No. 11850

Supreme Court of Illinois

Lynn.

vs.

Lynn, et al. Admr.

71641 7

Ap. 27.

Samuel N. Lynn et al.

vs.

David Lynn admr. et al.

11850

1849

State of Illinois
County of Henderson } ss

Was on the Chancery side of the Circuit Court in and for the County of Henderson and State of Illinois in the Cause of David Lynn administrator and one of the Children and heirs at law of David Lynn deceased and Ezekiel W Lynn Prudence Cook late Prudence Lynn children and heirs at law of the said David Lynn deceased and Charles Henry Brennard and Eliza Jane Lynn grand Children and Minor heirs at law of the said David Lynn deceased, who prosecute by their next friend David Lynn and Lucius Cook who is intermarried with the said Prudence Cook } Complainants

vs

Samuel W Lynn and Stephen Pettum defendants

Be it remembered that on the sixth day of November A D 1844 the said Complainants filed their bill in Chancery in the said Cause in the words and figures following:

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State of Illinois. Henderson County. ss
Of the Henderson Circuit Court, November Term 1844

To the Hon. Sepe B Thomas. One of the Justices of the Supreme Court, and presiding Judge of the Fifth Judicial Circuit, in said Henderson County, in Chancery sitting.

Your orators David Lynn, administrator, and ope of the children, and heirs at law of David Lynn, deceased, and Ezekiel W. Lynn, Prudence Cook, late Prudence Lynn, and Lucius Cook her husband, the said Ezekiel and Prudence being children and heirs at law of David Lynn, deceased, and Charles Henry Brainard, and Eliza Jane Lynn, grand children and minor heirs at law of the said David Lynn, deceased, by their next friend David Lynn humbly showing represent unto your honor that in the fall of AD 1832, Samuel W. Lynn, who is also one of the children, and heirs at law of the said David Lynn, deceased, left the State of Connecticut, in which he and the said David Lynn, deceased, at that time resided to seek a location in the State of Illinois, and settled as a squatter on a tract of land belonging to the United States, and returned to said State of Connecticut, in the spring of AD 1833 - that on his said return to Connecticut, he advised his father the said David Lynn, deceased, to remove to Illinois, and purchase and settle on the South half of Section One, in Township number Ten North, of the base line, and in range Five West, of the fourth Principal meridian, in said State, and which land was then owned by One Stephen B. Munn, of the City and State of New York — that from the spring of AD 1833 to the spring of AD 1834, the said Samuel and David frequently conversed during that time, upon the subject of purchase, and removal by the said David, the said Samuel frequently and earnestly advising the said David thereto — that influenced by the representations of the said Samuel, the said David sold his prop-

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city in the said State of Connecticut, and on or about the 13th day of April AD 1834, left that State in company with the said Samuel, with the intention of purchasing and settling on the tract of land above described — That the said Samuel and David on their way passed through the said City of New York, in order to ascertain from the said Stephen B. Munn the terms on which the said land could be purchased, by the said David, in event that the said David, might desire after examining the land, to make a purchase thereof, that after some negociation the said Munn executed a written proposal of the terms on which he would sell, the said land, and allowed three months to the said David, in which to accept or reject said proposition — Said written proposition was executed by the said Munn, at said New York, on or about the 18th day of April AD 1834, and was, and is substantially as follows, to wit

Mr Samuel W Lynn, may also have the S½ 1. 10 N 5 W in the Military Tract aforesaid for Nine Hundred & Sixty dollars two hundred dollars cash down, the remainder payable by yearly instalments of one hundred dollars each, interest at six per cent per annum, on all unpaid at the payment of each installment, I to give a contract to deliver a warrantee deed, for same on payment of said Seven Hundred and sixty dollars as aforesaid with interest money to be paid to Mess Tillson, Moore & Co. Quincy, Illinois, Mr Lynn, to let me know if he takes the above Seations in three months from this date, New York, April 18th 1834. Signed Stephen B. Munn.

