

8438

No. \_\_\_\_\_

# Supreme Court of Illinois

Erastus B. Carver

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vs.

Stanford A. Lasater et al

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71641  7

State of Illinois }  
Marion County } ss

Pleas and proceedings had  
in the Circuit Court in and for  
the County of Marion and State  
of Illinois, before the Hon. Silas L  
Bryan Judge of the 2<sup>d</sup> Judicial  
Circuit of said State of Illinois  
in a cause heretofore pending in said  
Court wherein Erastus B Carver was  
Complainant and Stanford A Sater  
and Daniel Gregory Defendants.

Be it Remembered that on the 23<sup>d</sup> day of July  
A.D. 1861 the above named Complainant filed in  
the office of the Clerk of the Circuit Court of said  
County his Bill for specific performance against  
the above named Defendants which is in words and  
figures following To wit

Marion County Circuit Court  
August Term A.D. 1861

Erastus B Carver }  
vs }  
Stanford A Sater a }  
Daniel Gregory }  
}

Bill for Specific Performance

State of Illinois }  
Marion County } Do the Hon Silas L Bryan Judge of the  
second Judicial Circuit in the State of  
Illinois in Chancery sitting humbly com-  
plaining sheweth unto your Hon the petition of Erastus B  
Carver a citizen and resident of the County of Marion and

State of Illinois respectfully representing unto your Hon that  
heretofore to wit on the Seventeenth day of March A.D. 1857  
your orator and one Stamford A. Sarater entered into their  
certain article of agreement in writing bearing date the day  
and year aforesaid and signed by the said Sarater and your  
orator. By the terms of which said article of agreement the  
said Sarater bargained and sold unto your orator the following  
described piece or parcel of land lying and being situated in  
the County of Marion and State of Illinois and known and  
designated as follows to wit the North half of the South West  
fractional Quarter of Section Nineteen Town Four North One  
East of the third principal meridian containing Forty five acres  
of Land for which your orator was to pay the said Sarater  
Two Hundred and Seventy Dollars to be paid Twelve months after  
the above date and for which the said Sarater held a promissory  
note bearing even date with said article of agreement with ten  
per cent interest and upon payment of said Note the said Sarater  
his heirs or assigns were to make and deliver to your orator  
his heirs or assigns a good and sufficient Warranty Deed of in  
and to said above described premises and in case your orator  
his heirs or assigns failed to pay said note when due then said  
article of agreement to be null and void otherwise in full force  
in law. All of which terms of agreement will more fully and  
at large appear by reference to said instrument hereto annexed  
and here shown to this Hon Court and asked to be taken and  
referred to as a part of this your orators Petition. That consequent  
upon said bargain sale and purchase as aforesaid your  
orator took immediate possession of said piece or parcel of

land and commenced exercising acts of possession and ownership over the same and has from thence hitherto continued to possess and occupy said premises and is still in possession of the same and that during<sup>the</sup> continuance of the said possession and occupancy of said premises by your orator your orator made valuable improvements upon the same to wit of the value of One Hundred Dollars. That since said bargain and sale and the execution of said Note by your orator to said Sarsater in said article of agreement mentioned, said Sarsater transferred said Note for a valuable consideration to one William D Long long before the same became due and payable which consideration the said Sarsater received at the time of said transfer or previous thereto. That at or about the time said note become due and payable your orator learned that said Sarsater at the time he bargained and sold said premises as aforesaid to your orator had no title to the same, but that one Daniel Gregory, a citizen and resident of Jayette County State of Illinois, was the owner in fee simple of said above described land and your orator charges that said Gregory has from thence hitherto been the owner and now is the owner in fee simple of said land and that said Sarsater never had the legal title to said premises, That said Sarsater at the time he bargained and sold said land to your orator was acting under by virtue of an agreement between himself and said Gregory, by which agreement said Sarsater had full power and authority from said Gregory to sell and convey said above described lands, That afterwards your orator had a conference with the said Gregory concerning

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the purchase of the aforesaid land from said Sarator by  
your orator and that said Gregory stated to, and assured  
your orator that by a contract entered into and then existing  
between the said Gregory and the said Sarator, that Sarator  
had full power and authority to contract and sell said  
land, and that he by said contract and agreement between  
himself and said Sarator was bound to make conveyance of  
the same and would carry out and affirm any and all  
contracts made by said Sarator relative to said lands that  
Sarator had an interest with him said Gregory in said  
lands but did not disclose the amount or nature of said  
interest. Your orator charges that said Sarator and Gregory  
were partners in buying and selling lands and that said  
Sarator was the active agent in said partnership, that  
said Gregory furnished money to said Sarator to be expended  
in purchasing lands from the government and that said  
Sarator purchased lands in the name of said Gregory and  
sold the same in his own name with the full knowledge  
and consent of said Gregory, said Gregory sharing in the  
proceeds and profits of such sales. That said above described  
land was purchased by said Sarator agreeable to the agree-  
-ment between himself and said Gregory, said Gregory furnish-  
-ed the money and said Sarator did the business, purchasing  
said premises in the name of said Gregory and that said  
Sarator had full power and authority from said Gregory  
to bargain and sell said premises as aforesaid, said  
Gregory having agreed with him to affirm and carry out  
any and all bargains sales and contracts relative to said

premises above described And your orator charges that said  
Contract between your orator and said Sasater relative to said  
land was made, possession given by said Sasater and improve-  
ments made on said land as aforesaid by your orator with full  
knowledge of the same by said Gregory and that he said Greg-  
ory permitted your orator to make said contract of purchase,  
take possession of, and make valuable improvements on said  
land without discovering the true state of facts in the premises  
or in any way making known his true interest therein to your  
orator. That said Sasater at or about the time said note  
became due and payable was in failing circumstances and  
has since become and now is wholly insolvent and unable to  
fulfill said agreement with your orator. That since the  
transfer of said note as aforesaid your orator has paid  
off and discharged the same and has repeatedly demanded  
from said Sasater and Gregory a good and sufficient  
warrantie deed to said above described premises which said  
demands have as often been neglected and refused by said  
Sasater and Gregory, and that said Sasater and Gregory  
still continue to neglect and refuse to make your orator a  
good and sufficient warrantie deed to said premises, all  
of which actings and doings of said Sasater and Gregory  
are contrary to Equity and good conscience and manifestly  
to the wrong injury and oppression of your orator in the premises  
In consideration whereof, and for as much as your orator is  
entirely remediless in the premises according to the strict rules  
of the Common Law and can only have relief in a Court of  
Equity where matters of this nature are properly cognizable

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and reliable. In the end therefore your orator prays that  
the said Stanford A Sazator and Daniel Gregory be made  
party dependants to this your orators Bill of Complaint and  
that they (their oaths being expressly waived) be compelled, full  
true, direct, and perfect answers to make to all and singular  
the matters, allegations and charges herein before stated and  
set forth, as fully and particularly as if the same were herein  
after reported, and they thereunto distinctly interrogated. And  
that not only as to the best of their respective knowledge and  
remembrance, but also as to the best of their several and re-  
spective information, hearsay and belief. And that upon a  
full and final hearing by this Hon Court of the proofs of  
the matters and things herein stated and charged and the  
answers thereto your Honor will order, adjudge and decree  
that the said agreement so made between your orator and  
the said Stanford A Sazator as aforesaid may be specifically  
performed, That said Daniel Gregory may be decreed to  
carry out and perform said agreement as made between  
your orator & said Sazator your orator having performed his  
part of said agreement so made as aforesaid and that  
said Daniel Gregory be compelled to make your orator a  
good and sufficient warrantee deed in fee simple of  
in and to said above described piece or parcel of land  
And will your Honor grant the writ of summons to issue  
directed to the Sheriffs of Marion and Jayette commanding  
them to summons the said Stanford A Sazator and the said  
Daniel Gregory to be and appear before your Honor at the  
August Term of this Hon Court to holden at the Court House

in Salem on the third Monday of August next A D 1861  
them to abide the order and decree of this Hon Court in  
the premises. And will your Honr grant such other and fur-  
ther relief as to your Honor may seem meet and proper  
and in duty bound your orator will ever pray as

Constant B Carver

By Willard and Goodnow his solicitors

Potosi March 17<sup>th</sup> 1857

This Indenture made this day  
between Stanford A Casater of the first part and Constant  
B Carver of the second part both of Marion Co Ills  
Whereas the said Casater has bargained and sold unto  
the said Carver the N<sup>1</sup>/<sub>2</sub> of S<sup>1</sup>/<sub>4</sub> fractional gr of Sec  
19 T<sup>1</sup>/<sub>4</sub> N<sup>1</sup>/<sub>2</sub> E of the third principle meridian containing  
forty five acres for the sum and consideration of Two  
Hundred and Seventy Dollars to be paid twelve months  
after the above date for which the said Casater holds a  
Promisory Note bearing even date herewith with interest at  
ten per cent, the said Casater his heirs or assigns hereby  
agrees upon the payment of said note to make and deliver  
unto the said Carver his heirs or assigns a good and  
sufficient Warranty Deed. In case the said Carver his  
heirs or assigns fail to pay said note when due this article  
is null and void otherwise to remain in full force and  
law

Witness

G A Walker

Stanford A Casater.

C Carver.



And afterwards to wit on the twenty second day of August A.D. 1861 said Defendants filed in the office of the Clerk of the said Circuit Court their answer to Complainants Bill herein which is in words and figures following to wit

Stanford A Sasater a

Daniel Gregory

ads

Erastus B Carver

} Of the August Term of the Maine  
Circuit Court A.D 1861

The joint and several answers of the Defendants Stanford A Sasater & Daniel Gregory unto the Complainants said Bill of Complaint And the said Defendants for answer unto said Bill of Complaint or so much thereof as they advised is necessary to be answered unto, answer as follows. The said Defendant Sasater answering says that he admits that on the 17<sup>th</sup> day of March 1857 he entered an agreement with the Complainant for the conveyance of the North Half of the South West 1/4 quarter of Section Nineteen Town four North in Range one East containing Forty acres as set forth in Complainants said Bill of Complaint & that the said land was taken possession of and improved by Complainant as stated in his said Bill and also admits that he transferred the note mentioned in said Complainants Bill of Complaint as therein stated

And the said Gregory says that at the time of the execution of the Agreement above named between said Complainant & Defendant Sasater for the conveyance of said

Land as specified in said Bill he the said Gregory had no knowledge of said Agreement, was not privy to it & did not consent or assent to it in any way whatever & never has had any knowledge of said Agreement to the best of his recollection except as informed of it by Complainants Bill or by Suter recently & that he has never consented to ratified or confessed said Agreement in any manner whatever. And the said Defendant Gregory says he knows nothing of the Complainants taking possession of said lands and improving the same except as informed in said Bill & denies all positive knowledge thereof & states that he the said Complainant is in possession (if in possession at all) without any authority whatever from this Defendant Gregory either directly or indirectly. And the said Gregory denies having any knowledge of the transfer of the Note mentioned in Complainants Bill except as informed by the Bill itself admitting the fact that said contract was

~~And the said Defendants further answer saying that they do not know when made - possession taken - & note transferred without any knowledge or consent of this Defendant Gregory. And the said Defendants further answer saying that they do not know when the Complainant learned that Defendant Suter had no title to said Lands but thereby admits the fact to be, that the Defendant Gregory was at the time alleged in such Bill the sole owner of said Lands and now owns the same in fee simple & that said Suter never had any legal title to said lands nor any interest in said land except what he derived from a contract~~

concerning said Land & other Lands entered into between the Defendants Sasater & Gregory on the 25<sup>th</sup> day of July 1855 a copy of which Contract marked "A" is filed herewith and made a part of this answer

And the said Defendants further answering deny expressly that said Sasater at the time he bargained said Lands to Complainant was acting under and by virtue of an agreement between these Defendants whereby said Sasater had full power & authority from said Gregory to sell & convey said land & they expressly deny that said Sasater had any agreement or authority whatever from said Gregory to sell & convey said Land, the only agreement in relation to said Land between them being the one above referred to marked "A" & a subsequent verbal extension of the time of payment of said Contract which Contract had been long since forfeited by the terms thereof. And the said Defendant Gregory says that he has no recollection of ever having a conference with said Complainant concerning the purchase of the said Lands from Sasater by Complainant & does not believe he ever had any such conversation as charged in the Bill & he positively denies stating to said Complainant that there was a contract between the defendants whereby Sasater had full power and authority to contract & sell said Land & he positively denies that he stated to said Complainant that by virtue of said contract or any other contract whatever he this Defendant was bound to make conveyance of said land to any one except Sasater himself & he expressly denies stating or promising to said Complainant that he this Defendant would carry out and affirm any & all contracts made by Sasater relative to said tract of Land above named in Complainant's Bill or any other lands in which Sasater

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had an interest. And the said defendants Gregory further answering avers that if he ever had any conversation with Complainant as stated in his bill, he must have stated & did state (if at all) the truth as it existed in fact that the only Contract between Defendants was the one referred to above marked "A" & that this Defendant was only bound to convey to Sazator upon payment of the purchase money & that he would not convey to him nor any one else until he this Defendant received his money in full and the said Defendant further answering says that said Sazator nor said Complainant or any one else has ever paid this Defendant any part of the money due him on said tract of land by virtue of said Contract above marked "A" & that he has never received any consideration whatever for the conveyance of said Land or for the promise of a Conveyance of said Land either the said Sazator or the said Complainant. And the said Defendant further answering deny that said Defendants were at any time whatever or ever have been partners in buying & selling lands, they deny that said Sazator was the active agent in any partnership with said Gregory whatever, they deny that said Gregory furnished money to said Sazator to be expended in purchasing lands from the Government as charged in said Bill. they deny that said Sazator purchased lands in Gregory's name & sold the same in his own name with the knowledge and consent of the Defendant Gregory as alleged in said Bill & they deny that said Gregory shared in the proceeds & profits of any such sales. And the said Defendants expressly deny that the land as referred in said Bill was purchased by said Sazator under any such agreement as alleged in said Bill or that said Gregory furnished the money

under said Agreements or that said Sasater did the business of purchasing said land in the name of said Gregory & they deny that said Sasater had any authority from said Gregory to bargain & sell said Land as aforesaid or that said Gregory had agreed with him to carry out & affirm any & all bargains & contracts relative to said premises. But the said Defendants express charges the facts to be in respect to the purchase of said tract mentioned in said Bill from Government, that said Sasater never did enter said tract & said Gregory never did furnish him money to enter said lands, the said Gregory entered the land in person, furnished his own money for that purpose and attended to all the business of entering said Land, & said Sasater had nothing to do whatever in entering said Land at the said office & all the interest & the only interest he ever had in said Land was what he derived from the contract above referred to marked "A" in which only gives him a receipt to a deed upon payment of the money as stated in said contract. And the said Defendant Gregory further answering denies that said contract between Complainant & Sasater in relation to said Land was under possession given of the land & improvements made there with the full knowledge of this Defendant & he also denies that he permitted him to have possession & make improvements thereon, for he expressly denies any knowledge of his having possession of said Lands in the manner specified in said Bill of Complaint and the said Defendants admit that said Sasater was in failing and embarrassed circumstances as charged in said Bill. And the said Defendants deny that said Complainant ever demanded a Deed for said Land as stated in said Bill, and

the said Defendants use of this Court that on the final hearing of this cause they may be dismissed this Court with their reasonable costs & that complainant be adjudged to pay the same

Daniel Gregory

Known to & signed before

Stanford A Sasater

me this 22<sup>nd</sup> day of August 1861

J O Chancel Clerk

Copy of Contract marked A

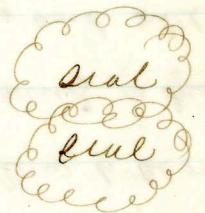
This Contract made this 25<sup>th</sup> day of July AD 1855 between Daniel Gregory of Jayette County and State of Illinois of the first part and Stanford A Sasater of Marion County and State of Illinois of the second part Witnesseth that the said part of the first part in consideration of the sum of \$ 784. <sup>54</sup>/<sub>100</sub> Dollars to be paid him by the said party of the second part on the 25<sup>th</sup> day of July AD 1856 Which payment is hereby declared a Condition precedent does hereby agree to sell and convey unto the said party of the second part by a Good Deed of Conveyance the following described tracts of land situated in the County of Marion and State of Illinois to wit E 1/2 S E 1/4 of sec 7 & W 1/2 of sec 19 & 4 26 1 E & that is to say the East half of the South East quarter of Section seven & the West half of fractional Section No Seventeen in Township No Four North Range No One East of the Third principle meridian containing 261 <sup>45</sup>/<sub>100</sub> Acres more or less upon the full payment of said sum of money at the time specified and not before or otherwise And the said party of the second part does hereby promise to pay the said party of the first part the sum of

Seven Hundred & Eighty Four  $3\frac{1}{100}$  Dollars on the 25<sup>th</sup> day of July A.D. 1856 to be paid at Vandalia Illinois. Provided always that in case of failure by said party of the second part to pay the said sum of money at the time above specified then the said party of the first part may consider this contract forfeited and may take immediate possession of said land and sell and convey the same to any other person whatsoever and in case also the entry or location of said tract of land at the Land Office should for any cause whatever be vacated or cancelled then this Contract is to be void otherwise to remain in full force and effect. The party of the second part is to pay all taxes that may accrue on said Land

In testimony whereof the said parties have hereunto set their hands the day and year above written

Signed

Daniel Gregory  
S A Suster



And afterwards to wit on the twenty ninth day of August A.D. 1861 said Complainant filed in the office of the Clerk of the said Circuit Court his Replication to Defendants answer herein which is in words and figures following to wit

