

12535

No. _____

Supreme Court of Illinois

Dunlap.

vs.

Daugherty, et al.

71641  7

Alva Deuleak	}	Supreme Court
opponent		of Illinois
James Deugherty		April Term. 1888
or much R. L. Easton		
appellee	}	

And now comes the said
 appellant and says that there
 is manifest error in the
 record and proceedings in
 said case a transcript of
 which is here attached
 and assigns the following
 errors

- 1 The Court erred in permitting
 the deed from Henry Howe to John
 Morgan to be used to the injury
 of the Court erred in permitting
 the deed from John Morgan to
 plaintiffs to be used in favor
 of the jury.
- 3 The Court erred in giving the
 instructions for plaintiffs
- 4 The Court erred in giving the
 instructions asked by defendant
- 5 The Court erred in overruling
 defendant's motion for a new trial
- 6 The Court erred in excluding
 plaintiff's expert depositions

whereupon appellant prays
that the said judgment be
reversed and the cause
remanded -

Respectfully,
Messrs. J. H. & C. H. [illegible]

Be it Remembered that heretofore to wit on the nineteenth day of November A.D. 1855 There was filed in the office of the Clerk of the Circuit Court of the County of Peoria in the State of Illinois a declaration together with the notice thereto attached & the Return of the Sheriff thereon endorsed is in the words and figures following to wit:

In the Circuit Court of the County of Peoria
Nov. Term, 1855.

James Daugherty &
Mark L. Easton

Ejectment.

vs
Alva Dunlop

James Daugherty and Mark L. Easton
Plaintiffs in this suit complain of Alva Dunlop Defendant
in this suit for that whereas on the 1st day of August A.D. 1855
at the County aforesaid, they said Plaintiff was possessed of
the following described real estate to wit: the South West
quarter of Section Number Two (2) in Township No Ten (10)
North of Range No Seven (7) East of the fourth Principal
Meridian Illinois The title to said premises in fee,
and the said Plaintiffs being so possessed thereof, the said
Defendants on the 3rd day of August A.D. 1855 entered
into said premises and unlawfully withholds from the Plaintiffs
the possession thereof to the damage of the said Plaintiffs one hundred
red dollars, and therefore they bring suit &c.

Purple Sanger & Pratt
for Plffs

To Mr Alva Dunlop You are Notified that on the first day of

the next term of the Circuit Court to be holden in and for the County of Peoria or as soon thereafter as Counsel can be heard the foregoing declaration in ejectment will be filed, and thereupon a rule will be entered requiring you to appear and plead thereto within twenty days after the entry of such rule; and that if you neglect so to appear and plead Judgment by default will be entered against you and the Plaintiff will recover possession of the premises described in said declaration Aug. 6. 1855.

Purple Sanger & Co.
Attorneys

State of Illinois }
Peoria County } ss

Samuel Crouse being duly sworn says that he served the foregoing declaration and Notice on the Defendant within named by giving him a true copy of the same, this Eighth day of August A.D. 1855

Subscribed and Sworn to before me this } Saml Crouse
8th day of August A.D. 1855

N. H. Purple Notary Public
Peoria ~~City~~ Ill

2
Proceedings at a term of the Circuit Court begun and held at the Court house in the City of Peoria in and for the County of Peoria in the State of Illinois on the third Monday of November in the year of our Lord one thousand eight hundred and fifty five it being the nineteenth day of said Month Present the Honorable Anslow Peters Judge of the sixteenth Judicial Circuit in the State of Illinois. David D. Irons Sheriff and Jacob Gab, clerk, to wit.

Monday. November 19th A.D. 1855

James Daugherty
William Gaston

vs
Alva Dunlop

Ejectment

This day came Norman H. Purple attorney for the plaintiffs and filed their declaration in this cause and on their motion it is ordered that the said Alva Dunlop plead to this action in twenty days.

And afterwards the defendant filed in the Clerks office of said Court his plea in the above entitled cause in words and figures following to wit:

Plea

James Daugherty
Mark L. Easton

Peoria Circuit Court

Nov Term 1855

In Ejectment.

vs
Alva Dunlop

And defendant comes and defends the force & injury when &c & says that he is not guilty in manner & form as plaintiff have above alleged against him & of this he puts himself upon the Country &c

Manning & Meriman
for Deft.

3 Proceedings at a term of the Circuit Court begun and held at the Court House in the City of Peoria in and for the County of Peoria in the State of Illinois on the second Monday of May in the year of our Lord one thousand eight hundred and fifty ~~five~~ ^{five} it being the ~~twelfth~~ ^{twelfth} day of said month Present the Honorable ~~John~~ ^{Jacob} ~~Easton~~ ^{Easton} Judge of the Sixteenth Judicial Circuit in the State of Illinois David D. Irons Sheriff and ~~James~~ ^{James} ~~Easton~~ ^{Easton} Clerk. to wit:

Wednesday May 28th A.D. 1856.

James Daugherty
Mark L. Easton

vs
Ejectment

Alva Dunlop

On motion of the defendant by his attorney this Cause is continued to the next November Term of this Court but at the Costs of the said defendant for this term of Court, therefore it is considered that the said James Daugherty & Mark L. Easton have and recover of the said Alva Dunlop their Costs and charges by them about their suit in this behalf expended and that they have execution therefor

And afterwards to wit on the 20th day of November 1856 there was filed in the Clerks office of said Court the affidavit of Julius Manning in words and figures following to wit:

affidavit of
J. Manning

State of Illinois
Peoria County

Peoria Circuit Court

November Term A.D. 1856

James Daugherty &
Mark L. Easton

vs

Alvah Dunlop

ff
ff
ff
ff
ff

4 I, Julius Manning being duly sworn says
that prior to last Term of Court I had written to S. Stoats
Taylor who had been the agent of Charles S. Folwell in the payment
of taxes in this State on the land in controversy to obtain the tax
receipts for the years during which Mr. Folwell was the owner of
the land, and taking the time to be from the date of the deed to
Folwell which was dated in 1846, which receipts were finally
obtained by us about the 25th day of August A.D. 1856.
Immediately after the last term of Court I having been informed
that Messrs Kingman & Tillson of Quincy had been employed
and acted as agents in the payment of Taxes on this land,
wrote to them to ascertain who paid the taxes for the years 1844
& 1845 this was done as early as first of June or last of May
In course of time they informed us that Mr S. Stoats Taylor
also paid the taxes for those years - upon receipt of this inform-
-ation as soon as I was able on account of my health I wrote
to Mr Taylor to obtain these receipts also, after some lapse
of time Mr Taylor wrote again that these receipts were also
in the hands of Mr Folwell - I then wrote directly to Mr Folwell
to obtain them. Mr Folwell as I am informed sent them to
Mr S. Stoats Taylor who resides at Cairo in this State and
he forwarded them to us, which we received sometime in the
month of October last, but the precise day I cannot state.
Upon receiving and examining them I found that they also
showed a payment of taxes in the name of Charles S. Folwell
I have no doubt that Mr. Folwell was in equity by some
agreement with his vendors the owner of the land during those
two years 1844 & 1845, though I never knew any thing of that
fact until I obtained those last mentioned receipts - and I

Know of no means of proving such agreement and ownership of Folwell except by taking his deposition. Nor does Mr Dunlop as I am advised and believe. About the time I ascertained this last fact in regard to the receipts of (44 & 45 being in the name of Folwell I was again taken sick and was unable to attend to business - and I believe Mr Merriman knew nothing of this until I informed him - he also was away from home attending another Court - I still being confined to my House by sickness requested him to give notice to take the deposition of Mr Folwell, which he informs he has done.

Mr Folwell resides in Philadelphia in the State of Pennsylvania and there has not been time since learning that it would be necessary to take his deposition and have it in Court by this time as I believe. The defendant expects to prove by him that he was the owner of a complete title in equity to said lands during the years 1844 & 1845 and at the time the taxes for those years were paid.

On our part (of Mr Merriman & myself) we have used all diligence in obtaining the evidence contained in these receipts and I know of no means by which we could have had the case in a greater state of forwardness for trial.

Sworn to and Subscribed

This 24th day of Nov^r

1856 before me

Enoch P. Sloan Clerk

Julius Manning

And thereupon on the same day there was filed in the Clerk's office of said Court the affidavit of Alva Dunlap which is in the words and figures following to wit:

Affidavit of
Alva Dunlap

James Laughery
Mark L. Easton

Alva Dunlap

Peace Court Court
Nov Term 1856

Alva Dunlap the said defendant being first duly sworn deposes and says that he cannot safely proceed to the trial of said Cause at the present term of the said Court for the reasons following: -
That he is advised by Counsel & believes that it is necessary to prove payment of Taxes upon the land in controversy

from and including the year 1844 for a seven years then next following - that Julius Manning with whom deponent had mostly consulted about said cause sent to Charles S. Folwell for the tax receipts from the year 1846 during which year said Folwell obtained the title to said land which tax receipts were forwarded by said Folwell to S. S. Taylor from whom they were procured by said Manning. That efforts were made to get the tax receipts for the two years prior to those above stated. That through further correspondence the other receipts were received from said Folwell and which tax receipts were given to said Folwell and were in his name. That said last mentioned receipts were received as deponent is informed by his said Counsel in the former part of October last. That it then became necessary as he is informed by his Counsel to prove that said last mentioned tax receipts for the years 1844 & 1855 were connected with the said title so obtained by said Folwell although they appear to have been paid by said Folwell prior to his getting the title which fact he believes he can prove by said Folwell that a notice has been given for a Commission to issue from said Court to take the deposition of said Folwell to prove said facts that there has not been time to get his deposition since he knew of the necessity of that proof & since it was known that the evidence of said Folwell was necessary to prove that fact - that deponent knows of no other witness by whom he can prove said fact - that he is also informed by his Counsel & believes that the following Deeds are necessary to show the title of deponent to the land in controversy John Tilson Jr to R. H. Nevins of date April 26 1835 the acknowledgment of which as recorded is as he is advised insufficient in law. So that the records of said Deed cannot be introduced in evidence, also a Deed from Elihu Townsend to William G. Buckner Frederick A. Tracy Charles F. Moulton & Robert Schuyler to David H. Nevins also Deed from David H. Nevins to Elihu Townsend, William G. Buckner, Charles F. Moulton & Robert Schuyler the recorded copies of which Deed deponent is advised cannot be read in evidence on account of the defect in the certificates of acknowledgment thereto attached but all of which Deeds as deponent is informed & believes can if the originals

can be found. can be used in Evidence also a deed from Charles F. Moulton Daniel Low, David H. Nevins John N. Gossler John W. Leavitt Joseph L. Joseph Samuel S Lewis Amos Birney James C. Dunn Samuel Lamb Joseph Swift Charles Atwater James B. Dainforth to Samuel Lamb & Thomas Dunlop. also Deed from James Dundas, Mordecai D. Lewis Samuel W. Jones, Robert L. Pittfield & Robert Howell to Charles S. ~~Roll~~^{Folwell} both of which last mentioned Deeds are by the recorded Copies thereof defective in the form of the Certificate of acknowledgement but which original Deeds if produced in Evidence are as deponent is advised sufficient to convey title that none of said Deeds are in the power of deponent, that he has caused search to be made for them but has not as yet been able to obtain the same, that application has been made to said Folwell who did not send the Deed but only a copy of the certificate of acknowledgement and that his letter containing said copy was received only a very few days prior to the present term of said Court & too late to make other attempts to get said Deed at this term, that in the latter part of October

Deponent ~~learned~~^{learned} that a portion of said Deeds were in the possession of O. H. Browning of Quincy but that the same could not be obtained at this term as said Browning declined sending them to the attorneys of deponent, but deponent believes that all of said Deeds & said deposition can be obtained by the next Term of this Court, that deponent is advised that he has a good defence provided he can get the above testimony that deponent has relied altogether upon said Manning who is now & has been for some time past unable from ill health to attend to business, that this application is not made for delay but that deponent may prepare his defence to said suit.

Subscribed & Sworn to before

me this 24th day of Nov 1856

Enoch P. Sloan Clerk

Alva Dunlop

Proceedings at a term of the Circuit Court begun and held at the courthouse in the city of Peoria in and for the County of Peoria in the State of Illinois on the third Monday of November in the year of our Lord One thousand eight hundred and fifty six, it being the seventeenth day of said month. Present the Honorable

Elihu N. Powell, Judge of the Sixteenth Judicial Circuit in the State
of Illinois - David D. Irons Sheriff and Enoch P. Sloan clerk, to wit:
Tuesday, November 25th A.D. 1856

James Daugherty
Mark L. Easton

vs
Alva Dunlop. Ejectment

This day came the defendant by A. L. Merriman
his attorney and on his Motion this cause is continued to next
Term but at his Costs. Ordered that the defendant pay all the
Costs of this term of Court.