5 Your orators further represent, that the said David Lynn, decd was at the time the said proposition was made aged and infirm, and little acquainted with dealing in western lands, and for that reason left the principal part of the negociation with said Munn for the purchase thereof to the said Samuel, who acted for him and under his direction in such negociation, and that the name of the said Samuel, was inserted by said Munn in said written

proposition, instead of the name of the said David, by the mistake of the said Munn, and without the knowledge of the said David or for the convenience of the said David, and to enable the said Samuel the more conveniently to transact the business and complete the purchase for the said David, as his agent in case the said David determined to take the said land, after examining the same, on the terms contained in said written proposition (6) that at the time of such negociation the said Samuel had no intention of purchasing said land for himself, but that whatever part he took in the business, either in the negociation with said Munn, or in procuring from said Munn, such written proposition, he acted solely for, and on account of, and under the direction of the said David as his agent, and that such written proposition was intended to be, and was as between the said Samuel and David, to the said David, and for his consideration as the intended purchaser, and that that part of said proposition by which three months time was given to accept the same, was inserted for the purpose of giving the said David, time to come to and examine the land for himself and to determine from such examination whether he would or not complete the purchase on the terms proposed by said Munn,

7 Your orators further represent that on the arrival of the said David and Samuel in Illinois, the said David, on an examination of said land, determined to accept of the said Munn's said written proposition, and that afterwards and on or about the 26th day of June AD 1834, the said Samuel at the request of the said David, and for him as his agent wrote to said Munn a letter of that date & sent the same to said Munn accepting of said proposition for and as the agent of the said David & which said letter is in substance as follows, to wit!

"

June the 26th AD 1834

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" Mr Munn, Sir, My Father has concluded to take the

" South ½ of 1. 10 N 5 West and pay you as agreed when you
" send to Quincy a bond for a deed, then your agent will
" send me a line, and I will fulfill on my part, you ought
" not to be so hard, with me as to charge me interest this year
" for I have to sell the improvement to Jamison, the same as I
" pay you for the lots, for to keep peace with the Kentuckians
" and I shall get nothing from it this year, we all arrived safe
" my father enjoys good health and the rest of us, the wood
" lot on the bluffs 36. 11 N 5 W. is a poor lot and I do not want
" it. I think you could get $150. if you want to take this,
" please to write, one Elliot wants it for his farm,

Yours &c Samuel W. Lynn for
(signed) his father David Lynn

8 Your orators further represent that the said Stephen B. Munn on the receipt of the said letter to him, did on or about the 19th day of July A.D. 1834, in pursuance of his said proposition and of the said acceptance thereof by said David, through the letter of the said Samuel, as the said Davids agent, write on the back of a copy of the said original propositions, a contract or obligation, under the hand, and sealed with the seal of the said Munn, to make a deed for the said land to the said Samuel W. Lynn, on his fulfilling the terms contained in said original proposition, and which said obligation or contracts was and is in substance as follows, to wit:

" In consideration of the within and in fulfillment of
" agreement as aforesaid, I do hereby bind myself, my heirs,
" executors ~~and~~ administrators and assigns, to deliver unto the
" aforesaid Samuel W. Lynn a full and perfect warrantee deed
" of Lot S½ 1. 10 N 5 W. when he shall have fulfilled on his part
" the conditions of said agreement, a copy whereof is hereunto
" annexed,

" In testimony whereof I have hereunto set my hand
" and seal this nineteenth day of July in the year
" of our Lord one thousand eight hundred and
" thirty four (signed) Stephen B. Munn (Seal)
" Sealed & delivered in presence of

9 And the said Munn on the day of the date of the said agreement or immediately thereafter transmitted the said contract or obligation, with the copy of said original proposition, or where the same was indorsed to the firm of Tillson, Morrow & Co his agents at Quincy, Illinois, for the purpose and with directions to them, to complete for him the said sale of the lands before described, and that on the receipt thereof the said Tillson, Morrow & Co, informed the said Samuel and David Lynn, thereof — and the said David as soon after the receipt of said information, as he conveniently could, ~~&~~ procured two hundred dollars, the amount of the first payment, and also sufficient to pay the ~~examination~~ tax, accrued thereon, to be made on the land, and delivered the same to the said Samuel, and sent the said Samuel as his agent to said Quincy with said money, to pay ~~the~~ over the same for him to the said Tillson, Morrow & Co as the first payment of said land, and the said Samuel, did in pursuance of such directions, on or about the eighth day of September AD 1834, pay ~~the~~ over the said two hundred and four $\frac{80}{100}$ dollars, the money of the said David, to the said Tillson, Morrow & Co as the agent of the said David, and in and for the said ~~first~~ payment on the said land & at the same time received from the said Tillson, Morrow & Co a receipt therefor to the said David, which said receipt was in substance as follows, to wit

