

11865

No.

Supreme Court of Illinois

Bates.

vs.

Honey.

71641  7

No. 1

Gring Bates
vs
Josiah Honey

Grundy

92

1851

11865

State of Illinois
Crawley County

Now before the Hon^{ble} David Davis Judge of the eighth judicial Circuit of the State of Illinois and by exchange with the Hon^{ble} R^{obert} Dickry Judge of the ninth Judicial Circuit of said State, Presiding Judge of the Circuit Court of said County at a Circuit Court in and for said County begun and held at the Court house in Morris on Tuesday the sixteenth day of December in the year of our Lord one thousand eight hundred and fort eight, at the hour of eleven o'clock A. M. of said day

Present Hon^{ble} David Davis Judge
W. B. Cook States Attorney
Orville Cook Sheriff
Geo. McKimsted clerk

Be it remembered that hereafter to wit on the 10th day of October 10 1848 the Transcript of ~~the~~ proceedings and papers in a certain suit of Sarah Morrey against Jerry Bates in Execution on a Change of Venue from the Court of Du Page, were filed in said Circuit Court and are in the words and figures following to wit:

State of Illinois

Du Page County Circuit Court

Sarah Morrey

v

Jerry Bates

State of Illinois
Du Page County

} of the September Term 1847

} as Sarah Morrey plaintiff

in this suit by Spring & Goodrich his Attorneys. Com-
plains of Jerry Bates Defendant in this suit of a false
withhold from the said Jerry Bates unlawfully with-
holds from the possession of the said plaintiff the
following described property situated beyond be-
ing in the said County of DuPage, to wit the east half
of the south east quarter of Section two (2) in Town-
ship thirty nine (39) north in Range eleven (11) east
of the third principal Meridian. Also the east
half of the north east quarter of Section eleven (11)
in the same Township & Range; Also the north
east quarter of Section two (2) in same Town-
ship & Range; Also the south west quarter
of Section One (1) in the same Township and
Range

For that whereas the said plaintiff on the
first day of June A.D. 1847 at the County of DuPage
aforesaid was possessed of the premises above
described and the said plaintiff being so pos-
sessed thereof, he the said defendant after-
wards; to wit, on the second day of June A.D.
1847 entered into said premises and un-
lawfully withholds from the said plaintiff
the possession thereof

And the said plaintiff states that
he claims the said premises in fee simple
to the damage of the said plaintiff of
one thousand dollars, and therefore he
brings his suit

Spring & Goodrich attys
for Plff

The said Defendant will take notice that

on the first day of the next term of the Du Page
County Circuit Court, a declaration, of
which the above is a copy, shall be filed in
said Court together with a copy of this
notice, and that upon filing the same, a
rule shall be entered requiring said defend-
-ant to appear and plead to such decla-
-ration within twenty days after the entry
of such rule, and that if said defendant
neglect so to appear and plead, a judgment
by default shall be entered against him
& the said plaintiff shall recover possession
of said premises

September 13th 1847

Spring & Goodrich atty for
plff

State of Illinois vs
Cook County vs

Almon Hovey being
duly sworn says that on the twenty third
day of September A D 1847 he served the
above named Jerry Bates with a copy
of the above declaration & notice by deliv-
-ering the same to him in Du Page County
in person

Almon Hovey

Subscribed and sworn to before me this 25th day
of September A D 1847



In testimony whereof I have hereunto set my
hand and affixed the seal of the Cook County
Circuit Court at Chicago in said County this
25th day of September A D 1847

Sam^l Howard Clk Cook County
Court

On Page County Circuit Court
Gerry Bates
vs
Josiah Henry

And the said Gerry Bates
by Andrew J. Brown his Attorney comes and
defends the force and injury. When he and
says that he is not guilty of unlawfully intru-
-ding the premises claimed by the Plaintiff
in this cause as alleged in the said Plain-
-tiff's declaration, - and of this he the said
Defendant puts himself upon the Court
and the said defendant doth the like &c
Andrew J. Brown
Atty for Def^{ce}

United States of America
State of Illinois
On Page County

Now before the Hon-
-orable Justice B. Thomas one of the Associate Jus-
-tices of the Supreme Court in and for the
State of Illinois and Presiding Judge of
the Seventh Judicial Circuit in said State
at a Circuit Court in and for the County
of Page in said Circuit, begun and
held at Capeville in said County on Mon-
-day the twenty fifth day of September in
the year of our Lord our thousand eight
hundred and fort eight and of the Inde-
-pendence of the United States of Am-
-erica the twenty third

Present the Honorable Justice Thomas Judge
William J Boardman State Attorney
George Rausch Sheriff
Attest John Kiddle Clerk

Be it remembered that herebefore, to wit, on
the ninth month day of September A D 1847 being
one of the days of said September Term of said
Court, the following among other proceedings
were had, to wit:

Abraham Henry vs Ejectment
Gerry Bates vs

This day comes the Plaintiff by
Spring his attorney and files his declaration
herein and also an affidavit of the service of
a copy thereof, together with the notice re-
quired by statute, and moves the Court for a
rule upon the Defendant to plead thereto
Whereupon it is ordered by the Court that the
Defendant plead herein within twenty days
after the entry of this rule, and in case of
failure of such appearance and plea, the
default of said defendant shall be entered
herein

And afterwards, to wit: on the nineteenth
day of April being one of the days of the April Term
A D 1848 of said Court, the following among
other proceedings were had, to wit:

Abraham Henry vs Ejectment
Gerry Bates vs

This day comes the defendant

by his Attorney W. Brown and moves the Court
for an injunction herein, which Motion is
opposed by opposing Attorney for the Plaintiff

And afterwards to wit on the 21st day
of April 1848 being as yet of the said April
term of said Court the following among
other proceedings were had to wit:

Abraham Kearney
vs
Erroy Bates } Ejectment

This day came the parties here
in and the Court having heard the parties on the
Motion formerly entered herein, and being
fully advised in the premises, overruled said
Motion and refuses to grant said bill

And issue being joined it is ordered, that a
Jury come, and thereupon came a jury to wit
John Granger Peter Burgard, Jesse B. Kitchin
Alonzo B. Chatfield, Michael Morris, John
Kaper, Stephen Pierce, James Pratt, Lewis Ellis
worth, Eli Rich, Abrahm Fowler and Frederick
McKether, who were duly impanelled and sworn
well and truly to try the issue joined herein
and after hearing the testimony, for verdict
say... That the Jury find the defendants
guilty of unlawfully withholding the premises
described in the declaration to wit:
situated in the County of Ouzage and State
of Illinois, being the East half of the South
East quarter of Section two (2) in Town-
ship thirty nine (39), North, in Range Eleven
(11) East of the Third principal Meridian
Also the East half of the North East quarter

of section Eleven (11) in the same Township and Range; Also the South West quarter of section one (1) in the same Township and Range.

It is therefore ordered and considered by the Court that the said Plaintiff recover of the said Defendant possession of the said lands and that a writ of Restitution issue for that purpose. It is further ordered that the Plaintiff recover of the said Defendant his costs and charges herein and that he have execution.

And therefore the Defendant according to the Statute in such case made and provided, moves for a new trial herein. And it appearing to the Court that the costs herein have been paid by the Defendant, sustains the motion and grants a new trial. And it is further ordered by the Court that this cause be reinstated on the Docket for the purpose of a new trial.