And afterwards to wit on the 12th day of December 19. 1856 there was
filed in the clerk's office of said Court the following notice and interrogatories
in words & figures viz:

James Daugherty
Mark L. Easton

Peoria Circuit Court

vs
Alva Dunlop In Ejectment

8 Take Notice, that on the 22^d day of November
A.D. 1856, shall issue out of the office of the clerk
and under the Seal of said Court a *Decimus potestatem Com-*
=*mission*, in the above cause, directed to David B. Birney of
the City of Philadelphia in the State of Pennsylvania Commissioner
or some other person, authorized by law, to take depositions to take
the deposition of Charles S. Folwell resident of said Philadelphia
in answer to annexed interrogatories, before which time you can
file cross interrogatories, to be propounded to said witness if
you deem proper.

To Purple & Pratt
Attorney for Plff

Yours &c
Manning & Merriman
Attorneys for Deft

Nov 12. 1856.

James Daugherty
Mark L. Easton

vs
Alva Dunlop Interrogatories to be propounded to
Charles S. Folwell of Philadelphia, Pa.

Int 1 What is your age, residence & occupation.

" 2 Were you or not the owner of the South west quarter of section two in township ten north in Range Seven East of the 4th principal Meridian situate in the County of Peoria & State of Illinois. If ^{yes} State when you first became the owner of the same, & from whom did you purchase said tract,

3 If you state that you received a Deed for said tract in the month of October 1846. State whether there was any agreement for a purchase of said tract from the parties conveying to you prior to said Deed, & if so State the date of such agreement of purchase.

4 State whether or not the taxes on said tract were paid by you for the years 1844 & 1845 & 1846. If so under what title were said taxes paid. & State the reason why you paid taxes for said years 1844 1845 & 1846 —

5 Do you know of any other matter or thing of advantage to said defendant?

9

Re copy Purple & Pratt
Nov 12 1856.

Whereupon afterwards to wit on the 11th day of March AD 1857 the defendant filed in the Clerks office of said Court his affidavit in words and figures following to wit:

Affidavit of James Daugherty
Alva Dunlap Mark L Easton

Peoria Circuit Court
March Term 1857

As
Alva Dunlop

Alva Dunlop being first duly sworn deposes and says that he cannot safely proceed to the trial of this cause at the present term of this Court on account of the reasons following — That he is advised by his Counsel and believes that it is necessary to prove by the testimony of Charles S. Folwell as deponent knows of no other witness by whom he can prove the facts

desired & expected to be proven by said Folwell, that the taxes due & assessed upon the land in controversy in this suit for the years 1844, 1845 & 1846 were paid by said Folwell under the title then claimed by James Dundas Mordecai D. Lewis Samuel W. Jones. Robert L. Pittfield & Robert Howell who in the month of October 1846. Conveyed said land to said Folwell, that on the twelfth day of November 1856. a notice with interrogatories was served upon the plaintiffs Counsel and filed in this Cause, for the purpose of bringing out a Commission for taking the deposition of said Folwell, which Commission was by said notice to be sued out on the 22 day of November 1856. That deponent is informed by his Counsel J. Manning & believes that a Commission did issue in accordance with said notice & forwarded to the Commissioner therein named - but as deponent is informed by the Clerk of this Court said Commission has not been returned

10
Deponent further states that the following Deeds are necessary to make out a chain of title in defendant to wit - a deed from John Tillson Jr to R. H. Nevins dated April 26. 1832. the acknowledgment of which as recorded is insufficient as deponent is advised by Counsel to authorize a recorded copy thereof to be read in Evidence & that the said Original Deed is requisite to enable this defendant to prove the said Conveyance that deponent has not yet been able to find said Deed although application has been made by Messrs Manning & Merriman, Attorneys for defendant of said Folwell D. S. Taylor who was the agent of the different parties through whom said title passed. Also of O. H. Browning, who has for many years & is now acting as attorney for most the parties claiming through said Deed but can find no trace of the same, although said Browning had possession of a portion of the title papers of defendant

Deponent further states that a Deed from Elihu Townsend William G. Bucknor Frederick O Tracy, Charles F. Moulton & Robert Schuyler to David H. Nevins of said land is an essential link in deponents chain of title, which Deed was recorded in the Records Office of said County of Peoria but the Certificate of acknowledgment of which as recorded

Me this 4th day of March 1857
 Enock T. Sloan clk

Tuesday March 3^d AD. 1857.

Alva Dunlop

Experiment

This day came the defendant by Manning & Merriman his attorneys and moved the Court for a continuance of this cause which motion was allowed and thereupon on the same day there was filed in the clerk's office of said Court the following notice & interrogatories to wit:

vs
Alva Dunlop

Florida Circuit Court

In Spectamen

Take Notice that on the 14th day of March A.D. 1857. Shall cause to be issued out of the office of the Clerk and under the Seal of said Court, a *Decimus potestatem* Commission in the above Cause directed to David B. Birney of the City of Philadelphia in the State of Pennsylvania Commissioner or some other person authorized by law, to take depositions to take the deposition of Charles S. Folwell resident of said Philadelphia in answer to ~~annexed~~ interrogatories before which time you can file ~~cross~~ interrogatories, to be propounded to said witness, if you deem proper.

To Purple & Pratt

Attorney for Plffs
Peoria March 4th 1857.

Yours &c,

Manning & Kerriman
Attorneys for Deft

James Daugherty
Mark L. Easton

as
Alva Dunlop

Interrogatories to be propounded to
Charles S. Folwell of Philadelphia. Pa

Interrogatories to be propounded to
Charles S. Folwell of Philadelphia. Pa

12
Int 1st What is your Name, age, residence & Occupation

" 2nd Were you or not the owner of the South west quarter of Section two in Township, ten North of Range, Seven East of the 4th principal Meridian Situate in the County of Peoria and State of Illinois. If yea State when you first became the owner of the Same & from whom did you purchase said tract

" 3rd If you state that you received a deed of said tract in the month of October 1846. State whether there was any agreement for a purchase of said tract from the parties conveying to you prior to said deed & if so State the date of such agreement of purchase

" 4th State whether or not the taxes were paid by you for the years 1844, 1845 & 1846. If so under what title were said taxes paid & State the reason why you paid said taxes for said years 1844, 1845 & 1846.

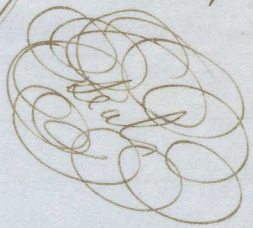
" 5th Do you know of any other matter or thing of advantage to said defendant

Peoria March 4th 1857.

Rec'd Copy of within Notice & Interrogatories
Hurple & Pratt

Said afterwards to wit on the 12th day of May A.D. 1857 there were opened under general order of Court & filed in the Clerk's office of said Court the depositions in the above entitled cause in words and figures following to wit:

13 State of Illinois, Peoria County, ss. The People of the State of Illinois, To David B. Burney Esq, Philadelphia Pa. Greeting: We, having confidence in your skill and fidelity, have appointed you and by these presents do authorize and require you at a certain time and place, to be by you appointed for that purpose to cause the witness whose name is mentioned in the Caption of the annexed interrogatories, to come before you and then and there diligently and faithfully to examine him on oath upon the said interrogatories in the order in which they are propounded; and you will cause the answers of the witness thereto, to be reduced to writing, in the order in which they shall be proposed and answered, and you will then cause the witness to sign his name to the same in your presence. You will also annex a certificate, subscribed by yourself at the foot of the deposition, stating that it was sworn to and signed by the deponent and the time and place when and where the same was taken. The deposition thus taken and subscribed, and all exhibits produced or referred to by the witness together with this Commission and the annexed interrogatories, you will inclose seal up and direct to the Clerk of the Circuit Court of the County of Peoria, in the State of Illinois, with the names of the parties litigant endorsed thereon



Witness Enoch P. Sloan Clerk of the Circuit Court of the County of Peoria and the Seal of said Court this 25th day of March in the year of our Lord one thousand eight hundred & fifty seven

Enoch P. Sloan clerk

Interrogatories to be propounded to Charles S. Fotwell, of Philadelphia Pa. a witness to be produced, sworn and examined in a certain Cause in the Circuit Court in and for Peoria County in the State of Illinois, wherein James Daugherty & Mark L. Easton is plaintiff and Alva Dunlop is defendant

On the part and behalf of the said plaintiff as follows, to wit:—

- 1 What is your name, age, residence & occupation?
- 2 Were you or not the owner of the South west quarter of Section two in township ten North of range seven east of the 4th principal Meridian situate in the County of Peoria and State of Illinois? If yes, State when you first became the owner of the same & from whom did you purchase said tract.
- 3 If you state that you received a deed of said tract in the month of October 1846, State whether there was any agreement for a purchase of said tract from the parties conveying to you prior to said deed & if so State the date of said agreement of purchase.
- 4 State whether or not the taxes were paid by you for the years 1844, 1845 & 1846, if so under what title were said taxes paid & State the reason why you paid said taxes for said years 1844, 1845 & 1846?
- 5 Do you know of any other Matter or thing of advantage to said defendant?

Peoria Illinois

Dec^r 6th 1849

C. S. Folwell Esq
agt &c Phila^d
Dear Sir

I have sold the S. W 1/4 2. T10. N. R 7 & Peoria County Ills to Alva Dunlop of same Co for \$237.⁵⁰ \$37.50 payable on delivery of deed - 100 Jan'y 1. 1851 \$100 Jan'y 2. 1852 & interest. This is a good lot of land, but from the nature of the title, being tax title only, I think you would have to wait a good while before you could get a better price or better terms. I have therefore closed with the applicant as above. Be good enough to retain the deed until I see you—

Very respy
your obt. Sct.
S. Staats Taylor

Exhibit

A

Charles S. Folwell

D. B. Birney

Comr.

15 The deposition of Charles S. Folwell of the County of Philadelphia
State of Pennsylvania a witness of lawful age produced sworn
and examined upon his solemn affirmation on the sixth day
of April in the year of our Lord 1857 at the office of Charles
S. Folwell Number 18 South Third Street in the City of Philade-
lphia State of Pennsylvania aforesaid by me David B. Birney
a Commissioner duly appointed by Dedimus Potestatem or
Commission issued out of the Clerks office of the Circuit Court
of the County of Peoria County in the State of Illinois bearing
Date in the name of Enoch W. Sloan Esq Clerk of said Court
with the Seal of said Court affixed thereto and to me directed
as such Commissioner for the examination of the said Folwell
a witness in a certain suit pending and undetermined in the
said Circuit Court wherein James Daugherty and Mark L.
Easton are plaintiffs and Alva Dunlop is defendant in behalf
of the said Daugherty & Easton plaintiffs upon the interrogatories
enclosed and upon none other

The said Charles S. Folwell being first duly affirmed by me as
a witness in the said Cause previous to the Commencement of
his examination to testify the truth as well on the part
of the plaintiff as the defendant in relation to the matters
in Controversy between the said plaintiff and defendant so
far as he ~~should~~^{should be} be interrogated, testified and deposed as
follows: -

First Interrogatory.

What is your name, age, residence & occupation.

Answer.

My name is Charles S. Folwell, age sixty years, residence
City of Philadelphia and my occupation that of an accountant

Second Interrogatory

Were you or not the owner of the South West quarter of Section two in township ten North of range seven east of the fourth principal Meridian situate in the County of Peoria and State of Illinois If yes State when you first became the owner of the same and from whom did you purchase said tract

Answer

To avoid inconvenience and delay in obtaining the execution and acknowledgements of the ten quarters to the numerous properties to be conveyed, the tract of land referred to in the second interrogatory was with numerous other properties conveyed to me by deed dated October 19th 1846 from James Dundas, Mordecai D. Lewis Samuel W. Jones Robert L. Pittfield & Robert Howell and their wives and was held by me in trust and subject to the order & Control of the said Dundas, Lewis, Jones, Pittfield and Howell trustees of the Bank of the United States

Third Interrogatory.

If you state that you received a deed of said tract in the month of October 1846. State whether there was any agreement for a purchase of said tract from the parties conveying to you prior to said deed, & if so State the date of such agreement of purchase

Answer

I am not aware that there was any agreement for a purchase of the said tract from the parties conveying to me prior to said deed, on the eighteenth December 1849 I received a letter from J. Staats Tylor dated at Peoria Illinois December 6th 1849 addressed to me as agent advising the price and terms upon which he had sold the tract referred to to Alva Dunlop Annexed marked A is a copy of the letter referred to.

Fourth Interrogatory.

State whether or not the taxes were paid by you for the years 1844, 1845, 1846 and if so under what title were said taxes paid and State the reason why you paid said taxes for said years 1844, 1845, 1846.

Answer

I paid the taxes for the years 1844, 1845, 1846 as the agent of the trustees and for the reason that the property really belonged to them

Fifth Interrogatory.

Do you know of any other matter or thing of advantage to said defendant.