" Sept 8th 1834 Received of David Lynn, by Samuel W
" Lynn, his son being ~~first~~ payment on purchase of S.
" B Munn of S½ S. 10 & 5 W for $960. the sum of two
" hundred dollars leaving $760. payable as follows, on
" the 1st Nov 1835 $100 with int on $760. at six per cent
" from 26th June 1834, and then annually on the 1st of
" Nov $100. & int at six per cent on all unpaid. Also —
" received amount of tax for 1834 on the same, four dollars
" and eighty cents

Stephen B. Munn
signed By his agents, Tillson, Morrow & Co

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And the said Tillson, Moore & Co. did at the time of such payment deliver to the said Samuel for and on account of the said David, the said above recited obligations of the said Munn, dated the 19th of July 1834

11 And your orators further complaining show unto your honor that the said Munn, in making out his said obligation dated July 19th AD 1834, referred to the original proposition herein before recited, and dated the 18th day of April AD 1834, to ascertain the person to whom said obligation or contract should be made, and not to the letter of the said Samuel herein before recited, dated the 26th day of June AD 1834, as the said Munn ought to have done and that by reason of this mistake of the said Munn, the said obligation was by him so made as before stated to the said Samuel, whereas by the tenor and purport of the said letter and according to the intention of the said Samuel, and the said David it ought to have been made to the said David

12 And the complainants allege that the said Samuel at the time he so paid the afore mentioned money to the said Tillson, Moore & Co on examining said obligation, discovered the said mistake, and called the attention of the said Tillson, Moore & Co thereto, and requested the said Tillson, Moore & Co to write to and procure from the said Munn a bond for the conveyance of the said land to the said David upon payment by the said David of the purchase money therefor according to said original proposition

13 And the said Tillson, Moore & Co. did on the same day to wit: the 8th day of September AD 1834, in pursuance of said request so to them made by the said Samuel, write to the said Munn, at said New York, directing the said Munn to execute another bond for the said premises to the said David in pursuance of the said acceptance of the said original proposition, by the said Samuel by his said letter, for and in the name of the said David, and the said Munn, in accordance

with such request of the said Tillson, Moore & Co. and on the receipt of their said letter, and within a short time after the same was written, make out, execute and seal in duplicate such bond for the conveyance of said premises to the said David and transmit the same to the said Moore, Morton & Co for the said David & which said bond so executed by the said Munn was and is in substance as follows, to wit!

"Articles of agreement made the twenty sixth day of
" June, in the year of our Lord, one thousand eight hundred
" and thirty four between Stephen B. Munn of the City and State
" of New York of the first part and David Lynn of S½ 1-
" 10 N 5 W. Military Tract, Warren County, Illinois, of the second
" part, witnesseth, that the said Party of the first part for
" and in consideration of the subsequent agreements and covenants
" of the said Party of the second part, and of one dollar to him
" in hand paid by the said Party of the second part, hath con
" tracted and agreed to sell to him the said Lynn, all that
" certain piece or parcel of land in the Military Tract, State of
" Illinois known as the South half of section One (1) in township
" ten (10) north and range five (5) west, containing three hun
" dred and twenty acres, be the same more or less — And the
" said Party of the first part agrees to execute and deliver to
" said Lynn a warrantee deed for the said land, provided
" and upon condition nevertheless that the said Lynn, his heirs
" or assigns pay to ~~the~~ said Munn, his heirs or assigns for the
" said land the sum of money of nine hundred and sixty dol
" lars, lawful money of the United States of America in manner
" following, viz, two hundred dollars on delivery of this contract
" the remainder payable by yearly installments of one hundred
" dollars each on the 1st day of November in each year with
" interest at six per cent per annum on all unpaid at the
" payment of each installment. And the said David Lynn, in
" consideration of the above agreement of the said Munn, for
" himself, his heirs, executors, and administrators doth covenant

