the Probate Court
among which was inventory
and account current ^{leading to} showing
the receipts by How the admin-
istrator of the Consideration
Money on the sale of said
lot by him - and also two letters

written by How to Jesse Williams,
the purchaser at the Sheriff's
sale and to William Raddick
the Sheriff who made the sale
showing that the sale under
the scire facias was made
to said Williams and as affiant
now recollects that the purchase
money was rec^d by him & said
How as administrator from
said Williams - and other
other papers from the files
of said Probate Court showing
~~the~~ as affiant contended & now
contends that the proceeds of
said sale were applied and
used for the benefit of said
estate - affiant further says
that there was proof on said
hearing that the word "sold" (referred
to on pag 6 of the abstract & ~~47~~
pag 47 on the record.) in pencil
writing - was in the hand
writing of said Howe,

Subscribed & sworn before
me this 7th day of May 1883. } J. J. Chumaneu,
J. Belmont Clerk
U. S. District Court

State of Illinois }
Sasado County } ^{vs} H. E. Ecclesdy being

duly sworn ~~Alleg~~ that he has read
the foregoing affidavits of William
Chummasero, that he was present
and assisted on the trial of said cause
on the part of the Complainants
and that he coincides with the
statements made by said Chummasero
as to the evidence omitted in said
Certificate: That after Judge
Hallistie had determined to allow
said Certificate to be filed, this
Deponent's engagements being
such that he could not person-
ally be present to hear the Certificate
was presented to the Judge, which
was about the last days of the
Term caused to be sent to Judge
Hallistie a memorandum of
the testimony in the case, which
was principally oral, but which
was not received by the Judge until
after he had signed the Certificate
& that Judge Hallistie stated to
Deponent since the commencement
of the present Term of this Court, that

He received said Memorandum of
testimony after he had signed
the Certificate and as he was about
to leave town for Princeton where
he had an engagement to
hold Court & that he had not
then time ^{to} make the necessary
corrections. but ~~expressed~~ ^{expressed} his regret
that he had not received the
Memorandum of testimony
sooner & that the Certificate
signed by him ^{was} through ~~was~~
mistaken on his part permitted
to be filed ~~as~~ (with a state
ment that it embraced all
the evidence) when a portion
of the evidence on the part of
the complement ~~was~~ ^{was}
omitted - & that he ^{would have} ~~would~~ have
amended it if ^{he could have} ~~he had~~ an
opportunity to do so. And if said
Certificate embraced, in fact,
all the evidence in the case
the objection for the Def. would
not vitiate upon the matter to
strike it out, but it is so materi-
ally defective as to require them
to do so. in further to thought
after complement

Subscribed & sworn to ~~by~~ J. S. Edwards
before me this 7th day of ~~July~~
1863

123

134

Malbado

May

appt on motion
to strike each of
writs from
the files

Filed May 7, 1863

J. L. Landa
Clerk

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1863.

ALONZO WALBRIDGE, }
 ^{vs.} }
FREDERICK S. DAY and } *Error to La Salle.*
ISAAC C. DAY. }

PLAINTIFFS BRIEF AND AUTHORITIES.

I.

It was error in the Court to strike the interrogatories from the answer. The law giving defendants the right to file such interrogatories with their answer, and have them answered by complainants, is found in Gale's Statutes, p. 142, Sec. 12. This law has not been expressly repealed, nor has it been impliedly repealed by a subsequent statute inconsistent therewith, or otherwise.

16 Ill. 329, Clinefelter vs. Ayres.
3 Scam. 453. 461, Ballance vs. Underhill.

II.

Defendants demurred to the bill, filing therewith an answer, simply denying the fraud charged, and insisted on their demurrer in their answer. It appears by the bill that the act complained of was committed more than five years before suit commenced. The Court erred in over-

ruling said demurrer, and in not dismissing said bill for want of equity. Plaintiff suggested that an action on the case at law could as well have been maintained on the facts alleged, as this bill.

III.

The Statute of Limitations was a good defense, and ought to have been sustained. This claim for compensation for a pretended wrongful act, not admitted by the defendants, ought not to be regarded as of a higher grade or dignity than an open account. The act complained of was more than five years past before suit. There was no allegation of concealment of the cause of action nor any recognition of the cause of action by defendants. A more than usual reason exists in this case for the interposition of this defense, and its support. The suit is brought by a contrivance between complainants and George B. Willis, without the knowledge of defendants, to get money out of them for *their* common benefit. The complainants have refused to testify, their attorney refused and is protected from testifying by the Court, and the other two who knew of the contrivance are deceased. It was a *stale* claim as well as inequitable, according to the principles and decisions of courts of equity.

4 Gil. 316, *Moore vs. Capps*.

1 Gil. 428, *Kimble vs. Cook*.

Brown on St. of Frauds, secs. 188-9.

9 Peck. 213.

9 Greenl. R. 131, *Cole vs. McGlathry*.

2 Dan. Ch. Pr. 737 and notes.

23 Ill. 525, 529, *Campbell vs. Vining*.

St. of Wills secs. 115, 116.

11 Ill. 216, *Judy vs. Kelly*.

16 Ill. 318, *Stillman et al. vs. Young*.

IV.

Complainants had no right of action,—even if there were a right of action on the part of somebody,—for they [see record, 63, abstract, 9,] had by deed Nov. 2, 1846, conveyed said lot to Wm. F. Day, with all interest in law and equity, so that no injury was done to complainants by defendants' act on May 4, 1850. If an owner, anterior to the act, could have a right of action, then Crosiar would as well have it as the Days. Proof in replication by complainants, that William F. Day conveyed to them by deed of July 22, 1851, [record, 67, abstract, 9,] does not help the matter. This deed conveyed no right of action then existing. If it did, then the complainants parted with it by their deed to the Railroad Company, [record, p. 61, abstract, 9,] which was before this suit was commenced.

This is evident upon mere inspection, and is the end of all controversy.

But if the Court will proceed further, plaintiff in error makes these further suggestions:

V.

Whoever comes into a Court of Equity, should come in with clean hands. The complainants combined with George B. Willis to make a winning case against Walbridge, agreeing to divide what they had and what they could get, (although they already had received more than they would be entitled to at law on covenants of warranty, on entire failure of title). Defendants come willingly into Court and make a slight defence by agreement. Perhaps one interested in defeating the suit could have defeated it. *Non constat*, but that (as complainants allege) they and Crosiar had paid taxes for seven years under claim and color of title, which would have constituted a good defence; or they might have proved notice to Willis of all that Walbridge knew, by Walbridge himself or some other person, or perhaps a lost or unrecorded deed; by Spaulding or his family, or some other person, with actual or constructive notice, &c.

They should have shown they were guilty of no *laches*.

1 Sm. and Mar. 608, *Land vs. Elliott*.
15 Ill. 148, *Kennedy vs. Northrup*.

VI.

As to the sale on *scire facias* on the foreclosure of mortgage, plaintiff in error insists that the rule is *caveat emptor*; that there is no privity between the administrator and the estate, and the heirs of the estate; that therefore nothing can be inferred from the position of the administrator on sale on mortgage of real estate, which might as well be supposed to have been given for any other debt as for the consideration money, and if complainants wished to protect themselves in their purchase they should have taken a deed with covenants; that consequently the heirs of Keyes could rightfully sell any part of the estate not rightfully disposed of, (for a valuable consideration,) as they did, (Rec. p. 22, abstract, p. 7,) to any person; that Walbridge, as well as anybody, could become the purchaser, (although ten years before that he became administrator,) and sell again, in his individual capacity, [without actual

intentional fraud, to be proved in all cases, and which is not proved here,] and for his own profit. It is not perceived why defendant's proposition hath not this extent, that every one who purchases a title by which some other supposed title is defeated, must not answer over for all damages to all pretended owners,

4 Scam. 135, *Mason vs. Waite*.
 4 Scam. 487, *England vs. Clark*.
 3 Scam. 502, 508, *Owings vs. Thompson*.
 12 Ill. 524, *United States vs. Duncan*.
 1 Ohio, (1 Hammond) 519, *Nowler vs. Coit*.
 4 Ohio, (4 Hammond) 469, *Leiby vs. Parks*.
 8 Blackf. 432, *Dunn vs. Frasier*.
 2 Gil. 176, *Hall vs. Irwin*.
 16 Ill. 177, *Stone vs. Wood, Ad. &c.*

VII.

Even on the supposition that complainants had a right to recover anything, they could not recover the amount found, \$704.75. Plaintiffs gave Jan. 11, 1844, \$150.00. This, with interest at 6 per cent. to the 4th of May, would amount to \$207.00.

And on November 15, 1862, [date of decree,] \$319.50.

Then they had received \$800 in rail road stocks (which is to be rated as cash, as they could have had \$400 in cash for half of it, but they chose the stock) in 1852. (See record, p. 33, Ab. 9.) The value of the lot on May 4th, 1850, was not proved. A year before the sale to the railroad company the value was from \$300 to \$600, and at the time of the sale \$1200. So if, all equity and conscience aside, after having gotten \$800 they can get \$1600 more and interest from Walbridge as an individual, or \$300 with annual interest since 1840, from him as administrator, (as they modestly ask in their bill) and have the same consummated in this Court, they will have made a very considerable speculation.

VIII.

The prayer of the bill (in the alternative) is, that, as the estate received \$300 on the bid of Spaulding, so the estate should respond to them in this sum with interest, and so it would seem that the Court, (by the amount found,) intended; (as \$300, with simple interest from May, 1840, to date of decree would amount to this.) But how are complainants entitled to recover for what Williams or Crosiar lost by depreciation of

value? And if the estate is to respond, complainants should have first shown a presentation of the claim either to the administrator, or to the Probate Court, and the decree (if any) should have been against the administrator, as such, to be paid in due course of administration; or the heirs should have been parties; or rather the bill should have been against the heirs, as having received and converted for value received the ancestors' estate.

16 Ill. 318, *Stillman vs. Young*.

Other suggestions might be made, but I cannot anticipate that the Court will proceed further than to the 3d or 4th point made, to find sufficient cause for reversal of the decree and dismissal of the bill.

E. S. HOLBROOK,
Atty. for Plaintiff in Error.

No 134

Wadbridge

vs
Joy & Day

Receipts and
authorities by
Plaintiff

Filed May 6, 1863
J. L. Leland CR

Yig9

650

delivered the opinion of the Court:

Mr. Justice

Wallace, ~~§~~. It appears from the evidence in this case, that Sney in his lifetime, was the owner of the lot in controversy. That upon his death, Horne became the administrator of his estate, and as such took a mortgage from Spaulding, ~~upon~~ ^{on} this lot, to secure a debt ~~due~~ ^{payable to} the estate. He as administrator, for the sum of five hundred and thirty dollars. That after its maturity he foreclosed the mortgage by scire facias, ~~and~~ ^{and} the property was sold ~~to~~ ^{to} Williams, who afterwards assigned his certificate of purchase to Crossier, to whom the sheriff afterwards conveyed the lot. Defendants in error became the purchasers of Crossier some time in the year 1840. Horne departed this life, and plaintiff in error, who having previously intermarried with Sney widow, became ~~the~~ administrator de bonis non of Sney estate.

He did also purchase the lot

of the heirs of Keys. He and his wife afterwards sold it to Willis, who instituted an action of ejectment against defendants in error, and recovered the property. Afterwards Willis and defendants in error sold the property to the rail road company for sixteen hundred dollars. On these facts the court below decreed, that plaintiffs in error pay to defendants in error the sum of \$704.^{115.}75 and costs of the suit, and awarded execution to enforce its payment.

There is no pretense, that plaintiffs in error, was either directly or ~~indirectly~~ ^{prematurely} connected with title derived from Spaulding, by the foreclosure of his mortgage to Harve, the administrator of the estate of Keys. But it is supposed that the court below, acted upon the supposition, that plaintiffs in error, as administrator de bonis non, was estopped, from acquiring title to the premises, and that by doing so he perpetrated a fraud, upon defendants in error,

which renders him liable to make
 compensation to them. Even if
 this was true of the title of which
 the intestate was the owner, it could
 not apply to an outstanding ti-
 -tle, which has been sold in the ex-
 -ecution of ~~the~~ a debt. When Howard,
 administrator of the estate, took
 the mortgage ~~from Spaulding~~, he
 certainly admitted that Spaulding
 had some kind of title to the prop-
 -erty. But he had no power to admit
 away the title held by Keys' heirs.
 Nor could the foreclosure of the
 mortgage, or the sale of the prop-
 -erty under execution have that
 effect. When this sale was made,
 it was not proposed to sell the
 intestate's title of the heirs, but it was
 Spaulding's title. That sale could
 by no conceivable rule of law
 merge their title, legally or equita-
 -bly, into Spaulding's. It was a shu-
 -ff's sale, and the rule of curat
 -emptor applies.

The administrator, could not
 affect the title of the heirs to their
 real estate, derived to them from
 the intestate, except by a sale an

= the land and licensed by an act of Court. They hold their title in their own right, and only subject to the payment of the debts of their ancestor, in the mode prescribed by the law, and not subject to any other control of the administrator.