Answer

I know of no other matter or thing of advantage to said Defendant
Chas. S. Folwell

State of Pennsylvania
City of Philadelphia

17 I David B. Birney of the County of Philadelphia State of Pennsylvania as Commissioner duly appointed to take the deposition of the said Charles S. Folwell witness whose name is subscribed to the foregoing deposition do hereby certify that previous to the commencement of the examination of the said Charles S. Folwell as a witness in the said suit between the said James Daugherty and Mark L. Easton plaintiffs and Alva Dunlop Defendant he was duly affirmed by me as such Commissioner to testify the truth in relation to the matters in controversy between the said plaintiffs and defendant so far as he ~~should~~^{could} be interrogated thereto and concerning the same that the said deposition was taken at the office of Charles S. Folwell in the City of Philadelphia State of Pennsylvania on the sixth day of April AD 1857 and that after said deposition was taken by me as aforesaid the interrogatories and answers thereto as written down were read over to the said witness and that thereupon the same was signed and affirmed to by the said deponent Chas S. Folwell before me as such Commissioner at the place and on the day & year last aforesaid.



Witness my hand & Seal this 6th day
of April 1857
David B. Birney Commissioner

Proceedings in the Circuit Court, at ~~Peoria~~ ^{Peoria} Illinois, began and held at the Court house in the City of Peoria ~~Illinois~~ ^{Illinois} for the County of Peoria and State of Illinois, on the second Monday of May in the year of our Lord, one thousand eight hundred and fifty seven it being the eleventh day of said month. Present the Honorable Elihu N. Powell Judge of the 16th Judicial Circuit in said State Francis W. Smith, Sheriff and Enoch P. Sloan, Clerk, to wit:—

Monday, May 18, AD. 1857.

James Daugherty

Mark L. Easton

vs Ejectment
Alva Dunlop

This day came the plaintiffs by N. H. Purple, their attorney and the defendant by W. Manning, his attorney, and it is ordered by the Court that a Jury be empannelled to try the issues joined in this Cause, whereupon came a jury of twelve good and lawful men to wit:— Stewart Neill, Noyes C. Bartholomew, Benjamin Heckler, Samuel B. King, Nathan Surger C. L. Barton, Matthew Tagart, Luzerne Bartholomew, Benjamin Rogers, H. V. Flegler, William L. Moss & James Bunn who were duly chosen, tried and sworn to well and truly try the issues joined in this Cause and a true verdict give according to the evidence, do, upon their oaths aforesaid say "We the Jury do find the issue for the defendant". Therefore it is considered that the said Alva Dunlop go hence without day and have and recover of the said James Daugherty and Mark L. Easton his costs and charges by him about his defence in this behalf expended and that he have execution therefor. The plaintiffs by their attorney moves the Court for a new trial in this Cause, which is allowed on conditions that said plaintiffs pay all the costs of this suit now due.

18 Proceedings in the Circuit Court at a term thereof began and held in the Court house in the City and County of Peoria, in and for said County, and State of Illinois on the Third Monday of November in the Year of our Lord One Thousand eight hundred and fifty seven it being the sixteenth day of said Month Present The Honorable Elisha N. Powell, Judge of the 16th Judicial Circuit in the State of Illinois— Francis W. Smith, Sheriff, and Brock P. Moan clerk to wit:—

Monday November 16, A.D. 1857.

James Daugherty
Mark L. Easton

vs Ejectment
Alva Dunlop

It having appeared to the Court that the Costs in this Cause had been paid by the plaintiffs herein It is ordered by the Court that the Judgment rendered herein at the last May term of this Court be set aside and that a new trial of this Cause

be had as per Motion of the plaintiffs for new trial - By agreement it is ordered that this Cause be continued

Proceedings at a term of the circuit court began and held in the Court house in the City of Peoria, in and for the County of Peoria, and State of Illinois, on the first Monday of March in the year of our Lord one thousand eight hundred and fifty eight it being the first day of said month Present - Honorable Elihu N. Powell, judge of the sixteenth Judicial Circuit in said State. Francis W. Smith Sheriff and Enock B. Sloan Clerk of the Court: -

Wednesday, March 10th A.D. 1858.

James Daugherty
Mark L. Easton

vs Ejectment
Alva Dunlop

19 This day came the said plaintiffs by Purples & Head their attorneys and the defendant by Manning & Merriman his attorneys, and it is ordered by the Court that a jury be empannelled to try the issues in this Cause, whereupon came a Jury of twelve good and lawful men to wit: - Robert Trial, Robert Garrison, Robert Pinckston, Abner Jenkins, Isaac Moore, James Elson, S. A. Todd, David Maxwell, Webster Huey, John Shock, Ephraim Morrison, and Seth Griffin who being duly chosen, tried, and sworn to well and truly try the issues joined in this Cause, and a true verdict give according to the evidence, upon their oaths do say we the Jury find the defendant guilty of withholding the premises described in the plaintiffs declaration as is alleged therein and assess the plaintiffs damages at one cent; and we further find the plaintiffs to be the owners of said premises in fee simple - Whereupon it is considered and adjudged by the Court that the said plaintiffs have and recover of the defendant the possession of said premises described in said declaration as the South west quarter of Section Number two in township Number ten North of range Number Seven east of the fourth principal Meridian, Peoria County, Illinois, and also the sum of one Cent their damages aforesaid, and also their costs and charges by them about their suit in this behalf expended, and that they have execution therefor; and also that a writ of possession issue herein according to law -

And thereupon to wit on the 16th day of March A.D. 1858 the defendant entered in the clerk's office of said Court his motion for a new trial in words and figures following to wit:

State of Illinois
County of Peoria

Peoria Circuit Court,
March Term A.D. 1858.

James Daugherty
Mark L. Easton

vs
Abraham Dunlop

And the defendant moves the Court to set aside the verdict of the Jury and grant a new trial for reasons

1. The Court permitted improper evidence offered by the plaintiff to go to the jury
2. The Court refused proper instructions prayed for by defendant
3. The Court gave improper instructions prayed for by plaintiff
4. There was no sufficient evidence given on the part of the plaintiff to sustain the verdict
5. The Court erred in deciding that the evidence showed no right to set up a limitation in this cause
6. The Court erred in deciding that the limitation under section 9, of chapter "Conveyances" of revised Statutes could not be set up by deft

Manning & Merriman for deft

Proceedings at a term of the Circuit Court began and held in the Court house in the City of Peoria, in and for the County of Peoria, and State of Illinois on the first Monday of March in the year of our Lord one thousand eight hundred and fifty eight, it being the first day of said month. Present: Honorable Elisha D. Powell, Judge of the sixteenth judicial circuit in said State Francis W. Smith Sheriff and Enoch P. Sloan clerk viz:—

Friday March 19th 1858

James Daugherty
Mark L. Easton

vs
Alva Dunlap

Exponent

This day this cause came on to be heard on the defendant's motion filed herein for a new trial of this cause; and the Court having heard the argument of Counsel and being fully advised in the premises does overrule said motion, whereupon the defendant by his attorney prayed an appeal to the Supreme Court of this State, which is allowed on his filing a bond with the Clerk of this Court in the penal sum of five hundred dollars with Amos L. Merriman as Surety, in twenty days, conditioned as the law directs -

And thereupon to wit on the 20th day of March A.D. 1858, there was filed in the office of the Clerk of the said Court a bill of exceptions which is in the words and figures following to wit:

James Daugherty
Mark L. Easton

Peoria Circuit Court
March Term. 1858

vs
Alva Dunlop

This cause came on to be tried on the issues joined, and the plaintiffs to sustain the issues on their part offered and read in Evidence a Patent from the United States to Henry Howe dated May 27, 1818. without objection conveying the land in controversy in this suit.

The plaintiff then offered in Evidence a certified Copy of a Deed from Henry Howe to John Morgan bearing date July 14, 1821, (the preliminary affidavit for the introduction of the Certified Copy of the Deed instead of the original being waived) to the reading of which the defendant then and there objected for the reason that the execution of the original Deed was not properly proven, which objection the Court overruled and permitted the said Deed to be read in Evidence to the Jury which Deed is as follows;

No 943 To all people to whom these presents shall come greeting Know Ye,
H. Howe That I Henry Howe of Canterbury Windham County State of Conn-
to -ecticut for the Consideration of One hundred and Sixty Dollars
J. Morgan received to my full satisfaction of John Morgan of said Canterbury
do give, grant, bargain and Confirm unto the said John Morgan

his heirs and assigns forever, one hundred and sixty acres of land being the South West quarter of Section Two of Township Ten North in range Seven East in the tract appropriated by the act of Congress for military bounties in the territory now State of Illinois as evidenced by a patent to me given by James Monroe President of the United States, dated the 27th day of May AD 1818 recorded in the land office of the General Commissioner Vol 23 page 165 reference hereunto being had for a more particular description To have and to hold the above granted and bargained premises with the appurtenances thereof unto the said grantee his heirs and assigns forever to his own proper use and behoof - And also I the said grantor do for my heirs, executors, and administrators Covenant with the said grantee his heirs and assigns that at and until the enrolling of these presents I am well seised of the premises as an indefeasible estate in fee simple and have good right to bargain and sell the same in manner and form as above written. And that the same is free from all encumbrances whatever, And furthermore the said Grantor do by these presents bind myself and heirs forever to warrant and defend the above granted and bargained premises to the said Grantee his heirs and assigns against all claims and demands whatsoever. In witness whereof I have hereunto set my hand and seal the 14 day of July Anno Domini 1821.

Signed sealed and delivered in presence of Andrew T. Jackson

Henry Howe Seal

John Sims

Windham County, p. Canterbury July 14 1821, Then personally appeared Henry Howe, Signer and Sealer of the foregoing Instrument personally appeared and acknowledged the same to be his Free act and Deed before me,

Andrew T. Jackson Justice of the peace

(Recorded 17 Nov 1821)

State of Illinois I, James A. Kenney Clerk of the Circuit Court & ex officio Recorder in and for said County & State do hereby Certify that the foregoing page and a part of a page contain a full true & perfect copy of a deed (and of the Certificate of acknowledgement thereto affixed) from Henry Howe to John Morgan, as it appears and still remains of Record in my office, recorded Nov 17, 1821 in Vol 3 pages 116 & 117 of the records of Pike County Illinois

Seal

Given under my hand and seal of said Court
this 28th day of June AD 1855

Jas A. Kenney clerk & ex. officio
Recorder

State of Connecticut } ss
County of Windham }

I Uriel Fuller Clerk of the Superior Court in
and for said County of Windham (which said Court is a Court
of Record) do hereby Certify that Andrew T. Judson Esq
whose name appears to be attached to the Certificate of the
acknowledgement of the annexed Certified Copy of a deed from
Henry Howe to John Morgan, was on the 14th day of July AD.
1821, a Justice of the peace in and for the County of Windham
and State afores. duly Commissioned and qualified; and I
do further Certify that said Certified Copy of said deed is execu-
ted and acknowledged in conformity with the laws of the State
of Connecticut as they ^{existed} ~~are~~ and were in force on the said
14th day of July AD. 1821.

Seal

In testimony Whereof I have hereunto set my
Hand and affixed the seal of said Windham County
at Windham County aforesaid this Seventh day
of August AD. 1855.

Uriel Fuller Clerk

To the decision of the Court in overruling of which objection and
the reading of which Deed to the Jury the Defendant then & there
accepted. The Plaintiff there offered in Evidence a Deed
from John Morgan to the Plaintiff dated June 2. 1855. to the
introduction of which Deed & to the reading the same to the
Jury the defendants then & there objected. Which objection was
overruled by the Court and said Deed which is as follows;
This Indenture, Made this Second day of June in the year of our
Lord One thousand Eight Hundred and Fifty five Between John
Morgan and Aurelia his wife formerly of Granterbury Windham
County Connecticut now of Wabash County Ills of the first part
And James Daugherty and Mark L. Easton parties of the
second part: Witnesseth - That the said parties of the first part
for and in Consideration of the sum of One Hundred and Fifty
Dollars to us in hand paid by the said parties of the second
part, the receipt whereof is hereby acknowledged, have

23

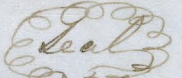
transferred, released and quit claimed - And by these presents do transfer, remise, release and quit claim to the said parties of the second part, their heirs and assigns Forever, all That Certain piece or parcel of Land, situate, lying and being in the County of Peoria, State of Illinois and known, designated and described, as follows, to wit: being the South West quarter of section Numbered Two in Township No Ten North of Range No Seven West of the fourth principal Meridian, patented by Henry Howe, and by him conveyed to me by Deed dated at Canterbury Windham County, Conn. July 14th A.D. 1821 and all the right title and interest we may have to the South East quarter section Numbered Three in Township No Ten North of Range No Seven East of the Fourth principal Meridian, patented to Charles Campbell, to the said parties of the second part their heirs and assigns forever - And all the estate, right, title, interest possession, claim and demand whatsoever, as well in law as in Equity, of the said party of the first part, in or to the above described premises and every part and parcel thereof, with the appurtenances thereto belonging. To have and to hold the above granted premises to the said party of the second part and to their heirs and assigns to their full use and behoof forever In Testimony Whereof the said party of the first part have hereunto set their hands and seals the day and year first above written.