"and agree to and with the said Munn, his heirs and assigns
"that the said Lynn will pay the said several sums as they
"severally become due, with the interest as aforesaid, and also
"the taxes on said land after the year 1833 which shall be from
"time to time assessed – And it is further agreed between the
"parties to these presents that if default be made in fulfilling
"this agreement or any part thereof, on the part of the said
"party of the second part, then and in such case the said
"party of the first part, his heirs and assigns shall be at
"liberty to consider this contract as forfeited and annulled
"and to dispose of the said land to any other person in the
"same manner as if this contract had never been made –
"In witness whereof the parties to these presents, have hereunto
"set their hands and seals, the day and year first above written
"Sealed and delivered in (Signed) Stephen B Munn (Seal)
presence of

14 Which said last above recited bond for the conveyance of said property was made by the said Munn after the making of the said first payment of the purchase money therefor as before stated, and was dated back by the directions of the said Samuel, so as to make the said bond contemporaneous in date with the said before recited letter of the said Samuel dated the 26th day of June AD 1834.

15 Complainants further representing show unto your honor, that afterward the receipt of the last recited contract by the said Tillson, Moore & Co from the said Munn, sometime in August 1835, the said Tillson, Moore & Co. sent the same in duplicate to the said David Lynn and Samuel W. Lynn, to be executed on his part by the said David, and one copy thereof to be delivered to the said David, in lieu of the said obligation to the said Samuel herein before mentioned, dated July 19th 1834, and the other copy thereof to be returned to the said Tillson, Moore & Co after being executed by the said David, which said agreement the said David, did not through the persuasion of the said

Samuel execute at that time, for the reason that a Mr. Samison was then, and had been from the time of said original proposition in the possession of the whole or some part of the said premises, and had made improvements on the same and declined leaving said premises till he was paid for his said improvements, and it was considered good policy by the said David, as advised by the said Samuel to leave said Munn and the said Samison to settle the value of those improvements between them which the said Munn it was thought by them, would pay less attention to after a formal instrument had been executed by the said David.

16 Your orators further represent that afterwards, to wit on or about the 29th day of October AD 1835, the said David Lynn, deceased, paid to the said Tillson, Moore & Co as the agents of the said Munn, the sum of one hundred and sixty one $\frac{43}{100}$ Dollars, being in full of the principal and interest of the second installment due from him to the said Munn for the purchase money of the said land, that the said David sent the said money, to the said Tillson, Moore & Co by the said Samuel as his agent or messenger and that the said Samuel did on the day aforesaid pay the same over to the said Tillson, Moore & Co for and on behalf of the said David, and at the time of such payment the said Samuel received from the said Tillson, Moore & Co for said David a receipt therefor and which said receipt was and is in substance as follows, to wit,

"Quincy, Illinois 29th October 1835 Received from David
"Lynn, by hand of Samuel W. Lynn one hundred dollars
"on a/c of principal & sixty one $\frac{43}{100}$ dollars interest, making
"full payment up to 1st Nov 1835 on contract from Stephen B
"Munn to David Lynn for S½ 1. 10 N 5 W Warren County
"$100. principal Signed Stephen B. Munn
"61.43 interest by his agents
$161.$\frac{43}{100}$ Tillson, Moore & Co

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And the complainants further complaining show unto your honor that afterwards to, wit: on the 26th day of October AD 1836. the said David Lynn paid to Messr. Moore, Morton & Co. the agents of said Munn, the further sum of One hundred and thirty nine dollars and sixty cents, it being the principal and interest in full of the third installment due the said Munn, as the purchase money of the said land, that the said David sent the said money to the said Moore, Morton & Co by the said Samuel, who paid the same to the said Moore, Morton & Co for the said David, and as his agent and messenger, and the said Samuel at the time of such payment received of the said Moore, Morton & Co a receipt for said money to the said David, and which said receipt was and is in substance as follows, to wit,

" Quincy, Illinois 26 Oct 1836 Received from David Lynn One
" hundred dollars on a/c of principal & thirty nine $\frac{60}{100}$ Dolls.
" interest making full payment up to 1st Nov 1836 on contract
" for S½ 1. 10 N 5 W Warren County
" $100.00 Principal
" 39.60 (Signed) Stephen B. Munn
$139.$\frac{60}{100}$ by Moore, Morton & Co

And the complainants further complaining show unto your honor that afterwards, to wit: on the 27th day of September AD 1837 the said David Lynn paid to the said Tillson, Moore & Co the further sum of One hundred and thirty three dollars & sixty cents it being the principal and interest in full of the fourth installment due the said Munn as the purchase money of the said land - that the said David sent the said money to the said Tillson, Moore & Co by the said Samuel who paid the same to the said Tillson, Moore & Co for the said David and as his agent and messenger, and the said Samuel at the time of such payment, received of the said Tillson, Moore & Co a receipt for said money, to the said David, and which said receipt was and is in substance as follows, to wit