Erastus B Carrer

vs

Stanford A Suster &

Daniel Gregory

Replication

State of Illinois }  
Marion County } SS

The Replication of Erastus B Curver Complainant  
to the answer of Stanford A Sasator and Daniel Gregory Defen-  
dants

This repliant, saving and reserving unto himself all  
and all manner of advantage of exception to the manifold in-  
sufficiencies of the said answer, for replication therto with  
that he will aver and prove his said bill to be true, certain  
and sufficient in the Law to be answered unto and that the  
said answer of the said Defendants is uncertain, untrue and  
insufficient to be replied unto by this said repliant, without  
this that any other matter or things whatsoever in the said  
answer contained, material or effectual in the law to be replied  
unto, confessed and avoided, transversed or denied is true  
All which matters and things this repliant is, and will be  
ready to aver and prove as this Honorable Court shall direct  
and humbly prays as in and by his said Bill he hath already  
prayed

Willard Goodson & Bussett  
Sol for Complainant

And afterwards at the August Term 1861  
of said Circuit Court Do wit on the 31<sup>st</sup> day of August the  
following order appears of Record in said Cause Do wit

Erastus B Curver

vs

Stanford A Sasator and  
Daniel Gregory

Specific Performance

And now at this day Saturday  
August 31<sup>st</sup> 1861 this cause is



called came the parties by their solicitors and this cause being  
at issue ordered that it be set down for hearing at next Term

And afterwards at the March Term  
1862 of said Circuit Court do with on the 17<sup>th</sup> <sup>26<sup>th</sup></sup> day of March  
the following order appears of Record in said cause to wit

Erastus B Carver

vs

Stanford A Sasater and  
Daniel Gregory

Specific Performance

And now at this day do with  
Monday March 17<sup>th</sup> 1862 came  
the parties by their Attorneys  
and leave is given Plaintiff to open Depositions. Afterwards  
on this day do with Wednesday March 26<sup>th</sup> came again the part-  
ies by their Attorneys and this cause is set for hearing in  
vacation. Decree to be entered as of this present Term &c

And afterwards at the August Term  
1862 of said Circuit Court do with on the 28<sup>th</sup> day of August  
the following order appears of Record in said cause to wit

Erastus B Carver

vs

Stanford A Sasater and  
Daniel Gregory

Specific Performance

And now at this day Thursday  
August 28. 1862 ordered that this  
cause be set for hearing for  
Saturday of first week in November  
and Decree to be entered as of this Term

The Deposition of W J W Kidder of the County of Marion and State of Illinois a witness produced sworn and examined before Jacob A Chance Clerk of the Circuit Court in and for the County of Marion and State of Illinois on the 12<sup>th</sup> day of February A D 1862 at his office in Salem to be read as evidence on the trial of a certain cause in Chancery now pending and undetermined in the Circuit Court in and for said Marion County Illinois wherein Erastus B Carver is Complainant and Stanford A Sasator and Daniel Gregory Defendants on the part and behalf of the said Complainant Notice being hereby expressly waived

The said W J W Kidder being first duly sworn according to law testifies as follows

Ques 1<sup>st</sup> Are you acquainted with the parties to this suit

Ans Yes sir I am acquainted with all the parties

Ques 2<sup>nd</sup> How long have you been acquainted with the parties respectively

Ans I became acquainted with Mr Carver in the early part of the year 1860. I became acquainted with Mr Gregory a few months afterwards. I have been acquainted with Mr Sasator for six or eight years

Ques 3<sup>rd</sup> State whether you were at any time and if so when present at any and what conversation between the said

Complainant and the said Defendant Daniel Gregory respecting the purchase by the Complainant of the Defendant Stamford A Sazator of Land, if so state what Land that was or describe said Land

Ans Yes sir I was present at a conversation I think it was in July or August 1860, the conversation took place at Daniel Gregory's house in Vandalia Illinois. The lands were the North Half of the South West fractional Quarter of Section Nineteen in Township Four North Range One East of the third principal Meridian in Marion County Illinois

Ques 4<sup>th</sup> State by name who were present at such conversation and what gave rise to said Conversation

Ans Daniel Gregory, myself & Mr Carver were all that were present at the beginning of the Conversation, Towards the close of the Conversation there was another gentleman called in but he was a stranger to me. What gave rise to the conversation as I understand it Mr Carver called on Mr Gregory to know how he Carver could procure a good title to the lands. He Carver was doubtful as to whether he had bought the land of the right person

Ques 5<sup>th</sup> State what passed between said Complainant Carver and said Defendant Gregory respecting such purchase at said Conversation

Ans There was a great deal said but the substance of what

was said was that Carver wanted to get a good title to the land and proposed buying the lands of Mr Gregory. Gregory looked at the numbers of the Land and informed Mr Carver that Sasater had already sold said lands. Carver then informed Gregory that he was the man that had bought it of Sasater and he Carver produced a Bond that he had acquired from Sasater and claimed that it was forfeited. Gregory examined the Bond and gave his opinion that it was not forfeited. He then told Carver that any arrangements or sale made by Sasater would be binding on him Gregory. Before this however Gregory produced a Bond between himself and Sasater concerning the Lands and read clauses of said Bond to us. After reading said clauses he said he considered the Bond between himself and Sasater binding although Sasater had not adhered strictly to the terms. He stated that inasmuch as the Bond between himself and Sasater was binding he considered the Bond between Sasater and Carver binding also.

Ques 6<sup>th</sup> What did Gregory say about himself being under obligations to Sasater to carry out the Contracts made by Sasater with other parties for the sale of Lands  
 Dependant by his counsel objects to this question on the ground of impertinence and directness

Ans

He stated that he was under obligations to give Deeds for all lands sold by Sasater that he Sasater had entered in Gregory's name

Depd by Counsel objects to the above answer

Ques 7<sup>th</sup> What did Mr Gregory say as to his being bound to carry out the contract between Mr Sasater and Mr Curver for the sale of the Lands described above?

Ans He said that the Deed was to come from him Gregory

Ques 8<sup>th</sup> How did Mr Gregory say that himself and Mr Sasater were operating in the purchase and sale of Lands.

Question objected to by Depts Atty

Ans He stated that he furnished the money to Sasater to pay for entering the Land and Sasater looked up the lands and made the entries

Ques 9<sup>th</sup> What, if any thing did said Gregory say at such conversation as to the nature of the Connection between him and said Sasater in the purchase and sale of Lands and state what in particular said Gregory said in such conversation if any thing as to carrying out his Contract with Complainant

(Question objected to by Depts Counsel)

Ans He stated that he furnished the money to pay for the entry of said Land and that Sasater looked up the Lands and made the entry in Gregory's name That Sasater had the selling of the lands and himself the making of the deeds to the same He stated that he was to receive a certain per cent on the money he furnished whenever the Lands were sold, that there was to be a division of the profits. I am not positive

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whether the ~~last~~ <sup>word</sup> said in the conversation between Gregory and Carver or whether it was read in the clause of the Bond he read to us. He said that Carver was to get his Deed from him  
Carver Gregory

Ques 10<sup>th</sup> State what if anything Mr Gregory said with regard to whom Carver should pay for said lands?

Ans  
I don't recollect anything as to whom Carver should pay except that Gregory said the Notes Carver had given to Sasater for the lands were binding upon Carver

Ques 11<sup>th</sup> In speaking of the lands above referred to was there anything said as to what particular Lands Sasater was to purchase and sell?

Ans  
It referred generally to all Lands entered by Sasater in Gregory name and also to the lands purchased by Carver of Sasater

Ques 12<sup>th</sup> Do you know of any other matter or things touching the matters in controversy in this case which may tend to the benefit or advantage of the Complainant herein? If you set forth the same and all the circumstances thereof fully and at large according to the best of your knowledge as if you had been thereunto particularly interrogated

Ans I don't recollect any thing else at present

Cross Examination by Defendants Counsel

Ques 1<sup>st</sup> Have you any interest in the Lands in dispute and why did you go to Gregory with Curver as before stated?

Ans I have a Bond for a Deed from Sasater for the same tract of Land. I went to Vandalia with him on business and then went with Curver to Gregory just as a Neighbor  
(Defendant by his Counsel objects to all the foregoing on account of Interest & irrelevancy)

Ques 2<sup>d</sup> Examine Exhibit A attached to Defendants answer and state if it is a true copy of the Bond produced and partly read at the conversation referred to?

Ans I recognize the Condition or proviso of the Bond as being the same as read to us but as to the balance I could not say whether it is the same or not

Ques 3<sup>d</sup> Did Gregory in that conversation state that there was any other Contract existing between him and Sasater about the lands in dispute than that contained in the Bond referred to above? if so when did he say that other Contract was made?

Ans Donk know that he spoke of any other

Ques 4 Was or was not all the conversation referred to relative to the

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liability of Gregory in regard to said Sands based upon  
said Bond between Sasater and Gregory and Sasater?

Ans There was no other liability spoken of. He and I know  
of no other liability existing.

Ques 5 State whether or not Gregory said in that conversation  
that he was not bound to make Deeds for Sands sold by  
Sasater until he Gregory received the purchase money?

Ans I dont recollect any such statement.

Ques 6 State whether or not Gregory said in that conversation  
that Sasater had entered the lands in dispute?

Ans Yes sir I so understood him Gregory referred to papers and  
said that Sasater had entered the Sands in his Gregorys name.

Ques 7 State what if anything Gregory said in that conversation  
about him Gregory not having received the purchase  
money for said lands from said Sasater?

Ans I dont recollect of his saying anything about it in regard  
to this Tract of Land. Dont think there was anything said  
about it in regard to this Tract of Land.

Examined by the Complainant



Ques 1<sup>st</sup> State whether the Bond from Sarator to Witness was dated after the date of the Bond from Sarator to Currier for the same Land? if so how long?

Ans My Bond was dated after that of Curriers I dont know exactly how long, but think it was about three years

Ques 2<sup>nd</sup> State whether you recognize the Bond in the Defendants answer as a true & correct Copy of the one read by Gregory at the time of the Conversation referred to?

Ans I do not recognize the whole Bond as being the same but a portion of it I do recognize as being the same

Ques 3<sup>rd</sup> Do you recognize it from memory? and what portion of it do you recognize?

Ans I recognize it from memory, from hearing it read. The portion of it that I recognize is the proviso

Ques 4 State whether or not you consider the Bond from Sarator to you cancelled or do you consider it still binding

Ans So far as this Land is concerned I consider it void

Wm J W Kidder

Sworn to and subscribed

before me this 12<sup>th</sup> day of

February AD 1862

J O Chance Clerk

The Deposition of James Bassett of the County of Marion and State of Illinois a witness produced sworn and examined before Jacob O Chance Clerk of the Circuit Court in and for the County of Marion and State of Illinois on the 17<sup>th</sup> day of July A D 1862 at his office in Salem to be read as evidence on the trial of a certain cause in Chancery now pending and undetermined in the Circuit Court in and for said Marion County Illinois wherein Erastus B Carver is Complainant and Stamford A Susater and Daniel Gregory Defendants on the part and behalf of the said Complainant Notice being hereby expressly waived

The said James Bassett being first duly sworn according to Law testifies as follows

Ques 1<sup>st</sup> Do you know the parties to this suit and if so how long have you known them?

Ans I know the Complainant Mr Carver since the latter part of 1858 I know the Defendant Susater 5 or 6 years. I know Mr Gregory since from the early part of 1860

Ques 2<sup>d</sup> State whether you had any conversation or conversations with Stamford A Susater respecting the purchase by the Complainant from said Susater of Land and if so state what the land was, describe same

Ans I had very many conversations with Mr Susater about

that purchase the lands as near as I can recollect was a fractional part of the S W 1/4 of Section 19 T 4 - 1 - near Patoka some 43 or 45 acres I cant recollect which

Ques 3<sup>d</sup> State what passed at such conversation or conversations if there were such

Ans I called on Mr Sasser in behalf of Mr Carver to know what he would do about making a deed for that land I told him <sup>that</sup> Mr Carver had been sued upon that note he gave to Sasser as payment for the purchase money for the land. That he had been sued by Mr Song to whom Sasser had assigned the note. I told him Carver would have to pay Song and I asked him what he would do to protect Carver, would he make the deed to Carver? He said he couldnt make the deed to Carver because the legal title to the land was in Mr Gregory and he said also that Carver having been away so long after the delivery of the note to him that he thought Carver had abandoned the matter and had after that sold the land to Mr Kidder and until Kidder had given up that claim that he had he couldnt feel safe in dealing directly with Carver and told me to see Kidder about it. I asked him how he came to sell land to Carver and Kidder while the title to the land was in Mr Gregory. He said that he had a Bond or agreement with Mr Gregory which enabled him to sell those lands and other lands. He said he would let me see the agreement and he would see Kidder and bring

70  
Kiddler to me and the agreement to me. I think that occurred in the latter part of 1859 or the early part of 1860. It was after the suit was commenced between Tong & Carver. The Records will tell. Some time after that conversation some few weeks I think in September 1860 he brought in Mr Kiddler to me. They both handed me the Bond that Sasater gave to Kiddler and it was then arranged that that Bond was to be left with me to be cancelled as to the said Sands. Kiddler relinquishing his claim on it as to said Sands to save Sasater from indictment for selling Sand twice. I have that Bond in my possession. I should say that I told Mr Sasater that Mr Carver intended indicting him. Mr Sasater then handed me a Bond or agreement between him & Mr Gregory. I examined that. there were several endorsements on it. I asked him if there was any other agreement between him and Mr Gregory. He said there was but he said he could not recollect whether it was in writing or an agreement understood between them. That he would hunt up his papers and if he had it in writing he would give it to me. He stated that the terms of that agreement secondly referred to were that he would look up Sands which Mr Gregory would enter. That Mr Gregory would furnish the money to pay for those Sands that he Sasater would procure purchasers and sell the Sands and that he & Gregory were to divide the profits between them and that under that agreement and the paper that he gave me he was authorized to treat with Carver and Carver being out of the way he

dealt with Kiddle's I've said that on the matter being  
said by Carver to Jony that he had no doubt he could  
get Mr Gregory to execute the deed. I called his attention  
to the terms of the paper that he gave me and suggested  
that if the terms of it were not complied with Mr  
Gregory might refuse. He said the terms of that agree-  
ment were extended and that the other agreements that he  
had was never cancelled, and that Mr Gregory no doubt  
would comply. The paper he gave me at that time I had in  
my possession for some time but afterwards gave it to  
him Sasator. The paper appended to the answer in this  
cause is I think a copy of it but the endorsements that  
were on that are not on the copy attached to the answer.  
The extension of time related to the Contract which I re-  
turned him and I understood him that that extension of  
time was then in force. I had several other conversations  
since that with Sasator Carver was pressing for Indictment  
and I was urging Mr Sasator to have the deed made so  
as to quiet Carver but I did not succeed in getting Mr  
Sasator to procure it. I would say that Carver by my  
advice gave up lands & relinquished homestead right to the  
Sheriff for the satisfaction of the judgment obtained by  
Jony on the note for the purchase money of the Land above  
referred to

Defendant Gregory excepts to this Question & answer

Ques 4<sup>th</sup> State whether you had any and what conversation with  
Defendant Gregory respecting the purchase by the Complainant

from the Defendant Sasater of Land, if so describe the Land and state what passed at such Conversation?

Ans I had a conversation with Mr Gregory upon the subject I had a conversation at Clark's Hotel, I think it was in the fall or winter of 1860. The conversation was about the Land described in the answer to the 2<sup>nd</sup> Interrogatory. I told Mr Gregory of Sasater having given the Bond for deed to Carver. I told him of Carver having given the note. I told him of the assignment to Jorg. I told him of Jorg's suit I told him of Sasater having sold to Kidder. I told him that Carver had the Land in his possession and had spent money on it and was desirous to get his deed in case he paid Jorg. I told him that I understood Sasater had not the title, that I understood the title was in him Mr Gregory. Mr Gregory asked me where the land was. I told him it was near Patoka. Mr Gregory told me that he had a Bond or agreement with Sasater about Land near Patoka and that possibly that Land may be a part of it. He said that Sasater did not comply with the terms of that matter yet that he supposed he would be bound by Sasater's agreement. He advised me to get Carver to pay the purchase money to him instead of to Sasater or Jorg and then Carver would be sure of a good title. At that time Carver had not settled with Jorg. He said that Sasater was unfortunate and careless but that he supposed that he would be bound by the fair agreements of Sasater. He said there was a general understanding or agreement

between him & Sazater about Sands. the purchase and selling of Sands including the above Sands but that Sazater never kept his agreements with him. I had a subsequent conversation with Mr Gregory. I think it was in the March term 1861 of our Circuit Court. I told him of Curver pressing Sazater as to the Indictment. He said if Curver & Sazater could settle and come and arrange with him that he could get the Deed. Gregory stated in the first conversation that he was to furnish money to enter Sands and Sazater was to sell and pay the money to him and there was to be division of per centage or profits between them Mr Gregory said the Conveyances were all to come from him of course as all the Sands were all in him

Ques 5<sup>th</sup> Do you know of any other matter or thing that would be of benefit to the Complainant? if so state fully

Ans Both Mr Sazater & Gregory were informed by me that I was the Attorney for Mr Curver. It does not occur to me that I know of any thing more except that Kidder makes no claim to the Sands under his Bond

Defendant Gregory excepts generally to all the foregoing

Cross examined by Defendant Gregory

Ques 1<sup>st</sup> Was the Defendant Gregory ever present at the conversation with Sazater of which you speak in your examination in chief

31 Ans It was not

Ques 2<sup>d</sup> State what endorsements were on the copy of the Bond or Agreement which Sasator showed you, in whose hand writing they were and by whom put there?