And afterwards, to wit, on the 25th day of September 1848, being one of the days of said September Term of said Court the following among other proceedings were had to wit:

Sarah Hovey
vs
Gory Bates } Ejectment

This day comes the Defendant by Brown his attorney, and files his affidavit, and for the reasons therein set forth: moves the Court for a change

of Whine in this Cause, and the Court having
heard the parties therein and being fully ad-
vised in the premises, It is ordered that
the venue in this cause be changed to the
County of Grundy in this State

State of Missouri
On Page County

John J. Riddler Clerk
of the Circuit Court for and for said
County of On Page in said State, hereby
Certify the foregoing to be a true and correct
transcript of the record in the above en-
titled Cause, taken from the records of
my office and that the annexed
file is a true copy from my file book
and I further Certify the enclosed papers
and transmitted herewith and marked (No A)
(No B) (No C) (No D) & (No E) are the Original (pa-
pers and all of them on file in my office in said
Court

In testimony whereof I herunto subscribe
my name and affix the seal of said Court
at Napoleon in said County this
sixth day of October A D 1848
John J. Riddler Clerk

State of Missouri
On Page County

Sept 7, 1848
Josiah Hays
vs
Gerry Bates

Plaintiffs vs

Dec 1st / C. Bill 3 / C. Ad 4 / Dec 1st / 1848 / \$1.37 1/2

And now, again comes the said plaintiff by Spring and Ballingall, his attorneys and the said Defendant by Brown and Dudley his attorneys, and issue being joined, it is ordered that a jury come, and thereupon came the following Jurors of a Jury, to wit; Thomas Reynolds, Franklin Hague, G. C. Cumberlin, William Woolsey, William Waters, James Berry, John T. Wheeler, Charles Crain, Hiram Fuller, Edward Booth, James McKean and Joseph C. Newport, who were duly empannelled and sworn well and truly to try the said issue according to the evidence and they having heard the evidence, retired to consider of their verdict, and thereafter came unto court and returned the following verdict "We the jury find the Defendant guilty of unlawfully withholding from the plaintiff the following described premises described in said declaration to wit;

All of the following described premises situate lying and being in the County of Du Page and State of Illinois, to wit; All that part of the East half of the North East quarter of section Eleven (11) lying north of the Center of the ^{Chicago} Grand de Louis State road; also the East half of the South East quarter of section two (2); the North East quarter of section two (2) and the South West quarter of section one (1) all of them in Township thirty nine (39) North, Range Eleven (11) East of the third principal Meridian in

The County of Du Page, containing altogether
Four hundred and twenty one acres of land
be the same more or less, being part and par-
cel of the said premises mentioned in the
said declaration, and we further find
the defendant not guilty as to the res-
idence of the premises mentioned in said
declaration - and we further find that
the said plaintiff was seized of an estate
in fee simple in the aforesaid premises
so unlawfully withheld. It is therefore
ordered and adjudged that the said plain-
tiff have and recover of the said defendant
possession of the said premises in said Ju-
dicial set forth and that he have a writ of
possession therefor. And it is further
ordered and adjudged that the said
plaintiff have and recover of the said
defendant his costs and charges herein
and that he have execution for the costs

And thereafter, to wit, on the 15th
day of December A.D. 1848, as yet after the same
Term of the said County Circuit Court, the
following further proceedings were had
in said cause, to wit;

Wesley Harvey
vs
Girvy Bates } Ejectment
 } Change of venue from Du Page
Again at this day came the
parties by their Attorneys and the said
defendant prayed for an appeal herein
to the Supreme Court, which is granted

upon condition that the said Defendant file a bond herein conditioned according to law in the penalty of seven hundred dollars on or before the second day of January next with security; which security it is agreed by the parties shall be approved by the Judge of the Seventh Judicial Circuit of this State at Chicago, upon giving notice to Giles Spring or Patrick Ballingall, Attorneys for the plaintiff of the time of such security being offered

And thereupon the said Defendant files a bill of exceptions in said cause which is in the words and figures following to wit

Grand Jury Court

Josiah Harvey } Bill of exceptions

vs

Gerry Bates } Of December Term 1848
In Ejectment

Be it remembered that on the 13th day of December of the Term of December A.D. 1848 before the Hon. David Davis Judge of the Eighth Judicial Circuit of the State of Illinois sitting for the Hon. S. V. Dickey Judge of the Ninth Judicial Circuit in said State, came the said Gerry Bates by Brown and Gralley his Counsel, and the said Josiah Harvey by Spring & Ballingall his Counsel, and thereupon the said Gerry Bates by his Counsel on the affidavits of

Gerry Bates and Henry Brown moved for a
continuance of said Cause - And affi-
davits are in the words and figures follow-
-ing to wit:

Grundy County Circuit Court
Gerry Bates
Ads } On Ejectment
Wesley Henry

Leosh County Jr. Gerry Bates de-
-fendant in the above Cause being duly
sworn deponent and saith, that he has a good
and substantial defense in this cause upon
the merits as he is advised by his Counsel
and verily believes to be true. That this
deponent on the 28th day of September 1846
by a quit claim deed joined with others
in a conveyance of the premises in ques-
-tion to one Almon Henry - that no mon-
-ey was paid at the time by the said Almon
Henry except for acknowledging the Deed
and none has been paid since. That said
deed was executed by this deponent to the
said Almon Henry to secure the payment
of two hundred dollars which he the said
Almon pretended he had assumed to pay
to George B. Varnum & to enable the said Almon
to make an equitable division of said
property between the deponent and one
John L. Henry who was interested with
this deponent therein - And that reposing
special confidence in the said Almon
this deponents wife & the said John L.
Henry's wife executed said deed & the

Said Almon agreed to make said division
and convey the same (after making him-
self secure for advances and responsibilities)
to this deponents wife and children

This deponent further saith that the
said Almon Hoagy has not paid the said
Geo B Cowens said demand or any part
of it as he is informed and believes &
expects to prove by the said Geo B Cowens
- This deponent also expects to prove by the
said Cowens that the two hundred dollars
which the said Almon pretended he had
assumed to pay said Cowens was for
two promissory notes bought of him by
said Hoagy against this deponent -
whereas in truth and in fact said Hoagy
had bought no such notes & said deed
so executed as aforesaid to the said Al-
mon was obtained in part of this depo-
ment by false pretences

This deponent further saith that on
the fifte of October 1846 seven days after he
had obtained said deed of this deponent
the said Almon fraudulently and corruptly
& without consideration conveyed said
premises to his brother Darius A Hoagy
- that the said Darius A Hoagy without con-
sideration afterwards fraudulently conveyed
said premises to Augustus C Lamb, ~~fraud-
ulently and without consideration~~ a
cousin of the said Almon and Darius A
Hoagy, and the said Augustus C Lamb

fraudulently and without consideration conveyed
the same to Josiah Hoovey the plaintiff in this
cause

The deponent further saith, that
said deed so executed by Daniel A Hoovey to
the said Augustus C Lamb was not delivered
to the said Lamb at the time of its execution
- that the said Lamb was not in the County
and this deponent believes he can prove by
said Lamb that the same was never delivered
to him

This deponent further saith
that the said Geo B Currier, and James
Curtis, William Salmage and Edward Remy
are material witnesses for the defendant
in the trial of the above cause, all
of whom reside in the Counties of Clark &
Ou Sage & that the depositions of the said
Augustus C Lamb & the depositions of John
A Warner and Otis Warner of the State of
Ohio & the deposition of Daniel A Hoovey of
Milwaukee Wisconsin are all of them nec-
-essary on the trial of said causes

That no means have been taken by
this deponent to procure said depositions
because this deponent supposed and believed
that there would be a decree in a cause
now pending in Chancery for setting
aside the aforesaid several deeds as fraud-
-ulent before the Grand Jury would
be held & in that case that said depo-
-sitions would be unnecessary

This deponent further saith that he this
deponent is indebted to Marcus Holcomb
Jeha's Med and Solomon C Williams of Ohio

in the sum of Five thousand five hundred dol-
lars & upwards and also to the said Mar-
cus Holcomb for the use of Suggins Reed
and Company in the sum of Fourteen hundred
dollars and upwards and was so indebted
on the said 28th day of September 1836, which
fact as to the said Holcomb Reed and
Williams debts was known to the said
Almon Hovey when he took said deed of
this deponent - That said Holcomb
and others commenced a suit in Chancery
in the On Page Circuit Court before this C-
-junctment was brought, against the said
Almon Hovey, Davius S Hovey Augustus
C Lamb, John S Hovey and Josiah Hovey to-
gether with this deponent, the object of
which suit is to set aside among other
things the several deeds under which the
said Josiah Hovey claims title to said
premises, as fraudulent & void, that
answers have been filed, proof taken
therein; that said suit has been argued
and is now under advisement by Judge
Oesby of the Cook County Court into
which said Chancery suit was removed
by consent, for decision

This deponent further saith that the said
Almon and Davius S Hovey and Josiah
Hovey are all of them insolvent as this
deponent is informed and believes - that
in case a recovery be had in this cause
this defendant will be entirely defrauded

out of his farm and Tavern Stand. (the
promises in guarantee) and this deponent
creditors will lose their just demands
against this deponent - That this de-
ponent prefers having the same go to
his honest creditors than to have it en-
joyed by the said Almon & Daniel A.
Henry or Sarah Henry, neither of whom
have paid any thing therefor of any conse-
quence, not to exceed at all events, twenty
five dollars. And further this deponent
saith not

Gerry Bates

Subscribed & sworn this
7th day of Dec^r 1848

before me - Witness my hand
and the seal of the Cook County Court
at Chicago the day and year aforesaid,
Louis Board Clerk
Cook Co. Circuit Court Ill.