" Quincy. Illinois. 27th Sept 1837 Received from David Lynn, One
" hundred dollars on a/c of principal & thirty three 60/100 Dollars,
" interest making full payment up to Nov 1st 1837 on contract
" for the S½ 1. 10 N 5 W Warren County

" 100.00 (Signed) Stephen R. Munn
" 33.60 by Moore, Morton & Co
" 133.60

And the complainants further show unto your honor that afterwards to wit, on the first day of October 1838. the said David Lynn, deceased, paid to the said Moore, Morton & Co as the agents of the said Munn, the further sum of one hundred and twenty seven dollars and sixty cents it being in full of the fifth installment principal and interest due from him to the said Munn, on the purchase money of the said land, and the said David sent the said money to the said Moore, Morton & Co by the said Samuel who paid the same to the said Moore, Morton & Co for the said David, and as his agent and messenger, and the said Samuel at the time of said payment, received of the said Moore, Morton & Co, a receipt for said Money to the said David, and which said receipt was and is in substance as follows, to wit,

" Quincy, Ills. 1 October 1838 Received from David Lynn, One
" hundred dollars on a/c of principal and twenty seven 60/100
" dollars, interest, making full payment up to 1 Nov 1838. on
" contract for S½ 1. 10 N 5 W

" $100.00 principal (Signed) Stephen R. Munn
" 27.60 interest by Moore, Morton & Co
$127.60

And the complainants further show unto your honor that afterwards to wit, on the 26th October 1839, the said David Lynn, deceased, paid to the said Moore, Morton & Co, as the agents of the said Munn, the sum of One hundred and twenty one dollars and sixty cents, it being in full of principal and interest, due from the said David, to the said Munn, as the

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sixth installment of the purchase money of the said land And the said David sent the said money to the said Moore Morton & Co by the said Samuel, who paid the same to the said Moore, Morton & Co, for the said David as his agent and messenger, and the said Samuel at the time of said payment, received from the said Moore, Morton & Co, a receipt for said money to the said David, and which said receipt was, and is in substance as follows, to wit:

" Quincy 26 Oct 1839. Received from David Lynn One hundred
" dollars on a/c of principal and twenty one $\frac{60}{100}$ Dollars, interest
" to Nov 1st 1839, leaving on principal 1 Nov 1839, for $121.10 & 57
" 100. Principal (signed) Stephen F. Munn
" $121.60 by Moore, Morton & Co

17 And the complainants further show unto your honor, that after the making of the said several payments as aforesaid to wit: on or about the 20th day of August AD 1840, the said David Lynn, departed this life intestate, and without having any widow surviving him, but having as his surviving and only heirs at law, the complainants, and the defendants Samuel W. Lynn, and that one of your orators David Lynn afterwards to wit on the day of AD 1841, sued out of the Court of Probate, in and for the County of Warren and State of Illinois, Letters of administration on the goods and chattels, rights and credits of the said David Lynn, deceased, in due form of law, as will more fully appear, reference being had to a certified copy of said letters herewith filed, and made a part of this bill, and marked "Exhibit A"

18 And the complainants further show, that since the death of the said David Lynn, deceased, the said Samuel W. Lynn has paid out of funds belonging to the said David Lynn, in his life time, and to your orator David Lynn, as administrator since his death, or to the heirs of the said David Lynn, deceased, as herein after stated, the full payment of the balance of the purchase money for the said land, to the

said Moore, Morton & Co. the agents of the said Munn & that such payments were made by the said Lynn at the times, & in the amounts as follows, to wit; the sum of one hundred and fifteen $\frac{60}{100}$ dollars was so paid on the 2nd day of November AD 1840, and the further sum of one hundred & nine $\frac{60}{100}$ dollars on the 25th day of October AD 1841, and the further & last installment of such payment, amounting to sixty one $\frac{90}{100}$ dollars, on the 10th day of June AD 1842 and making in the aggregate sum of two hundred & eighty six dollars and ten cents.