Ans There were two or three endorsements on it. I cannot say state now particularly what they were They related as far as I can recollect to the lands that were inside. I cannot tell particularly now whose hand writing it was but my impression is that it was Mr Gregory's. I understood from Mr Sasator that the original which I returned to him was with Mr Schaeffer

Ques 3<sup>d</sup> State whether or not Sasator ever showed you any additional Agreement between Sasator & Gregory to the one a copy of which is on file with Defendants answer?

Ans He never did But he said there was such an agreement He could not recollect whether it was in writing or not I wanted to see it if it was in writing and he promised to look but I never saw it

Ques 4<sup>th</sup> In your conversation with Sasator & Gregory and from the endorsements on the Bonds or agreements referred to did you learn that Gregory had been paid anything for the Lands in controversy

Compl't excepts to this Question



Ans I saw my conversations with Sazator I certainly did not learn that he paid Gregory anything for the lands because I asked him that question Sazator said that Gregory & he had never closed their business dealings, they were still open from Mr Gregory I learned that neither Sazator nor Carver paid him any money for the Land. I cannot state particularly the endorsements

Ques 5<sup>n</sup> State whether the endorsements referred to had reference to the tract of Land in Controversy?

Ans I have stated that I cannot particularize the endorsements my impression is that it did not

Answer objected to by Complainant

Ques 6<sup>n</sup> State if you can when the note of Carver was assigned by Sazator to Ding in reference to its maturity whether before or after

Ans I dont know anything about that.

Ques 7<sup>th</sup> In your conversation with Gregory of which you spoke in your examination in chief state whether or not Gregory told you that there was any other agreement between him and Sazator than that a Copy of which is attached attached to the answer of Defendants

Ans I understood that there was an agreement for entry of Sands and division of per centage or profit but I had not

this Agreement with me at that time and there was nothing distinctly referring to this Agreement. I understood that the Agreements were distinct

Ques 8<sup>th</sup> State of Sasater had given or shown you the Bond or agreement referred to before your said conversation with Gregory and whether your conversation did not have special reference to the respective rights of the parties herein growing out of said Bond or Agreement and the Bond that Curver held from Sasater?

Answer I think I had that Bond before my conversation with Gregory. My conversation had reference to the rights of Curver upon his Bond. I did not refer in that conversation to the Bond or Agreement between Gregory & Sasater, than I think in my possession. My object was to see how Curver would get his deed

Ques 9<sup>th</sup> Did not Gregory in the same conversation of which you speak state that he was under no obligations to make a deed for the lands in controversy, except as provided in said Bond or Agreements between him and Sasater and that he would not make a deed for the same until he received the purchase money

Ans I did not refer to the Bond or Agreements and Mr Gregory did not distinctly refer to it. It formed no part of our conversation, distinctly. I understood the Agreement he referred to was a general one as to sale and transfer of Lands. He did

not say that he would not make a Deed till he got the purchase money but he advised me to get Sarsiter & Carver to settle with him and he would give the Deed  
Complainant excepts generally to all the Crps interrogatories

Ques 10<sup>th</sup> State whether or not in that Conversation with Gregory, he Gregory stated that after he entered Lands he sold them to Sarsiter and gave him a Bond for a deed conditioned upon the payment of the purchase money  
Question objected to by Compl<sup>s</sup> counsel

Ans I cannot call up any recollections of any such observation

Re-examined by Compl

Ques 1<sup>st</sup> State if you recognize the Bond in file in Defendants answer as being the Bond or an exact copy of the Bond referred to in interrogatory second

Ans It is not the Bond referred to. I cannot say that it is an exact copy of the body of the Bond. The endorsements on the back of the one I had are not in that attached to the answer. I did not compare the body with that attached to the answer  
Cannot say that it is an exact copy but think generally that it is a copy

Examined to and signed

James Bassett

before me this July 17<sup>th</sup> 1862

J. O. Chance Clerk

And afterwards at the March Term 1863 of  
said Circuit Court, To wit on the 11<sup>th</sup> day of April the  
following order appears of Record in said cause to wit

Erastus B Carver

vs

Stanford A Sarator and

Daniel Sogony

Specific Performance

And now at this day to

wit Saturday April 4. 1863

this cause is called for hearing came the parties by their  
Solicitors and this cause is heard on Bill, answer exhibits  
and Depositions & Replication to answers and the Court  
having heard same and the arguments of Counsel, doth  
order, adjudge and Decree for Defendants for Costs &c

State of Illinois  
Marion County J. J. O. Chancel clerk of the Circuit Court  
of said County do hereby Certify the foregoing  
to be a true and complete Record of the proceedings had  
in our said Court in the above entitled cause as the same  
is at the end of Record in my office



Given under my hand and official Seal  
at Salem this 11th day of June A.D. 1863  
J. J. O. Chancel clerk

And now comes the said Complainant  
out by Willard Hyndman and James Beckett his  
Attornies, and says that there is manifest error  
in said Decree, and for error assigns as follows  
to wit.

#### Errors assigned.

I — The Decree is erroneous, in that it does not  
find the facts to warrant it, and is only for Costs,  
without either granting the relief sought or dismissing  
the Bill — *Sampson v Hunt 1 Root 207.*

II The Decree is erroneous, in that it does not con-  
form to the allegations and proofs, and is not  
founded on either — *Pigg vs Carter 12 Leigh 69*

III The Decree is erroneous, it overlooks the unity between  
the case alleged, the relief sought, and the Equity to have  
that relief — it overlooks the proof sustaining the material

allegations, and the consistency of the Equity sought. It is erroneous in not granting that Equity.

Edell vs Burt Hardin 567

O B Barren

vs

Lavelle and Gregory

Record

1870/10/13

14 - The decree is erroneous in that it is contrary to well settled rules of Equity.

1 - That real estate and its proceeds can be the subject of partnership

2 - That no vendor or incumbrancer in sale of Land can take advantage of his silence for his own benefit

3 - That the acts of an Agent within the scope of his authority bind his principal, and that one co-partner within can bind his co-partners within the terms of their partnership.

4 - That a person, not actually a party to a contract may yet be bound by it.

2 Willard Vendors 186.

15 - The Court erred in sustaining the sworn answer, when oath was waived and two witnesses contradicted it.

2 New Chy Pr 1022.

VI - The Court erred in basing its decree on Exhibit A to the Answer, and in relying thereon in the absence of the original, which absence is not accounted for; and in the absence of proof that said Exhibit A was either a true or a complete copy. 2 Davd Chy Pr 1022.

VII - The Court erred in overlooking the nature of the Answer, it was a joint and several answer, and the admissions of one Deft was evidence against his Co Deft.

Restor v Restor 3 pl 105.

VIII The Court erred in view of the Evidence in not decreeing the specific performance of the deed showing that Compt did all he was required to do - The Decree impliedly surrenders same.

C. B. Cameron Compt

By Willard Goddard and  
James Bassett his Atty.

Supreme Court

6

~~55~~

Erastus B. Carter

24

Stamped A. L. Carter  
& David Gregory

Records

Filed Nov. 13, 1863-

St. Johnston Ct

Paid by Goodnow \$11.50

James B. Peck

A. C. Goodnow

Att. Gen. 1864

fees \$10.40



In the Supreme Court of State of Illinois  
1st Grand Division.

Erastus B Carver Plaintiff in Error }  
vs } Error to  
Stanford A Lasater and }  
Daniel Gregory Defendant in Error }  
Marion County

Plaintiffs Brief Arguments.

This was a suit in Equity for Relief in the nature of Specific performance. The cause was heard by Hon Silas L Bryan at March Term 1863.

The decree was for costs, and without be on the Judges notes, hence the Clerk could not extend them to dismissal. It is however virtually a dismissal and is consequently erroneous in form. Hence the Plaintiffs 1st point (See Abstract). That point is that the Decree does not find the facts to warrant it, and is for costs only, without either granting the relief sought or dismissing the Bill. In Sampson vs Hunt 1 Root 207. 531. and Burdoin vs Shelton 10 Yerz 41. It is decided, that a Decree in Chancery must find the facts which warrant it. and in House vs Bolnesmitt 1 Jf March 506 it is decided, that a judgment or Decree should show upon its own face what the Court has decided.

This Decree is virtually a Decree of dismissal and hence this Court may act in the premises, and

so much for the just point relied on by Defendants  
in their Brief.

Abstract July 6. The Bill in this cause prays that Complainant's  
agreement with Lasater of 17 March 1857 for purchase  
of  $\frac{1}{2}$  of SW  $\frac{1}{4}$  of Sec 19 T4 N61 E R2  
specifically performed, and that Deft Gregory  
be decreed to carry out same and make Deft  
to Plff in Error.

There is no question whatever, that if Lasater  
had title to the Land, a Court of Equity would  
decree specific performance by him. All the facts  
necessary to that end are alleged and admitted.

Abstract July 8. Lasater in the joint and several answer, admits  
the Contract, price, possession of the Land and  
improvements made, making note for the purchase  
money, his transfer thereof to Long before due for  
valuable consideration, and payment of the note  
to Long is proved. Lasater also admits that Gregory  
had title, and Lasater none, except what he

Abstract July 28. denied under Contract A appended to the answer  
which admits in Gregory's answer, that Contract  
A to answer will again be referred to.

If this suit were against Lasater alone, and he  
had no title, this Court could not decree his specific  
performance, and leave him to his action at law  
to recover the purchase money, and to his indictment  
for selling Land without Title.

But the aid of a Court of Equity is sought against Gregory, the legal owner <sup>placing him in Lasater's position</sup> in fee, on grounds which the Plaintiff in error claims and submits are strictly equitable and in good conscience

These grounds are

Abt folio 3. That at time of Lasater's sale to Comer (17 March 1857) Lasater was acting under an agreement between himself and Gregory, by which he (Lasater) had full power from Gregory to sell ~~and convey~~ said Lands. The Bill charges that Lasater and Gregory were partners in buying and selling Lands, Lasater being the active agent of the partnership, Gregory furnished the money, and Lasater expended it in purchase of Land from the government in Gregory's name, sold them in his own name, with knowledge and consent of Gregory, who shares in the profits of sales. That the land in question was bought by Lasater under that agreement Gregory furnished the money, Lasater bought them in Gregory's name, had full power from Gregory to sell Gregory having agreed with him to carry out, and affirm all contracts as to said lands.

Abt folio 4 The Bill states that Comer had a conference with Gregory about that purchase from Lasater, that then Gregory assured him that Lasater under an existing contract with him (Gregory) had full power to contract and sell same, and that he Gregory was bound to convey same, and would affirm Lasater's contract, that Lasater had an interest

with him in the land, but did not disclose that interest.

Abst July 5

The Bill charges further that Camer's contract was made, possession given, and improvements made by Camer with Gregory's knowledge, who permitted Camer to contract, take possession, and improve the land, without disclosing the true facts, ~~and~~ <sup>or</sup> making his interest in the Land known to Compt.

Abst July 6

That about time of maturity of the note Lasater failed, is insolvent. That since transfer of the note, Camer paid it, and demanded his deeds from Lasater and Gregory, which they refused and still refuse to make.

This is the case on which Plaintiff in error seeks relief as against Gregory.

Before adverted to the evidence to sustain these allegations and charges of the Bill, we will refer to the Defendant's answer to them.

The answer of the Defendant is joint and several, and was read at the hearing of this cause. It is a sworn answer, though the oath was expressly waived in the Bill. We have adverted to Lasater's admissions in the answer as to making the contract, the price, possession and improvements, transfer of the note. These admissions it is submitted bind Gregory under the decisions of this Court in *Rector vs Rector* 3 Gilt 105. and *Rust vs Mansfield* 25 Illin's 338. and see 3 Greenleaf on

Evidence See 383 and cases referred to. and this is the effect of point 7 of Pleff in error (See Abstract).

As to these facts so admitted by Lasater, the Abstr for P. 9. Reft Gregory says that at the time of making said contract with Carter by Lasater, he was ignorant of it, was not going to it, did not consent to it, had no knowledge of it except from Bill, or recently from Lasater, never consented to ratify it, knows nothing of the possession or improvements, that Carter in possession was so without his authority directly or indirectly except from Bill.

x that the evidence abstract for 19 shows Gregory did know that Lasater had sold these lands. Kidden says that "Gregory looked at the number of the land and said Lasater had already sold them, then Carter said he was the purchaser and produced the Bond A to Bill that he had acquired from Lasater." again we say this knowledge bound him and he was a silent witness and approver of Lasater's dealing

In all this it is sought to say, that if the relation of partnership as alleged on the terms alleged existed, and Lasater had power to contract for the Land and Gregory bound to affirm his contracts, in that case the knowledge and consent of Gregory is implied, both at Law and in Equity, and this is the subject of the second and third sections of point 4 (See Abstract) which are that no Vendor or in encumbered or sale of lands can take advantage of his own silence for his own benefit - and in 3rd section point 4. That the acts of an agent within the scope of his authority bind his principal, and that one partner can bind his co partner within the scope of his authority terms of their partnership. The <sup>former</sup> ~~second~~ of these propositions is decided by this Court in Cochran vs Harrow 22 Illinois 348. and see on this point Day vs Martin 4 Seam 152. and see also Mendell vs Van Kessel

and *Stinson vs Belknap Johnsons Chy Dig p 246.*  
and *Leading cases in Equity p 866.* As to  
the latter proposition this Court has decided  
the point in *Ward vs Williams 26 Illinois 447*  
and see *Stovenden on Grand Jurors 186. 189. 193. 195.*

Abt p 10

The depts Gregory and Lasater jointly say  
they are ignorant when Lasater learned Lasater  
had no title. admit Gregory is sole owner of the  
Land, and that the only title Lasater had, was  
derived from a contract of 25 July 1855 between  
them both (Lasater and Gregory) copy of which  
marked A they appended to the answer as part of  
it. They deny that Lasater when he sold to  
Carver (17 March 1857) was acting under any  
agreement other than A above mentioned, and a  
verbal extension of time of payment, and that said  
contract A is forfeited by its terms.

To this it may be enough to say that of the  
partnership as alleged and its alleged terms be  
proven, that not only does the joint signature  
of Gregory before adverted to utterly fail, but also  
in that case the contract A, was not the only  
contract between Lasater and Gregory, and that  
there was another either verbal or written is  
clear from the testimony. This may be sought to  
say perhaps, but we say further that this Contract  
A should be eliminated from the case. because  
as stated in <sup>point</sup> point 6 (see Abstract) the Court  
should not have acted on it, in the absence of

the original, which absence is not accounted for, and in the further absence of proof that A was neither a true nor complete copy.

In 2 Daniels Chy R. p 1062 it is laid down that if plaintiff has proved a document which is in the custody of Def<sup>t</sup>. Def<sup>t</sup> is bound to produce it at hearing, though not served with an order to that effect. and again in page 1061. 1064 of same work it is laid down that secondary evidence must show the party has not means to produce it, such as its being lost or destroyed or in hands of a adverse party. None of these things have been done. The original has not been produced, its absence is not accounted for. both were demanded at the hearing, but no reply.

The Def<sup>t</sup> Jurgyn in his 3rd point in his Brief says that both Kidder and Russell identify the copy A, and by their evidence it is a sworn copy (the indorsements being no part of it they say) and Mr Russell Came's atty had the original, put it in possession of Lacater, out of the att of Gregory, and that there the evidence leaves it — The Def<sup>t</sup> Jurgyn counsel has here forgotten the great rule of discussion and argument to state your opponents case with the greatest fairness, and if possible state it with more force against yourself than your opponent can. he has felt our case to be stronger than his in this respect, and should not argue against it. Now the testimony of Kidder in this respect is being

Show Exhibit A to the answer and asked if it was a true copy of the Bond produced at the conversation witness said he recognized the condition as being the same as reads, as to the balance he could not say whether it is the same or not. On cross examination he said he did not recognize the whole Bond A to answer as the same, but a portion of it he did recognize as the same shown to him by Gregory at said conversation. recognized it from memory, from hearing it read, the portion he recognized was the promise. The testimony of Bassett

Abst fo 27

on this point is that Lasater handed him a Bond between him and Gregory, that there were several indorsements on it. ~~He~~ On cross examination witness Bassett said there were two or three indorsements on the Bond spoken of relating as far as he could recollect to the <sup>Sand</sup> ~~Bond~~ within it, could not tell in whose handwriting they were but thought in Gregory's. Understood from Lasater the original which witness gave him (Lasater) was with Mr. Shreffler, <sup>as also on the direct</sup> witness Bassett said the Bond in Dept's answer he did not recognize as an exact copy, it is not the Bond referred to, could not say it is an exact copy of the Bonds. The indorsements on the back of the one he had one with on that attached to the answer did not compare the body with that attached to the answer, could say it is an exact copy, but thinks generally it is a copy—

Abst fo 31

Abst fo 34



This is all the evidence on this point, leave any reasoning mind say that this Bond A to the answer is a sworn copy. Kiddle only recognizes the form or condition - does not identify the rest - Bassett says it is not an exact copy, but that generally it is a copy. Would any Court act on such testimony to admit a paper in evidence, <sup>and decide rights on it,</sup> The evidence of Bassett should have put Gregory on the alert to procure it, or account for its own production. Bassett says he got a Bond from Lasater, returned it to him, that Lasater told him W Shaeffe had it. W Shaeffe was Attorney for Lasater and Gregory <sup>acting for Defts and Gregory has no account</sup> was present at the examination, argued the cause and Gregory was also present at Bassett's examination he could have produced it. There was no suppression on part of Deft or his attorney. It did not come to Bassett from Gregory, but from Lasater, was returned to him, handed to Shaeffe deft attorney. There is nothing to lead Deft counsel to assume the Bond so received and delivered back to be the original of the copy A. nor is there anything to show how the copy A (supposing but not admitting it to be a copy for the purpose of adjudication) came to the hands of Deft. The answer is joint as to this exhibit A why not append the original, or account for it, when they were jointly answering they knew where it was.