We are at a loss to perceive how the administrator disbur
ses ² when he stepped from pur-
 chasing a title from the heirs of his intestate, by the former administrator having ^{procuring} furnished
 to a mortgage but ~~not~~ the premises ^{to be} sold to pay a debt. His predecessor made no warranty of the title, and if he had, it would have been personal, and could not affect his successor. Nor does it appear that he made any misrepresentations as to the character of the title sold by the sheriff; ^{but had he done so} and if he had, it could only have harmed him individually, and would not ^{have} operated against his successor. The title of the intestate does not rest in the administrator as a trustee, but it

- demands directly to the heirs.

It is not pretended that plaintiff in error [#] did any fraud -
 - about act to mislead defendants in error when they purchased at the sheriff's sale. Nor does the record contain any evidence that Howe ever sold the premises for the payment of debts of the estate. It only appears that Howe was authorized to make such a sale by a decree of Court. Under such a state of facts, we can perceive nothing to prevent the heirs from selling or plaintiff in error from purchasing, their title. Defendants in error have not shown that they had any interest in Keys' title to this lot. They only show their connection with Spendings' title. So far as defendants in error are concerned, they are wholly disconnected with, and are strangers to, the title held by Keys' heirs.

But even if Howe was guilty of any fraud it was upon Will -
 - ams, the purchaser at the sheriff's sale. But if that were established

we are at a loss to perceive how
 * ~~the~~ courts intend to the benefit of
 defrauders in error. When they
 purchased, it was for them to
 satisfy themselves of the validity
 of the title, and require covenants
 of the grantor, or to risk the title
 upon a quit claim deed. If their
 grantor perpetrated a fraud upon
 them, their remedy is against him.
 Or if they ~~received~~ ^{took} a covenant
 in the conveyance, they must look
 to it for their right of recovery.

The decree of the court below
 is reversed and the cause is rem-
 -anded.

Decree Reversed.

the right to recover the purchase money received by Wallbridge

Walbridge

134 vs 123

Lang & al

Opinion by
Walbridge

C. R.

Record 174

Companion

Supreme Court of the State of Illinois
Third Grand Division April Term
A.D. 1863.

George W. Albaugh

Frederick S. Gray

} Error to LaSalle

Statement of facts

Lot 8. in Block 45, was sold
by the School Commissioners of LaSalle
County to One Edward Keyes who did
seised of the premises. George W
Keyes was appointed his administrator
and as such obtained a Decree for
the sale of the premises to pay debts,
(See exhibit C. Rec p 46)

The Decree recites that the premises
were sold by the administrator under
this Decree. Some verbal evidence
tending to show a sale in fact, &
some documentary evidence also
does not appear in the Certificate
of Evidence. And the record in this
case presents the question as to
whether the recital of facts purporting
on the hearing is to be qualified
by this Certificate of Evidence

we insist that it is not, because
the Deed imports absolutely
and the facts stipulated to have
been established on the trial. Can
- not be refuted by the Certificate
because the Deed is, to say the
least, as conclusive evidence of
the facts proved, as the Certificate
and in case of ⁱⁿ a discrepancy,
the presumption is, that the
Certificate omits to state all the
evidence - And especially when
it ^{was} not signed until a subsequent
time of the Court & after the case
has passed from the docket,
and when, as we insist, the Court
had no jurisdiction to sign the Certifi-
cate and make it a part of the
Record -

at all events the certificate of
evidence does show, that it appeared
from the Inventory of the Administra-
tor Shew, that this Lot, 8. in Block
15. was marked "Sold" see Book
p 47, which together with the
mortgage by Spanning to
"George M. Howe as Administrator
of the Estate of the Estate of Edward

"Keys deceased" and the subsequent
foreclosure of the same by Hon
the admr. can have no reasonable
doubt of the fact that the Sub
was sold to Spaulding under
this deed & the mortgage was
given for the purchase money as
the deed directs the Sub to be
sold on a credit of six months
& the mortgage is dated Sep 1. 1837
& payable 1. March thereafter.

On the sale under the Sci fa
proceedings to foreclose this mortgage
the premises were sold to Jesse
Williams. who assigned his certifi-
cate of purchase to Amasa O.
Crozier and Leezie Crozier conveyed
to the Keys - the complainants
but for the loan of a deed from
Hon. the admr. to Spaulding, the
complainants would have had
a perfect legal title to the premises
& under these circumstances,
their equitable title to the premises
cannot be denied - ^{but} ~~and~~ though
through the fraud perpetrated
upon them by Walbridge, they were
evicted from the premises & lost

How land,

How the Administrator died
in 1840. And Walbridge the Plaintiff.
Ever married the Widow of Ray
and procured himself to be
appointed adm^{de bonis non}. And received
Conveyances from the heirs &c
and his wife conveyed to George
B. Willis. And Willis brought an
Eject. Suit on the Day & received
possession of the lot, the Day being
unable to show a valid legal title
deducible of record. And to recover
Compensation for this apparent
fraud on the part of Walbridge the
the Bill in this case was filed.

Without having the Record to refer
to, we respectfully beg leave to
submit the following suggestions
in support of the Verdict rendered
by the Court below

II

The Complainants, had a perfect Equitable Claim to the premises as they were in fact sold by the administrator And the Estate of Keys received the avails of that sale and of this Equitable title we insist Malbrady had notice here, to make his fraudulent scheme effectual he conveyed to George B. Willis, who it is to be presumed was a bona fide purchaser - It is possible that he might not have been, but nevertheless the presumption is, that he was. Hence he received the premises in the Equitable title. And it cannot be presumed that the Days could have shown that his (Willis,) purchase was not made in good faith. & thus defeated the remedy in the Equity - Moreover it would not have availed them in that suit to have shown it, because they could show no deed, from How as administrator on the sale the sale to Spaulding, and as the legal title only was involved in that suit their defeat was inevitable

II II

Walbridge as administrator de bonis non was chargeable with notice. That Hon. his predecessor had made a sale of the Lot - He had both actual and constructive notice of the Complainant's Equity - He administered upon what remained of the Estate - He could not do this without knowing what his predecessor had done in the course of his administration of the Estate

1. The Inventory with this Lot marked "sold" thereon (which was proved on the hearing to have been in the hand writing of Hon., but which is omitted in the Certificate) was on file in the Probate office
2. The Decree ordering a sale of the Lot by the admin to pay the debts of the Estate, was of Record, & of course constructive notice to all the world
3. The Mortgage from Spaulding to Hon as admin, was also on record
4. The proceedings in the Decy proceedings were also matters of record
5. The Defts Certificate of sale & this

3

dead Olerosin. & the death of the
latter to the Complainants were
also or near and of course
Constructive notice to Malbidge
of Complot & Equities, hence we
say a more infamous fraud,
now virtually completed. by
Malbidge and son - was now
before exposed in a Court of
Justice

6. As Administrator de bonis men
he was precluded by the acts of
his predecessor in office

See 1. Russ Ch B 40

7. Gill & Johnson 13

1. Gelman 615

He had undoubtedly ascertained
this. through the advice of Counsel
and hence his duty to Willis.
whereby he sought to ~~use~~ the fruits
of his fraud and cover up his
tracks.

§ § §

But, it is claimed that the Statute of Limitations has cut off all remedy for the injuries sustained by the Complainants - And all kinds of Statutes are set up to screen Malbidge - The Plff in error in the course of his investigations in this case having reached a point when he finds it necessary to confess the fraud & plead the Statute of Limitations we will briefly refute his various expositions of the workings of the Statute in behalf of this Scoundrel Malbidge

1. The Statute of Limitations cannot avail against such a fraud as is charged in the Bill

23 See Campbell vs. Vining 25 Ells 525 & authorities therein cited

2, The Compts aver in their Bill that they had no suspicions of the fraud perpetrated on them by Malbidge (Recd p 3 to 8.) They cannot of course show negatively that they did not know of it, but no claim of title was set up by Malbidge until

1851. And no attempt made to
interfere with their possession until
then

Nov, 3. Furthermore, they were not evicted
until the rendition of the Just in
Error in 1851, within 5 years preceding
the consummation of this sub- & other
rendition of this Just was a constructive
eviction 3 Sugd Row 372
4 Hill 646,
Rowle on Cov. 83-216, 217

4. In a case of this kind, the
statute of limitations, if applicable
at all, will not be applied short
of the time that would bar an
action of Ejectment.

Bousland vs County of Perin
16, 216, 539.

IV

There was an implied warranty on
the sale by Howe as agent that he had
authority to sell which was binding
on Malbidge (1. S & M ch 561 & 620)
and as the successor of Howe he had
no legal right to continue to defeat
the title of the complainants derived
under the sale made by Howe, as we

have already shown - but to this it
is objected that the Complainants
parted with their right when they
conveyed to ~~the R. R. Co.~~ M. F. Day
Nov 2. 1846, 2^d at all events when
they conveyed to the R. R. Co July 22. 1851
. To this we reply:

1. M. F. Day reconveyed to Complainants
July 22. 1851, prior to the Commence-
ment of the Eject Suit which was
not until Nov. 1851,

2^d No Claim of Title was set up by
Mills until after this recovery
and when they were evicted by the Eject suit

3. The quit claim deed by Complain-
ants to the R. R. Co was not executed
until after they had been evicted &
until ^{after} the fraud had been finally
consummated and they had become
divested of all their legal title to the
Lands viz on the 15 Dec 1852 this
and passed nothing then was
no estate to pass - it was probably
taken as a precautionary measure in
the part of the R. R. Co. & could in
no way effect any prior right of
action they had against Malbaird
for the fraud. I did not purport
to and could not ^(have the opportunity to) convey their right of action
for this fraud

3. The Complainants were the persons
 & the only persons who could
 maintain our action, because they
alone suffered through the
 fraud of Walbridge - M. J. Key
 suffered nothing by it - indeed
 he might have held the property
 merely as Trustee, but while the
 Complainants ~~had~~ had the Equitable title
and possession - they were evicted
 & lost the land.

V.

The principle of "Caveat Emptor" applies
 on all sales of real estate, but if
 a purchaser has actual or constructive
 notice of the rights of the
 Equitable owner - or of facts
 sufficient to put him upon
 inquiry - it is a fraud in him
 to purchase in the outstanding
 legal title ^{for} which Courts of Equity
 will grant redress - and all that
 Counsel on the other side urge
 in reference to the principle of
 "Caveat Emptor" has not the least
 application to the case at bar. Wal
 bridge held the legal title as Trustee,

(in Equity) for the Complainants
1. And, while it is true, that the ordinary
relations existing between an
Administrator and the Heirs of
the Decedent, would not preclude
him from purchasing the estate
the same as any other person
might, yet, when in the course
of his administration, as in
this case, he sells part of the
realty under a Decree of the
Court to pay the debts of the estate
which was a sale authorized
by law, and which the admin-
istrator had the legal right to make
he is not allowed to disturb the
title against vendors such sale
within is his successor in office

2 - The Heirs have only a Defensible
estate after payment of the debts, they
take the residue and a purchaser
from them stands in no better
condition in Statute of Will, § 46
§ 13 Ill. 171.

Malbrough knew all this - and
nevertheless conveyed the property
to Willis, because he well knew,
undoubtedly, that, if he had
interfered with the Complainants' Equitable
rights - he would have been defeated

and lost the fruits of his ~~insignificant~~
fraudulent schemes. Yet this
unconscionable villain has the audacity
to come into a Court of Equity
confess his fraud, plead the
statute of limitations and twaddle
about "State Claims" "Contra-vens"
~~etc~~, a "right of action in some
one other than complainant" and
such like stupid nonsense - when
the Compts were the only persons
injured by the fraud, & brought
them suit in due time - and
might have safely deferred
bringing it for 15 years longer if
they had chosen to, without prejudice
to their rights. Ex In Bouland vs Co of Ponio
16 Ills 539

VII.