19 Your orators further show unto your honor that at the time of the said purchase of the said premises, or immediately thereafter, the said David Lynn, deceased, entered into the possession of the said premises, and from thence to the time of his death, he continued in the possession thereof, and cultivated the same or some part thereof. That being old and infirm, and being also a widower, & being unable to attend to his own business, he resided in the same house, and in the family of the said Samuel W. Lynn, as a member of the family of the said Samuel who attended to the business of the said David, made contracts and paid the money of the said David for purposes required by the said David, and collected and received money for the said David, and superintended the farming business of the said David for him, and the making of the improvements on the said premises, and had access to, or the actual custody and control of all of the said Davids deeds, title papers, notes, receipts, evidences of debt, and all other papers belonging to the said David, up to and at the time of the death of the said David, and that among said papers were the said original proposition, proposition and obligation of the said Munn, herein before recited and dated the one on the 18th day of April AD 1834, and the other on July 17th 1834, and also the said several

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original receipts to said David Lynn, for the several installments of the purchase money of said premises, hereinbefore mentioned and substantially recited and dated severally and respectively, as is set forth in the said recital thereof, and that the said original proposition and obligation, and the said original receipts, have been ever since the death of the said David Lynn, deceased, and now are in the possession & custody and under the control of the said Samuel & can be by him produced to this court, and will if the same are produced by him contain and furnish evidence to the court of the facts herein before stated in reference and in relation to the same respectively, and will also contain evidence, and prove to the court that the said premises were purchased by the said David Lynn, deceased, as herein before stated and that all the money paid for said land during the life time of the said David, and mentioned in the said receipts was really the money of the said David, and will also prove that the said Samuel, during the life time of the said David always considered the said land as belonging to the said David, as the purchaser thereof.

20 Your orators further show unto your honor that having neither the possession nor the inspection of the several said original receipts for the said purchase money of the said premises herein before set forth as substantially recited, the complainant have not undertaken to recite, nor can they herein recite the same literally, but that the recitals thereof as hereinbefore set forth, contain the substantial facts which will be made to appear from the said original receipts now in the possession of the said Samuel, when the same are produced, and that they correspond in substance, as to date and amounts, and as the persons for whom and by whom, the said several sums of money, therein specified respectively was paid, and for whom & by whom the same was received

21 Your orators further ~~[illegible]~~ show unto your honor that

during the life time of the said David Lynn, deceased, the said Samuel always admitted that the said premises belonged to the said David, and that the said David was the purchaser thereof, not only by his acts, and by his letter herein before recited dated the 30th day of June AD 1834, & by paying over for the said David the purchase money therefor, & receiving receipts to the said David therefor, as herein before stated, but that the said Samuel did also on the 14th day of November AD 1835, write a certain other letter of that date to Mr Moore, of the said firm of Tillson, Moore & Co the agents of the said mann, in relation to the said premises, complaining about the acts of the Mr Samison, herein before mentioned in relation to said premises, and therein admitting that the said David Lynn, was entitled to the rents accruing on the land, since the said purchase, and thereby admitting that the said land belonged to the said David ~~& for him write a certain other letter of that~~ and which said letter was and is in the words and figures in substance as follows to wit

" Nov the 14th 1835

" Mr Moore, Sir Mr Samison has received your letter, I here noth-
" ing from him since when I got home from Quinsey I found
" Samison had gathered the corn. I have done nothing about it
" I want you to put it in a way to give me possession as soon
" as possible, and to collect the just payments for the yearly
" rents of the land which is now due to David Lynn, since
" the purchase. If you have done anything please to send
" me a line by the bearer, if not send me word what you
" intend to do.

Yours with respect

(Signed) Samuel W. Lynn,

22 Your orators further complaining show unto your honor that at and from the time of the said original purchase, up to and at the date of the said last recited letter of the said Samuel W. Lynn, the Mr Samison referred to in the said letter

had in possession and under cultivation about twenty five acres of land, on the said half section of land, and that the corn gathered by said Jamison as mentioned in said letter was corn raised and gathered by said Jamison on the said twenty five acres, or some part thereof - and that the rents mentioned in said letter as due to the said David Lynn, was the rent which the said David claimed that the said Jamison owed him for the use and occupation of the said twenty five acres & that the purchase mentioned in said letter referred to and meant the purchase of the said half section of land of the said Munn,