On the whole the rule of practice in Equity in such case has not been complied with, and the exhibit A should be cut off from the case.

In this connection we would say that the answer and its exhibit is not evidence for the Defts

It is under oath, while the Bill waives oath, the  
oath gave it no further effect. (Moore vs Bunker  
1 Gil 332 R. S. 1845 s. 21 p. 96) and where the  
Bill waives oath, Complaint must prove all his  
allegations put in issue by the answer. The answer  
in such case can be ordered for Def. for  
any purpose while as a pleading plaintiff may  
avail himself of it a defense and allegations  
which establish the case made by the Bill.  
(Harris v Rose 5 Gil 213. 2 Sand Chy R. 1032  
note. Patterson vs Jones 6 Bow. U. S. 870.) ~~and~~  
~~objec~~ This case should have been decided on Bill and

Oct 11. 12

But to return. Def. deny they were partners  
as alleged. Deny that Gregory furnished money to  
Lasater to purchase <sup>land</sup> money. Deny he so purchased  
in Gregory's name, and sold in his own with Gregory's  
consent. Deny Gregory shared profits. Gregory denies  
the land in question was bought by Lasater under  
any such agreement as alleged, denies Gregory provided  
the money or that Lasater did the business, or that  
Lasater had power to sell or that Gregory agreed to  
affirm. Charles Lasater never entered that tract in  
Gregory's name, who never furnished the money, that  
Gregory entered it himself paid his own money  
that Lasater had nothing to do about it. <sup>that the</sup>  
only interest Lasater had was denied under <sup>to answer</sup> exhibit A.

10 11

Gregory says he does not recollect the confer-  
ence alleged, does not believe he had such, denies  
he stated to Carver that there was a contract for

for sale giving Lasater such power and binding Gregory to convey. denies promising Cornett to affirm Lasater's contract. Avers that if he had such conversation, he must have stated, that the only contract between them was A and that he was only bound to convey to Lasater on payment of the purchase money and that he would not convey until he received same. That neither Lasater nor Carver has paid him any part of the money due under A and had got no consideration for said Land, or promise of conveyance from Lasater or Carver.

This brings up the gist of this case.

1. Was there such a conversation
2. Was there such partnership.
3. Was A the only contract as between Lasater and Gregory. <sup>really material</sup> These are the issues in this Answer. Has Plaintiff fully and fairly met them.

As to the 1st. the conversation was proved by Kidden, who says he was present at a conversation in July or August 1860 at Gregory's house in Vandavia identifies the Land in question. Gregory, Carver and himself were present at the conversation, it arose from Carver calling on Gregory to know if he could get a good title to the land, being doubtful whether he bought of the right person. Carver wanted good title and proposed buying of Gregory. Gregory looked at the numbers of the Land and said Lasater had already sold them. Carver said he was the purchaser, handed Gregory his Contract with Lasater, and claimed it perfect. Gregory examined it, and gave

about p 18

p 19

his opinion it was not forfeited, and told Carver that any arrangement or sale made by Lasater would be binding on him Gregory. Before this, Gregory produced a Bond between him and Lasater, about the land, read clauses of it to them, after reading he said the bond between him and Lasater he considered binding, though Lasater had not strictly adhered to it. and that as he considered that bond between him and Lasater binding, he also considered that between Lasater and Carver as binding. That he Gregory stated he was under obligations to give deeds for all lands sold by Lasater, which he Lasater had entered in Gregory's name. That the deed to the land was to come from him. That he furnished the money to Lasater to enter the Land, who looked it up and made the entries. That Gregory gave the money for entry, Lasater looked them up, entered them in Gregory's name, Lasater had the selling and Gregory making the deeds. Gregory was to get per centage on the money, when the lands were sold, and the profits were to be divided. That Carver was to get his deed from him Gregory, that Gregory said the notes Carver gave Lasater for the lands were binding on Carver. That in the conversation Gregory referred generally to all lands entered by Lasater in Gregory's name, and to the lands bought by Carver of Lasater.

fs 20

fs 21

Abak fs 22

[1848-31]

On cross examination. Kidder said he had a Bond for a Deeds from Lasater for the same land

fo 24

his Bond was dated 3 years after Carter  
On his re-examination he said, he considered the  
Bond from Lasater to him as being ~~represented~~ <sup>as</sup>  
void so far as the Land in question is concerned.

fo 22

On cross examination he said he went to Vandele  
with Carter in business, and then went with Carter  
to Gregory's as a neighbor. He said after stating  
about A already given. That he did not know  
that Gregory spoke of any other Contract than that  
in above Bond. said no other liability was spoken  
of than that in the Bond between Gregory and Lasater  
and knew of no other liability existing. That he under-  
stood Gregory on referring to the paper as <sup>saying</sup> that Lasater

fo 23

had entered the land in question. Gregory said Lasater  
had entered these lands in Gregory's name. The  
question was asked him if Gregory said anything  
about his not having received the purchase money  
for said land from Lasater? He answered  
he did not recollect his saying anything about it  
in regard to the tract in question, and did not think  
there was anything said about it in regard to this  
tract of land.

As to this testimony Dept Counsel fornt H.  
says Kidden contradicts himself. in cross examination  
on the fairest and <sup>on fair and</sup> most candid construction we  
cannot see contradiction, <sup>we ~~do not~~ only see</sup> we see want of clearness  
only. Kidden <sup>could</sup> did not mean to <sup>say</sup> convey that Gregory  
spoke of <sup>no</sup> ~~any~~ other Contract than A, when he had  
the contract of Plaintiff with Lasater, before him, he could  
not mean that no liability existed <sup>but</sup> ~~than~~ that on the

Bonds between Lasater & Gregory while the Contract of Carver was before him, this want of clearness arose we think from Counsel in his questioning using technical expressions as liability, which witness did not clearly apprehend and witness means

~~while the Contract of Carver was before him~~  
Bonds between Lasater and Gregory, use to be it that ~~the want of clearness arose from the fact that the witness was not present at the time the contract was signed~~ ~~we think he meant~~ that as between Lasater and Gregory he knew of no liability except on the Bond produced by Gregory. His mind did not go to Carver's claim. Be this as it may the witness is clear that there was an understanding as to furnishing money, entry and sale of land, and division of profits. Kidder did not in speaking of these call it a partnership contract, he told what Gregory said, without making an inference ~~implying a contract~~ ~~deft Counsel makes the inference to form his allegation~~ ~~is correct but the inference is not from the contract~~ ~~in point 7~~ ~~deft Counsel throws doubt on the visit to Gregory his words are "if it were so"~~ ~~W Kidder was a surgeon in the Army, is nephew to W Lasater and another surgeon who has fought a battle and stands unimpeached.~~ ~~Counsel in his anxiety to infer contradictions should not impeach the character of the absent.~~ Such observations are irrelevant and unbecoming and the more so of a disinterested witness.

fo 26

James Bassett testified that in latter part of 1859 or early in 1860, he had conversations with Lasater at which (fo 31) he said Gregory was not present. That he called on Lasater to know what he would do about making Carver a Deed for that land. Witness also testified to conversations with Gregory, when Lasater was not present, and that he told both Lasater and Gregory he was Carver's attorney. That Lasater said he could not deed to Carver, the

title being in Gregory, that Lasater said he sold  
the land to Camer under a bond or agreement  
with Gregory which enabled him to sell these and  
other lands. promised to get witness see the agreement  
and would buy Kidden bond. That in Sep 1860 he  
did buy Kidden. They handed witness Lasater's Bond  
to Kidden for cancellation, Kidden relinquishing claim  
on it. That then Lasater handed witness a Bond between  
him and Gregory, with endorsement on it. Lasater  
being asked said there was another agreement  
between him and Gregory, but could not say whether  
it was written or not, would hunt it up. and give  
it to witness. Lasater said the terms of that <sup>other</sup> agree-  
ment were that Lasater was to look up the Land  
Gregory sent them and furnish money to pay for  
them, Lasater to get purchasers and sell, and he  
and Gregory divide profits, and that it was under  
that agreement <sup>and the paper he handed witness</sup> he was authorized to treat with  
Camer. That as Camer paying Long, he had no doubt  
Gregory would give the Deed. On witness calling his  
attention to the Bond shown him, its forfeiture and  
that Gregory might refuse, Lasater said the terms were  
extended, and that the other agreement was uncancelled  
and that doubtless Gregory would comply. Gave the  
Bond to Lasater, thinks the paper annexed to the annex  
is a copy except that it has not the endorsements, the  
extension of time related to that contract so renewed  
which witness understood was in force. That  
Camer on his advice gave up the Land and

fs 27

fs 28

fs 29

relinquished his homestead to the Sheriff to satisfy the judgment long obtained on the note for purchase money of the land referred to.

That he had a conversation with Gregory in fall or winter of 1860. told Gregory all the facts that Cameron wanted his deed, and told Gregory the land was near Patoka in answer to Gregory's question. Gregory said he had a bond or agreement with Lasater about lands near Patoka, and possibly the land may be part of it; said Lasater did not comply with its terms, yet he supposed he would be bound by Lasater's agreement. That he advised witness to get Cameron to pay to him instead of Lasater or Long and then Cameron would get good title. (Then Cameron had not paid Long) That Lasater was careless and unfortunate, but he supposed he was bound by Lasater's former agreement. Said there was a general understanding or agreement between him and Lasater about lands, their purchase and sale, including the land in question, but that Lasater never kept his agreement with him.

fs 30

That he had another conversation with Gregory in March 1861. when Gregory said that if Cameron and Lasater would settle with him he could get the deed. That Gregory stated in the first conversation that he was to furnish money to enter lands, Lasater was to sell, pay the money to him, and there was to be a division of percentage or profits between them, and that Gregory said



fo 31

that all the debt were to come from him <sup>the latter</sup> he having

On cross examination witness said (after stating as to A what is given before) that Lasater never showed him any additional agreement, but said there was such, and could not recollect whether it was in writing or not, that he wanted to see it if in writing, that Lasater promised to look it up but witness never saw it. Did not learn from Lasater he paid money for the land, that he asked Lasater that question, who said that Gregory and he had never closed their business dealings, they were still open, but witness learned from Gregory that neither Cover or Lasater had paid him for the Land. Being asked whether Gregory said there was another agreement <sup>than</sup> that A to the answer, said he understood there was an agreement for entry of lands and division of profits and percentage. That he had no agreement with him and there was in it nothing distinctly referring to that agreement, but he understood the agreements were distinct. Think he had the Bond before his conversation with Gregory, his conversation had reference to the right of claim under his Bond. Witness did not in conversation with Gregory refer to that Bond then in his possession, his object was to see how come could get a deed. The question was asked if Gregory did not state he was under no obligation to make a deed for the land in question, except as provided in said Bonds between him and Lasater and that he would not make a deed for same

fo 32

fo 33

unless he received the purchase money? Witness said he did not refer to the Bonds, nor did Mr Gregory distinctly refer to it. Witness understood the agreement was a general one as to sale and transfer of land. Gregory did not say that he would not make a deed until he got the purchase money, but he advised witness to get Lasater and Carter to settle with him and he would give the deeds.

Such is the evidence.

It is clear that the alleged conversation took place between Carter and Gregory and it establishes the allegations of the Bill in that behalf (compare Abstract, fo 4 with fo 18, 19, 20.)

It is clear also that there was a partnership on the terms alleged in Bill (compare folios 3 and 4 with folios 20, 27, 30).

It is clear also that A to answer, was not the only agreement <sup>whether written or verbal</sup> between Lasater and Gregory. (compare fo 20, 23, 27, 30)

These things being clear, then the answer of Deft is evasive and untrue in these particulars

Deft Counsel calls this a "pretended partnership" repugnant to common sense, absurd, unreasonable, that any man should enter land, pay tax, divide half profits to another when sold as compensation for negotiating sale - epithets prove nothing, nor is it so absurd as alleged. Counsel said price was

125  
 45  
 628  
 500  
 56.25

45  
 270  
 56.25  
 213.75

\$1.25 an acre, the purchase money on the land in question would be \$36.25, whereas it was sold to Carver for \$6 an acre being in all \$270 a clear gain of \$213.75. But <sup>even</sup> of the partnership was absurd, that does not alter the fact, but Plff denies its absurdity, while he feels it <sup>as</sup> being made cloak to fraud, unless this Court interfere to prevent such. Plff has paid Lasater in good faith, and Gregory availing his obligation now demands <sup>second</sup> payment. Again the proportion of profits is nowhere stated, Deft's Counsel has no data from the pleading on which to assume it was one half - and so much for Deft's point 1 under head III it is frivolous <sup>as Plff submits</sup> to say the best of it -

A point is made by Deft's Counsel at 105: that neither of the witnesses testify that Gregory agreed to convey to Carver until paid his purchase money. This is frivolous, for if the partnership be held good, payment to Lasater the copartner is payment to Gregory, and Gregory's agreement to convey is implied on Lasater being paid. Kidden says ~~Gregory~~ (fo 31) that ~~Gregory~~ <sup>that</sup> he did not recollect that Gregory said anything as to whom Carver should pay, and Bassett says (fo 34) that Gregory did not say that he would not make a deed until he got the purchase money, he only advised Lasater and Carver to settle with him and he would convey. How could the witnesses swear to a matter not stated -

Defendants point 7 is irrelevant and is  
unbecoming in Counsel. What had learner to  
do with Hidden bond, ~~or Lasater's~~ ~~insubstantial~~  
that Bond was given 3 years after learner's bonds.  
Hidden silent during the conversation with Jentry  
as to that bond, had nothing to do with learner, <sup>he was making no claim on Jentry</sup> his  
silence was <sup>probably</sup> <sup>for</sup> prudence, from that conversation he  
learned learner had a new bond, he was nephew  
of Lasater, and deliaey was a good motive, it  
was also a sufficient motive for cancelling the  
Bond - these are things not affecting credibil-  
-ity. they show prudence, and kindness not  
untruthfulness -

Again the attack on Mr Bassett is gratuitous  
The Court will see that Mr Bassett was careful  
and cautious, colored nothing, but told the whole  
truth so that justice may be done. high coloring,  
ignominious framing are <sup>emphatically</sup> ~~carefully~~ disclaimed  
- Pliffs Counsel respect this Court too much to  
suppose a wrong conviction could be imposed  
on its mind, and disclaim circumlocution, <sup>that</sup>  
<sup>is not an irrelevant word in that testimony</sup>  
The making such points to this Court is not  
<sup>respectful to</sup> becoming its gravity and dignity, <sup>besides</sup> and Counsel  
ought to know personality is not argument.

The 6<sup>th</sup> point cuts no figure, learner had his  
right of <sup>suit, as</sup> ~~action~~ against Jentry as he supposed, and  
his wish for indictment of Lasater does not  
show he had no claim on Jentry, but <sup>shows</sup> that if Jentry's  
allegations be true, Lasater was right to have

if guilty, which he was not under the evidence  
Lasater duly dealt with, & all these points are  
outside the case.

Deft's Point No 2 under head III of deft. deserves  
attention he submits the evidence does not prove  
a partnership - gives Lasater no interest in the  
title, but a joint interest in profits only. This

point concedes the whole question, shows partnership  
as to third persons - as shown below -

Plff in his first head point 4 (see abstract)  
submits that real estate and its proceeds can  
be the subject of partnership. It is true that as  
to title tenancy in common and joint tenancy are  
at common law the cases in which community  
of title is recognized, but Equity looks beyond  
this, and holds as to Real Estate, <sup>and its proceeds</sup> that where  
it is purchased for partnership purposes, and on  
partnership account it is wholly immaterial in a  
Court of Equity in whose name the purchase is  
made. In whomsoever the legal title is vested  
it is deemed partnership property, and the partners  
are the cestui que trust (Hosie vs Carr  
1 Sumner 173. See also Pugh vs Corrie 8 Ala 446  
Sigourney vs Munn 7 Conn 11. Farmer vs Samuels  
4 Litt 187 Equity Leading cases 866. Denton vs  
Ramsay 1 Gilw 373. in Blue vs Leathers <sup>15 Ills 32 the</sup> 15 Ills 70.)  
and depts of trading, risk, contingent profits are the elements of partnership  
Sharing in the profits of a concern constitutes a  
partnership between the parties as to third persons  
(Mottley vs Jones 3 Sedwll Ch 144).

The distinction in Deft's point above cited  
is therefore frivolous, that there is a joint interest in

profits only. as to Carver a third person the case  
just cited of Motley vs Jones applies, as to him that  
point interest is a partnership - and *Blue vs Leathers* 15 Mo 32 is in point.

The Plff submits that a person subactually  
a party to a contract may be bound by it.

See 1 *Hillard Vendors* p 63. 68, 2 *Hillard Vendors* p 186  
*Small vs Atwood* Youngs 407. *Vanhorne vs*  
*Trick* 6 Sergt & Rawls 90. 91. *Johnson vs McQuiden*  
18 Mich 365. *Wood vs Goodridge* 6 Cush 117 and  
*Doggett vs Emerson* 3 Story & L. 700).