Grandy County Circuit Court

Gerry Bates

ads

In Exemption

Sarah Henry

Grandy County ss. Henry Brown
attorney and of counsel for the defendant in
this cause being duly sworn deposes and saith
that he is acquainted with the promises in guar-
antee and the merits of this cause and that
the defendant in the opinion of this depon-
ment has a good substantial and legal
defense therein - That said defense is

more properly a subject of Chancery jurisdiction than any other and consists in the proof of a great variety of facts and circumstances to be made out by the testimony of a great number of witnesses living some of them in different Counties in this State - some of them in Ohio & some of them in Wisconsin.

This document further saith that the said Jerry Bates being largely indebted to Marcus Redcomb, Silas Reed and Solomon Williams of Ohio previous to the 28th day of September 1846 on the day last aforesaid executed with his wife and others a quit claim deed to Almon Hoory of the Cottage Hill property now in dispute worth about \$5000; that the legal title to said premises at that time was in one John Warner in trust for the said Jerry Bates & one John Hoory; that said Almon Hoorys interest therein estimating the whole at \$5000 was \$388.64 and the said John Hoorys interest \$1181.36 that being unable to agree on the respective interests to which each was entitled, it was agreed between the said John Hoory & the said Jerry Bates, that Warner should convey the whole by a quit claim deed to the said Almon Hoory in which conveyance the said John Hoory & his wife & the said Jerry Bates & his wife joined - that the object of said conveyance on the part of the said Jerry Bates was

to secure the sum of two hundred dollars, which
the said Almon Henry pretended he had given
to one George B. Cairnes, or agreed to give for
the purchase of two notes against said Bates
and to enable him the said Almon to make
an equitable division of said property
between the said John C. Henry & Jerry
Bates, each of whom had a resulting trust
therein, the same having been purchased by
said Warner with moneys advanced by
the said John C. Henry & Jerry Bates
That said Almon Henry accepted said
deed for the aforesaid purpose and agreed
to make such division and do what was
right ^{as} between them - that no pecuniary
compensation was paid for said premises
- that said Almon agreed to pay some four
or five hundred dollars for the whole
thereof, so much any part of which has been
paid and no part of the pro. which he
said he had agreed to pay for the said Bates
notes That the said Almon instead of ma-
king such division as he agreed and pay-
ing off the debts he had assumed to pay,
fraudulently and without consideration
some days thereafter conveyed the whole of
said premises to his Brother Darius C. Henry
- the said Darius knowing at the time of the
transfer and conditions upon which his bro-
ther had received said deed - This deponent
further saith that the said Darius C.
Henry after he had received his deed from
the said Almon agreed to pay the debts which

Almon had promised to pay and make the
aforesaid division, but instead of doing
so. fraudulently and corruptly & without
consideration and after a suit in Chancery
was about to be commenced against him,
conveyed said premises to Augustus C
Caleb - that the said Augustus C Caleb
afterwards, without consideration, and
after a suit had been brought against
him to set aside his deed, fraudulently
conveyed the same to said Josiah Hovery.

This deponent further saith that
on the 28th day of May 1847 and before the
commencement of this ejectment suit
he this deponent as solicitor for said Hol-
comb Wood & Williams (the said Holcomb
Wood & Williams having previously obtained
a judgment & execution against said
Bates) & the same being levied upon the
property in question filed a bill in Chancery
against the said Almon Hovery, Daniel
O Hovery, John O Hovery, Augustus C Caleb
and Jerry Bates to set aside the aforesaid
several deeds as fraudulent & void -
that the said Augustus C Caleb on the
same day it was filed and after he must
have known that it was prepared to be
filed, conveyed said premises to the
said Josiah Hovery except 75 acres
thereof which he conveyed to the order of
John O Hovery to settle the suit brought
by the said John O Hovery against him and
others - that this deponent thereupon filed

a supplementary bill against the said Josiah
Henry making him a party in the original
suit & afterwards filed a petition to
make other persons Complainants therein
- that summons was issued and service
upon the said Josiah Henry in the Chan-
cery suit and was pending when this
ejectment suit was brought

This deponent further says that answers
have been filed therein by all the defendants
except John & Henry and that proof has
been taken in said cause - that the bill
and petition set forth among other things
the facts herein before mentioned in sub-
stance and prays that the deeds under
which Josiah Henry claims title to the
premises in question be set aside as frau-
-ulent and void and for such other and
further relief as said Complainants
are entitled to

This deponent further saith
that the above Chancery Suit (the venue
having been changed by consent from On Page
to Cash County Court) wherein Marcus
Holcomb, Silas Reed & Solomon O
Williams and Marcus Holcomb for the use
of Myrdum Reed & Co. are Complainants
and Almon Henry, James S. Henry, John
& Henry, Josiah Henry, Augustus L. Lamb
and Erny Batts are defendants was set
down for final hearing at the last Octo-
ber term thereof, and this deponent then
and there expected a decision therein

- That owing however to a press of business it was not heard during term - but by consent was set down for hearing in vacation and on the 23rd of October 1848 an order was entered in the book of rules and orders of said Court as follows

In Chancery Oct. 23 1848-

And now the Complainant by their Solicitors and the defendants by their Solicitors Spring & Goodrich also came and by agreement of parties it is ordered that this cause be set down for hearing of exceptions and final hearing before the Judge of this Court at his Chambers on Thursday next (Oct 26) and the Judgment and decree upon such hearing be entered up as of this term and to have the same force validity and effect and be subject to the same exceptions, appeals and writs of error as if heard and entered up in this term

That said cause instead of being heard on the 26th of October was continued by Judge Dickley from time to time till the 7th of November last for his own convenience he being unable to hear it before on which last day the same was argued by Counsel on both sides and submitted for final decision

This deponent further saith that after it had been argued his Hon. Judge Dickley informed ~~the~~

deponent that he would make a final de-
-cision therein as soon as possible - that this
deponent expecting such decree from day
to day and knowing that his decision
would be conclusive (unless appealed
from) in the Exaction Suit now pending
made no preparation for its defense un-
-til the 29th day of November when this
deponent was informed by Judge Tichey
that it would be impossible for him to de-
-cide said Chancery suit until after
the Grand Circuit - Whereupon this
deponent wrote immediately by mail
to the Clerk of the Grand Circuit to
send for subpoenas for James Curtiss, Geo
B. Snows of Cook County and William
Palmer & Edward Boney of On Page -
that owing to the delays of the road and
the delays incident thereto, this deponent
did not receive said subpoenas till the
8th of December instant - that one was
put into the hands of the Sheriff of Cook
County immediately for service and the
other sent to the Sheriff of On Page County
for the same purpose - that said last
mentioned subpoena has not been re-
-turned nor has this deponent learned
whether the same has been served or not
-that the same was sent by mail as soon
as received - that owing to the almost
unpassable state of the roads it is
uncertain whether the said Palmer
or the said Boney have been subpo-

And - that neither of them are in attendance - that this deponent gave directions to have them here by Tuesday noon without fail. This deponent further saith that the answers of the said Amos Henry, Augustus C Lamb, Almon Henry and Darius A Henry are a material part of the defendants defense in this Ejectment suit - that the said James Curtiss is Clerk of the Cook County Court and has the Custody of said papers - that he has been duly served with a subpoena to bring them to this Court and has neglected or omitted to attend - that the said Geo B Knowers is material in this respect to show that said deed was obtained by the said Almon Henry from the said Bates by falsely pretending that he was the owner of the aforesaid notes, when in fact and in truth he had obtained them merely to experiment thereon, without having any interest therein and without paying a single dollar therefor & that said Almon Henry was then and is now insolvent - that the said William Salmons and Edward Bounay are material in this respect, that said defendant will prove, as this deponent believes, by them that the deed executed by Almon Henry to Darius A Henry was executed without consideration and for the ex-

- for the purpose of defrauding not only
 the said Emory Bates & John V. McCreary
 of their interest in said premises, but
 their creditors also - This deponent
 further saith that this application
 is not made for unnecessary delay
 but to prevent multiplicity of litigation
 & in order that Justice may be done
 to the respective parties claiming an
 interest in the premises in question - and
 to prevent a great fraud being practiced
 by the plaintiff & his _____

And further this deponent saith that
 subscribed & sworn to by Henry Brown
 this 26th day of Dec.