24
Signed, Sealed and Delivered in the Presence of
John Morgan Seal
Aurelia Morgan Seal
Wm. M. Harmon
Adaline Morgan

State of Illinois }
Wabash County } ss
We it remembered, That on this second day of June A.D. 1855. before me, William M. Harmon, an Justice of the Peace in and for said County and State came John Morgan and Aurelia Morgan his Wife personally known to me to be the real person whose names are subscribed to the foregoing Deed as having executed the same and then acknowledged that they signed, sealed and delivered said Deed freely and voluntarily for the uses and purposes therein mentioned And the said Aurelia Morgan Wife of John Morgan being by me made acquainted with the Contents and effect of said Deed - and by me examined separate and apart from her husband, she

acknowledged that she executed said Deed, and relinquished her right of dower in the premises therein described and set forth freely and voluntarily and without the compulsion of her said husband

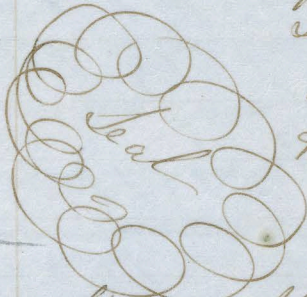
Given under my Hand and Seal at Mount Carmel
In the County of Wabash and State of Illinois
this second day of June in the year AD. 1855.

William M. Harmon Justice of the Peace 

State of Illinois } I, James S. Johnston clerk of the County
Wabash County } Court of said County do hereby certify that
William M. Harmon whose name is subscribed to the within
certificate of acknowledgement to the within Deed of conveyance
was at the time of taking and signing the same and still is an
acting justice of the Peace in and for said County duly commis-
sioned and qualified, and that as such full faith and credit
are due and of right ought to be given to all his official acts.

In Testimony whereof I have hereunto set my hand
and affixed the seal of said Court at Mount Carmel
this 2nd day of June AD. 1855.

James S. Johnston Clerk
of the County Court Wabash County

25

State of Illinois }
Peoria County } Recorder's Office,

I, Jacob Gale, Clerk of the Circuit Court in and for the County of
Peoria in the State of Illinois and ex officio recorder of deeds in said
County, do hereby certify that the annexed deed was filed for record in my
office on the 6th day of June, AD 1855, and has been duly
recorded with the accompanying Certificate on pages 270 & 271
in Book N.H. in said Recorder's Office. In Witness whereof, I
hereto set my hand and affix the seal of the said Circuit Court
at my office in Peoria, this 9th day of June AD 1855.

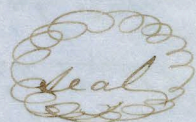
Jacob Gale, Clerk and Recorder

Was read to the Jury & the decision of the Court in overruling
said objection & in reading the same to the Jury the Defendant
then & there excepted - The possession of the premises in con-
troversy was for the purposes of this trial admitted by defendant
to be in himself at the time of the commencement of this suit - The
plaintiffs here closed - The Defendant offered in Evidence a Deed
from James T. B. Stapp auditor of the State of Illinois to
Robert H. Peebles dated February 10. 1832. as follows;

The Auditor of Public accounts of the State of Illinois To all who shall see these Presents Greeting: Know ye, That whereas I did on the 12th day of January A.D. 1831. at the town of Vandalia, in Conformity with all the requisitions of the several acts in such cases made and provided, expose to public sale a certain tract of land being the South West quarter of Section Two township Ten North in Range Seven East of the 4th principal Meridian for the sum of one dollar and 82 Cents being the amount of the tax for the year 1830 with the interest and costs chargeable on said tract of land: And whereas, at the time and place aforesaid Robt H. Peebles offered to pay the aforesaid sum of money for the whole of said tract of land which was the least quantity bid for; and the said R. H. Peebles has paid the sum of one dollar and 82 Cents into the Treasury of the State: I have granted, Bargained, and sold, and by these presents, as Auditor of the aforesaid State, do grant, bargain and sell the Whole of the South West quarter of section Two in township Ten North in Range Seven East of the 4th principal Meridian, to R. H. Peebles, his heirs and assigns: To have and to hold said tract of Land to the said R. H. Peebles and his heirs forever: Subject, However, to all the rights of redemption provided for by law. In testimony of which the said Auditor has hereunto subscribed his name and affixed his seal this 10th day of February 1832

James T. B. Stapp.

Auditor



For the purpose only of establishing a claim or color of title made in good faith in defendant to the introduction of which Deed plaintiffs then & there objected, which objection was overruled and the Deed was read in Evidence to the Jury to the ruling of the Court in that behalf plaintiffs excepted Defendant there read in Evidence without objection a certified Copy of a Deed from Robert H. Peebles to John Tillson Junior dated February 10. 1832. which Deed purported to convey the land in Controversy. Defendant there introduced & read in Evidence a Certified Copy of a Deed purporting to convey the land in Controversy from John Tillson Junior to Russell H. Nevins bearing date April 26. 1832. without objection

Defendant there introduced and read in Evidence without objection a Certified Copy of a deed from Russell H. Nevins to Elihu Townsend, William G. Bucknor, Frederick A. Tracy, Charles F. Moulton and Robert Schuyler bearing date June 1. 1832. purporting to convey the premises in Controversy. Defendant, ~~then~~ offered to read in Evidence a Certified Copy of a Deed from Elihu Townsend, William G. Bucknor, Frederick A. Tracy, Charles F. Moulton and Robert Schuyler to David H. Nevins bearing date February 25. 1835, (the preliminary affidavit requisite to introduce the Certified Copy of the original Deed being waived) to the introduction of which Deed the plaintiff objected on account of the insufficiency of the proof of the execution of the Deed. (No objection being made to absence of locality in the Certificate of proof) which objection was overruled by the Court & the plaintiffs excepted thereto, & the defendant ~~made~~^{read} said Deed to the Jury, which so far as relates to the land in Controversy.

27 This Indenture made the twenty fifth day of February in the year of our Lord one thousand eight hundred and thirty five Between Elihu Townsend, William G. Bucknor, Frederick A. Tracy, Charles F. Moulton and Robert Schuyler of the City of New York of the first part and David H. Nevins, also of said City of the second part Witnesseth that the said parties of the first part for and in Consideration of the Sum of one Dollar lawful Money of the United States of America to them in hand paid by the said party of the second part, at or before the enscrolling and delivery of these presents, the receipt whereof is hereby acknowledged have granted, bargained, sold, aliened, remised, released, conveyed and confirmed and by these presents do grant, bargain sell, alien, remise, release, convey and confirm, unto the said party of the second part and to his heirs and assigns forever All those certain Tracts Pieces or parcels of Land situate, lying and being in the State of Illinois in the Tract appropriated to Military Bounties and known and distinguished therein as follows viz; x x x x x x x x x x x x x x x x x x x

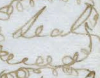
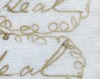
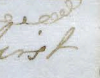
x x x x South west two ten north seven east x x x x x x x x x x x x x x x x x x x Together with all and singular the tenements hereditaments and appurtenances thereunto belonging or in any wise appertaining and the reversion and reversions, remainder and

remainders rents issues and profits thereof; and also all the estate right, title, interest, property, possession, claim and demands whatsoever, as well in law as in equity of the said parties of the first part, of in or to the above described premises and every part and parcel thereof with the appurtenances; To have and To hold all and singular the above mentioned and described premises together with the appurtenances unto the said parties of the second part his heirs and assigns forever and the said Elhu Townsend William G. Bucknor, Frederick A. Tracy, Charles F. Moulton, and Robert Schuyler do severally and not jointly covenant, promise and agree to and with the said party of the second part, his heirs and assigns each for himself, and his heirs executors & administrators, that he hath not made, done, committed, executed or suffered any act or thing whatever, whereby the above mentioned and described premises or any part or parcel thereof, now are or at any time hereafter shall or may be impeached, charged or incumbered in any manner or way whatever. In Witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year above written

28

Sealed, and
delivered in presence of

[Signature]

Elhu Townsend 
Wm G. Bucknor 
Fred A. Tracy 
C. F. Moulton 
Robert Schuyler 

The following erasures and interpolations having been first made, or the word "twenty nine" substituted for nineteen in the twenty seventh line of page one, the words "eighty acres" inserted in the forty seventh line on said page - the words eighty acres inserted in the seventh line on on second page - the same words on thirty seventh line of third page the word "East" in thirty fourth line of said page the word "half" substituted for "East" on fifty first line of fourth page the word "Northwest" in the thirtieth line of fourth page the word "five" in twenty fifth line of fifth page - the word eighty acres on eight line of sixth page, the numbers of the above lines all calculated from the bottoms of the pages the words "eight North" erased in South page on thirty third line from the top.

Richd F. Harrison
W. H. Hampton

State of New York
City and County of New York ^{ss} On the fifteenth day of
April one thousand eight hundred and thirty five before me
Came Richard F. Harrison a subscribing witness to the foregoing
Conveyance with whom I am personally acquainted who being by
me duly sworn did depose and say: that he resides at No. 436,
Fourth Street in the City of New York that he knew Elihu
Townsend, William G. Bucknor, Frederick A. Tracy, Charles
F. Moulton and Robert Schuyler the persons described in and
who executed the foregoing Conveyance that they severally
acknowledged they executed the same, and that he the said
Richard F. Harrison subscribed his name as a witness
thereof. H. Ulshoeffer Commissioner of Deeds &c
for the City & County of New York

29. State of York
City & County of New York ^{ss} I Thomas Jeremiah Clerk
of the City and County of New York, do hereby Certify, that
Henry Ulshoeffer Esq. whose name is subscribed to the
Certificate of the Proof for acknowledgment of the annexed
instrument and thereon written, was at the time of taking
such proof or acknowledgment a Commissioner in and for
the City and County aforesaid, dwelling in the said City
Commissioned and sworn and duly authorized to take
the same and further, that I am well acquainted with the
handwriting of such Commissioner and verily believe that
the signature to the said Certificate of Proof or acknowledgment
is genuine. In Testimony whereof I have hereunto set my
hand and affixed the Seal of the said County the 15th Day
of April 1835. Thos Jeremiah Clerk

Defendant there offered and read in evidence without objection
a Certified Copy of a Deed from David H. Nevins to Elihu
Townsend, William G. Bucknor, Charles F. Moulton, Robert
Schuyler, and Charles Atwater purporting to convey the
land in controversy dated February 26, 1835—

Defendant there offered & read in evidence without objection
a Copy of a Deed from Elihu Townsend, William G. Bucknor
Charles F. Moulton, Robert Schuyler, and Charles Atwater to

Charles F. Moulton ^{& others} purporting to convey the premises in Contravention
bearing date December 17, 1835

The Defendant then offered in Evidence a Deed from the last
named grantees, to Samuel Lamb and Thomas Dunlop dated
April 30. 1838. and also at the same time a power of attorney
from Charles F. Moulton to David H. Nevins dated July 9.
1836. to which power of attorney there was no objection but
the plaintiffs objected to the introduction of said Deed on
account of the insufficiency of the proof of the execution of
said Deed which objection was overruled & the Deed was
read in Evidence to the Jury as follows;—

30 Know all Men by these presents, That We John W. Leavitt, Charles
F. Moulton, Daniel Low, David H. Nevins, John N. Gosser, and
Joseph L. Joseph of the City of New York, Samuel S. Lewis, Amos
Binney and James C. Dunn of the City of Boston, Samuel Lamb
and Joseph Swift of the City of Philadelphia, Charles Atwater
of the City of New Haven and James B. Danforth now or late
of the City of Louisville in consideration of one dollar to us
paid by Samuel Lamb and Thomas Dunlop of the City of
Philadelphia in the State of Pennsylvania the receipt whereof
is hereby acknowledged have released conveyed and confirmed
and do hereby release convey and confirm unto the said Samuel
Lamb and Thomas Dunlop all the lands to us jointly conveyed
by any deed and deeds and lying in the State of Illinois To
have and to hold the same unto the said Samuel Lamb
and Thomas Dunlop and the survivors of them for life and
to the survivor and his heirs and assigns for ever, with the
power to them and the survivors of them to convey the said
lands and every part and parcel thereof to any person or
persons in fee simple absolute the Deeds of which conveyance
shall absolutely vest and convey unto such person or persons
as are grantees therein such Estates in fee simple or such
lesser Estates as shall therein or thereby be expressed to be
granted. In Witness whereof we have hereunto set our
hands and seals this thirtieth day of April in the year
of our Lord one thousand eight hundred and thirty eight
Sealed and Delivered }
in presence of }

F Taylor

Secy Wm Land Co.