The Plaintiff submits <sup>as to the abstract</sup> heretofore sustaining  
the answer for Def. and refers to several cases  
see abstract.) The Deft point I say the court  
gave no greater force to the answer as sworn to  
than if it were unsworn, that its decree rested  
on the inconclusive, repugnant, contradictory and  
uncertain testimony of Plff. and his proof in  
support of the original of exhibit A. The Plaintiff  
will not notice all these are for the  
court to examine and decide on. but Plff submits  
Def't mistake when he supposes that Plff gave  
any testimony to support A to answer. whatever  
testimony was had on it was Def't an cross exam-  
ination of the witnesses, he is right however in  
saying <sup>that</sup> that testimony is inconclusive for the  
identity of the copy filed with the original is not  
proved, and being unproved ought not to be relied  
on by the court. The court did act on that exhibit A hence  
Plff objects <sup>3 head III</sup>  
The only other point made by Def't is that  
there is no evidence of Jefferys knowledge of Carver's

contract, or of the possession and improvement  
nor any as to partnership and that Day vs  
Martin & Deam 181. 182 disposes of this case

Of the Court please, Lasater's admission of the  
contract, possession and improvement in the joint  
and several answer binds Gregory. and further  
his partnership relation impliedly binds him  
for Lasater's acts. and Day vs Martin <sup>181. 182</sup> does  
not dispose of this case. it decides that no man  
shall be compelled to part with his title till he  
receives consideration. Did not Gregory as partner get  
is not that Day vs Martin partnership to Gregory himself  
pay, shall Carver pay again that is not Equity  
but Day vs Martin decides that no man  
standing silently by and letting another purchase sup  
posing he got good title, that no such man will  
get favor in equity for his fraudulent concealment  
and this is Gregory's position in this case

The plea in point 3. affirms the decree  
is erroneous in overlooking the equity between the  
case alleged, the relief sought and the equity to  
have that relief. (Pigg vs Crider 12 Leigh 69  
Estell vs Bart Hardin 567).

The plaintiff in point 8 submits error  
in view of the evidence in not granting the relief  
sought, plaintiff having done all he was required  
to do. and that the decree impliedly encourages  
fraud. Lasater had power to contract, and Gregory  
admitted his obligation to convey these are proved  
The decree enables Gregory to stand by in silence  
while Lasater sells, gets money, and then gives

Abstract for  
x at Section 19  
It is shown that  
Gregory had full  
knowledge of the  
sale to Carver  
It says "Gregory  
looked at the  
numbers of the  
land and said  
Lasater had  
already sold  
them, and Carver  
said he was the  
purchaser and"  
produced his title  
again

~~But to return.~~ Gregory the right to receive  
pay from the same party again, pay from him  
who paid his Agent and partner. It does not become  
Gregory to say he got no cause de action when his  
partner received it.

On the whole Plff submits that he has  
proved all the allegations of his Bill, has done  
all <sup>that Gregory stands in the place of Socrates</sup> was required of him to do, that his Equity  
as prayed is just and in good conscience, and  
that the Defendants case on his answer is  
untrue, he gave no evidence to sustain his  
allegations, and the case made by his  
Counsel contains nothing to countervail  
the Plaintiffs Equity as prayed.

Wherefore he submits the Decree ought to  
be set aside, and the relief prayed be granted  
William Gordon and  
James Russell attys  
for Plff in Error.

There is no objection to look at the Record. the  
exhibits to the Bill A and to answer A are not set  
out. they were not deemed essential, being fully referred  
to in abstracts.



E B Carver  
vs  
Stanford Lasota &  
Daniel Gregory

Argument

8408

Basnett, Willard &  
Gardner  
Attors

# In the Supreme Court of Illinois---1st Grand Division.

ERASTUS B. CARVER, Pl'ff. in Error, }  
vs. } Error to Marion County.  
STANFORD A. LASATER, }  
DANIEL GREGORY, Def'ts. in Error. }

## Defendant's Brief.

The Plaintiff in error's abstract is deemed imperfect in some respects and will be hereinafter reproduced from the record.

The bill shows that in 1858, Carver knew the condition of the title, and no where avers he did not know it at the time he purchased. He fails also to print the contract between Lasater and Gregory set out in the answer, in substance, to-wit :

"That Daniel Gregory in consideration of the sum of \$784 34, to be paid him by Stanford A. Lasater on the 25th day of July, 1856, which payment was thereby declared to be a *condition precedent*, agreed to sell and convey unto the said Lasater the E $\frac{1}{2}$ . S. E $\frac{1}{4}$ . Sec. 7. and the W $\frac{1}{2}$  of fractional Sec. 19. T. 4 N. R. 1 E. And the said Lasater thereby promised to pay said 784 34 Dollars, on the 25th day of July, 1856. And in said contract it is expressly provided that in case of non payment at the time stipulated, Gregory may consider the contract forfeited—take possession of the land and convey the same to any other person. Dated, July 25th, 1855."

Signed.  
Signed.

DANIEL GREGORY, [Seal.]  
STANFORD A. LASATER, [Seal.]

See Record, page

The only Witnesses in the case are Messrs. Kidder and Basset, and the abstract is also deemed imperfect in relation to a part of their evidence. Mr. Kidder says at the conversation with Gregory to which he refers, Mr. Carver proposed buying the land from Gregory (1860,) and that Mr. Gregory read clauses of the bond, [Contract] between himself and Lasater ; examined the contract between *Carver* and *Lasater* and stated as his opinion that Carver's contract was not forfeited. He said he considered the bond [contract] between himself and Lasater binding *and inasmuch as* he considered that binding—he considered the contract between Carver and Lasater binding. He said the deed was to come from him. (Ans. to 7th question.)

### ON CROSS EXAMINATION.

To interrogatory 2. 3. and 4. Kidder said he recognized the contract marked A. with Defendant's answer so far as the *proviso*, as the same read by Gregory to Carver and him ; does not think Gregory spoke of any other ; there was no other liability spoken of and he knew of no other.

Mr. Bassett, had a conversation with Gregory in 1860, fall or winter. Gregory asked him where the land was. Witness informed him near Patoka. Mr. G. then remarked, he had a bond or agreement with Lasater about land near Patoka, and possibly that land might be a part of it.— Among other things, this witness says Mr. G. advised him to get Carver to pay him, and then he would be certain of a good title. Mr. B. states further that Lasater handed him the contract between him and Gregory ; it had some indorsements upon it—he examined it, and returned it to Lasater, and the paper appended to Defendant's answer he thinks is a copy of it. He says also, that Carver was pressing (March, 1861,) for indictment against Lasater ; that he so informed Gregory, who said, if Lasater and Carver would settle and arrange with him, he would deed to Carver.

Defendant Gregory relies upon the following points :

# IN THE SUPREME COURT.

First Grand Division.

State of Illinois, }  
MARION COUNTY, } SS.

November Term, 1863.

ERASTUS B. CARVER, *Plaintiff in Error,* }

vs.

STANFORD A. LASATER AND  
DANIEL GREGORY, *Defendants in Error,* }

ERROR FROM MARION.

This was a ~~suit in Equity~~ <sup>*in Chancery*</sup> Bill for Specific performance, <sup>*and*</sup> heard before  
Hon. S. L. Bryan, Circuit Judge at ~~the~~ <sup>*the*</sup> Term A. D. 1863.

1 The Bill filed 23rd July 1861, states that the complainant Carver is a citi-  
zen and resident of Marion County, Illinois.

2 That on 17th March 1857 Compt. and Deft. Lasater agreed in writing that  
said Lasater had sold to the said Carver the N half of S W fractional quarter of  
Section 19 Town 4 N R 1 E 45 acres for \$270 to be paid twelve months after  
date, for which Lasater held a promissory note of said date with ten per cent. in-  
terest, on payment of which said Lasater was to make and deliver a Warrantee  
Deed for said Lands as by said Bond or Agreement appended to said Bill, and  
made part thereof appears.

3 That thereupon Complt took possession of said Lands and has continued in  
such possession and improved same to amount of \$100.

That since sale said Lasater and before the note became due Lasater for  
valuable consideration transferred same to William D. Long.

That at time of said sale Lasater had no title to said Lands, same being in  
Deft Daniel Gregory of Fayette Co. Ills., who owned same in fee simple, and is  
now such owner, said Lasater never having a legal title thereto.

That at time of sale Lasater was acting under an agreement between him-  
self and Gregory by which Lasater had full power from Gregory to sell and convey  
said lands.

4 That afterwards Complt had a conference with Gregory about said purchase  
from Lasater, when Gregory assured him that by an existing contract between him  
and Lasater, Lasater had full power to contract and to sell said land, and that  
he, Gregory, was bound to make conveyance of same, and would carry out and  
affirm all Lasater's contracts as to said lands, and that Lasater had an interest  
with him in said lands, but did not disclose such interest.

Charges that they (Lasater and Gregory.) were partners in buying and  
selling land, that Lasater was the active agent in that partnership, Gregory fur-  
nished the money and Lasater expended it in buying land from the government, in  
Gregory's name, sold them in his own name, with knowledge and consent of Greg-  
ory, who shared in the profits of sales. That the land in question was purchased  
by Lasater, pursuant to said agreement; Gregory furnished the money, Lasater  
did the business, purchased in Gregory's name, and had full power from Gregory  
to sell same, Gregory having agreed with him to carry out and affirm all contracts  
as to said lands.

5 Charges that said contract with compt. as to said land was made, posses-  
sion given and improvements made by compt with Gregory's knowledge, who per-  
mitted compt to contract, take possession of and improve said land without disco-  
suring the true state of facts, or making his interest known to compt.

That about maturity of the said note Lasater failed and is now insolvent. That complt has since its transfer paid the note, and demanded his deed from Lasater and Gregory, which they refused ~~and neglected to do~~ and still ~~neglect~~ and refuse to ~~do so~~ *make*

Prays that Lasater and Gregory be Defendants—waives oath, prays answer and that said Compl't's agreement with Lasater be specifically performed—and that Gregory be decreed to carry out same and make Deed to Complainant.

Sets out the agreement which was filed with the Bill of Complaint.

Answer of both Defts filed 22 Aug. 1861. Answer joint and several states. That Deft Lasater admits the agreement, possession and improvements, and the transfer of the note as alleged in Bill. Deft Gregory says that at time of execution of said agreement he was ignorant of it, was not privy to it, did not consent to it, had no knowledge of it except from Bill or recently from Lasater, and never consented to ratify it, knows nothing of the possession or improvement except from Bill, denies all positive knowledge—that Compl't if in possession is so without Gregory's authority directly or indirectly—denies knowledge of the transfer of the note, except from Bill, admitting the fact of contract being made, possession taken, and note transferred, without his knowledge or consent.

Both Defendants say they do not know when Compl't learned Lasater had no title, admit that Gregory was and is sole owner of said land and that Lasater never had title except what he derived from a contract of 25 July 1855, copy whereof is appended to the answer marked "A" and part thereof.

They expressly deny that Lasater when he sold to Compl't was acting under an agreement whereby he had power from Gregory to sell same, deny any agreement other than that in "A" and a verbal extension of time of payment, that said contract "A" is forfeited by its terms.

Deft Gregory says he has recollection of the alleged conference, does not believe he had such; denies stating to Compl't there was the contract for sale alleged giving Lasater such power, and binding Gregory to convey except to Lasater himself—denies promising Compl't he would carry out and affirm Lasater's contracts as to said land or any land in which Lasater had an interest.

Gregory avers that if he had such conversation, he must have stated and did state the truth as it existed, that the only contract between them was, that in A. and that he was only bound to convey to Lasater on payment of the purchase money, and that he would not convey until he received same. That Lasater nor complt have ever paid him any part of the money due on said land by virtue of A. and has received no consideration of said land or promise of conveyance from Lasater or complt.

Denies that defendants were at any time partners as alleged. Deny Gregory furnished money to Lasater to purchase lands as alleged. Deny he purchased in Gregory's name and sold in his own with Gregory's consent. Deny Gregory shared profits. Gregory denies the land in question was bought by Lasater under any such agreement as alleged. Denies Gregory furnished the money, or that Lasater did the business, or that Lasater had power to sell or that Gregory agreed to affirm. They charge as to said tract that Lasater never entered it in Gregory's name, who never furnished him money therefor, that Gregory entered himself, paid his own money, that Lasater had nothing to do about it; the only interest he had was that denied under A.

Gregory denies that complts. contract, possession or improvements were made with his knowledge; denies he permitted such possession or improvements, for he denies any knowledge of such possession in manner alleged.

Defts admit Lasater's failing circumstances. Deny demands of deed alleged, and pray dismissal of bill with costs.

Answer sworn to on 22nd August 1861. Copy of contract A referred to in answer. Replication (general) filed 29 August, 1861.

Orders of continuance and setting cause down for hearing.

Deposition of W. J. W. Kidder on part of complt. taken before Clerk of Circuit Court of Marion Co., Ill. on 12 Jan. 1862, states—he knows the parties; complt from early in 1860, with Gregory a few months after, knows Lasater six or eight years. Was present at a conversation, thinks in July or August, 1860, at Gregory's house in Vandalia. The lands were north half of S W fractional quarter of

19 section 19, T 4 N R 1 E of 3d P M in Marion Co., Illinois. Gregory, himself and Carver were all present at beginning of the conversation. Towards its end a gentleman called, stranger to him. What gave rise to the conversation was, Mr. Carver called on Mr. Gregory to know how he could procure a good title to the land. Carver was doubtful whether he bought of the right person. A great deal was said; the substance of what was said was that Carver wanted a good title to the land, and proposed buying them of Gregory. Gregory looked at the numbers of the land, said Lasater had already sold them. Carver said he was the purchaser, and produced the bond (A to Bill), that he had acquired from Lasater, claimed its forfeiture. Gregory examined it and gave his opinion, it was not forfeited, told Carver that any arrangement or sale made by Lasater would be binding on him, Gregory. Before this, however, Gregory produced a bond between him and Lasater, about the lands, read clauses of it to them: after such reading, he said he considered the bond between him and Lasater binding, though Lasater had not adhered strictly to its terms; he stated that as he considered that bond between him and Lasater binding, he considered that between Lasater and Carver binding, also. Gregory stated he was under obligations to give deeds for all lands sold by Lasater, that he, Lasater, had entered in Gregory's name. (The above answer was objected to, as also the question for impertinence and directness.) Gregory said the deed to the land was to come from him. He stated that he furnished the money to Lasater to pay for entering the land, that Lasater looked up the land and made the entries. (Question objected to.) Gregory said he furnished the money to pay for the entry of the land, that Lasater looked up same and entered them in Gregory's name—Lasater had the selling thereof and Gregory made the Deeds. Gregory said he was to receive a certain per centage on the money furnished whenever the lands were sold, that there was to be a division of profits, witness could not positively say whether the last was said in the conversation between Gregory and Carver or whether it was read in the clauses of the Bond he read to them. Gregory said that Carver was to get his Deed from him, Gregory. (Question objected to.) Did not recollect anything as to whom Carver should pay except that Gregory said the notes Carver gave to Lasater for the lands were binding on Carver. In that conversation Gregory referred generally to all lands entered by Lasater in Gregory's name, and also to the lands purchased by Carver of Lasater.

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23  
24 On re-examination by Compts counsel witness said his Bond was dated after Carver's, did not know how long, thinks about three years.—That he did not recognize the whole Bond A to answer as being the same, but a portion of it he did recognize as being the same shown to him by Gregory at said conversation—recognized it from memory, from hearing it read; the portion of it he recognized was the proviso. Being asked if he considered the Bond from Lasater to him as being cancelled or as still binding, witness said so far as the land in question is concerned he considered it void.

25 The Deposition of James Bassett, a witness for Complt, taken before the Clerk of the Circuit Court of Marion County Illinois, on 17 July, 1862, states,  
That he knows complt Carver from latter part of 1858, knows Lasater five

or six years and Mr. Gregory from early part of 1860. Had many conversations with Lasater about Carver's purchase. The lands are a fractional part of S W quarter of section 19 T 4 N range 1 near Patoka, some 43 or 45 acres. Witness called on Lasater on behalf of Carver to know what he would do about making a deed for that land. Would he deed to Carver? He said he could not deed to Carver because the legal title to the land was in Gregory. I asked him how he came to sell the land to Carver and Kidder while the title was in Gregory. He said he had a bond or agreement with Mr. Gregory which enabled him to sell those lands and other lands. He said he would let me see the agreement, and he would see Kidder and bring Kidder to me and the agreement also. Thinks this occurred in the latter part of 1859 or early in 1860. Some time after, thinks in Sept. 1860, he brought Mr. Kidder to witness. They handed witness Lasater's bond to Kidder for cancellation as to said land, Kidder relinquishing his claim thereon.

Lasater then handed witness a bond between him and Gregory. There were several endorsements on it. Being asked by witness if there was any other agreement between him and Gregory, he said there was, but could not recollect whether it was in writing or not, but would hunt it up and give it to me. He said the terms of that other agreement were that Lasater was to look up the land, Gregory enter them and furnish the money to pay for them. Lasater would get purchasers and sell them, and Gregory and he would divide the profits; and said that under that agreement and the paper he gave me, he was authorized to treat with Carver. He said that on the matter being paid by Carver to Long he had no doubt he could get Gregory to execute the deed. Witness called his attention to the terms of the bond shown him, and its forfeiture, and that Gregory might refuse. Lasater said that the terms were extended and that the other agreement was uncanceled, and that Mr. Gregory, no doubt, would comply. Gave that bond to Lasater; thinks the paper annexed to the answer is a copy except that the endorsements were not on that copy attached to the answer. The extension of time related to that contract which witness understood was still in force. Carver, by witness's advice gave up land and relinquished homestead right to the Sheriff for satisfaction of the judgment obtained by Long on the note for the purchase money of the lands above referred to. (Gregory excepts to the question and above answer.) Being asked to state any conversations respecting that purchase with Gregory, said that he had a conversation with Gregory at Clark's Hotel in fall or winter of 1860. Told Gregory all the facts in detail and that Carver wanted his deed, and on Gregory's question said the land was near Patoka. Gregory told witness he had a bond or agreement with Lasater about lands near Patoka, and that possibly the land may be a part of it; said that Lasater didn't comply with the terms of that matter, yet that he supposed he would be bound by Lasater's agreement. Advised witness to get Carver to pay the purchase money to him instead of Lasater or Long, and then Carver would be sure of a good title. At that time Carver had not settled with Long. Said that Lasater was unfortunate and careless, but that he supposed that he would be bound by the fair agreement of Lasater. Said that there was a general understanding or agreement between him and Lasater about lands, the purchase and selling of lands; including the lands in question, but that Lasater never kept his agreement with him. Had a subsequent conversation with Gregory in March, 1861, Gregory said if Carver and Lasater would settle and come and arrange with him that he could get the Deed. Gregory stated in the first conversation that he was to furnish money to enter lands, and Lasater was to sell and pay the money to him and there was to be a division of per centage or profits between them. Gregory said the Conveyances were all to come from him of course as all the lands were in him. That both Lasater and Gregory were told by witness he was Carver's Attorney and that Kidder makes no claim to the lands under his Bond.