But, the charge is made that the
Extrajudicial suit was gotten up
by a contrivance, between the
Drops & Willis for the purposes of
this suit - the evidence of Brewster
instead of tending to show a collusion
between Willis & the Drops, shows that
all that passed between them was
after the determination of the Ex.
suit, the Compts had been evicted

and at his mercy and had
to make ^{the} best terms they could with
him, this was ~~at~~ at the time of
the conveyance to the R.R. Co.
(see Brewster case, to 2 Int. Rep.
p 31. to 33) and the Exch. suit
had been returned in November
preceding

1. The Deys had previously
contracted to sell the lot to the
R.R. Co for \$1600 & not until after
that did Mellis set up his claim
to the property

2. Mellis & the Deys were mutually
desirous that the controversy should
be speedily settled - the former, to enable
them to complete their cont. with
the R.R. Co, otherwise they might
be liable to heavy damages for a
breach of it, & the latter, to enable
him (Mellis) to make an advantage-
ous sale - as the building of
the R. R. made the lot peculiarly
valuable; hence, the agreed case,
which presented the legal status
of both parties truthfully in
every respect & as a reason to
which we challenge the most rigid
scrutiny. So the necessities of both

parties were such as to make
a speedy determination desirable
the Days protesting that they had
been defrauded by Walbridge,
were compelled to offer Mills
1/2 the amt they were to receive
from the R.R. Co. & he assented
to this as he wished the property ~~there~~
for if the ~~thing~~^{matter} was protracted
by further litigation. He would
have lost the sale as the Rail
Road Company, it ~~was~~^{was} probable,
would not purchase until all
controversy about the title was
settled. And this matter was finally
closed upon that basis, with per-
haps the additional stipulation
that Mills was to have \$100.
Now if the Days could obtain
compensation for the fraud. from
Walbridge, or was to refund \$100,
in case they could collect nothing
from Walbridge, but which
Brewster is not sure - so the
transaction, instead of being
concluded in advance of the Equi-
tub. as is falsely charged &
made to appear by Walbrook, by suppressing
& garbling Brewster's deposition

it was nothing more than ^{or} less
than this - that the Complt. were
at the mercy of Miller's shrewd
to pay him \$800. for his pro
amount Legal title 1/2 the
value of the land -

2. The Complt. had no legal
remedy, hence they filed this Bill
(to obtain compensation for their
loss) in Equity which they have
the clear right to do as this Court
has held in the case of
Ry. Buland vs. Roria Co., 16 216 539

3. The Complt. if they have
established the fraud charged
are not limited by the simple
legal measure of Damages
in an action of for a breach of
Covenant or failure of their
title. But Equity will award
to them the compensation for
their actual loss. and the measure
is for less than the loss they
actually sustained - but, if the
Court should be of the opinion

that the Decree is for too much
of course your Honor can
modify it without remanding
the case, but it is confidently
believed, that the Decree is ^{for} too
small an amount. rather
than for too much; & espe-
cially when it appears, as in
this case, that the Complainants
have actually suffered a greater
loss than the amount awarded
through a deliberate unscrupu-
lous friend, it is respectfully
submitted, that the Refd Court
should not be permitted to
escape without, at least, compensating
the Comps for their actual loss,
& that the Decree should therefore
be affirmed. The actual loss was at
least one half the value of the land
viz \$800, - In *Boulevard v. The Co. of
Florida* the Court say. (16 Ells p 546)
The sum to be recovered in this case is not
to be limited to the damages recoverable for a
breach of covenants of title &c., for that
might operate as an inducement on
county & parties to sell land in violation
of their engagements, when by its rise

they could ^{repay} ~~retain~~ the purchase money
and obtain a large balance" —
" When this is not questioned about a portion
of title re, but a wanton explicit breach
of contract by selling the same
lands for an advance. that such
creditors cannot complain that
they are treated as Trustees of
the proceeds for the first vendor
and compelled to account for
them with legal interest re?

Again this comes in Powell as follows
4. Scan 391 Day - "He (the Trustee)
is responsible for the loss and must
reimburse it - although he may
have made himself a Trustee by an
act of fraud. the Court will compel
him to act with fidelity re by holding
him responsible for any loss for not
doing so" - "The question is not what
the Trustee has made unless the Court
Trust chooses so to consider it, but
what the latter has lost" - "if he squanders
it he is responsible for its value

E. S. C. C. C.
Wm. C. C. C.
For Dept

Superior Creek
3. Revision

Henry Malbury

P. S. Day & Co

Argument
for Dept

1
State of Illinois } Pleas before the Honorable
Sasale County } Madison E. Hollister, presiding
judge of the north judicial
district of the State of Illinois at a circuit Court
commenced and hold in and for the County of
Sasale and State of Illinois at the Court House in
Altamir on the 12th day of November A.D. 1835
the same being the second Monday in said
month of November and said year being the
seventy month of the Independence of the United
States of America

Present

The Honorable Madison E. Hollister, Presiding judge
sitting as Chancellor

John F. Ash Clerk

William H. L. Wallace State Attorney

Francis Warner Sheriff

Be it Remembered that hereupon to wit: on the
24th day of September 1835 a certain Petition
showing was filed in the office of the Clerk of said
Court in the words and figures following viz:

"To the Honorable Madison E. Hollister judge of the
circuit Court of the County of Sasale and State of
Illinois

Yours Obedient Servant S. D. Day and Isaac C. Day
of Peoria in the County of Sasale of said State respectfully

represents that on the eleventh day of January in the year 1844 John Croton became the purchaser from one Amara Olovorian of said Sabal County of Lot number eight (8) in Block number fifteen (15) in the town of Peew in said County of Sabal for a valuable and full consideration paid by John Croton to the said Olovorian and the said Amara O. Olovorian on that day made executed and delivered to John Croton a deed in fee simple for said lot and surrendered possession thereof to John Croton which deed was filed for record on the twelfth day of the same month of January & which deed a copy thereof is hereto annexed and made part of this bill.

John Croton further represents that at the time of making said purchase and of receiving said deed they acted in good faith, truly believing that they thereby acquired a full complete and absolute estate in fee simple in said lot and so continued to reside in their title and paid out for taxes upon said lot a large sum of money to wit: the sum of fifty dollars in addition to the original price paid to said Olovorian for said lot in the year 1837 when one George B. Willis set up a claim to said lot and instituted a suit in Equity to determine the title thereto, which suit was decided by this Court at the November Term A.D. 1837 on the several decrees and a judgment rendered finding and determining the title of said lot to be in the said George B. Willis and against the supposed title of John

crators.

Ym Crators further represents that said lot originally was school land. part of section 16, and was sold in September AD 1834 by the school Commissioners of Saddle County to one Edmund Kees, then in full life but since deceased, and who died within ten or there years thereafter. With regard to said lot as per crators claim, and as appears by the proper records. The said Edmund Kees at the time of his death, left a widow Mary Kees and three heirs at law to wit Sarah a daughter who was, or subsequently became married to one William Johnson, Elias Kees a son and Emily Kees a daughter who subsequently deceased without having conveyed or incumbered her interest in said land and leaving her mother the said Mary, her sister Sarah and her brother Elias her heirs at law.

Ym Crators further represents that some time prior to the year 1849 the said widow Mary Kees intermarried with one Abner Walbridge of said Saddle County and that thereafter the said Abner from and from the said William Johnson and his wife Sarah Johnson and also from the said Elias Kees all their interests of the said Sarah and the said Elias in the estates of the said Edmund Kees deceased and the said Emily Kees deceased, both real and personal and proceed from the parties deeds duly executed conveying the same, that from the said William

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John and his wife dated March 5th A.D. 1830 and
 that from the said Elias Niles (with his wife) dated
 March 2^d A.D. 1830.

Ym exors represents further that said deeds to
 said Abner Wallbridge vested in said Wallbridge
 (vide from what was before vested in his wife the said
 Mary) the entire remaining estate of which the said
 Edmund Niles died seized or possessed, both real
 and personal and amounting to several thousands
 of dollars after satisfying the debts of the estate, and as
 far as appears of record or from exors can ascertain
 vested the legal title to said Lb & in Book 15 in
 Penn in the said Abner Wallbridge, except the extent
 therein of his wife the said Mary, as widow of said
 Edmund Niles, and as one of the heirs of said Emily
 Niles deceased.

Ym Exors further represents that under and by
 virtue of said deeds the said Abner Wallbridge
 claimed to have the title in said Lb and the said
 Abner Wallbridge and Mary Wallbridge by deed dated
 May 4th A.D. 1830 sold and conveyed said Lb & in
 Book 15 in Penn. to the said George B. Willis, and
 and that it was under and by virtue of the chain of
 title hereinbefore set forth that the said George B.
 Willis received in quiet enjoyment the title to said Lb
 against Ym exors.

Ym exors represents and avers that all the
 conveyances made by the heirs of said Edmund Niles
 deceased and by the said Abner and wife were

made long after the said Lewis had sold said
lands to said estate as aforesaid; and they are that
the said Henry Wallbridge at the time of buying said
said lands and at the time of conveying to said Willis
well knew full estate claim of title, and of the just
and equitable grounds of the same as hereinafter
represented and set forth: and that it was most unjust
and unreasonable to convey said lands to said Willis
and thereby defeat the rights of said estate in the
premises.

Said estate further represents that some time
previous to the month of September A.D. 1837 one George
W. Keen (then in full life but since deceased) was
appointed and took upon himself the duties of
Administrator of the estate of the said Edmund Kiger
deceased.

Said Estate further represents that on the first day
of September in the year 1847 one Nelson Spalding
of said Latah County (then in full life, but since
deceased) executed and delivered to the said George W.
Keen as administrator of the said Edmund Kiger deceased
a conveyance of said lot 8 and block 15 in said town as a
mortgage, being subject to a condition of defeasance
on the payment by said Spalding or his representatives
to the said Keen, administrator, or his representatives
the sum of five hundred and thirty dollars, on or
before the first day of March then next as reference to
a copy thereof marked B attached hereto will appear.

Your exors are ignorant of the date of the said Spaulding made said deed, then Kingman recd or other evidence of title in said Spaulding of which your exors have any information. But your exors believe that there had been some sale or pretended sale of said Ld by said Keen as such administrator to said Spaulding. And that said mortgage was made to secure the purchase price of said Ld, although there does not remain of record in the proper office any evidence of such sale, nor any due to said Spaulding of said Ld.

Your exors further represent that after the time limited in the conditions of defeasance to said mortgage for the payment of the money therein mentioned the said Keen as such administrator commenced proceedings in this Court by Seris Facias to foreclose said mortgage and at the January Special Term 1840 of this Court the said Keen as such administrator received a judgment against said Spaulding on said mortgage for the sum of \$572.27 and costs of suit upon which judgment a writ of execution was issued, dated on the first day of April 1840 directed and delivered to the Sheriff of said Tazewell County who served the same on the mortgage premises to wit: said Ld-8 in Block 15 in Peun and on the 16th day of May 1840 said said Ld to one Jesse Williams at and for the price of three hundred dollars. And the said Jesse Williams having duly assigned his certificate of purchase to the said Amasa Clerghier

7 #

The said Sheriff on the 17th day of May 1842 made and delivered to said Crozier the proper deed of said lot which deed was filed for record in the recorder's office on the 24th day of that same month as will appear by reference to a copy of said deed marked A & attached hereto.

Yem Crators further represents that it was under the claim of title thus acquired that said Crozier sold and conveyed to yem crators.

Yem crators further represents that in the purchase of said lot from said Crozier yem crators were aware that said Edmund Regis was the original purchaser of the same and also that said Crozier title was under a Sheriff's sale for foreclosure of a mortgage given by said Spaulding to said Keen as such administrator. But at the same time yem crators from the fact that said administrator of said Edmund Regis did had taken a mortgage on said lot & purchased the same, was misled as was also the said yem Williams & Amara C. Crozier to confer in the title under said mortgage, having all suspicions that any title still remained in the estate of said Edmund Regis deceased, omitted entirely, by the relation of the personal representative of the said Edmund Regis deceased to the mortgage and the proceedings under it.

Yem Crators ^{further} represents that in the year eighteen hundred and forty the said George W. Keen deceased

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the said Henry Wallbridge was appointed administrator
de bonis non of the estate of said Edmund Keyes
deceased and took upon himself the duties of such
administrator. And from records show that having
so as aforesaid purchased in the interest of the heirs
of said Edmund Keyes and having become such
administrator and having so as aforesaid married
and become the husband of the widow of said
Edmund Keyes deceased, the said Henry, before and
at the time of selling to said Willis, and thence
hitherto was and still is the sole representative of the
estate of said Edmund Keyes deceased, except as to the
separate interest of his wife the said Mary Keyes.

From records over and charge that in the matter
of said mortgage and the foreclosure of the same and
the sale of said lsh by said Sheriff for the benefit of said
estate; the estate of the said Edmund Keyes deceased
received a full consideration for said lsh from the
persons under whom from records examine title, and
that in justice equity and good conscience the title
should have passed through said Williams and
Crosby to from records; And from records charge
and over that the said Henry Wallbridge being
possessed of such legal title as far as appears of
record, yet, well knew that he had not a shadow of
equitable title to said lsh and that in so as aforesaid
deeding the same to said Willis and thereby
misdeemning the equitable title of from records
he was perpetrating a gross fraud upon from records

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9 ~~5~~

Yem craters also show that at the time the said Willis
 so received the said \$40 from yem craters said \$40 was
 of the value of sixteen hundred dollars and yem
 craters were prepared to realize that sum for it. wherefore
 yem craters say that the said George Wallbridge having,
 with the design to cheat and defraud yem craters
 actually defrauded yem craters out of said \$40 and the
 value of same. the said George in equity and
 good conscience should be required and compelled
 to refund and pay to yem craters the amount that
 by his crime and fraud aforesaid he has so
 defrauded yem craters out of, with interest thereon.

Yem craters further represent that the said George M.
 Keen, as such administrator in settling and
 for closing said mortgage, held out to the world
 and particularly to the purchasers under said
 mortgage that the estate of said Edward Tye deceased
 had no other interest in said \$40 and thereby induced
 the said Jesse Williams and the others mentioned
 as aforesaid to purchase the same, and thereby the
 said Keen as such administrator obtained from
 the said Williams the amount of said Williams' bid
 aforesaid for the use of said estate. and the estate
 has actually had the benefit and enjoyed the advantage
 of the money so paid by said Williams without, having
 in reality given or parted with any consideration
 for interest thereof the consideration upon which said
 money was paid by said Williams and received by said

Keen as administrator has been been defeated
 by the subsequent acts of said Wallbridge to bring
 Successor to said Keen as administrator and to
 representing the heirs of said estate. And generators
 show and charge that it is against equity and
 good conscience for the estate of said Edward Stiles
 deceased, or for the said Henry Wallbridge as such
 administrator, or the said Henry and his wife as the
 heirs and representing the heirs of said estate, to retain
 the money so paid at said Sheriff's sale by said William
 but on the contrary generators holding the right and
 all the equities acquired at said Sheriff's sale and
 having paid therefor in good faith and in confidence
 that the title acquired by them under said Sheriff's sale
 was a good and perfect title, have a right in equity and
 good conscience to demand of the said Henry Wallbridge
 the repayment of the amount paid and paid by said
 William at said Sheriff's sale with interest from the
 time of said Sheriff's sale to the time of repayment
 and also the amount paid by them or by said Origin
 for taxes on said lot with interest thereon and that
annual interest should be paid, because they say
 that the use of that amount of money has been during
 all the time of said use more or less than double the
 legal rates of six per cent interest and that it is
 therefore equitable that said Wallbridge as the repre-
 sentative of said estate should be obliged to restore the
 price paid at said Sheriff's sale and the money paid for
 taxes with annual interest at least.