J. W. Leavitt

Charles F Moulton

Amos Binney

James C Dunn

By His atty David H. Nevins

Samuel Lamb

By virtue of a power dated July

J. Swift

9. 1836

Chas. Atwater

Dan. Low

J. B. Danforth

David H. Nevins

In N Gossler

J. S. Joseph

Sam. S. Lewis

State of New York ^{County of Kings} Be it remembered that on the thirteenth day of July in the year of our Lord one thousand eight hundred and thirty eight personally appeared before me Frederick Taylor to me known who being by me duly sworn did depose and say that he resides in the City of Philadelphia and that the within named individuals that is to say J. W. Leavitt, David H. Nevins as the attorney of Charles F. Moulton, Dan. Low, David H. Nevins In N. Gossler, J. S. Joseph, Sam. S. Lewis, Amos Binney, James C. Dunn, Samuel Lamb, J. Swift, Chas. Atwater and James B. Danforth known to him to be the same persons whose signatures are annexed to the within Instrument severally and respectively signed their names to said Instrument and duly acknowledged the execution thereof for the uses and purposes therein expressed and that he became a subscribing Witness to such Execution In Testimony whereof I have subscribed my name and caused my seal of office to be affixed at the City of Brooklyn in the County and State aforesaid the day and year afore said

John Sinally

Notary Public

State of Illinois

County of Adams

This day personally appeared before me the undersigned clerk of the Circuit Court in and for the County of Adams and State of Illinois John Tillson a competent and Credible witness who being first duly sworn according to law did depose and say that he personally well knew John W. Leavitt and David H. Nevins the attorney in fact of Charles F. Moulton, Daniel Low, David H. Nevins, John N. Gossler, Joseph S. Joseph, Samuel S. Lewis, Amos Binney

32

James C. Dunn, Samuel Lamb, Joseph Swift, Charles Atwater and James B. Danforth the grantors in and F. Taylor the Subscribing witness to the foregoing deed and that he also well knew the hand writing and signatures of each of them having frequently seen them write and having had business correspondence with them and that from his knowledge of their hand writing he believes the names of said grantors and of the said David H. Nevins as the attorney of the said Charles F. Moulton and of the said Subscribing witness to the Deed aforesaid subscribed were thereto subscribed by the said grantors attorney in fact and the subscribing witness respectively. And that neither of the said named persons now reside or ever have resided in the State of Illinois but that all of them except the said F. Taylor who are not dead now reside either in the States of Massachusetts Connecticut New York or Pennsylvania some of them residing in each of the said States and that the said F. Taylor formerly resided in the City of Philadelphia in the State of Pennsylvania but that some six or eight years since he left that State and has gone either to Texas or to some other foreign parts to this affiant unknown.

In Testimony whereof I the clerk of the said Court have hereunto set my hand and affixed the seal of the said Court this 24th day of May A.D. 1849.

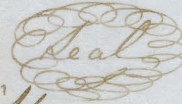
Peter Sott Clerk
By G. W. Leech Dpy

To which decision of the Court the plaintiffs excepted Defendant there offered and read as Evidence of claim & color & title merely a Deed from Christopher Orr Sheriff of Peoria County to Samuel Lamb & Thomas Dunlop dated June 3. 1842. which is as follows

Know all men by these presents, that whereas at the April term 1840 of the Circuit Court of Peoria County, a Judgment was obtained in said Court in favor of the State of Illinois against the South West quarter of Section Two in Township Ten North Range Seven East in said County for the sum of Two Dollars and Eighty Seven Cents, being the amount of taxes

interest and Cost, assessed upon the said tract of land for the year 1839. and whereas on the fourth day of May - 1840 Thomas Bryant, Sheriff of the County aforesaid, by virtue of a precept issued out of the Circuit Court of the County aforesaid dated the 30th day of April 1840 and to him directed, did expose to public sale, at the door of the Court house in the County aforesaid in conformity with all the requisitions of the Statute in such case made and provided, the tract of land above described, for the satisfaction of the Judgment so rendered as aforesaid; and whereas at the time and place aforesaid, L. Lamb & J. Dunlop of the County of Philadelphia and State of Pennsylvania having offered to pay the aforesaid sum of Two dollars and Eighty Seven Cents for one hundred and sixty acres thereof being the whole quantity offered which was the least quantity bid for, the said tract of land was stricken off to them at that price.

33 Now Therefore, I Christopher Orr Sheriff of the Said County of Peoria and Successor of Thomas Bryant, for and in Consideration of the said sum of Two Dollars and Eighty Seven Cents, to me in hand paid by the said Lamb & Dunlop at the time of the aforesaid Sale and by virtue of the Statute in such case made and provided, have granted, bargained, and sold and by these presents do grant, bargain and sell unto the said Lamb & Dunlop - their heirs and assigns the South West quarter of Section Two (2) in Township Ten North Range Seven East - To have and to hold unto them the said Lamb & Dunlop his heirs and assigns, forever; Subject, However, to all the rights of redemption provided by law. In Witness Whereof I Christopher Orr, Sheriff as aforesaid, by virtue of the authority aforesaid, have hereunto subscribed my name and affixed my Seal this third day of June 1842.

Christopher Orr 
Sheriff

State of Illinois)
Peoria County { ss Be it Known, that on the day of the date hereof, personally appeared before me William Mitchell Clerk of the Circuit Court within and for said County Christopher Orr, personally known to me to be the real person whose name appears subscribed to the foregoing deed of conveyance

as having executed the same in the Capacity of Sheriff of
Said County and acknowledged the execution thereof to be
his free act and deed for the uses and purposes therein expressed



In Witness Whereof I have hereunto set my
Hand and the seal of said Court, at Peoria this
third day of June A.D. 1842

William Mitchell Clerk

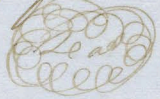
Defendant there offered in Evidence a Deed from Samuel
Lamb & Thomas Dunlop to David H. Nevins & John
Alstyne dated Nov 15. 1844 to the reading of which the
plaintiffs objected on account of the insufficiency of the
proof of the execution thereof (No objection being made to
the absence of locality in certificates of acknowledgment)
which objection was overruled by the Court & the Deed read
in Evidence as follows:—

November 18th 1845
39
This Deed made this fifteenth day of November in the year
of our Lord one thousand eight hundred and forty four, Between
Samuel Lamb and Margarella his wife and Thomas Dunlop
and Ann W. his wife all of the City of Philadelphia parties of
the first part, and David H. Nevins and John Alstyne both
of the City of New York parties of the second part, Witnesseth
that the said parties of the first part, for and in consideration
of the sum of one dollar lawful money of the United States
of America, to them in hand paid by the said parties of
the second part, the receipt whereof is hereby acknowledged, have
remised, released, and quit claimed, and by these presents
do remise, release and quit claim unto the said parties of
the second part, all the following described tracts of land
situate lying and being in the County of Peoria in the State
of Illinois in the tract appropriated for Military Bounties
viz; Peoria County State of Illinois viz; x x x x x x x
x x x Also (In Township 10 N. 7 E. South West and South East
Quarters of Section One; South West Two; South East Three;
North West and South West Nine; North West and North
East Ten; South East Twelve; South West Seventeen; North
West Twenty six; South West Twenty Eight; North West
Twenty nine; South West Thirty; North East Thirty two;
South East Thirty two Containing 112 acres: South West 3

South East quarters of Section Thirty three: North West North East & South East Thirty four: North West and North East Thirty five: North West and South East Thirty six: All of which said lots are situated in township Ten North, Range Seven East, and each of said lots contains one hundred and sixty acres, except such as are otherwise above designated: All of the above Townships being in Ranges East of the fourth Principal Meridian, Together with all and Singular the tenements hereditaments and appurtenances thereunto belonging and all the estate, right, title and interest, dower and thirds and right of dower, property, possession claim and demand whatsoever, as well in law as in equity of the said parties of the first part of, in and to the above described premises, and every part and parcel thereof with the appurtenances: To have and to hold all and Singular the above mentioned and described premises, together with the appurtenances, unto the said parties of the second part their heirs and assigns forever. In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

35 Signed, sealed and delivered in presence of
 Charles J. Carpenter
 S. Badger
 L. Lamb (Seal)
 Margaretta Lamb (Seal)
 T. Dunlop (Seal)
 A. W. Dunlop (Seal)

United States of America
 Be it known that before me Samuel Badger Notary Public for the Commonwealth of Pennsylvania, by lawful authority duly commissioned and sworn personally appeared Samuel Lamb and Margaretta, his wife, Thomas Dunlop and Ann W Dunlop his wife within named and known to me as such, and severally acknowledged the within indenture to be their and each of their separate act and deed and desired the same might be recorded as such in that they the said Margaret Lamb and Ann W Dunlop being of lawful age and by me privately examined, separate and apart from their said husbands, the contents thereof being by me made known to them declared that they executed the same voluntarily and of their own accord and

without any Compulsion, or Coercion of their said husbands
In Testimony Whereof I have hereunto set my hand and
seal this fifteenth day of November AD 1844. ~~(S. Badger)~~
 S. Badger

Notary Public

To the decision of the Court the plaintiff excepted —
Defendant there read in Evidence without objection a Deed
from David H. Nevins and John Abdyne to Mordecai D.
Lewis James Dundas, Samuel W. Jones Robert L. Pittfield
& Robert Howell purporting to convey the land in Controversy
dated September 1. 1845.

Defendant there read in Evidence a Deed without objection
a Deed from James Dundas, Mordecai D. Lewis Samuel
W. Jones. Robert L. Pittfield & Robert Howell to Charles S.
Folwell, dated October 19. 1846. purporting to convey the
land in Controversy.

Defendant there read in Evidence without objection a Deed
purporting to convey the land in Controversy from Charles
S. Folwell to defendant dated January 22. 1850 —

36

Defendant there proved by George C. Bestor that he acted
as agent for Stools Taylor who was agent for Charles
S. Folwell and sold the land in Controversy for said
Folwell to defendant in December 1849 — & gave to
defendant a written Contract as follows;

This Agreement, made this sixth day of December in the
year of our Lord one thousand eight hundred and Forty nine
Between Charles S. Folwell of the City of Philadelphia and
State of Pennsylvania of the first part and Alva Dunlop
of Peoria County & State of Illinois of the second part, Witness
eth, That the said parties of the first part for and in Consider-
-ation of the sum of one dollar, part of the purchase money for
the lot hereinafter mentioned now actually paid in, and upon
the express Condition, which is hereby declared a Condition
precedent, that the said party of the second part, his heirs
executors, administrators or assigns, shall and do well and faithfully
perform the covenants hereinafter mentioned on the part of the said
party of the second part, first to be kept and performed, doth hereby
as joint tenants, and not as tenants in common, Covenant, promise

and agree to execute and deliver to the said party of the second part, a deed of quit claim, with Covenant against their acts, of and for All that certain piece or parcel of lands, Situate, lying and being in the County of Peoria and State of Illinois known and described as follows, viz: South West-quarter of Section Two (2) in Township Ten (10) North of the Base line and in range Seven (7) East. And the said party of the second part doth hereby, for himself, his heirs, executors, administrators and assigns Covenant, promise and agree to and with the said parties of the first part and the survivors and survivor, and the heirs, executors, administrators and assigns of such survivor, as follows, to wit: First, to pay to the said parties of the first part or the survivors or survivor or the heirs, executors, administrators, or assigns of such survivor, the just and full sum of Thirty Seven ⁵⁰/₁₀₀ Dollars on the First day of January which will be in the year one thousand eight hundred and Fifty the further sum of One Hundred Dollars on the First day of January which will be in the year one thousand eight hundred and Fifty one and the further sum of one Hundred Dollars on the First day of January which will be in the year one thousand eight hundred and fifty two together with interest on each sum yearly at the rate of six per Centum per annum from the date hereof until the same be respectively paid, each of said payments, to be made at Peoria, to S. Staats Taylor or his appointee. Secondly, at the time of the delivery of the deed for said premises by the said parties of the second part, to repay to the said parties of the first part, or the survivors or survivor, all taxes assessed on said premises, and paid by the said parties of the first part from the day of ——— one thousand eight hundred and ——— and the interest thereon at the rate of six per Centum per annum until paid — Provided always, and these presents are upon the express Condition, that in case of the failure of the said party of the second part, his heirs, executors, administrators or assigns, in the performance of all or either of the Covenants and promises on his part to be performed, said parties of the first part as joint tenants aforesaid, shall have the right to declare this Contract void and thereupon to recover by distress upon the premises, or otherwise, all the interest which shall have accrued upon this Contract up to the day of declaring it void as rent for the use and occupation of said premises. To hold.

37

and retain the monies paid on this Contract by the said party of the second part, as liquidated damages, and to take immediate possession of the premises: To regard the person or persons in possession, on such termination of the Contract, as tenant or tenants holding over without permission, (if that should be necessary to regain the prompt possession of the premises) and to recover all damages sustained by such holding over without permission or by means of any waste committed or suffered on the said premises by the destruction of timber or otherwise. In Witness Whereof, the said parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written—

Signed, sealed and Delivered }
In presence of

Charles S. Folwell Seal
By J. Stuart Taylor Seal
Atty. at Law

Peoria Ills. Jan. 22 1850 Recd. Thirty seven ⁵⁰/₁₀₀ dollars on the within Contract

= Geo. C. Bestor for =
S. S. Taylor -

Peoria December 26th 1850 Recd. One hundred and Twelve Dollars on the within Contract -

Geo. C. Bestor
By J. M. Woodbury
for S. S. Taylor

Peoria Jan. 27, 1853 Recd. One hundred and twelve dollars on this Contract -

Geo. C. Bestor

Received of G. C. Bestor a deed from C. S. Folwell to me for S. W. 2-10-7 also Sheriff deed tax sales of 1840 ^{and 1839} ~~and 1839~~ deed 1828 & 1831.