A.D. 1848
 Geo. W. Keeney Clerk

- Said motion was
 granted by the plaintiffs counsel who of-
 fered to read the affidavit of Giles Spring
 and Patrick Ballingall together (not
 however as a counter affidavit) with
 a copy of a certain bill in Chancery there-
 unto annexed; ~~with~~ said affidavits &
 bill in Chancery are in the words and
 figures following, to wit:

State of Illinois }
 Grundy County } Special Term
 December 1848
 Sarah Keeney }

vs } Ejectment
 Emory Bates }

Giles Spring and Pat-
 rick Ballingall being duly sworn

should say that a Motion was made at
the Du Page Circuit Court for an in-
junction to stay the proceedings in
this cause as appears by the transcripts
of the proceedings of the said Court in
this cause. That said Motion was
made by the said defendant by Henry
Brown his solicitor on the bill and
Answers referred to in the affidavit of
the said Brown filed herein, a copy
of which said original bill is herewith
filed marked B. That the said Mo-
tion was made and argued on the fol-
lowing allegation that the said defendants
had insisted in their said answers
upon the Statute of frauds, which al-
legation was conceded by the said Brown
as solicitor afterwards, and the said
Court refused to grant said injunc-
tion as well upon the ground of the
Statute of frauds as on the ground
that there was no equity in the bill as
far as related to the said Bates, the
said Bates having no interest in the prem-
ises nor no equitable grounds for re-
-lief. And the deponents further sev-
-erally say that after the change of Ven-
-ue was taken in the Chancery cause
set forth in said Browns Affidavit
the said Spring in preparing said
Cause for argument discovered that
through inadvertency the said

Statute of frauds had not been inserted in said answers of said defendants and these deponents say that the Hon. Hugh S. Diebry on Motion of the said Spring as the Collector of Cases at New-York and Simon Hoovey granted leave to amend their said answers by setting up and inserting upon the Statute of frauds which was accordingly done

And said deponent Giles Spring says that some fifteen or twenty days prior to the last term of the said On Page County Circuit Court, the said Henry Brown moved for an injunction to stay the proceedings in said ejectment suit on the said bill and answers after all of the proofs had been taken in said cause amongst which proofs were the depositions of all of the witnesses named in said Affidavit of said Brown & Bates (except the witness James Curtiss) and Augustus C. Lamb, and the said Augustus C. Lamb had at that time filed his answer under oath in said Chancery Cause and the said Hon. Hugh S. Diebry after examining the bill answers and proofs therein (having taken the same under advisement for some days) overruled said Motion and refused to grant the said injunct-

ion
subscribed & sworn to by Giles Spring
this 13th December 1848 before me
Geo. M. Thurston Clerk

Giles Spring
J. P. Wallingall

To the Hon. Jesse B Thomas Judge of
the Du page County Circuit Court
in the State of Illinois in Chancery
Sitting

Humbly complaining shew unto your Honor
your Orators Marcus Malcolm, Silas Med
& Solomon & Williams of Lake County in the
State of Ohio, that Perry Bates of the County
of Du Page in the State of Illinois several years
ago was, and now is indebted to your Ora-
tors in the sum of two thousand four hun-
dred and fifty dollars & upwards for monies
of your Orators paid to the Geauga Bank
in the said State of Ohio for and on acco-
unt of the said Perry Bates & at his spe-
cial instance and request your Orators
then and there having been the endorsers of
his, the said Perry Bates promissory notes
to said Bank, which said demand is now
in judgment & execution as hereinafter
is set forth,

And your Orators further shew
unto your Honor, that the said Perry Bates
being thus indebted to your Orators in 1842
and afterwards & being also indebted to
other persons in large amounts, agreed
with one John V. Harvey as follows to wit,
that the said John V. Harvey should come
into the state of Illinois & enter on the mon-
ies to be furnished by the said Perry Bates
public lands & with means to be furnished
also by the said Perry Bates, should

make improvements thereon for the joint benefit of the said Jerry Bates & the said John O'Henry, that in pursuance of said agreement the said John O'Henry (who is a brother in law of the said Jerry Bates) came hither with his family and located himself at a place well known & distinguished as Cottage Hill in the County of Ou Page in the said State of Illinois

And your Orators further shew unto your Honor, that the said John O'Henry was also embarrassed in his pecuniary circumstances & the lands therefore which the said John O'Henry entered & caused to be entered as well as those which the said Jerry Bates entered & caused to be entered or purchased in the name of one Addison Warner, but for the use and benefit of the said Jerry Bates & John O'Henry under and by virtue of the agreement hereinbefore and herein after mentioned

And your Orators further shew unto your Honor that on or about the 19th day of February A.D. 1844 the said John O'Henry entered at the land office in Chicago, the East half of the South East quarter in section two in Town 39 North, range eleven East of the third principal Meridian in the said County of Ou Page, containing eight acres of land by the same more or less, in the name of one Darius O'Henry, which said purchase the said Darius O'Henry afterwards at the request of the said John O'Henry

Carried without consideration paid therefor
to one George Schofield & the said George Scho-
field afterwards at the like request & without
consideration Carried the same to the said
John Addison Warner

And your Orators further shew unto
your Honour that sometime in the year
1843 the East half of the North East quarter
of section Eleven in Town 39 North & Range 11
East in the said County of Du Page, contain-
ing Eight acres of land by the same name or
less, was entered at the land office in Chi-
cago in the name of said Warner, with the
Money of said Bates, for the use of the said
Bates & the said John V. Hoory, the latter
of whom having personally taken possession
& made valuable improvements thereon -
that in like manner the North East quarter
of section two in Town 39 North, Range 11
East & also the South West quarter of sec-
tion one in Town 39 North, Range 11 East
in Du Page County was purchased with the
Money of said Bates by the said John V.
Hoory in the name of said Warner for the
use of the said Bates & John V. Hoory, all
of which said several pieces or parcels of
land, the said John A. Warner, on or about
the 28th day of September in the year of our
Lord one thousand Eight hundred & forty six
held in trust for the joint benefit of the
said John V. Hoory & Gerry Bates subject
to certain Conditions then & before agreed
upon by and between the said Bates and the

said John & Henry, which said agreement was as follows to wit; the said John & Henry was to purchase and improve said lands with the means of said Bates, that each should just be paid for his advances & the ballance should be divided Equally between them so that said Henry should receive no pay for his services & the said Bates no interest for his money

And your Orators further shew unto your Honor that the several pieces or parcels of land herein before mentioned contain altogether about 495 acres & were selected with great care, that some portions thereof were highly cultivated, that valuable buildings, to wit, a commodious Tavern house, barn, stables & other buildings & improvements were made and erected thereon with means principally furnished by said Bates, but a small part thereof with means furnished by the said John & Henry - that said lands by reason of said improvements & the rise thereof, were on the said 28th day of September 1846 worth a large sum of money to wit; the sum of five thousand dollars & upwards