On cross examination by Defts Counsel witness, Bassett, said that Gregory was not present at any of the conversations with Lasater. That there were two or three endorsements on the Bond spoken of, they related as far as he could recollect to the lands that were inside, could not tell in whose handwriting they were, but thinks in Mr. Gregory's. Understood from Lasater the original which witness gave him was with Mr. Shaeffer. Lasater never showed witness any additional agreement, but said there was such and could not recollect whether it was

32 in writing or not, witness wanted to see it, if in writing; Lasater promised to look it out, but witness never saw it. From witness's conversations with Lasater did not learn he paid Gregory anything for the lands, for witness asked him that question and Lasater said that Gregory and he had never closed their business dealings, they were still open. From Mr. Gregory witness learned that neither Lasater nor Carver paid him any money for the land, cannot particularize the endorsements. Being asked whether the endorsements referred to had reference to the land in question, witness said his impression was it did not. Could not tell whether the note was assigned before maturity or not. Being asked whether Gregory told witness that there was another agreement than that appended to the Answer, witness said that he understood there was an agreement for entry of land and division of percentage and profit, but that he had the agreement with him, and there was nothing distinctly referring to the agreement, but witness understood the agreements were distinct. Thinks he had the Bond before his conversation with Gregory, his conversation had reference to the right of Carver upon his Bond. Witness did not in conversation with Gregory refer to that Bond then in his possession, his object was to see how Carver could get his deed. Being asked if Gregory did not state he was under no obligation to make a Deed for the lands in question, except as provided in said Bond between him and Lasater, and that he would not make a Deed for same unless he received the purchase money, witness said he did not refer to the Bond, and Mr. Gregory did not distinctly refer to it, it formed no part of their conversation distinctly. Witness understood the agreement he referred to was a general one as to sale and transfer of land. He did not say that he would not make a Deed until he got the purchase money, but he advised witness to get Lasater and Carver to settle with him, and he would give the Deed.

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34 Re-examined by Compt's Counsel, witness said, the Bond on file in Defendant's answer he did not recognize as an exact copy, it is not the Bond referred to, could not say it is an exact copy of the body of the Bond. The endorsements on the back of the one he had are not on that attached to the answer, did not compare the body with that attached to the answer, cannot say it is an exact copy, but thinks generally it is a copy.

35 Decree rendered at March Term, 1863, of Marion County Circuit Court, states cause called for hearing, that the parties came by their Solicitors, Cause heard on Bill, answer, exhibits Depositions and Replication. That the Court heard same, and the arguments of counsel, and decreed for Defendants for costs, &c.

36 CERTIFICATE OF CLERK OF CIRCUIT COURT.

And now comes the said Complainant by Willard and Goodnow, and James Bassett his Solicitors, and says that there is manifest error in said Decree, and for Error assigns as follows, to wit;

ERRORS ASSIGNED.

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Supreme Court 1<sup>st</sup> Grand  
Division Nov Term 1863

Erastus B Currier

vs

Stamper & Lusk & } Error to Harlan  
Daniel Gregory

And now comes  
W C Gaudreau Atty for Pltff  
and moves the court per order of  
Publication ~~in~~ <sup>cause</sup> to get service  
on Stamper & Lusk who is non-  
resident ~~and who is not to be served by~~  
~~that~~ service can not be had on him  
by regular process

W C Gaudreau

Atty for Pltff



<sup>38</sup>  
Erastus B. Carver  
per

Stamped & Signed  
Daniel Gregory

Notice for copies  
of Publications

Filed Nov. 15 1893.  
St. Petersburg, Fla.

W. C. Galloway  
City of  
P. M.

State of Illinois Supreme Court 1st & 2nd Division

Erastus B. Carver

vs

Stamford A. Lasater &

Daniel Gregory

} Error to Marion

file received and

Mr. Clerk please

issue a *Scire Facias* in the above en-  
titled cause to <sup>the Sheriff of</sup> Fayette County Illinois

to serve Daniel Gregory and to  
~~Washington County to serve Stamford~~  
~~A. Lasater~~

Sci fa to be sent to  
Governor at Salem -  
directed to Sheriff of Fayette

Willard Goodnow  
Attys to P. J. F.

Erastus B Currier  
us

Stamford & Lasater

Daniel Gregory

Error & Marion

Filed Nov. 13. 1863

A. S. Currier M

Willard & Goodwin  
Attys at Law

# IN THE SUPREME COURT.

First Grand Division.

State of Illinois, }  
MARION COUNTY, } SS.

November Term, 1863.

ERASTUS B. CARVER, *Plaintiff in Error,* }  
vs. }  
STANFORD A. LASATER AND } ERROR FROM MARION.  
DANIEL GREGORY, *Defendants in Error,* }

This was a suit in Equity on Bill for Specific performance, heard before Hon. S. L. Bryan, Circuit Judge at <sup>Marion</sup> ~~New~~ Term A. D. 1863.

1 The Bill filed 23rd July 1861, states that the complainant Carver is a citizen and resident of Marion County, Illinois.

2 That on 17th March 1857 Compt. and Deft. Lasater agreed in writing that said Lasater had sold to the said Carver the N half of S W fractional quarter of Section 19 Town 4 N R 1 E 45 acres for \$270 to be paid twelve months after date, for which Lasater held a promissory note of said date with ten per cent. interest, on payment of which said Lasater was to make and deliver a Warrantee Deed for said Lands as by said Bond or Agreement appended to said Bill, and made part thereof appears.

3 That thereupon Compt took possession of said Lands and has continued in such possession and improved same to amount of \$100.

That since sale said Lasater and before the note became due Lasater for valuable consideration transferred same to William D. <sup>Yong</sup>.

That at time of said sale Lasater had no title to said Lands, same being in Deft Daniel Gregory of Fayette Co. Ills., who owned same in fee simple, and is now such owner, said Lasater never having a legal title thereto.

That at time of sale Lasater was acting under an agreement between himself and Gregory by which Lasater had full power from Gregory to sell and convey said lands.

4 That afterwards Compt had a conference with Gregory about said purchase from Lasater, when Gregory assured him that by an existing contract between him and Lasater, Lasater had full power to contract and to sell said land, and that he, Gregory, was bound to make conveyance of same, and would carry out and affirm all Lasater's contracts as to said lands, and that Lasater had an interest with him in said lands, but did not disclose such interest.

Charges that they (Lasater and Gregory,) were partners in buying and selling land, that Lasater was the active agent in that partnership, Gregory furnished the money and Lasater expended it in buying land from the government, in Gregory's name, sold them in his own name, with knowledge and consent of Gregory, who shared in the profits of sales. That the land in question was purchased by Lasater, pursuant to said agreement; Gregory furnished the money, Lasater did the business, purchased in Gregory's name, and had full power from Gregory to sell same, Gregory having agreed with him to carry out and affirm all contracts as to said lands.

5 Charges that said contract with compt. as to said land was made, possession given and improvements made by compt with Gregory's knowledge, who permitted compt to contract, take possession of and improve said land without disclosing the true state of facts, or making his interest known to compt.

That about maturity of the said note Lasater failed and is now insolvent. That complt has since its transfer paid the note, and demanded his deed from Lasater and Gregory, which they refused ~~and neglected to do~~, and still neglect and refuse to ~~do so~~ *make*

6 Prays that Lasater and Gregory be Defendants—waives oath, prays answer and that said Compl't's agreement with Lasater be specifically performed—and that Gregory be decreed to carry out same and make Deed to Complainant.

7 Sets out the agreement which was filed with the Bill of Complaint.

8 Answer of both Defts filed 22 Aug. 1861. Answer joint and several states. That Deft Lasater admits the agreement, possession and improvements, and the transfer of the note as alleged in Bill. Deft Gregory says that at time of execution of said agreement he was ignorant of it, was not privy to it, did not consent to it, had no knowledge of it except from Bill or recently from Lasater, and never consented to ratify it, knows nothing of the possession or improvement except from Bill, denies all positive knowledge—that Compl't if in possession is so without Gregory's authority directly or indirectly—denies knowledge of the transfer of the note, except from Bill, admitting the fact of contract being made, possession taken, and note transferred, without his knowledge or consent.

9 Both Defendants say they do not know when Compl't learned Lasater had no title, admit that Gregory was and is sole owner of said land and that Lasater never had title except what he derived from a contract of 25 July 1855, copy whereof is appended to the answer marked "A" and part thereof.

10 They expressly deny that Lasater when he sold to Compl't was acting under an agreement whereby he had power from Gregory to sell same, deny any agreement other than that in "A" and a verbal extension of time of payment, that said contract "A" is forfeited by its terms.

Deft Gregory says he has recollection of the alleged conference, does not believe he had such; denies stating to Compl't there was the contract for sale alleged giving Lasater such power, and binding Gregory to convey except to Lasater himself—denies promising Compl't he would carry out and affirm Lasater's contracts as to said land or any land in which Lasater had an interest.

11 Gregory avers that if he had such conversation, he must have stated and did state the truth as it existed, that the only contract between them was, that in A. and that he was only bound to convey to Lasater on payment of the purchase money, and that he would not convey until he received same. That Lasater nor complt have ever paid him any part of the money due on said land by virtue of A. and has received no consideration of said land or promise of conveyance from Lasater or complt.

12 Denies that defendants were at any time partners as alleged. Deny Gregory furnished money to Lasater to purchase lands as alleged. Deny he purchased in Gregory's name and sold in his own with Gregory's consent. Deny Gregory shared profits. Gregory denies the land in question was bought by Lasater under any such agreement as alleged. Denies Gregory furnished the money, or that Lasater did the business, or that Lasater had power to sell or that Gregory agreed to affirm. They charge as to said tract that Lasater never entered it in Gregory's name, who never furnished him money therefor, that Gregory entered himself, paid his own money, that Lasater had nothing to do about it; the only interest he had was that ~~denied~~ under A.

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Gregory denies that complt's contract, possession or improvements were made with his knowledge; denies he permitted such possession or improvements, for he denies any knowledge of such possession in manner alleged.

13 Defts admit Lasater's failing circumstances. Deny demands of deed alleged, and pray dismissal of bill with costs.

14 Answer sworn to on 22nd August 1861. Copy of contract A referred to in answer. Replication (general) filed 29 August, 1861.

15-16 Orders of continuance and setting cause down for hearing.

17 Deposition of W. J. W. Kidder on part of complt. taken before Clerk of Circuit Court of Marion Co., Ill. on 12 Jan. 1862, states—he knows the parties; complt from early in 1860, with Gregory a few months after, knows Lasater six or eight years. Was present at a conversation, thinks in July or August, 1860, at Gregory's house in Vandalia. The lands were north half of S W fractional quarter of

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Re-examined by Compt's Counsel, witness said, the Bond on file in Defendant's answer he did not recognize as an exact copy, it is not the Bond referred to, could not say it is an exact copy of the body of the Bond. The endorsements on the back of the one he had are not on that attached to the answer, did not compare the body with that attached to the answer, cannot say it is an exact copy, but thinks generally it is a copy.

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Decree rendered at March Term, 1863, of Marion County Circuit Court, states cause called for hearing, that the parties came by their Solicitors, Cause heard on Bill, answer, exhibits Depositions and Replication. That the Court heard same, and the arguments of counsel, and decreed for Defendants for costs, &c.

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CERTIFICATE OF CLERK OF CIRCUIT COURT.

And now comes the said Complainant by Willard and Goodnow, and James Bassett his Solicitors, and says that there is manifest error in said Decree, and for Error assigns as follows, to wit ;

ERRORS ASSIGNED.

1

The Decree is erroneous. It does not find the facts to warrant it, and is only for costs, without either granting the relief sought, or dismissing the Bill.

Sampson vs. Hunt 1 Root, 207, 521. Burdoin vs. Skelton, 10 Yerg 41.

Honore vs. Colmeshill, 1 J J Marsh 506. Crocket vs. Lee, 7 Wheat 522.

Beers vs. Botsford, 13 Conn 146.

2

The Decree is erroneous, in that it does not conform to the allegations and proofs, and is founded on neither.

3

3. The decree is erroneous. It overlooks the unity between the case alleged, the relief sought, and the equity to have that relief ; it overlooks the proofs sustaining the material allegations and the consistency of the equity sought ; it is erroneous in not granting that equity.

Pigg vs. Corden, 12 Leigh, 69. Estill vs. Hart, Hardin, 567.

4

4. The decree is erroneous in that it is contrary to well settled rules of equity. First. That real estate and its proceeds can be the subject of partnership.

Hoxie vs. Carr, 1 Sumner 173. Sigourney vs. Munn, 7 Conn 11.

Smith vs. Ramsey, 1 Gilm 373. Pugh vs. Currie, 5 Ala 446.

Farmer vs. Samuel, 4 Litt 187. Winslow vs. Chuffere, 1 Harp Ch 25.

Willard's Eq Juris, 710. Johnson's Chy Dig 246. 13 Ills. 70.

Dale vs Hamilton, 5 Hare 369 and 2 Phil 266. See Equity Leading cases 566



*Second.* That no vendor or incumbrancer on sale of land can take advantage of his silence for his own benefit.

Hovenden on Fraud, 186, 189, 193, 195. Cochrane vs. Harrow, 22 Ill. 345.  
Wendell vs. VanRansellaer, J Chy Dig 246. Niven vs. Belknap, *ibid*.  
Dye vs. Martin, 4 Scam 147, 152. Leading cases in Equity, 561.

*Third.* That the acts of an agent within the scope of his authority bind his principal, and that one partner can bind his co-partner within the terms of their partnership.

Hovenden on Fraud, cited above. Ward vs. Williams, 26 Ills, 447.  
Anderson vs. Tompkins, 1 Brock 456. Harnden vs. Sterry, 1 Chip 315.  
Taylor vs. Taylor, 2 Meer 70. Fitch vs. Stamps, 6 How, Miss. 487.  
Kirby vs. Ingersoll, Harring, Ch. 172. Chamb'n vs. Darragh, Walk Chy. 149.

*Fourth.* That a person not actually a party to a contract may yet be bound by it.

2 Hilliard Vendors, 186. Small vs. Atwood Young 407.  
1 Hilliard Vendors, pp. 63. Vanhorn vs. Fricke, 6 Sergt & Rawle,  
1 Hilliard Vendors, pp. 68. 90—91.  
Johnson vs. McGruder, 15 Miss. 365. Wood vs. Goodridge, 6 Cush 117.  
Doggett vs. Emerson, 3 Story, C C 700.

5. The Court erred in its decree in sustaining for deft the sworn answer, when oath was waived, and two witnesses contradict it.

2 Danl Chy Prac 1022 and note. Rev Stat 1845 p 96 sec 21.  
Moore vs. Hunter, 1 Gil 332. Harris vs. Reece, 5 Gil 213.

6. The Court erred in basing its decree on the exhibit A to the answer, and in acting at all on it in the absence of the original, which absence is not accounted for, and in the absence of proof that exhibit A was neither a true or a complete copy.

2 Daniel Chy Prac.—cited above,

7. The Court erred in overlooking the nature of the answer. It was a joint and several answer, and the admission of one deft is evidence against his Co deft.

3 Greenleaf Ev Sec 283 and note and cases cited.  
Rector vs. Rector, 3 Gil 105. Fust vs. Mansfield, 25 Ills 338.

8. The Court erred in view of the evidence, in not decreeing the specific performance prayed; the proof showing that complainant did all he was required to do. The decree impliedly encourages fraud.

Willard & Guallron & Bassett  
Atty's for Plt's in Error



State of Illinois,  
SUPREME COURT,  
First Grand Division.

} SS

The People of the State of Illinois,  
To the Sheriff of Clayton County.

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of Marion county, before the Judge thereof between

Erastus B. Carver plaintiff and

Stanford A. Sasater & Dennis Gregory  
defendants it is said that manifest error hath intervened to the injury of said Erastus B. Carver as we

are informed by his complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Mount Vernon, before the justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said Stanford A. Sasater and Dennis Gregory

that they be and appear before the justices of our said Supreme Court; at the next term of said Court, to be holden at **Mount Vernon**, in said State, on the first Tuesday after the second Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if they shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Sasater and Gregory notice together with this writ.

WITNESS, the Hon. John D. Catron Chief Justice of the Supreme Court and the seal thereof, at MOUNT VERNON, this thirtieth day of November in the year of our Lord one thousand eight hundred and Sixty three.

Noah Huston  
Clerk of the Supreme Court.

I have served this summons by reading to the within  
named Daniel Gregory & also by leaving a true  
copy with him May 24<sup>th</sup> 1864. Attest before me  
witness my hand & the seal of my office this 24<sup>th</sup> day of May 1864. J. Walton Sheriff

Sheriff's Fee  
Serving 50 ct  
Copy 50  
Retaining 10  
By Wm. Singer deputy  
46-

6  
SUPREME COURT.  
First Grand Division.

Erastus B. Carver

Plaintiff in Error,

vs.