11 6

And to your orators say that they are equitably
entitled to demand and recover of the said Thomas
Wallbridge the value of said land at the time they
were vested by said Willis with interest on account
of the fraud practiced by said Thomas, or else they
are entitled to demand and recover of said Thomas
as the representative of the estate of the said Edward
Keggs demand the price to be as said price paid by said
Williams or said Sheriff's sale with interest thereon as
aforesaid.

Your Orators will bring into Court and exhibit as the
Court may direct the mortgage given by said Thomas
Spalding to said Keene as administrator the deed
given by said Sheriff to said Keene and the deed
given by said Keene to your orators; and also the
records of the other conveyances and legal proceedings
therein contained.

In consideration of the premises your orators pray
that the said Thomas Wallbridge and Henry Wallbridge
may be made defendants hereto and that summons
may issue against them to the Sheriff of said
Labadie County; that they be required to answer this
Bill fully without oath and that on final hearing
and the equity of the case being found to be with
the complainants, that the said Thomas Wallbridge
(being found guilty of fraudulently defeating the
rights and title of your orators to said land) may be
decree and adjudged to pay to your orators the

value of said Lot at the time the same was received
by said Willis in payment, with interest, or, if from
such bearing the said things should not be found
thus liable that then the said things be adjudged as
the representatives of the estate of the said Edmund Steg
deceased, be adjudged and decreed to return to the
creditors the price paid for said Lot, by said William
or said Sheriff's sale with interest as aforesaid, as a
fund justly and equitably belonging to the creditors
and which it is against conscience for the said
Wallbridge as the representative of the estate of said
Edmund Steg deceased to retain from the creditors
and also that said Wallbridge as such representative may
be adjudged and decreed to repay to the creditors the
moneys so as aforesaid by them, and by the said George
upon selling to them price on account of the aforesaid
said Lot and for such other and further relief as may
pertain to equity and good conscience, and the cred-
itors with our proper

Chambers & Eldridge

Complaisant Solicitors

"A"

This Undertaking made this eleventh day of January
in the year of our Lord one thousand eight hundred
and forty four before us the undersigned Clerk of the Court
of Notice County of Tazewell and State of Illinois

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of the first part and Frederick S. Day and Isaac
 C. Day of Peru in the County and State of Pennsylvania
 witnesseth that the said party of the first part in
 consideration of the sum of One hundred and
 fifty dollars to him in hand paid by the said parties
 of the second part the receipt whereof is hereby acknowledged
 hath given granted bargained sold and
 quit claimed, and by these presents doth give grant
 bargain sell and quit claim unto the said
 parties of the second part and to their heirs and
 assigns forever all that certain lot piece or parcel
 of land known and described as follows viz: being
 lot number eight (8) in Block number fifteen (15)
 in the town of Peru County and State of Pennsylvania as by
 reference to the plat of said town on record in the
 recorder's office of said Adams County will more
 fully appear. Together with all and singular the
 hereditaments and appurtenances whatsoever
 to the same belonging or appertaining and the
 reversion and reversions remainder and remainders
 next issues and profits thereof and support and
 parcel thereof and also all the estate rights title
 and interest profits claim or demand whatsoever
 with in law and in equity of the said parties of the
 first part in or out of the said lands tenements
 hereditaments and premises. To Have and to Hold
 the said lands tenements and hereditaments and
 all and singular other the premises hereinafter

mentioned with their appurtenances with said
 parties of the second part their heirs and assigns
 forever. And the said party of the first part doth
 hereby for himself his heirs &c. covenants administrators
 and assigns covenant promise and agree to and
 with the said parties of the second part their heirs
 and assigns in manner & form following. That is to
 say that the said parties of the second part their
 heirs and assigns shall and may peaceably and
 quietly have hold and enjoy the said land and
 premises and every part & parcel thereof without the
 let hind trouble vexation or disturbance of the
 said party of the first part his heirs or assigns or
 of or by any other persons lawfully claiming
 or to claim from or under him them or
 any of them. And that the said lands tenements
 hereditaments and premises and every part and
 parcel thereof now are and from henceforth
 shall continue and remain and be unto the said
 parties of the second part their heirs and assigns
 for ever & fully and clearly acquitted & acquitted
 and discharged of and from and against all
 former and other gifts grants conveyances sales
 mortgages estates titles bonds charges and
 encumbrances whatsoever that have been
 committed or caused or suffered by the said
 Amara Olovian or by any person lawfully claiming
 by from or under him or by his heirs or any of them
 as means assent or procurements

15-8

On Witness whereof I have hereunto set my hand
and seal this Eleventh day of January Eighteen
hundred & forty four
Signed Sealed & delivered Amasa Cleverias

In presence of
Wm. Chalmers

State of Illinois, I Kemp. Beck a justice of the
Said County 3^d place in & for said County do
hereby certify that Amasa Cleverias
whose signature appears to the foregoing deed and
who is personally known to me to be the identical
person named in said deed and who executed the
same personally appeared before me and acknowledged
the same to be his free and voluntary
act and deed for the uses and purposes therein
mentioned. Given under my hand and seal
this 11th day of January A.D. 1835

K. S. Beck, J. P.

"B"

This Indenture made this 1st day of September A.D.
1837 Between Volgers Spaulding of the County of
Sasale and State of Illinois of the first part and Geo.
W. Kern administrator of the estate of Edmund
Kern deceased of the other part witnesses that the
said Volgers Spaulding for and in consideration
of the sum of Five hundred and thirty dollars to him

in hand paid the receipt whereof is hereby acknowledged
 both granted bargain and sold and by these presents
 both grant bargain and sell convey and confirm
 unto the said George W. Keen administrator his heirs
 and assigns forever a certain described lot in the
 Town of Penn and State of Maine to wit lot number
 eight in Block number fifteen in said town of
 Penn known and designated as the same said off
 by the School Commissioners of said County in the
 year A.D. 1834. To Have and to Hold the said
 described lot together with the appurtenances
 thereunto belonging to him the said Geo W. Keen his
 heirs and assigns forever. Provided always that
 these presents are upon this express condition that if
 the said Nelson Spaulding his heirs heirs or
 administrators shall pay or cause to be paid to the
 said Geo W. Keen administrator his heirs or
 assigns the sum of five hundred and thirty
 dollars lawful money of the United States on or
 before the first day of March next ensuing in
 manner particularly expressed in a certain bond
 bearing even date herewith executed by the said
 Nelson Spaulding to the said Geo W. Keen adminis-
 trator then and from thenceforth these presents
 and every thing herein contained shall cease and
 be void any thing herein contained to the
 contrary notwithstanding

In Witness whereof the said party of the first part
 hath hereunto set his hand and seal the day and

17 7

year abn mttm Nelson Spalding Esq

In presence of

S. Leslie Smith

State of Illinois } On this 1st day of September
Sasale County } 1837 personally came before
me the subscriber one of the acting

justices of the peace in & for the County of Sasale

Nelson Spalding to me personally known and acknowledged that he signed sealed and delivered the
within indenture and desires that the same may

be recorded according to law

Given under my hand and seal this day and year
abn mttm Geo. W. Horn J. P. Esq

"So" Sheriff Deed"

Whereas George W. Horn administrator of the estate
of Edward Keys deceased died at the February special
term of the Circuit Court for the County of Sasale
for the year 1840 upon a judgment against
Nelson Spalding on a mortgage for the sum of five
hundred and ninety two dollars and twenty seven
cents and costs of suit upon which judgment a
special writ of execution was issued dated on the first
day of April 1840 directed to the Sheriff of Sasale
County to execute and by return of said execution the
said Sheriff seized upon the lands hereinafter
described and the same was struck off and sold to
Jesse Williams the highest and best bidder

therefor and the time and place of sale having
 been duly advertised according to law and the said
 Jesse Williams having duly assigned his certificate of
 purchase to Amasa Clevins. Now Therefore know
 all men of this state that I William Reddick Sheriff
 of said County of Adams in consideration of the premium
 then granted Benjamin and wife and do hereby
 come to the said Amasa Clevins his heirs and
 assigns the following described tract of land situate
 eight (8) in Block number fifteen (15) in the town
 of Peru in said County and State to have and to hold
 the said described premises with all the appurtenances
 thereto belonging to the said Amasa Clevins his heirs
 and assigns forever. Witness my hand and seal
 this seventeenth day of May in the year of our
 Lord one thousand eight hundred and forty two.
 The undersigned of and William Reddick Esq
 the said Jesse Williams Sheriff of Adams County
 having duly assigned his
 certificate of purchase to
 Amasa Clevins intended before signing

State of Illinois Personally appeared before me
 Adams County of undersigned clerk of the peace
 learned in said County the
 within named William Reddick who is personally
 known to me & who acknowledges that he signed
 and executed the within deed as Sheriff of said

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County which are for act & deed for the uses and purposes therein mentioned.

In Witness Whereof I have hereunto signed my
 name & affixed the seal of said Court this 18th
day of May A.D. 1842.

And afterwards, to wit: on the 24th day of
September 1835 a summons was issued out of and
under the seal of said Court in the words and
figures following viz:

"State of Illinois
Saidle County Sch. The People of the State of Illinois
to the Sheriff of Saidle County
Greeting: We command you to summon George
Walkridge and George Walkridge of to be found in your
County personally to be and appear before the Circuit
Court of said County on the first day of the next term
thereof to be holden at the Court House in Ottawa on
the 12 day of November next to answer to a certain
Bill of Complaint filed in our said Circuit Court
on the Chancery side thereof against them by Frederick
S. Day & Isaac C. Day and hear you there and there
this writ and make return thereon in what manner
you see fit the same. Witness John H. Cook Clerk of
said Court and the seal of said Court at
 Ottawa this 24 day of September A.D. 1835
J. H. Cook Clerk

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Which said summons was returned and filed
on the 10th day of November 1835 into the Sheriff's
endorsement of service thereon in the mode and
figures following viz:

"Executed this writ by reading the
Same to Almy Walbridge and Mary Walbridge and by
leaving a copy with each of the Celsters 30th 1835-

H. Warner Sheriff
Pr J. Harris Deft"

And afterwards to wit: on the 12th day of November
1835 the Same being one of the days of the November
Term of said Court for said year, the defendants by
Beckwith Gray their solicitors filed a demurrer in
the mode and figures following to wit:

"State of Illinois: In the Circuit Court thereof in
Sasale County, in Chancey sitting for Term 1835

The demurrer of Almy Walbridge
and Mary Walbridge defendants to the bill of Complaint
of Frederick S. Day and Lucius L. Day Complainants.

The defendants by protestation, not confessing or
acknowledging all or any of the matters or things
in and by the said bill set forth and complained of to
be true, in manner and form as the Same are
therein set forth and alleged, say they are advised
by their counsel, that there is no matter or thing in
the said bill containing good and sufficient evidence

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21

To call these defendants in question in this Honorable Court for the same, but that there is good cause of demurrer thereto, and therefore these defendants say that the complainants said lib. in case the allegations therein contained not one which these defendants do in any way admit, contains not any matter of fact wherein this Court can ground any decree or give the complainants any relief or assistance as against these defendants; wherefore and for divers other errors and imperfections in the said lib appearing, these defendants do demur in law thereto, and humbly demand the judgment of this Honorable Court, whether they shall be compelled to put in any further or other answer to the said lib. (and humbly pray to be hence dismissed with their reasonable costs within which must wrongfully sustained)

Benjamin Gray Sols for
 Henry Wallbridge & Mary Wallbridge

"And for answer to so much of said lib of complaints as charges these defendants with fraud, collusion and combination, these defendants jointly answering say, that said charges in said lib contained are not true as therein set forth

Henry Wallbridge and
 Mary Wallbridge
 By Benjamin & Gray their Sols"

And afterwards to wit: at the February Term 1857 of said Court - Two orders were entered of record in said cause in the words and figures following viz:

"Tuesday February 11th"

"Frederick S. Day +

Grace L. Day

vs

In Chancery

Henry Wallbridge

Mary Wallbridge

After due consideration thereon had it is ordered by the Court that the defendants answer to the plaintiffs bill be amended."

"Friday February 20th"

"Frederick S. Day +

Grace L. Day

vs

In Chancery

Henry Wallbridge

Mary Wallbridge

This day the defendants come by Benjamin Gray their solicitors who move the Court for leave to file an amended answer in this cause, which motion is sustained by the Court - and leave granted defendants to file an amended answer."