Clerk's deed for 1838 & 1838

April 24 1855

Alva Dunlop

That the Deed was sent to witness in October 1852 and remained in the office of witness for a year or two when the Deed was delivered to defendant upon said Contract Defendant there read in evidence the deposition of Charles S. Folwell as follows;—

State of Illinois, Peoria County, ss
The People of the State of Illinois To David B. Burney, Esq,
Philadelphia Pa. Greeting: We, having confidence in your
skill and fidelity, have appointed you, and by these presents, do
authorize and require you, at a certain time and place, to be by
you appointed for that purpose, to cause the witness whose name
is mentioned in the Caption of the annexed interrogatories, to
come before you, and then and there diligently and faithfully to
examine him on oath upon the said interrogatories, in the
order in which they are propounded; and you will cause the
answers of the witness thereto, to be reduced to writing, in the
order in which they shall be proposed and answered; and you will
then cause the witness to sign his name to the same in your presence.
You will also annex a certificate, subscribed by yourself at the
foot of the deposition stating that it was sworn to and signed by
the deponent and the time and place when and where the same was
taken. The deposition thus taken and subscribed and all exhibits
produced or referred to by the witness together with this Comm-
ission and the annexed interrogatories, you will inclose, seal
up and direct to the Clerk of the Circuit Court of the County of
Peoria, in the State of Illinois, with the names of the parties litig-
ant endorsed thereon.

39



Witness Enoch P. Sloan, Clerk of the Circuit Court
of the County of Peoria and the Seal of said Court, this
25th day of March in the year of our Lord one thousand
eight hundred and fifty seven.
Enoch P. Sloan Clerk

Interrogatories to be propounded to Charles S. Polwell, of
Philadelphia, Pa, a witness to be produced, sworn and examined
in a certain cause in the Circuit Court in and for Peoria County
in the State of Illinois, wherein James Daugherty & Mark L.
Easton is plaintiff and Alva Dunlop is defendant
On the part and behalf of the said plaintiff
as follows to wit:—

1 What is your name, age, residence & occupation?

2 Were you or not the owner of the South West quarter of Section

two in township ten North of range seven east of the 4th principal Meridian situate in the County of Peoria and State of Illinois If yeas State when you first became the owner of the same & from whom did you purchase said tract.

3 If you state that you received a deed of said tract in the month of October 1846, State whether there was any agreement for a purchase of said tract from the parties conveying to you prior to said deed & if so State the date of such agreement of purchase =

4 State whether or not the taxes were paid by you for the years 1844, 1845 & 1846, if so under what title were said taxes paid & State the reason why you paid said taxes for said years 1844, 1845 & 1846?

5 Do you know of any other matter or thing of advantage to said defendant?

40

Peoria Illinois

Dec^r 6th 1849-

C. S. Folwell Esq^r

Ag^t. vs. Phila^a

Dear Sir

I have sold the S. W. $\frac{1}{4}$ 2. T. 10. R. 12
of E. Peoria County Ill^s to Alva Dunlop of same Co for \$237⁵⁰/₁₀₀
\$37.50. payable on delivery of deed - 100 Jan^y 1 - 1851 \$100 Jan^y 2
1852 & interest. This is a good lot of land, but from the nature of
the title, being tax title only. I think you would have to wait a
good while before you could get a better price or better terms.
I have therefore closed with the applicant as above. Be good
enough to retain the deed until I see you

Very respy

your obt. S^t

S. Staab Taylor

Exhibit

A

Chas. S. Folwell

D. B. Birney Comr.

The deposition of Charles S. Folwell of the County of Philadelphia State of Pennsylvania a witness of lawful age produced, sworn and examined upon his solemn affirmation on the sixth day of April in the year of our Lord 1857 at the office of Charles S. Folwell Number 18 South Third Street in the City of Philadelphia State of Pennsylvania aforesaid by me David B. Burney a Commissioner duly appointed by *De minimis potestatem* or Commission issued out of the Clerks office of the Circuit Court of the County of Peoria County in the State of Illinois bearing date in the Name of Enoch P. Sloan Esq. Clerk of said Court with the Seal of said Court affixed thereto and to me directed as such Commissioner for the examination of the said Folwell a witness in a certain Suit pending and undetermined in the said Circuit Court wherein James Daugherty and Mark L. Easton are plaintiffs and Alva Dunlop is defendant in behalf of the said Daugherty & Easton plaintiffs upon the interrogatories enclosed and upon none other

41 The said Charles S. Folwell being first duly affirmed by me as a witness in the said Cause previous to the Commencement of his examination to testify the truth as well on the part of the plaintiff as the defendant in relation to the matters in controversy between the said plaintiffs and defendant so far as he should be interrogated, testified and deposed as follows;

First Interrogatory

What is your name age residence & occupation

Answer

My name is Charles S. Folwell, age sixty years, residence City of Philadelphia and my occupation that of an accountant.

Second Interrogatory

Were you or not the owner of the South West quarter of Section two in Township ten North of range Seven East of the fourth principal Meridian situate in the County of Peoria and State of Illinois. If yes state when you first became the owner of the same and from whom did you purchase said tract

Answer

To avoid inconvenience and delay in obtaining the execution and acknowledgement of the ten grantors to the numerous properties to be conveyed, the tract of land referred to in the second

interrogatory, was with numerous other properties conveyed to me by deed dated October 19th 1846 from James Dundas, Mordecai D. Lewis, Samuel W. Jones, Robert L. Pittfield & Robert Howell and their wives and was held by me in trust and subject to the order & control of the said Dundas, Lewis, Jones, Pittfield and Howell Trustees of the Bank of the United States

Third Interrogatory

If you state that you received a deed of said tract in the month of October 1846 state whether there was any agreement for a purchase of said tract from the parties conveying to you prior to said deed, & if so state the date of such agreement of purchase

Answer

I am not aware that there was any agreement for a purchase of the said tract from the parties conveying to me prior to said deed. On the eighteenth December 1849 I received a letter from J. Staats Taylor dated at Peoria, Illinois December 6th 1849 addressed to me as agent advising the price and terms upon which he had sold the tract referred to to Alva Dunlop. Annexed marked A is a copy of the letter referred to.

42 Fourth Interrogatory

State whether or not the taxes were paid by you for the years 1844, 1845, 1846 and if so under what title were said taxes paid and state the reason why you paid said taxes for said years 1844, 1845, 1846.

Answer

I paid the taxes for the years 1844, 1845, 1846, as the agent of the Trustees and for the reason that the property really belonged to them

Fifth Interrogatory

Do you know of any other matter or thing of advantage to said defendant?

Answer

I know of no other matter or thing of advantage to said defendant

Chas. S. Folwell

State of Pennsylvania
City of Philadelphia

J. David B. Birney of the County of

Philadelphia State of Pennsylvania as Commissioner duly
appointed to take the deposition of the said Charles S. Folwell
Witness whose name is subscribed to the foregoing deposition
do hereby certify that previous to the commencement of the
examination of the said Charles S. Folwell ^{as a witness in the}
said suit between the said James Daugherty and Mark L.
Easton plaintiffs and Alva Dunlop defendant he was duly
affirmed by me as such Commissioner to testify the truth
in relation to the matters in controversy between the said
plaintiffs and defendant so far as he ~~should~~ ^{should} be interrogated
thereto and concerning the same that the said deposition was
taken at the office of Charles S. Folwell in the City of Philadelphia
State of Pennsylvania on the sixth day of April AD 1857 and
that after said deposition was taken by me as aforesaid the
interrogatories and answers thereto as written down were
read over to the said Witness and that thereupon the same was
signed and affirmed to by the said deponent Chas. S. Folwell
before me as such Commissioner at the place and on the day
& year last aforesaid

Witness my hand & Seal this 6th
day of April 1857

David B. Birney
Commissioner

Defendant there proved the payment of all taxes assessed
on the land in controversy by Charles S. Folwell for the years
1845, 1846, 1847, 1848 & 1849, and of all taxes assessed on
said land for the years 1850, 1851, 1852, 1853, & 1854 by defend-
ant and that the said land was vacant and unoccupied
from the year 1842 till 1853 or 1854. This was all the evidence
the case

The Court there gave to the Jury the following instructions
on behalf of plaintiffs

Daugherty
Easton

vs
Alva Dunlop

Plaintiffs

The plaintiffs askt the Court to instruct the Jury as
follows;

1st That the second Section of the act of March 2^d 1839
is unconstitutional

That the defendants have not proved any legal defence
in this case and if the jury believe from the evidence that
the plaintiffs have shown a title in themselves derived from
the United States, they are entitled to recover."

To the giving which instructions the defendant then & there
objected, which objections the Court overruled & gave the same
to the jury to which ruling of the Court in giving said instructions
the defendant then & there excepted. The Defendant then
prayed the Court to give to the jury the following instructions

1 If the jury believe from the evidence that the defendant had
at the time of the commencement of this suit color of title
made in good faith to the land in controversy and that he
and the persons under whom he claims and holds such color
of title have paid all taxes legally assessed thereon for seven
44 successive years while such land was vacant and unoccupied
and that such taxes were all properly paid under the title which
the defendant has shown in evidence by or for persons under
whom he claims and who at the time of the payment of such
taxes also held the same color of title also in good faith, then
they will find for the defendant

Which the Court refused to do, to the ruling of the Court in
refusing such instructions asked by defendant, the
defendant then & there excepted
The jury found for the plaintiffs - The defendant then
moved the Court for a new trial for the following reasons
on file to wit: -

State of Illinois
County of Peoria

Peoria Circuit Court
March Term AD 1858

James Daugherty
Mark L. Easton
vs
Abraham Dunlop

And the defendant moves the Court to set aside the verdict of the Jury and grant a new trial for reasons

1. The Court permitted improper evidence offered by the plaintiffs to go to the Jury—
2. The Court refused proper instructions prayed defendant
3. The Court gave improper instructions prayed by plaintiffs
4. There was no sufficient evidence given on the part of the plaintiff to sustain the verdict
5. The Court erred in deciding that the evidence showed no right to set up a limitation in this cause
6. The Court erred in deciding that the limitation under Section 9 of Chapter "Conveyances of Revised Statute" could not be set up by deft. Manning & Merriman for deft

45 Which motion the Court overruled whereupon the defendant tendered this his Bill of exceptions and prayed the Court to sign & Seal the same which is done
E. N. Powell (Seal)

And afterwards to wit on the 2nd day of April A.D. 1858 the defendant filed in the office of the Clerk of the Circuit Court his appeal bond in the above entitled cause in the words and figures following to wit:

Appeal Bond "Know all men by these presents that we Alva Dunlap and Amos L. Merriman are held and firmly bound unto James Daugherty & Mark L. Easton in the penal sum of five hundred dollars for the payment of which well and truly to be made we bind ourselves jointly, severally & firmly by these presents; witnesses our hands & seals this 2^d day of April A.D. 1858

The condition of the foregoing obligation is such that whereas at and during the March term of the Circuit Court of Peoria County A.D. 1858 the said Daugherty & Easton recovered judgment against said Dunlap in an action of ejectment for the recovery of the possession of the S.W. quarter of section No two in Township ten north in range seven east in said County of Peoria together with the costs of said suit from which judgment said Dunlap has taken an appeal to the Supreme Court of Illinois. Now therefore if said Dunlap shall well and truly prosecute his said appeal and shall pay the costs and damages in case said judgment shall be affirmed or said appeal dismissed then this obligation to be void else to remain in full force & virtue

Alva Dunlap (Seal)
A. L. Merriman (Seal)

State of Illinois }
 Peoria County }
 I, Enoch P. Sloan, Clerk of the Circuit Court
 in and for the County of Peoria in the State of Illinois do hereby certify
 that the foregoing is a true and correct transcript of papers filed
 in my office of the proceedings of our said Court in a certain cause
 wherein James Dougherty and Mark L. Easton are plaintiffs and
 Alon Dumlaf is defendant as the same remain on file and
 of Record in my office.

Given under my hand and the
 seal of said Court at my office
 in Peoria this fifteenth day of
 April in the year 1858
 Enoch P. Sloan, Clerk

Recd of Merriman & Manning 19²⁵/₁₀₀ fees for
 making record for said Court
 E. P. Sloan, clerk

186
 186
 James Dougherty
 Mark L. Easton
 Alon Dumlaf

Filed April 21st 1858
 E. P. Sloan
 Clerk

Alvah Dunlap

or

James Dougherty

Mark L. Easton

} In the Supreme
Court April 7
1858

Argument for Defendants in
Error by Weed & Williamson

1. The first point raised by the counsel
for plaintiff in error is as to the
validity of the acknowledgment of
the Deed from Henry Stowe to
John Morgan dated July 14, 1821

The acknowledgment begins "Windham
County ss - Canterbury July 14, 1821."