And your Orators further shew unto your Honor that sometime previous to the said 28th day of September 1846 the said Jerry Bates came to the State of Illinois with his family and took up his residence in the house upon said premises with the said John & Henry - that seven

after he came hither, difficulties between the said John V Henry & the said Jerry Bates arose, which rendered a separation or division of their several & respective interests in said premises desirable, and being unable to agree on such division, the said John V Henry in order to further his view, desired the aid of one Almon Henry, then of Du Page County, now of Chicago, his kinsman & friend in the premises, that the said Almon Henry promised the said John V Henry his aid and agreed to be true and faithful to his trust

And your Orators further shew unto your Honor that the said Almon Henry sometime previous to the twenty eighth day of September 1846 had a small judgment of about thirty dollars against the said John V Henry on which he had caused an execution to be issued & to be levied upon the interests of the said John V Henry in the aforesaid described premises - that the said Almon Henry at the special interest and request of the said John V Henry had also purchased ~~of~~ before the 28th day of September 1846 of one George Reynolds of Mazara County New York a large demand of some twelve or thirteen hundred dollars against the said John V Henry & gave his note therefor with one George B Conners as his security in the sum of one hundred and fifty dollars

payable on the thirtieth day of March 1847, with interest at six per cent, which said demand was prosecuted in the name of the said George Reynolds, but for the use of the said Almon Hovey & a judgment confessed in the Kane County Circuit Court on or about the 24th day of April 1846 for \$1245.00 with interest and cost, that an execution was afterwards issued thereon to the Sheriff of Du Page County and levied upon the aforesaid described premises - that the said Almon Hovey purchased also of our George B Cowles two promissory notes executed by the said Jerry Bates for the sum of \$100.00 each, one of them due on the first day of May 1841, the other on the 21st day of November 1841 at the like request of the said John V Hovey & agreed to pay the said George B Cowles two hundred dollars therefor, which said two promissory notes the said Almon Hovey caused to be prosecuted in the Du Page Circuit Court - that the said Almon Hovey filed also his bill in Chancery against the said John Addison Warner, John V Hovey & Jerry Bates for discovery & relief in the Du Page County Circuit Court in April or May AD 1846, which said suit in Chancery and said suit in force of the said Almon Hovey against the said Jerry Bates were pending on the 28th day of September AD 1846 & the interest of the said John

& Henry in the herein before described premises
granted upon by the Sheriff of Du Page County
by virtue of the two executions herein before
mentioned in favor of the said Simon Henry

And your Orators further shew unto
your Honor that they have been informed
& believe, & so charge the fact to be, that on or
about the said 28th day of September 1886
the said John Addison Warner, John V. Henry
& Gerry Bates, to avoid further expenses, to
heal difficulties between themselves and friends
, to provide for the payment of certain debts
and to adjust their several matters upon an
equitable basis, agreed to convey the whole
of said premises to the said Simon Henry
in trust (the said John Addison Warner, John
& Henry & Gerry Bates then and there having
perfect confidence in the integrity, respon-
sibility & fidelity of the said Simon Henry as
such trustee) and the said John Addison
Warner & the said John V. Henry & his wife &
the said Gerry Bates and his wife, then &
there, to wit, on the 28th day of September in
the year last aforesaid, at Cottage Hill
in the County of Du Page aforesaid did
convey to the said Simon Henry his heirs
assigns forever the whole of said premises
by a deed absolute and unconditional up-
on its face, but in truth & in fact by a deed
of trust to pay certain debts, to pay the

costs which had accrued thus far in the several suits herein before mentioned, to pay said trustee for his services & expenses & indemnifying him against responsibilities before that time incurred and lastly to decide the same between the said John V. Hovery & Jerry Bates according to their respective interests therein & as justice should require of being then and there conceded that the said John Addison Warner had no other interest in the said premises than as a mere naked trustee - that the debts as aforesaid to be paid out of the said John V. Hovery's interest in said premises were first the judgment in favor of the said Almon Hovery of about \$39, secured by the \$150 note & interest given for the demand which the said Almon Hovery had purchased of the said George Rynob, and thirdly the costs which had accrued in the several suits before mentioned - the whole of which costs were estimated at the time at about one hundred and fifty dollars - that the debts to be paid out of the said Jerry Bates interest in said premises was the ones before incurred by the purchase of the notes herein before mentioned of the said George R. Warner & such portion of the said costs as should be equitable & just - that the amount to be paid for services as such trustee was not agreed

upon by said parties, but left open for future consideration - that the said Almon Henry accepted of said deed on the above conditions & agreed to do what was right in the premises, that no money was paid by the said Almon Henry at the time, except for acknowledging the deed & recording of the same a few hours thereafter.

And your Orators further shew unto your Honor, that the said Almon Henry caused said deed to be recorded in the Records office of the County of Du Page on the day of its execution & since that time has not only wholly neglected but has grossly violated the duties of his said trust, that he has neither discharged the small judgment in his own favor against the said John V. Henry nor has he paid the said Note so given as aforesaid to the said George Reynold, nor the amount which he promised to pay the said George B. Venable, nor has he paid the costs which have accrued in the several suits herein before mentioned except a small part thereof, perhaps some twenty or twenty five dollars in the whole - & now is, and for several months last past has been as your Orators are informed & believe wholly insolvent.

And your Orators further shew unto your Honor that the said Almon

Henry afterwards, to wit, on the fifth day
of Oct. 10 1846 in relation of his said
trust and without any preliminary consid-
eration therefor conveyed the whole of said
premises to our Daniel Henry a brother
of the said Simon Henry, by deed purporting
on its face to be an absolute deed ~~of the~~
by the said Daniel Henry knowing at
the time that the said Simon Henry was
a trustee merely, having no absolute estate
in the premises - which said last men-
tioned deed has been duly acknowledged
& recorded in the County of Du Page
where said lands are situated

And your Orators further shew unto
your Honor that the said Simon Henry
before his conveyance of said premises
to Daniel Henry repeatedly promised
the said John V Henry & the said Jerry
Bates that he would do what was right
in the premises & convey said land &
premises according to the wishes and instru-
ctions of the parties interested therein as
soon as the said John V Henry & Jerry
Bates should make a settlement between
themselves & the respective rights of each
should be ascertained & determined & he
should be indemnified against costs &
responsibilities to be paid for his services
& advances

And your Orators further shew

unto your Honor, that the said Daniel
McCurry after the conveyance to him of the
said premises by the said Simon Henry
separately promised the said John & Henry
and the said Jerry Bates that he also would
do what was right in the premises & convey
said lands and premises according to the
orders and instructions of the Parters
interested therein as soon as the said John
& Henry & Jerry Bates should make a set-
tlement between themselves & the respective
& the respective rights of each should be
ascertained and determined and he should
be indemnified against costs and responsi-
bilities

And your Orators further shew unto
your Honor that the said Simon Henry &
the said Daniel McCurry in violation of
their several & respective trusts have & each
of them has ~~separately offered~~ separately
offered to Mortgage & sell & convey said
premises herein before mentioned to differ-
ent persons in order to raise Money for
his & their own use & not for the purpose
of paying the aforesaid debts or any part
thereof, and that each of them has refused
to pay such debts or any part of them or
any part of either, other than is herein be-
fore mentioned

And your Orators further

Shew unto your Honor that the said Darius A
Henry is also insolvent as they are informed &
believe and that your Orators will be in
danger of losing their demand against the
said Jerry Bates unless they can obtain
the aid and assistance of this Honourable
Court in these premises

And your Orators further shew unto
your Honor, that they are informed and be-
lieve and so charge the fact to be, that on
or about the 11th day of Feby 1854; a set-
tlement was effected between the said Jerry
Bates & the said John V Henry, by which
settlement it was agreed and admitted
that the said John V Henry had expended
\$265 in the purchase and improvement of
said premises, and the said Jerry Bates
the sum of three thousand and two dollars
& twenty seven cents for the like purpose
that after paying to each the above amounts
that the price for which said premises can
be sold after deducting costs, charges &
incumbrances be divided equally between
said Bates & the said John V Henry - that
the fact of such settlement being made
has been communicated to the said Simon
Henry & the said Darius A Henry & that they
and ~~each~~ each of them, ^{have} wholly neglected & refused
to fulfill their duties as trustees and trustees
as aforesaid

And your Orators further

Shew unto your Honor that they have been informed and believe and so charge the fact to be, that a purchaser for a part of said premises at a fair price was procured & the said Darius A. Harvey was requested to execute a deed to said purchaser for the purpose of raising money to pay the said Almon Harvey & the said Darius A. Harvey such moneys as they or either of them had advanced & to pay such debts as they or either of them were responsible for on account of said Trust, together with a reasonable compensation for their & each of their services as trustees & all costs which had been incurred, but that the said Darius A. Harvey refused to execute such deed alleging that he and his brother Almon Harvey had other objects in view.