And afterwards to wit: on the 8th day of June 1857 the defendants filed their ^{amended} answer in the words and figures following to wit:

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The amended answer of Abner Wallbridge & Mary Wallbridge to the Bill of Complaint of Frederick S. Day & Isaac C. Day

These defendants having to themselves all right of exception to the many errors & insufficiencies of said Bill & the matters & things therein contained insisting as heretofore that Complaints are not entitled to relief upon the case made, for answer to said Bill or to so much thereof as they are advised is material for them to answer, say

That it is true as they claim that Ad 8 in Book 15 of the Town of Peru changed to Edward Regis in his life time, that he died leaving a widow now the defendant Mary Wallbridge & heirs Sarah Johnson, Elias Regis & Emily Regis that said Emily died leaving heirs, said Mary, Sarah & Elias, that said Mary married said Abner that said Abner bought out the interests of said Sarah & Elias in the estate of said Edward, and acquired thereby the legal title of said Ad 8 & the fees owned by said Mary and that these defendants conveyed said Ad 8 to George B. Willis substantially as set forth in said Bill of Complaint. They also admit that George W. Horn was administrator of the estate of said Edward Regis, that he deceased, that afterwards this defendant Abner Wallbridge became administrator de bonis non of said Regis substantially

as set forth in said Bill of Complaint.

These defendants further answering say that as regards any sale of said Ld by said Heem as such administrator or any mortgage given to secure the purchase money or any sale in said Ld as or the reception of the purchase money (paid estate and as to all proceedings whatever made or pertaining to such sale and the Complainants becoming the equitable owners of said Ld thereby as set forth in said Bill these defendants know nothing, they believe the same is untrue and they therefore deny all of said allegations and leave Complainants to their proofs.

These defendants further answering say that said George in purchasing said Ld of the heirs of said Edward & Emily Keys acted entirely for himself and not as the administrator or representative of the estate of said Edward Keys, that he sold the same for his own use, that in like manner he and his said wife sold the same (with other Lds) to said George B. Willis as their own property as they believe they might lawfully do, that in all this said George nor these defendants neither meditated or committed any fraud upon said Complainants nor sought to undermine their equitable title of Complainants as they did not know that they had any, and they therefore say that they are either of them is

25 ~~119~~

liable to complainants in any capacity nor to
any extent for the value of said Loh or for the purchase
money or any supposed sale of said Loh to said
Williams & the interests thereof & as claimed by
said complainants.

These defendants further answering say that as to
any suit in Ejectment brought by said George B.
Willis against complainants and the judgments
of the Court in favor of said Willis for the recovery
of said Loh they know nothing respecting the same
and they require proof. But these defendants
insist as to said suit that the title to said Loh was
no better or stronger in the hands of said Willis than
in the hands of these defendants, that said Willis
at the time he purchased said Loh had in fact
and was bound in law to have full notice of all of
complainants claim and title to said Loh that
he knew all matters & things pertaining to
said Loh that said defendants did at the time of
said sale by them of said Loh, and if, for any
reason it was inequitable for these defendants
to obtain claim and dispose of the title to said
Loh (as is claimed by complainants) in their suit
of complaint) said complainants might have
injured said Willis from proceeding to judgment
in said suit for the recovery of said Loh.

These defendants urge therefore that complain-
ants were guilty of such wrong as injuring

Said Willis & Stogings said proceedings. These defendants allege the truth to be as to said suit and judgment—that the same was had by collusion and contrivance and agreement between them and said Willis for the purpose of this suit and obtaining money from these defendants or one of them—that before said suit was brought arrangements were made between them by which they divided or were to divide said \$100. in the process of said suit upon sale & finally between them or nearly so and that said suit was brought at the instigation of said complainants & at their expense.

These defendants further answering say that all the other matters set up in said bill of complaint not specifically answered in this answer, are untrue and they urge to the Court as they have already done that the complainants are not entitled to rely upon the case made by their bill of complaint and as a special defence to the matters & things complained of in said bill these defendants set up and rely upon the Statute of Limitation and the principles of said Statute as the same are adopted and enforced by Courts of Equity as more than five years elapsed after the supposed commission of that fraud which is complained of by complainants and more than two years elapsed from said things undertaken said administration

27 ~~18~~

and also from his choosing the same upon the
beginning of this suit. And defendants claim
the same advantage from said statute that they
might have had if the same were set up by
special pleas.

And having fully answered defendants as to the
discharge with their costs & charges

Alonzo Wallbridge

Henry Wallbridge

The complainants are required to answer the
following interrogatories

Was not the debt in ejectment mentioned
in your bill of Complaint as brought by George B.
Willis brought by you or as from expense and by
you agreed by virtue of some agreement between
you and said Willis, and if so state what such
agreement was, if it was in writing give a copy
of it - and was it not for the purpose of this suit?

Had you not at the time of bringing
said debt, or have you at any time made an
agreement with said Willis to divide said debt
or the proceeds of said debt on sale. And if so state
said agreement. If the same was in writing give
a copy of it, and have you perfected said agreement
and state all concerning it.

Alonzo Wallbridge
Henry Wallbridge

Bushnell Gray
E. S. Reddish Solr.

And afterwards to wit: on the 12th day of June 1857
the complainants filed their application to defendants
answers in the names and figures following viz:

"State of Illinois

Asdls & mts Lewis & Lewis - June Term 1857

Frederick S. Day +

Grace L. Day

vs

In Chancery

Almz Wallbridge & Co And now comes the said

Complainants of Chmman &

Eldridge their Solicitors and say that the said

answers of the said defendants and the matters

+ things therein contained are untrue &c And that

the said complainants will prove and maintain

their said bill in all respects to the end &

sufficient &c &c

Chmman & Eldridge

Complete Solrs"

And afterwards to wit: at the November Term 1858
of said Court two further orders were made in said
cause in the names and figures following viz:

"Saturday November 27"

"Frederick S. Day +

Grace L. Day

Almz Wallbridge

Mary Wallbridge

In Chancery

This day the Complainants
of Chmman & Eldridge

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their solicitors and now the Court to strike the interrogatories from the defendants answer.

"Thursday December 9th"

Fredrick S. Day &

Lucas S. Day

"

In Chancery

George Wallbridge &

Mary Wallbridge

This day the complainants
again came by Sherman &
Eldridge their solicitors and

the defendants by E. S. Redwood their solicitors and
after hearing the arguments of counsel the Court
sustains the complainants motion to strike the
interrogatories from the defendants answer. And
by agreement of parties it is ordered by the Court
that this cause be heard in vacation at some
time to be mutually agreed upon.

After adjournment to wit: on Friday March 4th
1839 the same being one of the days of the
February term of said Court for said year another
order was made and entered of record in said cause
in the words and figures following viz:

Fredrick S. Day &

Lucas S. Day

"

In Chancery

George Wallbridge &

Mary Wallbridge

By agreement of parties it is

ordered that this cause be set for hearing in vacation

And afterwards to wit; on Monday May 26th 1862
the same being one of the days of the May Special
Term of said Court for said year. the following
further order was entered of record in said cause viz;

"Frederick S. Day &

vs
Lea & Co. Day

3
3 On Petition

Almg. Walbridge & It is ordered by the Court
Henry Walbridge that the further hearing of
this cause be continued until
the next regular Term of this Court."

And afterwards to wit; on Saturday June 28th 1862
the same being one of the days of the June Term of said
Court for said year. the following further order
was entered of record in said cause viz;

"Frederick S. Day &

vs
Lea & Co. Day

3
3 On Petition

Almg. Walbridge & It is ordered by the Court that
Henry Walbridge the further hearing of this cause
be continued until the next
regular Term of this Court."

and Isaac L. Day it was either of both or of Frederick S. Day for said Company. This was in 1851 or 1852. James S. Taylor of Penn was the attorney of said Company in looking up title and making out title deeds. The company was to pay for said lot sixteen hundred dollars one half in stock of said road and one half in money. My impression is that this agreement by the Day was reduced to writing and signed by the Days. Not by Mr. Briggs.

Ques L - State what you know of any thing as to any claim that George B. Willis had on said lot and what arrangement if any was made between said Willis and said Days as to said lot or as to the amount paid or to be paid by said Company for said lot.

"O.K."

Ans L - Mr Frederick S. Day came to me after the purchase had been made of said lot and said that Mr Willis claimed the title to said lot and that he had arranged the matter with Mr Willis by paying him \$800. and agreeing not to pay him so much out of the purchase money and I did so by paying him \$400 in stock and the balance in cash or stock. My impression is that it was cash. The balance I paid to the Days. I think it was all stock. This was probably done at the time the deeds were made. I think both the Days and Willis made deeds to the Company. I think the Days said also something.

about another hundred dollars and something about a suit commenced or to be commenced by them against a man by the name of Wallingford and that upon the determination of that suit said one hundred dollars was either to be paid to said Willis or refunded by said Willis to said Dags. I am not positive which. But my best recollection is that the sum was to be paid by the Dags to Willis if the Dags won the suit. all this was sometime after the first contract.

Q - State what was the value of said stock at the time of the purchase of said Dags. what the value one year before that time. what the value in the fall of 1833 and what the value at the present time.

"Objected to"

A - At that time about \$1200 in cash, one year before that worth from \$300 to \$600. in the fall of 1833 about \$800. and now worth about \$500.

Q - State if you made any special agreements subsequent to the first as to paying all stock to said Dags instead of half stock and half money

A - The proposition was made by Merdags that if I would pay Willis \$400 in stock & \$400 in cash he would take all his in stock

Question by Complainant

Was the contract of purchase for the ^{lot} which
you state you made with the Daps in writing or
was it a verbal contract

Answer - my impression is it was in writing
signed by the Daps & delivered by them to J. D. Taylor
as the ~~att~~ of the Rail Road Company.

Question 2 - State what the value of the ^{lot} was
at the time you made the arrangement for the
purchase of it from the Daps as agent of the Rail
Road Company

Answer - I think the cash value of the ^{lot} at this
time was Dollars hundred dollars

Subscribed & sworn before Thos D. Brewster

on this 25 Feb 1860

Wm Chapman

Judge Recorder Court of Penna

And after coming to me; on Saturday November
15th 1862 the same being one of the days of the
Term of this Court for said year a
final decree was rendered in said cause in the
words and figures following viz

In Chancery
Frederick L Day
& Isaac C Day

vs
Alonso Walbridge
Mary his wife

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This cause came on to be heard at the May Special Term of the LaSalle County Circuit Court. upon the bill answers Replication and proofs and exhibits introduced before the Court, and after arguments of Counsel was taken under advisement by the Court and continued until the June Term of said Court at which time the Court not being fully advised continued this cause until the November Term of said Court A D 1862 - and now at the November Term of this Court A D 1862. It appearing to the Court from the Bill answers and proofs and exhibits. That

Lot ^{Eight} (8) in Block number fifteen 15 in the original Town now City of River in the County of LaSalle and State of Illinois was sold by the School Commissioners of said County in the month.

of September 1834 to one Edward
 Reyes who died seized of the ^{said} premises
 that said Reyes left him surviving
 his widow Mary Reyes. and three
^{children his only} heirs at law. Sarah Elias and
 Emily ^{Reyes} ~~as alleged~~ ^{consequently} in the ^{will} is
 alleged and that some time
 prior to 1849 said Mary Reyes
 intermarried with said Alonzo Wal-
 bridge and that said Sarah
 intermarried with one William
 Johnson. and that said Emily
 Reyes. died leaving as her heirs
 at law. the said Mary Wal-
 bridge Elias Reyes and Sarah
 Johnson. and it further
 appearing to the Court that
 the said Alonzo Walbridge
 thereafter purchased from
 the said William Johnson
 and Sarah Johnson and
 the said Elias Reyes. all the interest
 of the said Sarah and Elias
 in the said estate of the said
 Edward Reyes deceased both
 real and personal and procu-
 red from the parties last named
 deeds for conveyance duly conveying
 the same to him the one from

37 The said William Johnson Sarah
his wife dated March 5th 1850.

and Thome from Elias Keyes. This wife
and which said deeds were duly recorded as alleged in said
bill of complaint dated March 2nd 1857. Which
rested in the said Walbridge the
entire remaining estate of which
the said Edward Keyes died seized
and possessed except what was
before vested in the said Mary
Walbridge as in said bill is
alleged.

and it further appearing to
the Court that ~~prior to the month~~
~~of September 1834~~ one George
W. Brown was appointed administrator
of the estate of said Edward Keyes
deceased and took upon himself
the administration thereof and
it further appearing that the
said George W. Brown as such ad-
ministrator at the May Term of
the Circuit Court of the County
of Latah A.D. 1857. duly procured
a decree ^{of the said county} for the sale of the said
lot 8 in Block 15. and also for lot
11 in Block 15. in Person aforesaid
or so much thereof as should
be necessary for the purpose of
paying the debts of said Edward Keyes.

of which conveyance there is no record Evidence

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Key, deceased - and that the said
George W. Brown as such admin-
istrator ^{under and by virtue of and in} ~~and~~ pursuant of said
decree on the 1st day of September
AD 1837. sold the said lot 8 in
Block 15. To one Ulysses Spalding
for the sum of \$530⁰⁰ and con-
veyed the same to him # and
at the same time took from
the said Ulysses Spalding a mortgage
to secure the purchase money,
a copy of which mortgage is
annexed to Complainant's bill
^{which said mortgage was duly recorded on the 24th day of January}
^{1838 in Book # of deeds page 80 during the day office of said county}
and named Exhibit D. A. And
it also appearing to the Court that
default was made by the said
Ulysses Spalding in the payment
^{the sum of money secured to be paid by}
of said mortgage, and that said Geo
Brown as administrator cannot
said mortgage to be duly foreclosed
by *Dei facias* and that ^{Default} ~~the same~~
was undertaken at the February
Special Term AD 1840 ^{of the said Sabine County Court} for the sale
of said lot 8 in Block 15. for the
payment of the amount due
upon said mortgage, and that
under and by virtue of an Execution
and ^a *fi facias* duly issued by the
Clerk of said County upon said

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fragments and directed to the
 Sheriff of said Latah County, William
 Readick then being Sheriff of said
 County. Under and by virtue of
 said Execution, ^{and after being} did on the 14th
 day of August A.D. 1840 duly
 sell the said lot 8 in Block
 15 to one Jesse Williams for the
 sum of three hundred dollars, and
 duly issued a certificate of the
 purchase thereof to him which
 certificate was afterwards assigned
 by said Williams to one Amasa O.
 Crozier and the said Wm. Readick
 spending having failed to re-
 deem the said lot 8 in Block
 15 according to law the said Wm.
 Readick Sheriff as aforesaid on
 the 14th day of May in the year 1842
 duly executed and delivered to
 the said Amasa O. Crozier a
 deed for said premises a
 copy of which deed is annexed
 to complainant's bill of complaint
 and marked Exhibit C* and it
 further appearing to the Court
 that the said Amasa O. Crozier
 on the 11th day of January A.D. 1844
 by his deed of that date duly exe-

which said deed was duly recorded in the recorder's office
 of Latah County on the 24th day of January 1844 2 in Book
 number 8 page 196.