23 Your orators further complaining, show unto your honor that the said David Lynn, deceased, after his said purchase and up to the time of his death, had made lasting and valuable improvements on said premises to the value of several thousand dollars, and that the said premises, including said improvements, at the time of his said decease, were worth a large sum of money, say five thousand dollars or thereabouts

24 Your orators further show unto your honor, that your orator David Lynn, the administrator of the said David Lynn, deceased, has fully administered all the assets and effects of the said David Lynn, deceased, which came into his hands & paid all the debts of the said David Lynn deceased, and fully and finally settled according to laws with the Probate Justice of the Peace of said County & been discharged from the further duties of such administration, and that all the goods and chattels, monies, rights and credits belonging to the estate of the said David Lynn, deceased, belong in respective portions to the said heirs at law of the said David Lynn, deceased, and ought to be appropriated & applied to the respective use and benefit of the said heirs at law

25 Your orators further represent unto your honor that at the time of the death of the said David Lynn, deceased, the

said Samuel W. Lynn, took the possession of the said premises and has ever since that time been and now is in the possession thereof, and during all that time he has had the use and occupation and the rents and profits thereof and has appropriated the same to his own sole use and benefit, except as hereinafter mentioned, and that the rents and profits of the said premises are of great yearly value being the yearly value of six hundred and forty dollars.

26 Your orators further represent unto your honor that before the death of the said David Lynn, deceased, and sometime in the spring or summer of the year AD 1840 the said Samuel W. Lynn, as the agent of the said David sold and delivered to certain persons trading and doing business at Burlington, Iowa Territory, under the name and firm of Page & Moore, a lot of beef cattle belonging to the said David Lynn, deceased, at and for the price of about the sum of two hundred dollars, and at the time of the said sale or sometime afterwards received the same from the said Messrs Page & Moore, and never afterwards either in the life time of the said David, or since the death of the said David, hath accounted therefor, paid the same to the said David, or to his administrator since his death,

27 Your orators further represent that heretofore to wit; sometime in the spring of the year AD 1840, the said Samuel W. Lynn, sold to a Mr Deaton, one mare belonging to the said David Lynn, deceased, and as the agent of the said David, at and for the sum of about sixty five dollars & afterwards received the amount of which he so sold said mare and neither in the life time of the said David, paid the same to the said David, nor hath he since the death of the said David paid or accounted therefor to the administrator of the said David

28 Your orators further complaining show unto your honor that the said sum of two hundred and eighty six $\frac{10}{100}$ dollars

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so as aforesaid paid by the said Samuel W. Lynn, since the death of the said David Lynn, as the balance due, and in full payment of the purchase money of the said land, was by the said Samuel so paid out of the funds and moneys which he received as aforesaid from the sale of the said Beef Cattle of the said David Lynn, to the said Page & Moore as before stated, and from the moneys he received from the said sale of the said Mare of the said David Lynn, to the said Mr Keaton, as before stated and from monies received out of the use and occupation, and crops and rents and profits accruing, and enjoyed and received by him, for the said premises since the death of the said David Lynn

25 Your orators further complaining show unto your honor that in or about the month of June AD 1835, your orator Ezekiel Lynn, and the defendant, Samuel W. Lynn, entered at the United States Land Office, in Quincy in this State by preemption, the north west quarter of section number eleven, in township number ten north of the base line & in range five west of the fourth principal meridian, in the Military tract and State of Illinois, and that at the time the same was so entered by them, the said David Lynn, deceased, loaned the sum of about two hundred dollars, to the said Samuel with which to enter the said land as aforesaid, that soon afterwards on a division of the said land between the said Ezekiel and the said Samuel, the East half of the said quarter section of land became the sole property of the said Samuel, and that afterwards about the month of December AD 1835, the said Samuel by his deed, of or about the date last aforesaid, sold and conveyed the said east half of said quarter section of land to the said David, and acknowledged the said Deed, before one John B. Patterson, a Justice of the Peace, in and for the County of Warren, in the State aforesaid, and delivered the said Deed, to the said David Lynn, deceased, who from thence to the time of his death, retained the possession of the same and that at the time of his said death, the said David was

the legal owner in fee simple of the said east half of the last described quarter section of land, that at the time of his said death, and for some years previous, the said David Lynn, deceased, resided with the said Samuel Lynn, on the said east half of said quarter section of land, and had made many and valuable improvements therein, which with the said improvements was at that time and now is of the value of about five hundred dollars.