And your Orators further shew unto your Honor that they have been informed & believe and so charge the fact to be that the said Darius A. Harvey afterwards & on or about the 25th day of March 1847 executed and acknowledged & caused to be recorded a deed of the whole of said premises to one Augustus C. Lamb of the State of New York without any consideration therefor - that the said Augustus C. Lamb is a young man brought up by the said Almon and Darius A. Harveys father and about 21 years of age, des-

-titude of property & wholly irresponsible -
that the said Augustus C. Lamb was not
present at the execution of said deed
& knew nothing thereof till some time
thereafter - that the said Augustus C.
Lamb is fraudulently represented in said
deed to be a resident of Tioga County
in the State of Pennsylvania, when, in fact
and in fact the said Augustus C. Lamb
mentioned therein was, at the time either
an apprentice to the trade of a tinner
in Buffalo or a journeyman in a tin-
ner shop at Buffalo in New York or some
where else to your Orators at present
unknown.

And your Orators further shew unto
your Honor that the doings & proceedings
of the several parties herein before mentioned
& especially the doings & proceedings of the
said Simon Henry & Darius A. Henry
& of the said Augustus C. Lamb, so far
as he has acted (if at all) are fraud-
ulent & corrupt & tend greatly to your
Orators injury.

And your Orators further shew unto
your Honor that the said Jerry Bates be-
ing thus indebted to your Orators as is
shewn before mentioned, for money paid
said out & expended at his the said
Jerry Bates special instance & request
the said Jerry Bates afterwards promised

to pay your Orators the said sum of ~~Two~~
thousand four hundred & fifty dollars as
General in the County of Kane and State
of Illinois & your Orators heretofore, to
wit, on the 23^d day of April of the Term
of April A.D. 1847 of the Kane County
Circuit Court in the State of Illinois
& by the Consideration & Judgment of the
said Court recovered against the said
Gerry Bates the said sum of Two thou-
sand four hundred & fifty dollars dam-
ages & costs of suit which were ad-
judged to your Orators in & by the said
Court as by the records & proceedings
now in the Clerk's office of the said Kane
County Circuit Court, reference being
thereunto had will more fully & at large
appear

And your Orators further shew unto
your Honor that afterwards to wit on
the 24th day of April A.D. 1847 your
Orators caused an execution to be is-
sued out of the said Kane County Cir-
cuit Court, directed to the Sheriff of
the County of Du Page in the said State
of Illinois, commanding him that of
the goods and chattels lands and
tenements of the said Gerry Bates in
his Bailiwick he should cause to be
made the amount of said Judgment &
interest & costs and return said Execu-

tion in sixty days thereafter - that by virtue
of said execution the Sheriff of the said
County of Outage has since levied upon
all the premises herein before mentioned
& particularly described containing as
is supposed about 495 acres of land
be the same more or less being all the land
heretofore held in the name of the said
John Addison Warner & by him conveyed
to Almon Hovey and by the said Almon
Hovey to the said Daniel & Hovey, and
by the said Daniel & Hovey to the said
Augustus C. Vaneb as herein before is set
forth

And your Orators further show unto
your Honour that the said Judgment so recor-
ded as aforesaid by your Orators against
the said Gerry Bates, remains wholly unpaid
& unsatisfied, & as your Orators believe un-
satisfied & that the whole amount thereof
is still equitably & justly due to your Or-
ators from the said Gerry Bates over and
above all just claims by the said Gerry
Bates by way of set off or otherwise

And your Orators further state
that this their said bill of Complaint is
not exhibited by collusion with the
said Gerry Bates, nor for the purpose
of protecting his the said Gerry Bates
interest & effects against the claims
of other Creditors, but for the sole pur-

peace of Compelling payment & Satisfaction of your Orators said Judgment

And your Orators further shew unto your Honor that they are informed & believe that the said Jerry Bates has an Equitable interest in said premises so bound upon as aforesaid, exclusive of all prior Claims thereon, sufficient to pay and satisfy your Orators Judgment and that your Orators are unable to reach & discover the same without the interposition of this Court

And your Orators further shew unto your Honor & hereby state that they have no desire whatever to defer it, or delay or obstruct the execution of the trust created on the said twenty eighth day of September A D 1846 between the said John D'Henry and Jerry Bates of the one part & the said Simon Henry of the other part, but on the contrary thereof desire to have the same carried into full and perfect effect and they hereby tender to the said Simon Henry all the Monies paid and out & expended by him the said Simon Henry for the discharge of his duty as said trustee - they also tender to him indemnity against all legal liabilities by him justly & properly incurred in the discharge of his said trust, together with his legal costs and Counsel fees & also a fair

Compensation for services to be determined
by this Court

They also tender the like to the said
Darius A. Hoagy & desire that the note of
\$150 herein before mentioned given by the
said Almon Hoagy and his Security to the
said George Reynolds may be paid out of
the interest of the said John V. Hoagy in
said premises when ascertained. They

also desire that the debt of two hundred
dollars & interest due by the said Almon
Hoagy to the said George B. Cowles or his
assignee herein before mentioned may be
paid out of the interest which the said
George Bates has in said premises when
ascertained & that the said Almon Hoagy
be wholly discharged from every respon-
sibility growing out of said trust.

And your Orators further shew
unto your Honor, that they have applied
to the said Almon Hoagy, & to the said Da-
rius A. Hoagy & requested them & each of
them to do what was right in the prem-
ises, with which reasonable request the
said Almon Hoagy & Darius A. Hoagy have
refused to comply & your Orators charge
that the sale & conveyance of the said
premises to the said Augustus C. Lamb
was in violation of said trust, without
any consideration whatever & fraudulent
& void - that it was a mere pretence

to evade the performance of their several & respective duties as trustee or trustees & made for the sole purpose of defrauding the said John V. Henry & Jerry Bates, their assignees & creditors out of their just and legal demands

And your Orators further charge that the sole inducement which the said John V. Henry & Jerry Bates had for executing the deed of said premises on the said 28th day of September 1846 to the said Simon Henry & for procuring the said John Addison Warner & the several respective wives of the said John V. Henry & Jerry Bates to join in said conveyance was the entire confidence which they and each of them reposed in the said Simon Henry & the full persuasion which they and each of them entertained that the said Simon Henry would do as he agreed that is, that he would do what was right & neither destroy nor impair their just & legal interests in the premises so conveyed as aforesaid - And your Orators further charge that the conveyance from the said Simon Henry to the said James A. Henry made by the former to the latter on the 5th of October 1846 was made with full knowledge of the facts hereinbefore recited & the trusts which had previously existed in the

Said Almon Hoory was then there transferred to
to the said Darius A Hoory & that the said
Darius A Hoory then and there undertook &
faithfully promised to execute the same
according to the intent and meaning of the
parties thereto

Your Orators further charge that they have
been informed that the conveyance so execu-
ted as aforesaid by the said Darius A Hoory
to the said Augustus C Lamb, was made for
the purpose of vesting the whole title to
said premises in the Father of the said
Almon & Darius A Hoory and that the
said Augustus C Lamb, who is a Kinsman
and dependant of the said Almon & Darius
A Hoory Father together with the Father of
the said Almon & Darius A Hoory, have
within a few days come hither from the State
of New York in order to get possession of
said premises & to convert them to his &
their own use & thus defraud the said
John A Hoory & Jerry Bates, their credi-
tors & Creditors out of all their interests
therein