S. A. Lasater and  
Daniel Gregory  
Defendant in Error.

SCIRE FACIAS.

FILED - Nov. 14.  
1864.

W. Johnston cly

I acknowledge service on the within  
part. this 11<sup>th</sup> Nov 1864  
S. A. Lasater



# In the Supreme Court of Illinois---1st Grand Division.

ERASTUS B. CARVER, Plt'ff. in Error, }  
vs. }  
STANFORD A. LASATER, }  
DANIEL GREGORY, Def'ts. in Error. }

Error to Marion County.

## Defendant's Brief.

The Plaintiff in error's abstract is deemed imperfect in some respects and will be hereinafter reproduced from the record.

The bill shows that in 1858, Carver knew the condition of the title, and no where avers he did not know it at the time he purchased. He fails also to print the contract between Lasater and Gregory set out in the answer, in substance, to-wit :

"That Daniel Gregory in consideration of the sum of \$784 34, to be paid him by Stanford A. Lasater on the 25th day of July, 1856, which payment was thereby declared to be a *condition precedent*, agreed to sell and convey unto the said Lasater the E $\frac{1}{2}$ . S. E $\frac{1}{4}$ . Sec. 7. and the W $\frac{1}{2}$  of fractional Sec. 19. T. 4 N. R. 1 E. And the said Lasater thereby promised to pay said 784 34 Dollars, on the 25th day of July, 1856. And in said contract it is expressly provided that in case of non payment at the time stipulated, Gregory may consider the contract forfeited—take possession of the land and convey the same to any other person. Dated, July 25th, 1855."

Signed.  
Signed.

DANIEL GREGORY, [Seal.]  
STANFORD A. LASATER, [Seal.]

See Record, page

The only Witnesses in the case are Messrs. Kidder and Basset, and the abstract is also deemed imperfect in relation to a part of their evidence. Mr. Kidder says at the conversation with Gregory to which he refers, Mr. Carver proposed buying the land from Gregory (1860,) and that Mr. Gregory read clauses of the bond, [Contract] between himself and Lasater ; examined the contract between Carver and Lasater and stated as his opinion that Carver's contract was not forfeited. He said he considered the bond [contract] between himself and Lasater binding *and inasmuch as* he considered that binding—he considered the contract between Carver and Lasater binding. He said the deed was to come from him. (Ans. to 5th question.)

## ON CROSS EXAMINATION.

To interrogatory 2. 3. and 4. Kidder said he recognized the contract marked A. with Defendant's answer so far as the *proviso*, as the same read by Gregory to Carver and him ; does not think Gregory spoke of any other ; there was no other liability spoken of and he knew of no other.

Mr. Bassett, had a conversation with Gregory in 1860, fall or winter. Gregory asked him where the land was. Witness informed him near Patoka. Mr. G. then remarked, he had a bond or agreement with Lasater about land near Patoka, and possibly that land might be a part of it.— Among other things, this witness says Mr. G. advised him to get Carver to pay him, and then he would be certain of a good title. Mr. B. states further that Lasater handed him the contract between him and Gregory ; it had some indorsements upon it—he examined it, and returned it to Lasater, and the paper appended to Defendant's answer he thinks is a copy of it. He says also, that Carver was pressing (March, 1861,) for indictment against Lasater ; that he so informed Gregory, who said, if Lasater and Carver would settle and arrange with him, he would deed to Carver.

Defendant Gregory relies upon the following points :

1st. The Plaintiff is *estopped* from denying that the bill was dismissed—unless that were so, the suit is still pending in the court below, and this Court would have no Jurisdiction. The record shows however the cause was heard, decree against Complainants for costs, &c., the *and so forth*, will embrace dismissal of bill, and the Clerk only omitted it in the final decree.

2d. The Court gave no greater force to the answer sworn to, than had it not been so ; nor base its decree on exhibit A. to Defendant's answer, but rested its action on the inconclusive, repugnant, contradictory and uncertain testimony of the Complainant, and the Plaintiff's proof in support of the original of exhibit A.

A 1/2 5th part  
gr. 19 - 4th 12  
45 acres \$270  
12 mos. after date  
when note became  
due Capt. Carver  
& had no title

3rd. Both Kidder and Basset indentify the contract a copy of which, is marked A. and by their evidence the exhibit is a sworn copy, (the indorsements are no part of it,) and Mr. Basset, Att'y of Carver had the original, and put it in the possession of Lasater, out of the possession of Gregory, and there the evidence leaves it.

4th. Kidder contradicts himself; in one part of his evidence to interrogatories 2. 3. and 4. (on cross examination,) he says he recognizes the contract marked A. to Defendant's answers so far as the *proviso*, as the same read to him by Gregory; that he does not think Gregory spoke of any other; that there was no other liability spoken of, and that he knew of no other. In another part of his evidence, he refers to another partnership contract, and division of the profits.

5th. Neither of these witnesses will testify that Gregory agreed to convey this land to Carver until paid his purchase money. In Bassets conversation in fall or winter of 1860, Mr. Gregory advised him to get Carver to pay him, and then he would be sure of a good title; in the Spring of 1861, he said, if Lasater and Carver, would settle and arrange with him he would convey to him. He said to Kidder and Carver, that as he considered *his contract with Lasater binding*, he so considered Lasater and Carver's contract binding between them.

6th. The fact that Plaintiff waited after he learned Gregory was the owner, more than three years before suit, and further that after all the reported conversations with Gregory, *up to March, 1861*, and after his Att'y Basset had cancelled the Kidder contract as to this land, *he was urging an indictment* against Lasater, are strong circumstances evincing a knowledge on his part, that he had no just claims upon Gregory for the title.

7th. The fact also that Kidder holds bonds of Lasater, for land, Lasater's insolvency—the visit to Gregory, (if it were so), his silence then, that he held a bond for the same land, the facility with which he releases this land back to Lasater, are circumstances which go to his credibility. So too, of Mr. Basset, the Att'y of Carver; the manner of detailing conversations of Lasater not in the presence of Gregory, abundantly justify the impression that such evidence is highly colored. The whole of the evidence seems ingeniously framed to impose a wrong conviction on the mind of the Court of Plaintiffs' rights, by circumlocution rather than by testifying to direct and material facts.

### III.

1. As to the pretended partnership it is, it seems to me on its face, repugnant to common sense, and absolutely absurd and unreasonable, that any man should enter land at Congress price, pay the taxes, and give one half of the profits to another when sold, as compensation for negotiating sale.

2. But ~~the~~ <sup>the</sup> testimony as it states matter purporting to prove a partnership, is not I submit a partnership, it gives Lasater no interest in the *title*, at most a joint interest in the profits only.

24 Dec 617.

3. There is no evidence of Gregory's knowledge of the making of contract of Carver and Lasater, possession or improvement of the land, none satisfactory in relation to partnership, and the whole case falls it is believed, within the decision of Dyer vs. Martin et. al. 4 Scam. Rep. 151 and 152.

H. K. S. O'MELVENY, Att'y. for Def't. in Error—Gregory.



# IN THE SUPREME COURT.

First Grand Division.

State of Illinois, }  
MARION COUNTY, } SS.

November Term, 1863.

ERASTUS B. CARVER, *Plaintiff in Error,* }

*vs.*

STANFORD A. LASATER AND  
DANIEL GREGORY, *Defendants in Error,* }

ERROR FROM MARION.

This was a suit in Equity on Bill for Specific performance, heard before Hon. S. L. Bryan, Circuit Judge at ~~May~~ Term A. D. 1863.

1 The Bill filed 23rd July 1861, states that the complainant Carver is a citizen and resident of Marion County, Illinois.

2 That on 17th March 1857 Compt. and Deft. Lasater agreed in writing that said Lasater had sold to the said Carver the N half of S W fractional quarter of Section 19 Town 4 N R 1 E 45 acres for \$270 to be paid twelve months after date, for which Lasater held a promissory note of said date with ten per cent. interest, on payment of which said Lasater was to make and deliver a Warrantee Deed for said Lands as by said Bond or Agreement appended to said Bill, and made part thereof appears.

3 That thereupon Compt took possession of said Lands and has continued in such possession and improved same to amount of \$100.

That since sale said Lasater and before the note became due Lasater for valuable consideration transferred same to William D. Long.

That at time of said sale Lasater had no title to said Lands, same being in Deft Daniel Gregory of Fayette Co. Ills., who owned same in fee simple, and is now such owner, said Lasater never having a legal title thereto.

That at time of sale Lasater was acting under an agreement between himself and Gregory by which Lasater had full power from Gregory to sell and convey said lands.

4 That afterwards Compt had a conference with Gregory about said purchase from Lasater, when Gregory assured him that by an existing contract between him and Lasater, Lasater had full power to contract and to sell said land, and that he, Gregory, was bound to make conveyance of same, and would carry out and affirm all Lasater's contracts as to said lands, and that Lasater had an interest with him in said lands, but did not disclose such interest.

Charges that they (Lasater and Gregory,) were partners in buying and selling land, that Lasater was the active agent in that partnership, Gregory furnished the money and Lasater expended it in buying land from the government, in Gregory's name, sold them in his own name, with knowledge and consent of Gregory, who shared in the profits of sales. That the land in question was purchased by Lasater, pursuant to said agreement; Gregory furnished the money, Lasater did the business, purchased in Gregory's name, and had full power from Gregory to sell same, Gregory having agreed with him to carry out and affirm all contracts as to said lands.

5 Charges that said contract with compt. as to said land was made, possession given and improvements made by compt with Gregory's knowledge, who permitted compt to contract, take possession of and improve said land without disclosing the true state of facts, or making his interest known to compt.



That about maturity of the said note Lasater failed and is now insolvent. That complt has since its transfer paid the note, and demanded his deed from Lasater and Gregory, which they refused ~~and neglected to do~~ and still ~~neglect and~~ refuse to ~~do so~~ *make*

6 Prays that Lasater and Gregory be Defendants—waives oath, prays answer and that said Compl't's agreement with Lasater be specifically performed—and that Gregory be decreed to carry out same and make Deed to Complainant.

7 Sets out the agreement which was filed with the Bill of Complaint.

8 Answer of both Defts filed 22 Aug. 1861. Answer joint and several states. That Deft Lasater admits the agreement, possession and improvements, and the transfer of the note as alleged in Bill. Deft Gregory says that at time of execution of said agreement he was ignorant of it, was not privy to it, did not consent to it, had no knowledge of it except from Bill or recently from Lasater, and never consented to ratify it, knows nothing of the possession or improvement except from Bill, denies all positive knowledge—that Compl't if in possession is so without Gregory's authority directly or indirectly—denies knowledge of the transfer of the note, except from Bill, admitting the fact of contract being made, possession taken, and note transferred, without his knowledge or consent.

9 Both Defendants say they do not know when Compl't learned Lasater had no title, admit that Gregory was and is sole owner of said land and that Lasater never had title except what he derived from a contract of 25 July 1855, copy whereof is appended to the answer marked "A" and part thereof.

10 They expressly deny that Lasater when he sold to Compl't was acting under an agreement whereby he had power from Gregory to sell same, deny any agreement other than that in "A" and a verbal extension of time of payment, that said contract "A" is forfeited by its terms.

Deft Gregory says he has recollection of the alleged conference, does not believe he had such; denies stating to Compl't there was the contract for sale alleged giving Lasater such power, and binding Gregory to convey except to Lasater himself—denies promising Compl't he would carry out and affirm Lasater's contracts as to said land or any land in which Lasater had an interest.

11 Gregory avers that if he had such conversation, he must have stated and did state the truth as it existed, that the only contract between them was, that in A. and that he was only bound to convey to Lasater on payment of the purchase money, and that he would not convey until he received same. That Lasater nor complt have ever paid him any part of the money due on said land by virtue of A. and has received no consideration of said land or promise of conveyance from Lasater or complt.

12 Denies that defendants were at any time partners as alleged. Deny Gregory furnished money to Lasater to purchase lands as alleged. Deny he purchased in Gregory's name and sold in his own with Gregory's consent. Deny Gregory shared profits. Gregory denies the land in question was bought by Lasater under any such agreement as alleged. Denies Gregory furnished the money, or that Lasater did the business, or that Lasater had power to sell or that Gregory agreed to affirm. They charge as to said tract that Lasater never entered it in Gregory's name, who never furnished him money therefor, that Gregory entered himself, paid his own money, that Lasater had nothing to do about it; the only interest he had was that denied under A.

Gregory denies that complt's contract, possession or improvements were made with his knowledge; denies he permitted such possession or improvements, for he denies any knowledge of such possession in manner alleged.

13 Defts admit Lasater's failing circumstances. Deny demands of deed alleged, and pray dismissal of bill with costs.

14 Answer sworn to on 22nd August 1861. Copy of contract A referred to in answer. Replication (general) filed 29 August, 1861.

15-16 Orders of continuance and setting cause down for hearing.

17 Deposition of W. J. W. Kidder on part of complt. taken before Clerk of Circuit Court of Marion Co., Ill. on 12 Jan. 1862, states—he knows the parties; complt from early in 1860, with Gregory a few months after, knows Lasater six or eight years. Was present at a conversation, thinks in July or August, 1860, at Gregory's house in Vandalia. The lands were north half of S W fractional quarter of

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19 section 19, T 4 N R 1 E of 3d P M in Marion Co., Illinois. Gregory, himself and Carver were all present at beginning of the conversation. Towards its end a gentleman called, stranger to him. What gave rise to the conversation was, Mr. Carver called on Mr. Gregory to know how he could procure a good title to the land. Carver was doubtful whether he bought of the right person. A great deal was said; the substance of what was said was that Carver wanted a good title to the land, and proposed buying them of Gregory. Gregory looked at the numbers of the land, said Lasater had already sold them. Carver said he was the purchaser, and produced the bond (A to Bill), that he had acquired from Lasater, claimed its forfeiture. Gregory examined it and gave his opinion, it was not forfeited, told Carver that any arrangement or sale made by Lasater would be binding on him, Gregory. Before this, however, Gregory produced a bond between him and Lasater, about the lands, read clauses of it to them: after such reading, he said he considered the bond between him and Lasater binding, though Lasater had not adhered strictly to its terms; he stated that as he considered that bond between him and Lasater binding, he considered that between Lasater and Carver binding, also. Gregory stated he was under obligations to give deeds for all lands sold by Lasater, that he, Lasater, had entered in Gregory's name. (The above answer was objected to, as also the question for impertinence and directness.) Gregory said the deed to the land was to come from him. He stated that he furnished the money to Lasater to pay for entering the land, that Lasater looked up the land and made the entries. (Question objected to.) Gregory said he furnished the money to pay for the entry of the land, that Lasater looked up same and entered them in Gregory's name—Lasater had the selling thereof and Gregory made the Deeds. Gregory said he was to receive a certain per centage on the money furnished whenever the lands were sold, that there was to be a division of profits, witness could not positively say whether the last was said in the conversation between Gregory and Carver or whether it was read in the clauses of the Bond he read to them. Gregory said that Carver was to get his Deed from him, Gregory. (Question objected to.) Did not recollect anything as to whom Carver should pay except that Gregory said the notes Carver gave to Lasater for the lands were binding on Carver. In that conversation Gregory referred generally to all lands entered by Lasater in Gregory's name, and also to the lands purchased by Carver of Lasater.

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21  
22 On cross examination by Defts' counsel the witness Kidder said, he had a Bond for a Deed from Lasater for the same land. He went to Vandalia with Carver on business, and then went with Carver to Gregory's as a neighbour. (Defendts' counsel objects to the foregoing on account of interest and irrelevancy.) Being shown Exhibit A to the answer and was asked if it were a true copy of the Bond produced and partly read at said conversation, witness said he recognized the condition as being the same as read, as to the balance could not say whether it is the same or not—witness did not know that Gregory spoke of any other contract than that in above bond. Witness said no other liability was spoken of than that based on the Bond between Gregory and Lasater and he knew of no other liability existing. The witness said that he understood Gregory on referring to paper as saying that Lasater had entered the land in question, Gregory said Lasater had entered these lands in his Gregory's name. Being asked if Gregory in that conversation said anything about his not having received the purchase money for said lands from Lasater, witness said he did not recollect his saying anything about it in regard to the tract in question. Did not think there was anything said about it in regard to this tract of land.

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24 On re-examination by Complots counsel witness said his Bond was dated after Carver's, did not know how long, thinks about three years.—That he did not recognize the whole Bond A to answer as being the same, but a portion of it he did recognize as being the same shown to him by Gregory at said conversation—recognized it from memory, from hearing it read; the portion of it he recognized was the proviso. Being asked if he considered the Bond from Lasater to him as being cancelled or as still binding, witness said so far as the land in question is concerned he considered it void.

25 The Deposition of James Bassett, a witness for Complt, taken before the Clerk of the Circuit Court of Marion County Illinois, on 17 July, 1862, states.

That he knows complt Carver from latter part of 1858, knows Lasater five

26 or six years and Mr. Gregory from early part of 1860. Had many conversations with Lasater about Carver's purchase. The lands are a fractional part of S W quarter of section 19 T 4 N range 1 near Patoka, some 43 or 45 acres. Witness called on Lasater on behalf of Carver to know what he would do about making a deed for that land. Would he deed to Carver? He said he could not deed to Carver because the legal title to the land was in Gregory. I asked him how he came to sell the land to Carver and Kidder while the title was in Gregory. He said he had a bond or agreement with Mr. Gregory which enabled him to sell those lands and other lands. He said he would let me see the agreement, and he would see 27 Kidder and bring Kidder to me and the agreement also. Thinks this occurred in the latter part of 1859 or early in 1860. Some time after, thinks in Sept. 1860, he brought Mr. Kidder to witness. They handed witness Lasater's bond to Kidder for cancellation as to said land, Kidder relinquishing his claim thereon.