To this is appended the certifi-
cate of the Clerk of the Superior Court
for the County of Windham in the
State of Connecticut, that the Justice
who took the acknowledgment was
a justice of that County at the date
of the Deed & acknowledgment

But it is insisted on the
authority of the case of Vance vs
Schuyler 1 Gil 164, that here
is no locality. But this is a mistake
Windham County supposes a locality

But it is said the State is omitted
— that amounts to nothing.

"It is not indispensable that the
place of taking the acknowledgment
of a deed should appear from the
certificate of acknowledgment; if it
appear with sufficient certainty from
an inspection of the whole instrument

Brooks vs Chapin 3 Vermont 281
Hushman vs London 13 Serg & R 386

These cases decide that the Court will
look into the Deed to see where the parties
lived. In the case at bar the parties
are both described as living in Windham
County Connecticut. In the case of
1 Kilman the Deed does not appear to
have been before the Court and no
County was named in the certificate

2. The defendant in this case did not make out a claim and color of title and a payment of taxes for seven successive years within the meaning of the 9th section of the act concerning ~~the payment of taxes~~ conveyances.

The Deed ^{from} to Charles S Folwell to Defendant does not appear to have been recorded — nor was the Contract from him to Dunlap recorded. Dunlap paid the taxes for 1850, 1851, 1852, & 1853 while it was vacant land.

The Deeds not being recorded, and no notice being proved in any way to the owners of the land, they could not know that Folwell had claim & color of title. If he paid taxes in his own name, they were bound perhaps to take notice of that fact, but unless his deed was recorded, how could they know that Folwell had color of title in good faith?

As is well remarked by Judge Skinner in McCoy vs Morrow 18 Ill 523,

"the policy of our law is to afford notice
"through public officers and records of liens
"against lands and the law will not favor
"liens of which it has provided no public
"notice"

The whole policy of our law requires
Notice to be given of all liens and claims
upon land. And it is not to be tolerated
that men should be permitted to keep
their color of title in their pockets, until
they have paid taxes seven successive
years, and then claim their title.

If they have color of title, that color
must be made known, it must be
made openly, and under such circum-
stances as will put the owner of the
land upon enquiry — in short he
must have some notice of such claim.
It would be robbery to let him hide
his color of title until he had paid taxes
seven years, and then produce it, &
claim the land.

So Dunlap did not get his Con-
tract recorded. He paid taxes under
a secret, concealed color of title of
which the plain tiff could not know.
Indeed, as no deed to Holwell bears on

record, and as he ceased to pay
taxes in 1849, the plaintiffs had a
right to infer that he had abandoned
his claim. Dunlap then began to
pay taxes, but how were the plaintiffs
to know that he held and claimed under
Holsell. If he had put his Contract
on record, it is possible that this would
have been deemed notice of his claim,
but he did not put his Contract on
record. Our recording laws are

made for the very purpose of showing
what liens and claims are upon real
estate, and all such liens & claims
not of record, ought not to encourage.
There is no need of giving any wider or
looser construction of this law than is
here contended for. It is a law of
very doubtful policy, and ought
not to be extended beyond its fair
meaning. It is a law substantially
to deprive men of their land, and
should be construed strictly. The
man who claims under it, having
no possession, should at least be
required to do all he can do to
make his color of title known; he

should either place it upon record
in the Recorder's office or be held
to give the owner actual notice

" There are few greater public mis-
" fortunes than insecurity of titles to
" landed property. It paralyzes industry
" and destroys that incentive to labour
" and enterprise which a reasonable
" certainty of a just reward will create
" and upon which depends the public
" & private prosperity " in Skinner's Justice
McClellan's Monroe 18 Ill 323.

For a further & more extended argu-
ment I refer to my written argument
filed this term in the case of Hart
vs Marshall

3

3. It is contended that the 9th Sec of the law under consideration is constitutional and will protect a person who has claim & color of title made in good faith, and who pays the taxes for seven successive years while it is vacant & unoccupied land, and who gets possession after such payment.

This Court in the case of *Harding vs Bullis* 18 Ill 502 decided that the section of the law under consideration was unconstitutional and void. It certainly follows that if it is unconstitutional and void for one purpose, it must be so for all purposes. It cannot depend upon the person or his position for its validity. It either is or is not void ~~or else it~~. It must stand by itself. It cannot depend ~~for its~~ circumstances for its vitality. You can stop to see whether a man is or is not in possession before you decide upon its effect. That would be to reason as a certain hunter did

who was accused of having made
a bad shot while out hunting
He replied that he was not certain
what he shot at, he thought it was
a deer but it might be a calf, so
he took aim to hit, if it was a deer
and to miss if it was a calf.

So the plaintiff claims in this
case that the law is unconstitutional
if no one is in possession, but
constitutional if one gets into
possession before suit brought.

In other words it is good if it hits,
and if it misses it is void, bad.

The effect & consequences of a decision
such as is contended for plaintiff would
be disastrous. It would create a
spirit of land stealing and piracy
greatly to be deprecated. Whoever should
pay the taxes on vacant land for
seven successive years, would be
found two hours after his last pay-
ment on his way, to get possession
~~and~~ arrived at the land, he would
find some one there to contest his

right. A struggle would ensue,
Each would go on to different parts
of the land, and build temporary cabins
or plough furrows, within twenty minutes
of each other. Fights must would
follow. Horrible entry & detainer ~~would~~
~~ensue~~ brought to recover possession
would follow. Already the ^{sockets of the} Courts
in the Military tract are filled with
actions of this kind & they constitute a
large portion of the business of those
Courts. And if a broad construction
of the law is made, the taxes will
be paid secretly by the owner of
some pretended color of title, ~~so as~~
and such title will also be kept
secret until, the seven years expires,
and then payee of the taxes will
rush for the land with a swift
foot, and ponderous fist, determined
to rob the owner of the land according
to law. So too if on the Seventh
year the owner of the land, and the
owner of the ~~tax~~ color of title shall
both start on the same day to pay
taxes, the real title will depend
upon which gets first to the

Collectors office It reminds one of
the prayer said to be made by Genl
Jackson just before the battle of
New Orleans

Thus runs the story "Oh Lord
" dear sir thou knowest I am not much
" given to praying, but we are about
" to have a fight with these British
" rascals, and we pray thee O Lord
" to be on our side & help us if you
" can, and if you cannot, please
" to lie low & keep dark, and pre
" haps you'll see one of the d—d
" fights you ever did see in all
" your born days respectfully
Yours

Andrew Jackson

So in a case like the one suggested
there would be "considerable of a
foot race"

Again suppose the owner of the
color of title should pay the taxes
for seven successive years, and
then start to take possession of the

land, but on reaching it, should find the real owner had arrived there about ten minutes before him and got into possession. Now the constitutionality of the law is made to depend upon the fact ^{of} ~~whether~~ the fellow speed - if he gets there first, he owns the land, but if last, he don't own it.

It is very much like "heads I win"
"Tails you lose."

Wend & Williamson
for defendant

Alvato Dunlap
vs

James Dougherty
& Mark L Easton

Argument for
Defendant by
Wm & Williamson

ALVA DUNLAP,
vs.
JAMES DAUGHERTY, MARK L. EASTON. } IN SUPREME COURT,
APRIL TERM, 1858.

POINTS AND ARGUMENTS OF DEFENDANTS.

1st. There is no valid objection to the certificate of conformity to the deed from Henry Howe to John Morgan.—Purple's Statutes, Vol 1, p. 167, Sec. V. Dennis v. Hopper, 18, 20—82; Hart v. McCartney, 18, 20—131-2.

2. The description in the deed from John Morgan to the plaintiff is sufficient and certain.

This point has been so often decided, and is so well understood by the profession, that I am sure I need not cite authorities to sustain it. That portion of the description "in range seven *west*" is, so far as the word "*west*" is concerned, a mistake.

This Court will judicially take notice that there is no range seven *west* in Peoria county, nor in the Military Bounty Tract. The description is perfect, ejecting the word "*west*," and if there could be any possible objection on this account, the description is made entirely certain by the reference to the patent to Henry Howe, and the deed made by him to John Morgan, dated July 14, 1821, in which is contained the same description as is in the patent from the United States to Howe.

So far as the question of the certificate of conformity attached to the certified copy of the deed from Howe to Morgan is concerned, it seems to me that it is settled in the case of *Dennis v. Hopper*, 18 Ill., 82, and *Hart v. McCartney*, *idem* 131-2, before cited. And also that the distinction attempted to be drawn between that case and this, is a distinction without a difference.

In this case the certificate is a literal compliance with the law.

The law assumes that the original is lost, the certified copy is to be used in its place; the certified copy, the original being lost, is the deed. The certificate of conformity is to be attached to it; the officer is to examine the copy, and upon such examination make his certificate. He has no knowledge of the original, except what he learns from the copy. And it is wholly immaterial whether he certifies that the copy or the original is, or appears to be, acknowledged in conformity with law. In either case the copy furnishes the only evidence upon which the certificate is based.

THIRD POINT.

The instructions asked were properly refused. The 9th section of the act of 1845, Purple's Stat. 155, originally 2d sec. act 2nd, March, 1839, R. E. Stat. 426, is unconstitutional and void.

In the case of *Harding vs. Butts et. al.*, 18th Ills. 502, it is decided that this section is not a limitation law, and that it is unconstitutional. I shall base my argument upon the assumption that these two principles have been decided, and are now the settled law of this State.

If this be so, it follows necessarily that this defence cannot be maintained. Dunlap paid taxes under claim and color of title for seven successive years. He afterwards took possession of the land. His possession neither gives him any additional title, nor does it impart vitality to a void and unconstitutional enactment. Some parts of a law may be constitutional, and other portions of the same unconstitutional. But the same paragraph or section of a law cannot be constitutional for one purpose, or at one time, and void for its unconstitutionality at another time or under other circumstances.

It is manifest that the Legislature never intended that this section of the act should be aided by a short possession. They have never passed the law which our opponents must contend for, as the true construction of this.

They must admit that it is already decided that payment of taxes seven years without possession gives or confers no title; but say that if the tax-payer gets into possession one day after the lapse of the seven years, he is safe and cannot be turned out by the owner of the legal title; that by some *hocus pocus magic*, or *legerdmain*, this dead, void, unconstitutional act revives, becomes valid and constitutional, and most opportunely steps in to aid him in retaining his possession.

To-day he has no legal or equitable right or claim to the land: to-morrow he takes possession, and becomes the legal owner, and may defend his possession under and by virtue of a defunct, unconstitutional and void statute.

He must either acquire the title under claim and color of title, and seven years' payment of taxes without possession, or he does not acquire it under the statute.

Upon its face, and in its entire letter and spirit, the law operates upon the title, to transfer it. If it does not affect this it does nothing, and is a dead letter. And who so ever contends or asserts that payment of taxes for seven years, and possession for one year or one day, is a bar to an action of ejectment brought by the owner of the legal title, must look elsewhere than in this statute, or any portion of it, for his proof.

By the first sec. of the act of 1839, R. E. Stat. 426, seven years' payment of

taxes, accompanied by actual possession, under claim and color of title made in good faith, bars an action of ejectment. This is a regular, legitimate limitation law, defensive in its operations and effects, as all limitation laws have heretofore been.

The limitation of an action upon a promissory note in this State is sixteen years. This, too, is legitimate. But what sort of a statute of limitations would it be if the Legislature were to pass an act that if the payee of a promissory note did not collect it within sixteen years, he should surrender it to the maker on demand, and if he did not, the maker might sue and recover it? Or that if he could get possession of it that he should be *deemed* and adjudged to be the owner of the note.

The answer is, just such an one as the 2d section of the act of March 2d, 1839.

But to return to the 1st section of this act. When the General Assembly provided that seven years' payment of taxes and possession under claim and color of title should constitute a bar to an action of ejectment, and when that body passed the subsequent act or section providing that seven years' payment of taxes on vacant and unoccupied land, under like claim and color of title, should constitute such tax-payer the owner of the land, no one member, I am confident, of that body ever dreamed that they had passed a law which conferred title by seven years' payment of taxes, and one day's possession.

If the second section is void for one purpose, it is void for all purposes. If it is good for any purpose, it can stand by itself, and does not need one year's or one day's possession to aid it. If its validity and efficacy depends upon this limited possession, then it is the possession alone, without the aid of the payment of taxes, which constitutes the bar; and then the result follows, that the Legislature have had the stupidity to declare, in two sections of this same law, that if a party is in possession one year, and has paid taxes seven; or, if he is in possession seven years and has paid taxes for the same period of time, he may defend such possession against any action brought by the owner of the legal title to recover the possession.