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certified conveyed the said last
 named premises to said Corin
 (as in said bill is alleged)
 Plaintiff, a copy of which is
 annexed to the Complainant's bill

and marked Exhibit A. which said deed
 was duly recorded in the records of said Saline County in book 9 of deeds
 12 ap 5 61 on the 12th day of January 1844.

And it also appearing to the Court
 that said George did as is alleged
 in said bill of complaint and
 that the defendant Alongo Walbridge
 was duly appointed administrator
 of the estate of said Key, estate
 as is also alleged in said bill
 viz: in the year 1840 - and it
 further appearing to the Court
 that on the 4th day of May A.D. 1850
 by deed bearing date on that day
 the said Alongo Walbridge and
 Mary his wife conveyed the said
 lot 8 in Block 15. to one George
 B. Willis - and it further appen-
 ing to the Court that the said George
 B. Willis hereafter caused an action
 of ejectment to be instituted against
 the said Complainant in the Cir-
 cuit Court of said Saline County
 to recover possession of said lot
 8 in Block 15. which said suit
 was tried at the November Term of
 said Court A.D. 1851. and judgment.

rendered therein by the Court
 in favor of said Willis and against
 the complainant herein. And
 Court found that said George
 Bl Willis was seized in fee simple
 of said last named premises
 and that he, ^{said Willis should} have and recover
 of said complainant the possession
 thereof and it further appear-
 =ing that the said George Bl Willis
 by deed bearing date 29th day
 of July 1852^{for} the consideration
 of the sum of \$1600⁰⁰ conveyed
 said premises last named to
 the Chicago and Rock Island Rail
 Road Company, who entered
 into possession of said premises
 under said deed and have con-
 tinued ever since to occupy the
 same, whereby said complainant
 was divested of all legal title to said
 premises & the possession thereof

And it further appearing
 to the Court that the said George
 W. How as administrator of the
 estate of the said Edward Keyes
 deceased received on the sale
 of said lot under the said judgment
 from the said ~~George W. How~~ Spalding

49 Jesse Williams The purchaser
at the sale so made by William
Readick Sheriff as aforesaid Under
and by virtue of the execution
& fieri bill aforesaid The sum
of Three hundred Dollars and
~~that the estate of said~~ which
sum Entered to the benefit of
the estate of said Edward Keys deceased
and that the said Alonzo Walbridge
at the time of his appointment
as administrator Set aside
None and at the time he procured
the conveyances aforesaid from
William & Sarah Johnson and
Elias Keys, and prior to the time
of his conveying said lot 8 in
Block 15 to George Blocher
as aforesaid had notice of the
above facts and of complainant's
Equitable title to the premises
last mentioned - And it further
appearing to the Court that the
said conveyances of the said
William & Sarah Johnson and
Elias Keys were procured by said
Alonzo Walbridge fraudulently
and with a view to divest the
said Complainants of their

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Equitable title to said premises - and that said Alongo Walbridge sold said last mentioned lot and conveyed the same to the said George Willis and received the purchase money thereof from said Willis & applied the same to his own use and that said Conveyance to said Willis by said Walbridge was made with the purpose of defrauding the said Complainant as aforesaid and it further

appearing to the Court that all the material allegations in said Complaint are true. It is therefore ordered adjudged

and decreed and this Court by virtue of the power and authority therein vested doth order adjudge and decree that the bill filed herein be dismissed as to Mary Walbridge and that the Complainant have and recover from the said Alongo Walbridge the sum of seven hundred and four Dollars & seventy five cents —

and that said Alongo Walbridge pay the same to the said Complainant or their solicitor within ten days from the rising of this Court together with the costs and charges by the said

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complainants about their debt
in this wholly expended and
that in default thereof that
the said complainants have
execution therefor.

M. E. A.

In Chauncy
Judk. & Day
Et al.

Along Walbridge

Deere

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And afterwards to wit: on the 6th day of March 1863
as and for the 15th day of November 1862 the defendants
by E. S. Hollenbeck as their solicitor filed a certificate
of the evidence used in this cause which was in the
words and figures following viz:

" Frederick S. Day &

Grace Co. Day

is } Sent in Chancery in the
George Wallbridge } Salate County Circuit Court
Mary Wallbridge his wife } The hearing had at the
May Special Term A.D. 1862

Before the Hon. Mr. E. Hollenbeck Judge - Decree
rendered for Term A.D. 1862

Be it known that on the hearing of this cause
the complainants offered the following testimony
L. H. Hook Deputy Clerk of the Court being sworn
said that he had searched the records of said
Court - that the old records were in great confusion
that he found no record of proceedings by the
administrator of Elias Stege pertaining to the
Sale of Lot 8 Block 15 Pursuant to an entry on
the Court docket of the May Term A.D. 1837 and
a decree among the papers of said term in words
and figures following to wit:

(If the Court will specify what is meant by ^{the in what decree}
a copy as that is more or less found it of found the clerk
will insert - J. F. H.)

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La Salle Circuit Court May Term 1837

Wednesday May 10th 1837.

Geo W. Howe adm^r of Edward Key's dec^d

vs

In Chancery - Petition

The Heirs of Edward Key's deceased for the sale of Real Estate

This day came George W. Howe administrator of Edward Key's dec^d and after reading the petition and other exhibits filed herein it appears to the Satisfaction of the Court that the said heirs of the said Edward Key's dec^d have been duly notified of the time and place of presenting said petition, and it also appearing that the money arising from the sale of lots sold by order of this Court made at the last September term is insufficient to satisfy the debts established against said estate. It is therefore decreed ordered and directed that the said administrator sell at public sale according to law two town lots in the town of Peru belonging to said estate, to wit:

Lot No. 8 in Block No.

11. + Lot No 8. in Block No. 15. on a credit of six months provided it necessary to sell so much for the purpose of paying the said debts of the said deceased, otherwise so much thereof as may be necessary for the purpose aforesaid.

Copy decrees

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An inventory from the papers of the office of the County Court of the Regs estate by Honr ad, noticing Sec 8 Book 15 of Rec and opposite to it the word "Sic" written in pencil was read in evidence.

Complainants then read in evidence a mortgage of Volgers Spalding to said Honr a copy of which is attached to the Bill as exhibit "B"

Complainants then read in evidence without objection a writ of Scire Facias from said Circuit Court, a judgment of said Court thereon, the return and sale thereon by direction of said Honr (as shown by letters on file) by Rodolph Shieff to Jesse Williams Aug. 1840

Complainants then read in evidence a deed by the Sheriff of said County of said Sale on said Sale to Amara Clerrin assignee of said Williams a copy of which is attached to said Bill as exhibit "C"

Complainants then read in evidence a deed of Amara Clerrin to complainants, a copy of which is attached to said Bill as exhibit "D"

Complainants then read in evidence from the files of Court de Session in Exemption by George B. Willis against said Complainants and plea of dependents and proceedings of Court thereon of the Nov. Term 1851 in words and figures following to wit:

Copy of Declaration filed to

" State of Illinois Sadale County ss. In the Circuit Court November Term AD 1851 = George B. Willis by J. D. Taylor his attorney complains of Frederic S. Day and Grace C. Day by disavowal and notice according to the Statute. For that whereas the said George B. Willis on the first day of July in the year of our Lord one thousand eight hundred and fifty one was possessed of a certain Aq. of land in the City of Peun County of Sadale and State of Illinois with the appurtenances and known as No number eight in Block number fifteen in the original town plot of Peun, which said premises the said George B. Willis claims in fee; and the said George B. Willis being so possessed thereof the said Frederic S. Day and Grace C. Day, afterwards to wit on the first day of August in the year of our Lord one thousand eight hundred and fifty one entered into the said premises and ejected the said George B. Willis therefrom and unlawfully withheld from the said George B. Willis the possession thereof to the damage of the said George B. Willis of one hundred dollars; and therefore he brings his suit &c

J. D. Taylor Attorney for Plaintiff.

To Mess Frederic S. Day and Grace C. Day

You are hereby notified that the declaration with a copy of which you are now herewith send. and to which copy this notice is subjoined with it filed on on the 5th day of November next being the first day of the next

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term of the Circuit Court within and for the County
of LaSalle and State of Illinois; that upon filing the
same a rule nisi be entered requiring you to
appear and plead to said declaration within twenty
days after the entry of such rule and that if you
neglect to appear and plead, a judgment by
default with a return against you and the
Plaintiff with recovery of the premises specified
in the said declaration

Dated this 20th day of October A.D. 1831

Yours J. D. Taylor Atty for plff.

State of Illinois

LaSalle County vs I James D. Taylor Attorney for the
Plaintiff in the foregoing declaration
and notice being sworn, on my oath say that on the third
day of November A.D. 1831 I served the foregoing
declaration on Frederick S. Day and Isaac L. Day
the defendants therein named by delivering to them
a written copy thereof with a notice in writing
subjoining them to which notice the foregoing is
a true copy

J. D. Taylor

Sworn to and Subscribed

Before me in open Court this

5th day of November A.D. 1831

Rindley Clerk

Cert of plea referred to

50.

"Sabell Co. Co. Nov. 1851

Geo. B. Willis

} Expectation

Frederick S. Day } And now comes the case

J. C. Day } defendants by Mr. Chapman the

attorney and say action

because they say that they are not guilty & as in
their declaration is alleged & of this they put
themselves upon the country &c

& J. H. K. K. K.

Mr. Chapman

Deputy Atty

Recd of the order of Court referred to in said
cause

"Tuesday November 20th 1851"

"Geo. B. Willis

} Expectation

Frederick S. Day } This day came the plaintiff

Lucas Co. Day } by Taylor his attorney & the

defendants by Chapman his

attorney & by agreement of parties a jury is waived
herein & this cause submitted to the Court for trial &
after hearing the evidence & arguments of counsel the
Court after due deliberation thereon have found the
defendants guilty of withholding from the plaintiff
his mineral rights in Block number fifteen in the
original town of Penn in manner & form as charged

51 in Plaintiff's declaration. The Court having found
the fee simple in said premises to be in the
Plaintiff. It is therefore considered that the
Plaintiff has and recovers of the defendants the
possession of said premises to wit; Lot number eight
in Block number fifteen in the original town of
Peew and that a writ of possession (issue herein).

It was admitted by the defendants that Henry
was ad. of Keps. That he Keps deceased leaving a
widow. That George Wallbridge became adminis-
trator and married said widow Mary Keps as
alleged in the bill.

The Complainants have notice their case.

The Defendants read in evidence without
objection the evidence read in said Ejectment case
being in writing and found among the papers of the
case in words and figures following to wit:

"George B. Willis }
" } In Saballe Lewis & Co
Frederick S. Day } Normen Term 1851
Frederick S. Day } Ejectment to recover lot 8 in
Block 15 in the original town
plot of Peew Saballe County

Agreed Case

It Both parties claim under Edmund Keps who
purchased the lot in question (being part of sec 14)

at Court Commissioners Sale Sept 18th 1834

2^d Edward Keyes died intestate in or about the year 183 without having sold or conveyed the lot having a widow Mary Keyes and three children, his heirs viz: Elias Keyes Sarah M. Keyes and Emily Keyes.

3^d That Emily Keyes from time prior to 1830 died intestate without issue born of her body leaving her brother Elias, her sister Sarah and her mother Mary her heirs at law.

4th = That the said Sarah M. Keyes from time prior to the year 1830 intermarried with one William Johnson.

5th = That said Mary Keyes the widow of Edward intermarried with one George Wallbridge from time prior to the year 1830.