Lasater then handed witness a bond between him and Gregory. There were several endorsements on it. Being asked by witness if there was any other agreement between him and Gregory, he said there was, but could not recollect whether it was in writing or not, but would hunt it up and give it to me. He said the terms of that other agreement were that Lasater was to look up the land, Gregory enter them and furnish the money to pay for them. Lasater would get purchasers and sell them, and Gregory and he would divide the profits; and said that under that agreement and the paper he gave me, he was authorized to treat with Carver. He said that on the matter being paid by Carver to Long he had no doubt he could get Gregory to execute the deed. Witness called his attention to the terms of the bond shown him, and its forfeiture, and that Gregory might refuse. Lasater said that the terms were extended and that the other agreement was uncanceled, and that Mr. Gregory, no doubt, would comply. Gave that bond to Lasater; thinks the paper annexed to the answer is a copy except that the endorsements were not on that copy attached to the answer. The extension of time related to that contract which witness understood was still in force. Carver, by witness's advice gave up land and relinquished homestead right to the Sheriff for satisfaction of the judgment obtained by Long on the note for the purchase money of the lands above referred to. (Gregory excepts to the question and above answer.)

29 Being asked to state any conversations respecting that purchase with Gregory, said that he had a conversation with Gregory at Clark's Hotel in fall or winter of 1860. Told Gregory all the facts in detail and that Carver wanted his deed, and on Gregory's question said the land was near Patoka. Gregory told witness he had a bond or agreement with Lasater about lands near Patoka, and that possibly the land may be a part of it; said that Lasater didn't comply with the terms of that matter, yet that he supposed he would be bound by Lasater's agreement. Advised witness to get Carver to pay the purchase money to him instead of Lasater or Long, and then Carver would be sure of a good title. At that time Carver had not settled with Long. Said that Lasater was unfortunate and careless, but that he supposed that he would be bound by the fair agreement of Lasater. Said that there was a general understanding or agreement between him and Lasater about lands, the purchase and selling of lands; including the lands in question, but that Lasater never kept his agreement with him. Had a subsequent conversation with Gregory in March, 1861, Gregory said if Carver and Lasater would settle and come and arrange with him that he could get the Deed. Gregory stated in the first conversation that he was to furnish money to enter lands, and Lasater was to sell and pay the money to him and there was to be a division of per centage or profits between them. Gregory said the Conveyances were all to come from him of course as all the lands were in him. That both Lasater and Gregory were told by witness he was Carver's Attorney and that Kidder makes no claim to the lands under his Bond.

31 On cross examination by Defts Counsel witness, Bassett, said that Gregory was not present at any of the conversations with Lasater. That there were two or three endorsements on the Bond spoken of, they related as far as he could recollect to the lands that were inside, could not tell in whose handwriting they were, but thinks in Mr. Gregory's. Understood from Lasater the original which witness gave him was with Mr. Shaeffer. Lasater never showed witness any additional agreement, but said there was such and could not recollect whether it was

32 in writing or not, witness wanted to see it, if in writing ; Lasater promised to look it out, but witness never saw it. From witness's conversations with Lasater did not learn he paid Gregory anything for the lands, for witness asked him that question and Lasater said that Gregory and he had never closed their business dealings, they were still open. From Mr. Gregory witness learned that neither Lasater nor Carver paid him any money for the land, cannot particularize the endorsements. Being asked whether the endorsements referred to had reference to the land in question, witness said his impression was it did not. Could not tell whether the note was assigned before maturity or not. Being asked whether Gregory told witness that there was another agreement than that appended to the Answer, witness said that he understood there was an agreement for entry of land and division of percentage and profit, but that he had the agreement with him, and there was nothing distinctly referring to the agreement, but witness understood the agreements were distinct. Thinks he had the Bond before his conversation with Gregory, his conversation had reference to the right of Carver upon his Bond. Witness did not in conversation with Gregory refer to that Bond then in his possession, his object was to see how Carver could get his deed. Being asked if Gregory did not state he was under no obligation to make a Deed for the lands in question, except as provided in said Bond between him and Lasater, and that he would not make a Deed for same unless he received the purchase money, witness said he did not refer to the Bond, and Mr. Gregory did not distinctly refer to it, it formed no part of their conversation distinctly. Witness understood the agreement he referred to was a general one as to sale and transfer of land. He did not say that he would not make a Deed until he got the purchase money, but he advised witness to get Lasater and Carver to settle with him, and he would give the Deed.

34 Re-examined by Compl't's Counsel, witness said, the Bond on file in Defendant's answer he did not recognize as an exact copy, it is not the Bond referred to, could not say it is an exact copy of the body of the Bond. The endorsements on the back of the one he had are not on that attached to the answer, did not compare the body with that attached to the answer, cannot say it is an exact copy, but thinks generally it is a copy.

35 Decree rendered at March Term, 1863, of Marion County Circuit Court, states cause called for hearing, that the parties came by their Solicitors, Cause heard on Bill, answer, exhibits Depositions and Replication. That the Court heard same, and the arguments of counsel, and decreed for Defendants for costs, &c.

36 CERTIFICATE OF CLERK OF CIRCUIT COURT.

And now comes the said Complainant by Willard and Goodnow, and James Bassett his Solicitors, and says that there is manifest error in said Decree, and for Error assigns as follows, to wit ;

ERRORS ASSIGNED.

1 The Decree is erroneous. It does not find the facts to warrant it, and is only for costs, without either granting the relief sought, or dismissing the Bill.

Sampson vs. Hunt 1 Root, 207, 521. Burdoin vs. Skelton, 10 Yerg 41.

Honore vs. Colmeshill, 1 J J Marsh 506. Crocket vs. Lee, 7 Wheat 522.

Beers vs. Botsford, 13 Conn 146.

2 The Decree is erroneous, in that it does not conform to the allegations and proofs, and is founded on neither.

3 The decree is erroneous. It overlooks the unity between the case alleged, the relief sought, and the equity to have that relief ; it overlooks the proofs sustaining the material allegations and the consistency of the equity sought ; it is erroneous in not granting that equity.

Pigg vs. Corden, 12 Leigh, 69. Estill vs. Hart, Hardin, 567.

4 The decree is erroneous in that it is contrary to well settled rules of equity. First. That real estate and its proceeds can be the subject of partnership.

Hoxie vs. Carr, 1 Sumner 173. Sigourney vs. Munn, 7 Conn 11.

Smith vs. Ramsey, 1 Gilm 373. Pugh vs. Currie, 5 Ala 446.

Farmer vs. Samuel, 4 Litt 187. Winslow vs. Chuffere, 1 Harp Ch 25.

Willard's Eq Juris, 710 Johnson's Chy Dig 246. 15 Ills. 70.

Dale vs Hamilton, 5 Hare 369 and 2 Phil 266. See Equity Leading cases 566

*Second.* That no vendor or incumbrancer on sale of land can take advantage of his silence for his own benefit.

Hovenden on Fraud, 186, 189, 193, 195. Cochrane vs. Harrow, 22 Ill, 345.  
Wendell vs. VanRansellaer, J Chy Dig 246. Niven vs. Belknap, ibid.  
Dye vs. Martin, 4 Seam 147, 152. Leading cases in Equity, 561.

*Third.* That the acts of an agent within the scope of his authority bind his principal, and that one partner can bind his co-partner within the terms of their partnership.

Hovenden on Fraud, cited above. Ward vs. Williams, 26 Ills, 447.  
Anderson vs. Tompkins, 1 Brock 456. Harnden vs. Sterry, 1 Chip 315.  
Taylor vs. Taylor, 2 Meer 70. Fitch vs. Stamps, 6 How, Miss. 487.  
Kirby vs. Ingersoll, Harring, Ch. 172. Chamb'n vs. Darragh, Walk Chy. 149.

*Fourth.* That a person not actually a party to a contract may yet be bound by it.

2 Hilliard Vendors, 186. Small vs. Atwood Young 407.  
1 Hilliard Vendors, pp. 63. Vanhorn vs. Fricke, 6 Sergt & Rawle,  
1 Hilliard Vendors, pp. 68. 90—91.  
Johnson vs. McGruder, 15 Miss. 365. Wood vs. Goodridge, 6 Cush 117.  
Doggett vs. Emerson, 3 Story, C C 700.

5. The Court erred in its decree in sustaining for deft the sworn answer, when oath was waived, and two witnesses contradict it.

2 Danl Chy Prac 1022 and note. Rev Stat 1845 p 96 sec 21.  
Moore vs. Hunter, 1 Gil 332. Harris vs. Reece, 5 Gil 213.

6. The Court erred in basing its decree on the exhibit A to the answer, and in acting at all on it in the absence of the original, which absence is not accounted for, and in the absence of proof that exhibit A was neither a true or a complete copy.

2 Daniel Chy Prac.—cited above,

7. The Court erred in overlooking the nature of the answer. It was a joint and several answer, and the admission of one deft is evidence against his Co deft.  
3 Greenleaf Ev Sec 283 and note and cases cited.

Rector vs. Rector, 3 Gil 105. Fust vs. Mansfield, 25 Ills 338.

8. The Court erred in view of the evidence, in not decreeing the specific performance prayed; the proof showing that complainant did all he was required to do. The decree impliedly encourages fraud.

Willard & Guadnow & Bossett  
Attys for Plt in Error

E B Carver 6  
m

Sussex & Gregory

Abstract

The facts judicially ascertained from  
the records before the Court showing that complainant did all he was required to  
do by the Court early in view of the evidence is not denoting the specific  
factor of record 3 Ch 102. See also *Wentworth v. H. 532.*

The Court ruled in overruling the claims of the answerer. It was a  
noted record made by the deposition of one Galt is evidence against the Co. Galt  
3 Chancery Case—1863 above.

The question of how the exhibit A was written on a receipt  
and in the absence of the original, which appears in my  
copy of the record is being the decree on the exhibit A to the answerer and in  
the case of *Hunter v. 1 Ch 322. Harris v. Record 2 Ch 213.*

The Court ruled in overruling the claims of the answerer, when  
with the evidence of the facts in connection for the answerer, when  
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*Wentworth v. H. 532.*

Filed Nov. 13-1863.  
N. Johnston Clerk

State of Illinois,  
SUPREME COURT,  
First Grand Division.

} SS

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Marion Greeting:

**Because,** In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Marion county, before the Judge thereof between

Erastus B. Career plaintiff and

Stanford A. Sasata and Daniel Gungy defendants it is said manifest error hath intervened to the injury of the aforesaid Erastus B. Career

as we are informed by his complaint, and we being willing that error, if any there be, should be corrected in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay send to our Justices of our Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at **Mount Vernon**, in the County of Jefferson, on the 1<sup>st</sup> Sunday after the 2<sup>d</sup> Monday of November next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

WITNESS, the Hon. Jhu D. Cochrane Chief Justice of the Supreme Court and the seal thereof, at MOUNT VERNON, this thirtieth day of November in the year of our Lord one thousand eight hundred and sixty-three.

Wash. Thurston

Clerk of the Supreme Court.





# In the Supreme Court of Illinois---1st Grand Division.

ERASTUS B. CARVER, Pl'tff. in Error, }

vs. }

STANFORD A. LASATER,  
DANIEL GREGORY, Def'ts. in Error. }

Error to Marion County.

## Defendant's Brief.

The Plaintiff in error's abstract is deemed imperfect in some respects and will be hereinafter reproduced from the record.

The bill shows that in 1858, Carver knew the condition of the title, and no where avers he did not know it at the time he purchased. He fails also to print the contract between Lasater and Gregory set out in the answer, in substance, to-wit :

"That Daniel Gregory in consideration of the sum of \$784 34, to be paid him by Stanford A. Lasater on the 25th day of July, 1856, which payment was thereby declared to be a *condition precedent*, agreed to sell and convey unto the said Lasater the E $\frac{1}{2}$ . S. E $\frac{1}{2}$ . Sec. 7. and the W $\frac{1}{2}$  of fractional Sec. 19. T. 4 N. R. 1 E. And the said Lasater thereby promised to pay said 784 34 Dollars, on the 25th day of July, 1856. And in said contract it is expressly provided that in case of non payment at the time stipulated, Gregory may consider the contract forfeited—take possession of the land and convey the same to any other person. Dated, July 25th, 1855."

Signed.

DANIEL GREGORY, [Seal.]

Signed.

STANFORD A. LASATER, [Seal.]

See Record, page

The only Witnesses in the case are Messrs. Kidder and Basset, and the abstract is also deemed imperfect in relation to a part of their evidence. Mr. Kidder says at the conversation with Gregory to which he refers, Mr. Carver proposed buying the land from Gregory (1860,) and that Mr. Gregory read clauses of the bond, [Contract] between himself and Lasater ; examined the contract between Carver and Lasater and stated as his opinion that Carver's contract was not forfeited. He said he considered the bond [contract] between himself and Lasater binding *and inasmuch* as he considered that binding—he considered the contract between Carver and Lasater binding. He said the deed was to come from him. (Ans. to 7th question.)

### ON CROSS EXAMINATION.

To interrogatory 2. 3. and 4. Kidder said he recognized the contract marked A. with Defendant's answer so far as the *proviso*, as the same read by Gregory to Carver and him ; does not think Gregory spoke of any other ; there was no other liability spoken of and he knew of no other.

Mr. Bassett, had a conversation with Gregory in 1860, fall or winter. Gregory asked him where the land was. Witness informed him near Patoka. Mr. G. then remarked, he had a bond or agreement with Lasater about land near Patoka, and possibly that land might be a part of it.— Among other things, this witness says Mr. G. advised him to get Carver to pay him, and then he would be certain of a good title. Mr. B. states further that Lasater handed him the contract between him and Gregory ; it had some indorsements upon it—he examined it, and returned it to Lasater, and the paper appended to Defendant's answer he thinks is a copy of it. He says also, that Carver was pressing (March, 1861,) for indictment against Lasater ; that he so informed Gregory, who said, if Lasater and Carver would settle and arrange with him, he would deed to Carver.

Defendant Gregory relies upon the following points :

1st. The Plaintiff is *estopped* from denying that the bill was dismissed—unless that were so, the suit is still pending in the court below, and this Court would have no Jurisdiction. The record shows however the cause was heard, decree against Complainants for costs, &c., the *and so forth*, will embrace dismissal of bill, and the Clerk only omitted it in the final decree.

2d. The Court gave no greater force to the answer sworn to, than had it not been so ; nor base its decree on exhibit A. to Defendant's answer, but rested its action on the inconclusive, repugnant, contradictory and uncertain testimony of the Complainant, and the Plaintiff's proof in support of the original of exhibit A.

3rd. Both Kidder and Basset identify the contract a copy of which, is marked A. and by their evidence the exhibit is a sworn copy, (the indorsements are no part of it,) and Mr. Basset, Att'y of Carver had the original, and put it in the possession of Lasater, out of the possession of Gregory, and there the evidence leaves it.

4th. Kidder contradicts himself; in one part of his evidence to interrogatories 2. 3. and 4. (on cross examination,) he says he recognizes the contract marked A. to Defendant's answer so far as the *proviso*, as the same read to him by Gregory; that he does not think Gregory spoke of any other; that there was no other liability spoken of, and that he knew of no other. In another part of his evidence, he refers to another partnership contract, and division of the profits.

5th. Neither of these witnesses will testify that Gregory agreed to convey this land to Carver until paid his purchase money. In Bassets conversation in fall or winter of 1860, Mr. Gregory advised him to get Carver to pay him, and then he would be sure of a good title; in the Spring of 1861, he said, if Lasater and Carver, would settle and arrange with him he would convey to him. He said to Kidder and Carver, that as he considered *his contract with Lasater binding*, he so considered Lasater and Carver's contract binding between them.

6th. The fact that Plaintiff waited after he learned Gregory was the owner, more than three years before suit, and further that after all the reported conversations with Gregory, *up to March, 1861*, and after his Att'y Basset had cancelled the Kidder contract as to this land, *he was urging an indictment against Lasater*, are strong circumstances evincing a knowledge on his part, that he had no just claims upon Gregory for the title.

7th. The fact also that Kidder holds bonds of Lasater, for land, Lasater's insolvency—the visit to Gregory, (if it were so), his silence then, that he held a bond for the same land, the facility with which he releases this land back to Lasater, are circumstances which go to his credibility. So too, of Mr. Basset, the Att'y of Carver; the manner of detailing conversations of Lasater not in the presence of Gregory, abundantly justify the impression that such evidence is highly colored. The whole of the evidence seems ingeniously framed to impose a wrong conviction on the mind of the Court of Plaintiffs' rights, by circumlocution rather than by testifying to direct and material facts.

### III.

1. As to the pretended partnership it is, it seems to me on its face, repugnant to common sense, and absolutely absurd and unreasonable, that any man should enter land at Congress price, pay the taxes, and give one half of the profits to another when sold, as compensation for negociating sale.

2. But were the testimony as it states matter purporting to prove a partnership, is not I submit a partnership, it gives Lasater no interest in the *title*, at most a joint interest in the profits only.

3. There is no evidence of Gregory's knowledge of the making of contract of Carver and Lasater, possession or improvement of the land, none satisfactory in relation to partnership, and the whole case falls it is believed, within the decision of Dyer vs. Martin et. al. 4 Scam. Rep. 151 and 152.

H. K. S. O'MELVENY, Att'y. for Def't. in Error—Gregory.

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