A farmer once built a house. It was fashionable in those days to cut a cat hole in the front door. The farmer made his cat hole, and after it was done it occurred to him that he had a small kitten, and he cut another and smaller hole to let the kitten pass through. It never occurred to him that a kitten could get through a cat hole.

So with the Legislature. If they have declared, or intended, that payment of taxes seven years, with possession one year, should be a bar to an action of ejectment, can any good reason be imagined why they should provide further, that payment of taxes for seven years with possession seven years, should have the same force and effect in law.

It ought to be presumed that the Legislature had better sense than to intend any such absurdity. We think it had.

With regard to the objections made by plaintiffs below, to the introduction of the defendants' title papers, or some of them, on account of defective acknowledgments, I make no argument, leaving those questions to be discussed by my associate, Judge Wead. It is probable, indeed, that some of them are defectively acknowledged; and if so, the judgment must be affirmed, even if the opinion of the Court should be adverse to us upon the questions arising under the statute of limitations.

N. H. PURPLE,
Att'y for Appellees.

186

77

Alva Dunlap

^W
James Daugherty
Father

Argument
Purple
for Appellee

Filed May 12, 1858
L. Leland
Clk

W. H. BURKE

W. H. BURKE

W. H. BURKE

ALVA DUNLAP,
versus
JAMES DAUGHERTY and
MARK L. EASTON.

This was an action of ejectment, brought by Daugherty and Easton against Dunlap, for the recovery of a quarter section of land lying in the county of Peoria in this State. At the trial the plaintiffs were permitted to read in evidence a chain of title from the original patentee to the plaintiffs. The defendant read in evidence a chain of title from an Auditor's sale made January 12, 1831, upon which the Auditor's deed was made February 10, 1832: and also from a Sheriff's deed made on the sale of 1840, and dated June 3, 1842, to himself. The defendant also proved the payment of taxes for seven successive years by himself, and his grantors under his title, while the land was vacant and unoccupied. Under the instructions of the court, the jury found for the plaintiffs.

I. The Court erred in permitting the plaintiffs' deed from Henry Howe to John Morgan to be read in evidence upon the authentication exhibited. The original was not produced. It is contended that the copy was properly admitted under the 5th section of the act of Feb. 15, 1851. 1 *Purp. Stat.* 167. By that section the party offering the copy is required to "exhibit with the same a certificate of conformity as provided for in the sixteenth section of chapter twenty-four of the Revised Statutes."

The provision referred to in the 16th section of chapter 24, is that a Clerk of a Court of Record shall "certify that such deed or instrument is executed and acknowledged, or proved, in conformity with the laws" of his State, Territory or District. 1 *Purp. Stat.* 156. The Statute in effect provides that the certificate required shall be evidence that the deed was executed and acknowledged in conformity with the law of another State. This law must be substantially complied with, and it must appear affirmatively that there has been a substantial compliance with its requirements. *Job v. Tibbets*, 4 *Gil.* 147-8.

In the case under consideration the certified copy shows that the original was not acknowledged in conformity with our own laws. The certificate of the Clerk of a Court of Record is that the "*certified copy* of said deed is executed and acknowledged in conformity with the laws of Connecticut." This is a mere certificate of the proper execution of a *copy*, not of a deed. It may be true that the copy is properly executed, and still the deed have been executed even against law. This copy had been taken from the records in our State, and was ~~was~~ certified as such, before this certificate of conformity was attached to it. In this respect the Clerk certified that it was properly executed. In *Job v. Tibbets*, the Court decided that it was not sufficient for the officer to state that the grantor was known to him, but it was necessary for the certificate to show that the grantor was known to him *as the person* who executed the deed. Yet there was far more nearly a substantial compliance with the Statute than here.

The substance to be obtained is proof that the original deed was executed according to law; *proof* that a copy is executed according to law is not the same in substance. If the thing indispensable to be proved in Court were the execution of a deed according to a foreign law, and a witness should appear and testify that a *copy* was executed according to that law, and refuse to swear whether the original was or not, the idea of letting in the original on such evidence would be simply ridiculous. In cases where this extraordinary species of evidence is resorted to, more certainly should the requirement be fully complied with.

II. The Court erred in the instructions given at the request of the defendant, and in refusing the one prayed by the plaintiff.

The provisions of the ninth section of the chapter "Conveyances," was relied on as a statute of limitations by the plaintiff. His proof had brought his case within its provisions. The Court refused to apply the law to this case on the ground that the section was unconstitutional, as a statute of limitations.

We are first to inquire whether the 9th section creates a limitation. There is no difference between the provisions of the 8th and 9th sections, excepting that the 8th section requires actual

possession of the land, while the 9th requires it to be vacant and unoccupied, during the seven successive years. Now it is as fully within the constitutional power of the Legislature to create a limitation without possession, as with it. What is a statute of limitation? A prohibition against a party's bringing an action, unless he shall commence it within a certain specified time. What is the evil to be remedied by such statutes? The prevention of litigation of stale claims, after the witnesses may have forgotten the facts, or may be removed or dead, and after a defendant may have well presumed the claim against him abandoned. They are statutes of repose. They are to prevent vexatious litigation. The length of time during which they shall run, or the circumstances under which they shall run, the subject matter upon which they shall act, the persons against whom they shall operate, are all within the constitutional power of the Legislature.

The intent of the Legislature is to be gathered from the language of the act, and the evil to be remedied, or the object sought to be attained. Under this rule, the Court in *Woodward vs. Blanchard*, 16 Ills. 424, very properly determined that the 8th section of chapter 24 is a limitation, and available to the defendant to defeat a recovery. Every reason assigned by the Court for that decision applies with equal force to the 9th section, excepting so far as it does not require *actual* possession.

It is not essential to a statute of limitation, that it should require possession of the thing by the defendant for the recovery of which the right of action is barred, after the limit specified. The principle of such statutes is the same, whether they limit personal actions, or actions concerning real estate. Their constitutionality is to be determined by the same considerations in the one case as the other. Probably there is no act where an action for the recovery of personal property is limited, by which possession by the defendant, or those under whom he claims, is required during the running of the statute. It has been usual in statutes to limit the right of action for the recovery of the realty, to require possession by an adverse claimant as essential to the running of the statute. But a statute may require a limited time within which such action shall be brought, without reference to the possession; and it would be none the less a statute of limitation. That is, for the purpose of quieting vexatious litigation and of compelling the plaintiff to take his remedy at law within a reasonable time, it would provide that the action should be brought within the time limited, and under the circumstances specified, or that it should be forever barred.

To carry out a great object of public policy the person having a right of action would be required to enforce it within a given time, or forfeit his remedy. It would be the same in its object and effect, so far as concerns the end to be attained, whether it required adverse possession by the party defendant or not. Whether it shall require such possession or not is altogether within the discretionary power of the Legislature, and the manner of exercising that power is not subject to review by the Judiciary. Courts cannot declare such legislation a nullity, because legislatures have generally inserted such a provision in similar statutes, or because the courts may conceive it would have been very wise or judicious for the Legislature to have done so in the Statute under consideration.

To illustrate: It would have been competent for the Legislature of Illinois to have enacted that any person having a right of action to vacant and unoccupied lands, and where another had claim and color of title to such lands made in good faith, and should pay all taxes legally assessed thereon for seven successive years, should bring his action within those seven years, unless he paid the taxes at least once within those seven years, or made entry therein within such seven years, or he should be forever barred of such right of action.

This would be a statute of limitation, and the Legislature would have constitutional power to make it, although it provides a limitation in a case where there is no adverse possession of the premises. Yet this is the precise thing intended to be effected by the Legislature in this 9th section.

This Court has well determined that the words in the 8th section, "shall be held and adjudged to be the legal owner of said lands according to the extent and according to the purport of his or her paper title" do not change the enactment from a limitation to that of a legislative transfer of real estate. The same construction is to be applied to the same language in the 9th section. If the eighth section was intended to be a statute of limitation, so also was the ninth. They are in *pari materia*. They are in the same act. They are to attain the same object; to prevent the same evil. Equally in both cases the Legislature designed to prevent vexatious litigation. Where an act of a legislature with one reasonable construction will be constitutional, and with another, equally

reasonable, unconstitutional, Courts will adopt that construction which will render the act valid for the Legislature are not to be presumed to have willfully violated the Constitution. If then the 8th section be a valid enactment as a limitation, the Court will not construe the same language (except as to possession) in the same act not to be a limitation—attributing to the Legislature a different intent though they express themselves in the same manner—for the mere pleasure of deciding that the ninth section is unconstitutional.

We are aware of the opinion of the Court in *Harding v. Butts*, 18 Ills. 502. The Court there say that the ninth section is not a statute of limitation, and not being a statute of limitation, it is unconstitutional. There was no question before the Court as to the ninth section's being a statute of limitation. The only question before the Court was the validity of the statute to transfer title, so as to enable the party claiming its benefit to maintain an action of ejectment. The Court decide that so far as it attempts to transfer title, it is void. The same decision must necessarily be made upon the eighth section, when, if ever, a similar question shall arise upon its provisions.

Any expressions made by the Judge delivering the opinion of the Court concerning matters foreign to the subject of investigation before the Court, must be regarded as his private *obiter dicta*, and not as the law of the Court. We therefore conceive it consistent with our respect to the Court, which we earnestly desire to preserve, to examine the remarks on this point contained in that opinion.

We are unable to acquiesce in the observation of *C. J. Scates*, that there is hardly a feature of an act of limitation in these provisions except it be the saving of rights to infancy. His acuteness appears to have improved since the writing of the opinion in *Woodward v. Blanchard*. We can see that the intention of the Legislature was, most clearly, to limit an action under the circumstances mentioned, after the lapse of seven years; and not merely to convey real estate from the owner to another claimant; and that we must travel out of a direct course to find that this was the sole intention of the act, in order to declare it void. If the act may operate as a statute of limitations, then, although it may operate in another way, and operating in that other way would be unconstitutional; yet it still will be ^{valid} ~~void~~ so far as it operates as a statute of limitation; for a legislative act is only so far void, as it is in conflict with the Constitution.

Statutes of limitation may confer on a *possessor* the right of property and still be sustained as constitutional. 18 Ills. 508., and cases cited. Now what constitutional power does a mere wrongful possession confer on the Legislature to create a limitation, or transfer the right, more than claim and color of title made in good faith, and payment of taxes? If the statute were valid in the one case, it would be in the other, so far as the question of legislative power is concerned.

It is asserted, and dwelt upon with a strange pertinacity, that statutes of limitation work upon the possession; and, as appears, that a statute wanting this quality can be no statute of limitation. Now it is some years since we learned that statutes of limitation operated upon the remedy. We have seen it repeated some thousands of times by the most learned and eminent of jurists, and it is but quite recently that we have been informed that it is not possible, or within the power and prerogative of Legislatures, to create a limitation of real actions, unless the realty is in *actual* possession. We live and learn.

The Pennsylvania statute was similar in its provisions, *Robb vs. Bowen*, 9 Penn. State R. 71. But it is urged, that "the act provides that an action shall lie against the purchaser, though not in possession." Our law provided the same, during all the time of the running of the statute in the case at the Bar. Our present chapter, Ejectment, was passed in 1839; and provides that if the premises are not actually occupied, "the action shall be brought against some person exercising acts of ownership on the premises claimed, or claiming title thereto, or some interest therein at the commencement of the suit." 1 *Purp. Stat.* 504. Here the defendant claimed title; paid taxes, thereby exercising an act of ownership over the land, and might have been sued for the land. In addition to this, the other party might have entered upon the land at any time during the seven years, or indeed at any time before actual possession was taken by the plaintiff, and thereby have defeated any right which the defendant had under the statute; or he might have paid the taxes any one year and thereby have stopped the running of the statute. *C. J. Scates* is mistaken about the statute's getting up a race between claimants to see who should first pay the taxes. Any owner had a right to make payment or to tender payment of the taxes and thereby stop the running of the statute.

We say, therefore, that the Legislature has constitutional power to create a statute of limitations barring actions for the recovery of real estate. That it is not essential to the validity of such statutes that they should not run unless the land is in the actual possession of him setting up the statute during its running. That under what circumstances it shall run, is entirely within the discretion and power of the Legislature. That if the decision in *Woodward v. Blanchard* is correct, and we believe it is, then the 9th section is a statute of limitation as well as the 8th. That in *Harding v. Butts* the question whether the 9th section created a limitation was not before the court; and if it was, the court, as seems to be the opinion, mistook the law on which that opinion is founded, and that therefore it is no authority.

Finally, that most clearly the intention of the Legislature in this 9th section was to bar the plaintiff's remedy after a certain time under the circumstances stated in the statute, and that the Statute therefore is a statute of limitations, and as such, constitutional.

MANNING & MERRIMAN,

For Appellant.

186
Alvin Dunlap

vs
James Doughty

186

Dunlap

12535

558

~~X~~
Repaid