6th = Said William Johnson and his wife Sarah M. Johnson died leaving date March 5th 1830 just claimed by the said George Wallbridge for the consideration of \$200, divers lands and lots specifically described "also all our right title and interest in and to the estate both real and personal of Emily Keyes deceased, in right of the said Sarah as one of the heirs at law and personal representatives of said Emily Keyes, also all our right title and interest in and to the estate both real and personal of Edward Keyes late of the County of Madison deceased and rights

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of the said Sarah as heir at law and personal representative of said Edmund Regis deceased" which deed was duly executed and filed for record in the recorder's office of Sadler County on the 11th day of June 1830 and recorded in Book No 21 pages 186 & 187

7th = The said Elias W. Regis and his wife Ann D. Regis by deed dated March 2^d 1830 quit claim for the consideration of \$200, to the said Henry Wallbridge Lewis both and heirs of land particularly described "also all our right title and interest in and to the estate both real and personal of Emily Regis deceased also all our right title and interest in and to the estate both real and personal of Edmund Regis late of the County of Sadler deceased" which deed was duly executed and filed for record in the recorder's office of Sadler County on the 11th day of June 1830 and recorded in Book No 21 pages 187 & 188.

8th = The said Henry Wallbridge and his wife Mary Wallbridge (formerly Mary Regis widow of said Edmund Regis de'd) by deed dated May 4th 1830 quit claim to the plaintiff George B. Willis for the consideration of \$100, Lot 8 in Book 15 in Peer King the property in question which deed was duly executed and filed for record in the recorder's office of Sadler County on the 4th day of May 1830 and recorded in Book 21 page 28

54.

The Plaintiff claims title and possession under the foregoing facts.

The Defendant claims title under the following facts, viz:

1st - Claims title under Edmund Regis as does the plff.
2^d - Edmund Regis deceased intestate and on the — day of — 1837 George W. Keene was appointed administrator on his estate and qualified as such by law.

3^d - At the May term 1837 of Sabala County Circuit Court an order was entered on the record for the sale of the lot in question, and on other lots for payment of debts, a copy of which order is made part hereof.

There is no return on petition to be found on the files of Court, nor any report of sale; neither is there any deed to the purchaser, there being no record of any such conveyance in Sabala County.

4th - A mortgage duly executed dated September 11th 1837 given by Nelson Spalding to Geo^d George W. Keene administrator of the estate of Edmund Regis deceased to secure the payment to said administrator of \$534, on or before the 1st of October then next according to the condition of a bond executed by Spalding to Keene which mortgage was upon the lot in question and was filed for record Nov 16, 1837 and recorded in Sabala records Book No page 80.

5th - Filed Special term 1840 of Sabala Circuit Court

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George W. Keen as Adm. record judgment on the above named mortgage against Spalding for \$542.27 and costs. Special Execution issued April 12 1840 to Sff. Spalding who held on Oct 8 in Book 15 in Penn Street No 10 to John Williams who assigned his certificate to Amasa O. Crozier, to whom the Sheriff deeded May 7th 1842 which was recorded May 24, 1842 Spalding records Book 8 page 196

6th - Jan'y 11, 1844 Amasa O. Crozier for commission of \$150. Just named to Frederick S. Day and Isaac C. Day the last in question did duly executed filed for record Jan'y 12, 1844 and recorded in Spalding records Book No 9 page 561.

Agreed to Apr 14, 1837

J. D. Taylor Atty for Plff
Wm Chumacee Atty for Dfts.

Defendants then called as a witness William Chumacee attorney for complainants in this case who was sworn and testified that he was attorney for the defendants in said judgment case that all the testimony offered in said case was reduced to writing by James D. Taylor attorney for Willis and was read by him in court and was the same first read in this case, that said Taylor deceased about 1835 and that said George B. Willis deceased about 1834. On being asked by defendants

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cannot state what he knew of any thing about an agreement made between said Willis and said Dags as to bringing said agreement into and dividing the property or the proceeds of the lot on sale between them. He states that he knew something about an agreement between them but whatever he knew he knew as cannot for said Dags and he declines on that ground to testify.

The Court sustained said witness in his position and he did not answer said question.

Defendant then read in evidence the statement of T. D. Brewster on file with the agreement as follows (see the statement or deposition of said Brewster also immediately after the Replication)

Defendant then read in evidence the deed of Alanzo & Mary Wallbridge to George B. Willis dated May 4, 1850 with the acknowledgment and certificate of record - recorded in Book 21 p. 28 of the records of deeds of said County

"This Indenture made this fourth day of May in the year of our Lord one thousand eight hundred and fifty Between Alanzo Wallbridge & Mary Wallbridge his wife of the County of LaSalle State of Illinois parties of the first part and George B. Willis of the same place party of the second part Witnesseth that the said parties of the first part for and in consideration of the sum of one hundred dollars

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to them 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. forasmuch
and discharged therefrom have remission and sole
conveyance and quit claim and by these presents do
remission release full conveyance and quit claim with the
said party of the second part his heirs and assigns
forever all the right title interest claim and demand
which the said parties of the first part have in and to
the following described lot prior or parcel of land to wit:
Lot eight in Block fifteen in the town of Burr of Saddle
County State of Illinois To have and to hold the same
together with all and singular the appurtenances and
privileges thereto belonging or in any wise appertain-
ing, and all the estate right title interest and claim
whichever of the said parties 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 his heirs and
assigns forever.

In Witness Whereof the said parties of the first part
hereunto set their hands and seals the day and year
first above written.

George Wallbridge

Signed Sealed and

Mary Wallbridge

Delivered in presence of

State of Illinois J. J. Keene S. Fisher Notary Public for the
Saddle County is J. J. Keene in and for said County
in the State aforesaid do hereby certify
that George Wallbridge is personally known to me as the

Some 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. And the said Mary Wallbridge wife of the said Henry Wallbridge having been by me examined separately and apart and not appearing of her said husband and the contents and meaning of the said instrument of writing having been by me made known to her she acknowledged that she had freely and voluntarily received the same and relinquished her dower to the lands and tenements therein mentioned without the compulsion of her said husband and that she does not wish to retract the same. Given under my hand and seal

Attest this 4th day of May 1830
 Wm. B. Fisher Notary Public
 (Filed May 4th 1830 at 21. o'clock p.m.)

Defendant then read in evidence a deed of George B. Willis & wife to the Chicago and Rock Island Rail Road Company recorded Jan 1, 1833 in Book 28 p 411 of the records of deeds of said County

"This Indenture made this twenty ninth day of July in the year of our Lord one thousand eight hundred and fifty two between George B. Willis & Mary B. Willis wife of the said George B. Willis of the County of Adams

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and State of Illinois party of the first part and the Chicago
 & Rock Island Rail Road Company of the State of Illinois
 party of the second part Witnesseth that the said party of the
 first part for and in consideration of the sum of fifteen
 hundred dollars (\$1500) paid by the said party of the second
 part the Receipt of which is hereby acknowledged do by these
 presents grant bargain and sell unto the said party of the
 second part their successors and assigns the following
 described tract of parcel of land situated in Tazewell County
 and State of Illinois and known & described as follows viz:
 Lot no eight (8) in Block numbered fifteen (15) in the
 original or 2d Town of Peru as per records at Ottawa
 Together with all and singular the hereditaments and
 appurtenances thereto belonging or in anywise appert-
 aining to have and to hold the said premises as then
 described with the appurtenances unto the said party of the
 second part their successors and assigns forever, And the
 said party of the first part for themselves and their heirs
 executors and administrators do hereby covenant to
 and with the said party of the second part their successors
 and assigns that they are well seized of the premises
 then conveyed as of a good and independent estate in fee
 simple and have good right to sell and convey the same
 in manner and form as aforesaid that they are free
 from all incumbrances and that the above bargained
 premises in the quiet and peaceful possession of the said
 party of the second part their successors heirs or
 assigns against the claim of all persons whomsoever.

they will from vacant and defend.

In Testimony Whereof the said parties of the first part
has presented to their hands and seals the day and
year first above written

George B. Willis Esq

Henry B. Willis Esq

State of Illinois } On the twenty ninth day of July 1852
Jasale County ss } personally appeared before me Frank

S. Day Notary Public in and for the
City of Peoria in said County George B. Willis to me
personally known to be the person whose name is subscribed
to the above deed as having executed the same and
acknowledged that he had freely executed the same
for the uses and purposes therein expressed. And Henry B.
Willis wife of the said George B. Willis to me personally
known to be the person whose name is subscribed to the same
deed also appeared before me and was by me made acquain-
ted with the contents of the same and examined separately
and apart from her said husband whether she executed
the said deed and relinquished her dower to the lands
and tenements therein mentioned voluntarily freely and
without compulsion of her said husband; and acknowledged
that she executed the same and relinquished her dower in
the lands and tenements therein mentioned voluntarily
and freely and without the compulsion of her said husband
Given under my hand and seal the day and year
aforesaid

Frank S. Day Not Pub Esq

(Filed July 12 1853 at 11 A.M.)

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Dependents then read in evidence a deed by complainants
 & mine to mine (see Recorded Book 33 p. 394) of records
 of deeds of said County

" This Indenture made this
 fifteenth day of December in the year of our Lord one thousand
 eight hundred and fifty six Between Fred^d S. Day and
 Louie W. B. his wife and Grace L. Day and Lamine E.
 his wife of Part of the County of Sabalee and State of Illinois
 parties of the first part and the Chicago and Rock Island
 Rail Road Company of Illinois parties of the second part
 Witnesses that the said parties of the first part for and
 in consideration of the sum of One hundred dollars
 paid by the said parties of the second part the receipt of
 which is hereby acknowledged do by these presents demise
 release transfer and quit claim unto the said parties
 of the second part their heirs and assigns the following
 described tract or parcel of land situated in the
 County of Sabalee and State of Illinois and known and
 described as follows viz: Lot number eight (8) in Block
 fifteen (15) in the original town of Pease as per recorded
 plat at Ottawa Sabalee County Together with all and
 singular the hereditaments and appurtenances thereto
 belonging or in any wise appertaining to have and to hold
 the said premises as also described with the appurtenances
 unto the said parties of the second part their successors
 and assigns forever. In Testimony Whereof the said parties
 of the first part have hereunto set their hands and
 seals the day and year first above written.

Frederick S. Day *ES*
 Lemuel W. B. Day *ES*
 Isaac C. Day *ES*
 Larimer E. Day *ES*

State of Illinois On this 15th day of December 1882
 Asalle County I personally appeared before me Theron

D. Brewster Mayor of the City of Peoria
 in said County Frederick S. Day & Lemuel W. B. Day & Isaac C. Day
 & Larimer E. Day to me personally known to be the persons
 whose names are subscribed to the above deed as having
 executed the same and a knowledge that they had just
 executed the same for the uses and purposes therein
 expressed, I met said Lemuel W. B. Day & Larimer E. Day
 wives of the said Frederick S. & Isaac C. Day to me personally
 known to be the person whose name is subscribed to the same
 and also appeared before me and was by me made
 acquainted with the contents of the same and examined
 separate and apart from their said husbands whether
 they executed the said deed and relinquished their claims
 to the lands and tenements therein mentioned voluntarily
 and freely and without compulsion of their said husbands,
 and a knowledge that she executed the same and relinquished
 her claims to the lands and tenements therein mentioned
 voluntarily and freely and without the compulsion of their
 said husbands. Given under my hand and
 seal this day and year aforesaid

Theron D. Brewster Mayor
 (Filed Oct 21 1883 at St. Louis)

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Defendants then read in evidence a deed of complainants
 & mine to William F. Day dated Nov 2 1846
 recorded in Book 13 p. 306 of the records of deed of
 Saballe County

"This Indenture made this second day
 of November in the year of our Lord one thousand
 eight hundred and forty six Between Frederick S. Day
 Deuce S. Day & Lavinia E. his wife of the town of Peoria
 County of Saballe & State of Illinois of the first part and
 William F. Day of Elizabethtown Essex County State of
 New Jersey of the second part Witnesseth That the said parties
 of the first part for and in consideration of the sum of
 Fifteen hundred dollars to them 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
 have released and discharged therefrom their granted
 bargain and sold promise released aliened and confirmed
 and by these presents do grant bargain sell release alien
 alien and confirm unto the said party of the second part
 and to his heirs and assigns forever all the following
 described lots pieces or parcels of land to wit; lot number
 eight (8) in Block numbered 15 fifteen and lot numbered
 five (5) in Block seventeen 17 with the two and a half
 story frame ware house all being situated in the old
 town of Peoria Saballe County State of Illinois as will be
 shown from the records at Ottumwa together with all
 & singular the hereditaments & appurtenances thereto
 belonging or in anywise appertaining and the persons

remains remainder remainders rents issues & profits
 thereof, and all the estate right title interest claim or
 demand whatsoever of said parties of the first part within
 in law or equity of us to the above bargained premises
 with the hereditaments and appurtenances To Have and
 To Hold the said premises above bargained & the interest with
 the appurtenances with the said party of the second part
 his heirs & assigns forever. And the said parties of the first
 part for themselves their heirs & executors & administrators
 do covenant grant bargain and agree to and with the
 said party of the second part his heirs and assigns that at
 the time of the conveying and delivery of these presents
 they own well seized of the premises above conveyed as of a
 good lease perfect absolute & indefeasible estate of inheritance
 in the law in fee simple and have good right full power
 and lawful authority to grant bargain sell and convey the
 same in manner & form aforesaid, and that the same
 are free & clear of all former and other grants bargains
 sales liens judgments taxes assessments & incumbrances
 of what kind & nature soever to the above bargained
 premises in the quiet & peaceable possession of the said
 party of the second part his heirs & assigns against all &
 every person or persons lawfully claiming or to claim the
 whole or any part thereof the said parties of the first part
 shall & will warrant and defend

In Witness Whereof the said parties of the first part have
 hereunto set their hands and
 Seal the day and year first above written

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Sealed and Delivered in
presence of

Warren Brown

E. Manning

Frederick S. Day *ESQ*

Lucas E. Day *ESQ*

Larimer E. Day *ESQ*

State of Illinois. On this third day of November
A.D. 1846 personally appeared before
me Frederick S. Day, Lucas E. Day
Larimer E. Day in and for said County to me
personally known to be the persons whose name is
subscribed to the above deed — to — claiming to execute
the same and acknowledged that they had freely
executed the same for the uses and purposes therein
expressed. And Larimer E. Day wife of the said Lucas
E. Day to me personally known to be the person who
subscribed the same deed also appeared before me and
was by me made acquainted with the contents of the
same and examined separately and apart from her said
husband whether she executed the said deed and
relinquished her dower to the lands and tenements
therein mentioned voluntarily, freely and without
compulsion of her said husband, and acknowledged
that she executed the same and relinquished her
dower in the lands and tenements therein mentioned
voluntarily and freely and without the compulsion of her
said husband. Given under my hand and seal the
day and year above said.