And your Orators further shew unto
your Honor that they have been informed &
believe & also charge the fact to be, that the
said Jerry Bates is now in the quiet pos-
session of said premises, using and occu-
pying the same as his own except a part
two rooms only in the house on said

premises occupied by the family of the said John V. Henry & that the said Augustus C. Vauht, in furtherance of his aforesaid wrongful intentions at the instancer & by the advice of the said Simon Henry & Darius A. Henry & the Father of the latter, on the 25th day of May in they year 1847 gave the said Jerry Batts a written notice to quit said house & premises without delay & commanded him in the name of the people of the State of Illinois forthwith to leave the same & threatens to institute legal proceedings to effect his corrupt & fraudulent designs, all such acts & proceedings are contrary to equity and good conscience and tend to the manifest wrong & injury of your Orators

To the end therefore that the said Simon Henry, Darius A. Henry, Augustus C. Vauht, Jerry Batts, John V. Henry and their Confederates, may upon the several & respective several oaths, true, full, direct and perfect answer make to all and singular the matters herein before stated & charged & that as fully & particularly as if the same were here repeated & they thereto severally & specifically interrogated & that they shall so answer not only to the best of their respective knowledge & remembrance, but all to

to the best of their several & respective hear-
ing, information & belief (& that the deed
before mentioned executed by the said
Almon Henry to the said Dennis A Henry
on the 5th day of October 1816 may be de-
creed by this Court to be set aside, va-
cated & held for nought, and that the deed
before mentioned executed by the said
Dennis A Henry to the said Augustus C
Lamb on or about the 25th day of March
1817 may also be decreed by this Court
to be set aside vacated and held for nought
and that the said Almon Henry may be
removed from the office of trustee afore-
said & a suitable and proper person may
be appointed by this Court to discharge
the duties of said trust & that the said
Almon Henry may by a decree of this
Court be compelled to convey said prop-
erty to the trustee so to be appointed as
aforesaid - And that a portion of the
said premises may be sold under the
direction of this Court to pay said mon-
ies & interest as has been advanced by
the said Almon Henry (if any) in part
performance of said trusts, together with
the responsibilities by him incurred & espe-
cially the small Judgment of about
\$30 due from the said John A Henry
to the said Almon & the said note &
interest given to the said George Ry-

not herein before mentioned & the sum of
two hundred dollars agreed by the said
Almon Henry to be paid to the said George
Blowers or his Assignee & all the costs
which have been incurred previous to
the said 27th day of September 1846 to-
gether with a reasonable Compensation
for services to be settled and determined
by this Court & that the respective rights
and interests of the said John V. Henry
& Jerry Bates may be ascertained & deter-
mined & that the interest of the said Jerry
Bates in the said promises when ascertain-
ed may be subjected to your Orators
Execution &c issued as aforesaid now
in the hands of the Sheriff of the said
County of Du Page

And that your Orators may have
such further relief or may have such
other relief as the nature of their case
may require & shall be agreeable to equity

May it please your Honor to grant
unto your Orators a summons to be
directed to the said Almon Henry, Daniel
A. Henry, Augustus Le Veau, Jerry Bates
John V. Henry and their Confederates when
discovered commanding them & each of
them to bond appear in the Du Page County
Circuit Court at the next term thereof
and then and there to answer the promises

and further to stand to and abide such
order & decree therein as shall be agreeable
to equity and good conscience

And may it also please your Honor to
grant unto your Orators the premises
Most gracious writ of Injunction is-
suing out of and under the seal of this
Honorable Court, directed to the said
Almon Hovvy, Dennis A Hovvy, Augustus
C Vamb & their confederates - their attorneys,
solicitors and agents commanding them
and each of them absolutely to desist
& refrain from interfering with the
said premises herein before described
or any part thereof in any manner what-
-ever until the decision of this Court can
be had upon the bill herewith filed by
your Orators, & that they and each of
them absolutely desist & refrain from
granting, bargaining, selling, conveying,
leasing, or otherwise disposing of or
incumbering said herein before
described premises or any part or parcel
thereof without the permission of this
Court first had and obtained & that the
said Almon Hovvy, Dennis A Hovvy & Au-
gustus C Vamb & each and every of them
may also be restrained by injunction from
instituting any action at law for the
recovery of the possession of said premises
or any part thereof without the like

permission of this Court. And your
Orators as in duty bound will ever pray

Henry Brown

Sole for Comps

Clerk Court of Henry Brown of the City of Chi-
-cago being duly sworn saith that he is the
Attorney & Solicitor in and for the Com-
-plainants in the annexed bill - that said
Complainants reside in the State of Ohio
- that he has read said bill and knows
the contents thereof - that he has informa-
-tion as to all the matters stated therein,
and from such information he believes
such matters to be therein truly stated and
such bill to be true, and further saith that
he subscribed & sworn this 9th
day of May 1847 before me

Henry Brown

Hugh Dickery

Judge of the Cook County
Court Ill.

The reading of said
last mentioned Affidavit and bill was
objected to by the defendants Counsel
and the objection overruled, and the de-
-cision of said Court excepted to - arg-
-ument was thereupon had on said motion
and after mature deliberation the mo-
-tion to continue said Cause was over-
-ruled and excepted to by the defend-
-ants Counsel. Afterwards a jury
was empannelled to try the issue in

Said Cause on the 14th day of December
AD 1848, and the said Plaintiff to sup-
port his issue proved that the defend-
ant was in possession of the premises in
question when said suit was commenced
- and at the time of trial. The plain-
tiff then produced and read in evidence
to the jury a quit claim deed of the prem-
ises in declaration mentioned, dated
on the 28th day of September AD 1846
signed by John Warner, Jerry Bates
and Adaline his wife & John & Henry
and Margaret his wife, to Almon Hoovey
- the consideration therein was \$350.
, it was witnessed by Henry Brown and
duly acknowledged & recorded on the same
day. The plaintiff then produced and
read in evidence to the jury a Warranty
deed of the same premises; dated on
the fifth day of October AD 1846, the
consideration mentioned therein was
\$4000., executed by the said Almon
Hoovey to Darius Hoovey, witnessed
by Henry Brown and duly acknowledged
& recorded in Du Page County records
on the 6th day of October AD 1846.
The plaintiff then produced and read
in evidence a Warranty deed of the
same premises executed by the said
Darius Hoovey to Augustus C. Lamb
of Tioga Pennsylvania - the consid-

- eration therein mentioned was \$4500., dated on the 25th day of March A.D. 1847 & duly acknowledged on the 26th day of March A.D. 1847 before Valentine J. Boyer a Justice of the Peace in and for the County of Cook & recorded in the office of the Recorder of Du Page County on the 27th day of March A.D. 1847 - All of which said deeds were duly acknowledged and recorded and read to the Jury without objection.

The plaintiff then produced a Mortgage deed dated on the 28th day of May 1847 executed by Augustus Lamb of Warsaw Wyoming County & State of New York, to Josiah Hoory of the same place of a part of the premises in said declaration mentioned, which said last mentioned deed is in the words and figures following, to wit;

This indenture made this ~~twenty~~ eighth day of May in the year of our Lord one thousand eight hundred and forty seven between Augustus & Lamb of Warsaw Wyoming County State of New York of the first part and Josiah Hoory of the same place of the second part. Witnesseth that the said party of the first part for and in consideration of the sum of Four


thousand dollars to him in hand paid
by the said part of the second part (the
receipt whereof is hereby acknowledged and
the said part of the second part forever
released and discharged therefrom) hath
granted bargain, sold, promised, re-
leased, aliened, and confirmed, and by
these presents doth grant bargain sell
promise, release alien and confirm unto
the said part of the second part and to
his heirs and assigns forever, all of
the following described premises sit-
uate lying and being in the County of
Du page and State of Illinois, to wit;