Warren Brown *ESQ*

Justice of the peace

(Filed December 19, 1846 at 2 o'clock P.M.)

Defendants heretofore their case,

Plaintiffs then read in evidence a deed by Wm F. Day to complainants dated 22 July 1857, filed for record May 14, 1862 recorded Book 27 p 332 of the records of deeds of said County

"This Order came made this twenty second day of July in the year of our Lord one thousand eight hundred and fifty one 1851 Between William F. Day and Mary Annia his wife of the Township of Elizabethtown in the County of Essex and State of New Jersey of the first part and Frederick S. Day & Emeline, Day of the Town of Peew in the County of Sedale and State of Illinois of the second part Witnesseth that the said parties of the first part for and in consideration of the sum of Six thousand dollars money of the United States of America to them in hand well and truly paid by the said parties of the second part at or before the sealing and delivery of these presents the receipt whereof is hereby acknowledged and the said parties of the first part thereunto fully satisfied Content and paid her remise release and forever quit claimed and by these presents do remise release and forever quit claim unto the said parties of the second part and their heirs and assigns all that lot tract or parcel of land and premises hereinafter particularly described situate lying and being in the said Town of Peew in the County of Sedale and State of Illinois being lot number eight (8) in Block fifteen (15) in the 1st Town of Peew

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Together with all and singular the profits privileges and advantages with the appurtenances to them concerning or in any wise appertaining, also all the same right into certain profits claims and demands whatsoever of the said parties of the first part of us and to every part and parts thereof To Have and To Hold all and singular the above described tract or lot of land and premises with the appurtenances unto the said Frederick S. Dag and Isaac C. Dag as tenants in common their heirs and assigns to the purpose use benefit and behoof of the said Frederick S. Dag and Isaac C. Dag as tenants in common their heirs and assigns forever, And the said William F. Dag doth for himself his heirs executors and administrators Consent and Grant to and unto the said Frederick S. Dag and Isaac C. Dag their heirs and assigns that they the said parties of the first part have not done caused suffered or proceed to be done any act matter or thing whereby the title of the said parties of the second part of us and to the above granted bargain and described land and premises or any part thereof can or may be changed changed altered or defeated in any way whatsoever.

In Witness Whereof the said William F. Dag and Mary Almira his wife have hereunto set their hands and seals the day and year first above written.

Signia Sealed and delivered

William F. Dag

In the presence of

Mary Almira Dag

Jos. R. Crane

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New Jersey On this 24th day of July A.D. 1857 before
 Esq. County Mr John R. Crane Acting Public and
 for the said County of Essex personally
 appeared William F. Day and Mary Almira his wife
 who are known to me as the grantors in the within and
 named whom I acquainted with the contents thereof
 and who thereupon acknowledged that they signed sealed
 and delivered the same as their voluntary act and deed
 for the uses and purposes therein expressed, and the said
 Mary Almira being examined by me privately & apart
 & apart from her said husband acknowledged that
 she signed sealed and delivered the said deed freely
 as her voluntary act and deed without any fear threat
 or compulsion of her said husband.

In Testimony Whereof I have hereunto affixed
 my notarial seal and subscribed my hand
 the day and year first above said
 John R. Crane
 Acting Public
 (Filed May 10th 1862 at 11¹⁴ A.M.)

And this was all the testimony in the case.

At the Feb Term A.D. 1863 on this 6th day of March
 came the defendants by E. S. Kildbrook their counsel
 and the complainants by George S. Eldridge their counsel
 and said defendants entered a motion to Mr. Lockart

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the case and for him to file exhibits and a certificate of the evidence used by defendants on the hearing also for a rehearing of the cause on the ground that the finding of the Court was against the law & the evidence and in support thereof made a notice and service thereof as follows

"Frederick S. Day &
Grace L. Day } Complainants

vs }
Alonzo Wallbridge } Defendants

Mary Wallbridge }
in the Saddle Creek Court hearing
had at the May Special Term AD 1862 - Decree
entered at the June AD 1862

To George S. Eldridge and W. Chapman Attorneys
of said Complainants. Take notice that at the
present term of said Court on the 23rd day of July
1863 or as soon thereafter as counsel can be heard
I shall move to re-look said decree and shall
ask leave of Court to file in said cause exhibits and
certificate of the evidence used by said defendants on
the hearing of said cause and shall also move for
a re-hearing of said cause E. S. Willbrook
Feb. 24, 1863 Atty for defendants"

"Rec'd Copy of written notice July 24th 1863"
W. Chapman"

And the affidavits of E. S. Holbrook as follows:

"The affidavit of E. S. Holbrook to a rule on motion to set aside verdict & entitled Theodore S. Day & Lucie E. Day vs George Wallbridge and Henry Wallbridge heretofore pending in Chancery in Sadale Circuit Court.

State of Illinois, E. S. Holbrook being duly sworn Sadale County, I depose and say that he is and has been attorney of defendants in the above entitled suit and has had the sole charge of their defence. Affiant says that about two or three years ago he made an agreement with George S. Eldridge complainant's attorney that neither party should do anything in said suit without the presence of or notice to the other party which agreement never was annulled and a stipulation made the entering the decree in this cause. Affiant says that the hearing ⁱⁿ of this cause took place at the May Special Term A.D. 1862. That it was taken under a disreement by the Court and kept until the Nov Term A.D. 1862.

Affiant says that he was present in Court the 3^d & 4th days of said Court term. That at that time it was suggested to the Court by direct attorneys of said Court in substance that it would be difficult to do any civil business on account of certain provisions of the Kentucky State External Revenue Law and whereupon the Court adjourned from the bench in

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Substance with that no more civil business would be done at said term except by consent of parties.

This affiant says that on account of said announcement he immediately left court and was not again in court during the session. He has not the slightest idea that any thing would be done in said cause during said term. Affiant says he had no knowledge until this present term that any decree was entered neither as affiant is informed and believes did defendants have any knowledge of said decree until the present term. Defendants therefore have had no chance to file exhibits and a certificate of the evidence used by defendants at the hearing.

Affiant believes and insists under the law and the testimony in the case that complainants have no right to recover of the defendants in this action and that unless defendants have been to file a certificate of their testimony so that their defence can be made to appear in the Supreme Court that very great injustice would be done them.

Subscribed & sworn to before me

E. S. Holbrook

Feb 25. 1863

A. B. Moore Clerk

In Test

Alonzo Walbridge being sworn says that he had no knowledge of the decree entered therein until this term of Court and he believes it is inequitable and unjust that complainants should recover any thing against

him.

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Subscribed & sworn to before George Wallbridge
on this 25. January, 1863

A. B. Moore Clerk

per clerk

Said Eldridge stated said motions and offered his
affidavits as follows:

"In deic M. D. Day & Isaac L. Day

vs George Wallbridge & Henry Wallbridge.

State of Illinois,

Said Compt. as J. S. Eldridge being duly sworn
that he was associated with William Chumacee
as solicitor for the complainants in the above entitled
cause while the same was necessarily pending in the
Said Compt. Circuit Court. That said cause was then
pending for several years. That once while said cause
was so pending said Hebbrook spoke to affiant
about the trial of said cause & stated that he had an
engagement elsewhere & wanted making some in
reference to the trial thereof as dispositive mat-
ters. That his return on during his absence
to which dispositive assented & to it was then
mutually agreed in substance as between dispositive &
said Hebbrook that said cause should not be brought
to a hearing by either party in the absence of the Court
for the other. That at least once & dispositive before 3 or
4 times thereafter & before the trial of said cause the
same was called by the Court for trial in the absence

of said Hedbrook & deponent procured the Court to
 let the case pass on account of said Hedbrook's
 absence & which was done by the Court apparently
 with reluctance, the Court stating that said cause
 should be finally disposed of as it had been a
 long time on the docket. That deponent always
 believed that he could not give the hearing of said
 cause in the absence of said Hedbrook without
 giving him notice of his intention to do so, that the
 cause was finally tried at the May special term
 of this Court 1862 and taken under advisement
 & was continued without decision at the June term
 following until the last of June & on the first day
 of said term defendant inquired of the judge of said
 Court of said cause had been decided & was informed
 by him that it had not then as yet been decided &
 deponent did nothing further about said cause &
 knew nothing further in reference to said cause
 until the latter part of said November Term when
 deponent received a letter by mail from L. H. Hedbrook
 deputy clerk informing him that said cause had
 been decided & a decree rendered for the complainants
 & suggesting that a decree should be prepared before the
 adjournment of Court. That deponent then informed
 said Commares of the contents of such letter &
 deponent having occasion to come to Court on
 other business said Commares requested
 deponent to help him in preparing said decree

which he did, that he had nothing whatever to do in
 regard to the rendition of said decision & knew nothing
 about it until informed of it as aforesaid, that neither
 this deponent nor said Christman were in attendance
 upon said Court when the decision was announced
 Deponent supposed when the said cause was finally
 tried & a decree rendered that the complainants
 cannot claim with perfect propriety & without any
 violation of such understanding a decree
 in accordance with the decision of the Court &
 submits that it cannot be insisted that he
 was bound to wait for the decision of the cause
 & out of Mr. Redbank's theory, that said Redbank
 knew that said cause was held under advisement
 and it was his duty to look after his own rights in
 said cause & that if he obtained the information
 in question that said cause would not be decided
 at said term, then this deponent is in no wise
 responsible for it, as to what was the order of the Court
 in regard to business at said term then this
 deponent never definitely understood further than
 that no cause should be tried without the consent
 of both parties, but this deponent never supposed that
 that the order of business adopted by the Court at
 said term included the decision of said
 cause at that time and this deponent expressly
 denies that it was absolutely agreed between him &
 said Redbank that neither party should do anything

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in said case in the absence of the other, that the only
 understanding about the cause that this defendant
 ever had with said Hollister to his recollection or
 belief was in reference to the trial thereof as herein-
 before stated. That defendant believes from the evidence
 introduced on the trial of said cause that the said
 Wallbridge committed a gross fraud upon the
 complainants & that there was nothing introduced
 in evidence on the part of the defendants to claim
 mitigating the same, but that said defence as he
 understands it was a more technical one &
 virtually confessed the fraud charged in the com-
 plaints &c. And this defendant is further informed
 and believes that said Wallbridge, is in very small way
 in his pecuniary circumstances & that to reinstate
 said cause if it can be legally done would deprive
 the complainants of a decree to which they are justly
 entitled & upon which an execution has been issued
 & a levy made upon the defendants property & this defendant
 believes that the motion to reinstate said cause &
 for a rehearing is for the mere purpose of preventing
 the complainants from collecting a just claim which
 they have for a long time been justly entitled to.
 Subscribed & sworn to before me
 G. S. Eldridge
 on this — day of
 February 1863

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State of Illinois } I Absalom B. Moore Clerk of
 LaSalle County vs } the Circuit Court in and for
 said County do hereby certify that
 the above and foregoing comprises a true full perfect
 and complete record in the said case of Day vs
 Wallbridge, as the same now appear of record
 and on file in said cause in my office.



In Testimony Whereof I have hereunto set my
 hand and the seal of said Court at Ottawa
 this 10th day of April A.D. 1863

A. B. Moore Clerk
 J. Nash

Supreme Court: State of Illinois
3^d Grand Division. April term 1883

Alonso Walbridge, Plaintiff in Error
Fredrick Day } Defendants in Error.
Sam'l Day }

Now comes the said Walbridge
by E. H. Applebrook, his attorney and says that in
said record, proceedings and decrees
there is manifest error in this:

1. The Court erred in overruling defendant's
demurrer to the Bill of Complaint.
2. The Court erred in sustaining complain-
ant's motion to strike the interrogatories
from defendant's answer.
3. The Court erred in not sustaining
the defendant's defence of the Statute
of Limitations.
4. The Court erred in finding for
the complainants, either in the
sum found, or any sum whatever.
5. The Court erred in rendering a de-
cree against defendant, and
in not dismissing said Bill of
Complaint. = and for these and
other errors plaintiff in error prays
that said decree may be re-
versed and annulled.

By E. H. Applebrook
his attorney.

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Alonso Walbridge &
Mary Walbridge

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Frederick S. Day &
Emac Co. Day
Recd

Filed April 21st 1863
L. Leland
Clerk

Paid by ob. man

Fees
\$12.00