All that part of the east half of the north
east quarter of section eleven (11) lying south
of the Centre of the Chicago and Grand
Du Page State road; also the east half
of the south east quarter of section two
(2), the north east quarter of section two
(2) and the south west quarter of section
one (1) all of them in Township thirty
nine (39) north range eleven (11) east
of the third principal Meridian in the
said County of Du page, containing al-
together, four hundred and twenty acres
of land, be the same more or less
together with all and singular the Heredit-
aments and appurtenances thereto
belonging or in any wise appertaining
and the Reversion and Residues, Remain

the and Remainder, rents issues and prof-
its thereof, and all the estate right, title
~~and~~ interest, claim or demand, what-
soever of the said part of the first part, ei-
ther in law, or equity of in and to the above
bargained premises, with the hereditaments
and appurtenances So have and to hold
the said premises above bargained and
described with the appurtenances unto
the said part of the second part his
heirs and assigns forever. And the
said Augustus C. Paul for himself his
heirs executors and Administrators, doth
covenant bargain and agree to and with
the said part of the second part his heirs
and assigns, that at the time of the
executing and delivery of these presents
the said Augustus C. Paul is well seized
of the premises above conveyed as of a
good, sure, perfect, absolute and in-
feisible estate of inheritance in the law in
fee simple and hath good right, full pow-
er and lawful authority to grant bargain
sell and convey the same in manner
and form aforesaid, and that the same
are free and clear of all former and other
grants, bargains, sales liens, judg-
ments, taxes, assessments and incum-
brances of what kind or nature soever
And the above bargained premises in

the quiet and peaceable possession of the
said part of the second part, his heirs
and assigns against all and every per-
son or persons lawfully claiming or to
claim the whole or any part thereof, shall
and well warrant and forever defend

In witness whereof the said part of
the first part hath hereunto set his hand
and seal the day and year first above
written

Sealed and delivered Augustus C Lamb 
in presence of
J M Burns
Ann Hovey

On the back of said
deed there was a certificate of acknow-
ledgment in the words and figures fol-
lowing to wit;

State of Illinois
County of Cook } ss

Be it remembered that
on the 28th day of May AD 1847 before
me Samuel Hoard Clerk of the Circuit
Court in and for the County of Cook
& State of Illinois, personally appeared
Augustus C Lamb, who upon the
oath of Ann Hovey was represented
to me as the real person who executed
the within deed and then and there ack-
nowledged personally that he executed
the said deed freely and voluntarily for

The uses and purposes therein set forth
In testimony whereof I have hereunto
set my hand and affixed the seal
of the said Circuit Court at Chi-
cago in said County this twelfth
day of May in the year
of our Lord one thousand eight
hundred and forty seven

Samuel Board clerk
Said deed was duly recorded on the 29th
day of May A.D. 1847

The reading of said
deed to the jury was objected to by the
Defendants Counsel on account of the
Certificate of said proof and Acknowledg-
ment being insufficient - The objection
was overruled and excepted to

Before the reading of said deed to the jury
Simon Henry was offered as a witness to
prove its execution - he was objected
to as a witness on account of his having
given a Warranty deed of said premises
& was therefore interested in the event of
said cause - The said Simon Henry was
then sworn on his Vainc die & testified
that he had no interest in the result of
the suit - He was then sworn in Chief and
testified that he saw said Grant execute said
deed and that he subscribed it as a
witness, and that said Grant delivered

said deed to said Simon Henry, all in his
said Simon's presence - Said defen-
dant then excepted to the introduction
of said deed, which objection was over-
ruled. The said Simon Henry was
then asked by the defendants Counsel
if there was not a suit pending in Hen-
-ry in relation to said land when said
deed was executed - to this question the
plaintiffs Counsel excepted & the same
was the decision of the Court - & except-
ed to

The plaintiff here rested

The defendant then offered Henry Brown
as a witness - To his testimony an objec-
tion was raised by the plaintiffs Counsel
because he was an attorney for the party
calling him, the objection was overruled
by the Court, and said Brown was
sworn in chief and the following questions
propounded to him on the part of the
defendant

1st Judge Brown will state to the jury
anything within his personal knowledge
concerning any fraud, if any there be,
practised by Simon Henry in procuring
a conveyance to him from Gerry Bates

2^d Judge Brown will state to the jury
whether or not there was any consideration
for the deed from Gerry Bates to Simon

Horvy, if yes, state fully what was that consideration

3^d Judge Brown will state to the Jury whether Casius A Horvy at the time of and before the conveyance to him by Almon Horvy, had any knowledge of the terms, conditions and moving consideration of the conveyance from Jerry Bates to Almon Horvy, if yes, state fully what was the knowledge of said Casius A Horvy in relation thereto and for what purpose was said deed delivered

4th Judge Brown will please state to the jury whether the deed to Augustus C Lamb for the premises in question, which deed is now in evidence before the jury, was or was not ever delivered to said Augustus C Lamb

To each and all of which said questions the said plaintiff objected and the objections were severally sustained & the opinion of the Court excepted to — And this was the whole evidence given in this cause on the trial thereof

And inasmuch as these several matters do not appear of record, this bill of exceptions is duly signed and

Sealed by the Court
Given under my hand and
seal at Morris County Courthouse. Ill. Dec-
ember 15th 1848

O Davis



And afterwards, to wit on the
30th day of December AD 1848 the said
defendant Jerry Bates, in pursuance
of the order of Court, filed in the Clerk's
Office of said County Court Circuit
Court his Capital bond which is
in the words & figures following to wit;

Know all Men by these presents
that we Jerry Bates & John Schmage of
the County of DuPage are held and firmly
bound unto Josiah Henry of the State of New
York in the penal sum of Seven hundred dollars
good and lawful money of the United States to be
paid to the said Josiah Henry his executors
administrators or assigns, And for the same
payment well and truly to be made we bind
ourselves, our heirs, executors & Administrators, jointly
by these presents, sealed with our seals, Dated this 2nd
day of December in the year of our Lord one thousand
Eight hundred and forty eight

Whereas the said Josiah Henry at the special
December Term of the County Court Circuit Court
in the year 1848 did recover a judgment in an
action of Ejectment, against the above bounden

Erny Bates, for lands situate lying and being
in the said County of DuPage, from which
judgment the said Erny Bates has taken an
appeal to the Supreme Court of the State of Illinois

Now therefore the Condition of the above obli-
gation is such, that if the said Erny Bates
shall duly prosecute his said Appeal and shall
prosecute the same with effect, and shall pay
whatever Judgment shall be rendered by the Court ap-
- on a dismissal or trial of said Appeal, together
with all damages interest and costs which
shall be awarded to the said Josiah Horry against
the said Erny Bates, ~~in case~~ said judg-
ment shall be affirmed, then the above obli-
gation to be void, otherwise to remain in full
force and effect

Sealed & delivered
in presence of
Erny Bates
Henry Brown

Erny Bates Seal
John Talmaugh Seal

See indentations before execution

The above bond is taken and approved
of by me, in pursuance of the order
made at the Special Oc. Term
Grand Jury Circuit Court 1848

Hugh S. Chesley
Grant Judge of 1st Judicial
Circuit

State of Illinois
Grand Jury County of DuPage
J. S. Husted Clerk

of the Circuit Court in and for said County, do
hereby certify the foregoing to be a true copy of the
record of all the proceedings and the papers
on file in said Court in the said suit
of Lucian Horn against Jerry Bates



In witness whereof I have hereunto set
my hand and private seal (no official seal
having been provided for said court) at
Morris this 10th day of January A.D.
1849

Geo. K. Kerstedt clk

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Supreme Court
Josiah Hovey
vs
Gerry Bates

A. Brown
Atty for Deft
and appellants

Sperry & Ballou
In appelle

Filed Feby. 7. 1849.
Holland Clk.

William Brown

Gary Bates

vs

Josiah Hovey

Appellant of Error

Gary Bates the defendant came appellant in this case by Henry Brown his attorney against the following cause of Error -

- I. The Court below erred in permitting ^{the} counter affidavits and bills to be read on a motion to continue -
- II. The Court erred in refusing the continuance
- III. The Court erred in permitting the deed to Josiah Hovey being read in the case -
- IV. The Court erred in permitting Calvin Hovey to testify
- V. The Court erred in excluding the testimony of Henry Brown a witness for the depts in

Chicago July 5th 1849

Henry Brown

Atty for Deft

and Appellant -

No License rule before me to file the return Transcript and affidavit of Error - I write you whether they are received and whether there is to be a new trial or not when - The case is yet undecided in this long time again what is going on in the courts Chicago July 5th 1849

Henry Brown