30 Your orators further show unto your honor that the said Deed, from Samuel W. Lynn, to said David Lynn, deceased, hath not up to the time of the death of the said David, ever been recorded, in the Recorders office, in the County in which the said premises were situated, nor has the said deed at any time since been so recorded, but remains unrecorded, and that the said Samuel, for many years previous to to the death of the said David, having access to the deeds and papers of the said David, had also free access to the said deed up to and at the time of the death of the said David, and that the said Samuel, at the time last aforesaid took the possession of the said deed, & from that time to this date, has had, and now has the custody, possession, and control of the said deed, & can produce and exhibit to the Court, the said original deed, and your orators show to your honor that the said deed if so produced and exhibited to the Court will give evidence of and prove to this Court, that the said Samuel W. Lynn, sold and conveyed the east half of the said last described quarter section of land, to the said David Lynn deceased, as is hereinbefore stated, and that the said David was at the time of his death, the owner in fee simple of the said premises.

31 Your orator further complaining show unto your honor, that since the death of the said David, he the said Samuel has continued to reside on and hold the possession of the said last described half quarter section of land, and has held, ~~retained~~ reserved

and enjoyed the use, rents and profits thereof, and that the said rents ~~and~~, and profits thereof were, and are of the great yearly value, being of the value of two hundred dollars per annum, and that since the death of the said David, he the said deft has conveyed or mortgaged the said half quarter section of land, to some third person, who had not as your orators are informed any knowledge or information of your orators claim and equity thereon, and thereto, to reserve the payment of a large sum of money, whereby your orators are unable to make said land liable to the claim and equity which your orators had thereto previous to said Conveyance or Mortgage,

32. Your orators further show unto your honor, that at the time the said Samuel first left the State of Connecticut for the State of Illinois, in the fall of A.D 1832, he was poor and had not the means to pay the expenses of his said journey or to purchase a home when he arrived in said Illinois, and for the purpose of raising money, the said Samuel borrowed the sum of two hundred dollars, on the credit of the said David Lynn, deceased, who executed as the security of the said Samuel, a note with said Samuel therefore, and afterwards when he the said David was himself about removing to the west as before stated, in the spring of A.D 1834, he took up and paid the said note for the said Samuel, who was then without property or resources, and wholly unable to pay the same, & that the said Samuel never repaid said money to the said David Lynn, deceased, during his life time nor to the administrator of the said Lynn, since his death, And that the same with interest is now justly due and owing from the said Samuel to the heirs at law of the said David in their respective proportions, and that on a just and equitable settlement between the said Samuel & your orators of all the matters hereinbefore mentioned, the said Samuel will be found indebted to your orators in their

respective

portions in the aggregate sum of several thousand dollars

33 Your orators further show that at the time of the original proposition and contract for the purchase of the said premises from the said Munn, the said Samuel was wholly unable to have bought and paid for the same, and that at the time the said several installments of said purchase money became due, the said Samuel was without funds or property of his own, out of which said installments could have been paid - but that from the time he first came to the State of Illinois, he was dependent upon the funds and resources provided for and advanced to him by the said David Lynn, deceased,

34 Your orators further show that the said Munn, hath been, as they are informed and believe at all times since the payment of the full purchase money of the premises so purchased, of him, been ready and willing to execute a conveyance for said premises to the heirs at law of the said David Lynn, deceased, and your orators had hoped, and believed that the said Samuel W. Lynn, would have thrown no obstacles in the way of such conveyance, and that the same, and also the said east half of the quarter section of land before described be divided between your orators and the defendants as heirs at law of the said David Lynn, deceased, in their respective proportions, according to their legal rights, and justice and equity of the case,

A in accordance with the contract of sale
B to any other person legally entitled to the same, in the rights of the said David Lynn, deceased.

35 But now so it is may it please your honor, the said Samuel since the death of the said David combining and confederating with certain persons to your orators unknown to cheat and defraud your orators in the premises pretends that that he the the said Samuel, purchased the said premises of the said Munn, for himself, and that he paid there for his own money, and that the said David Lynn, deceased did not purchase and had no interest in the purchase of the same, and paid no part of the purchase money there

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for and that he the said Samuel, ~~and that he the said Sam-~~ uel did not convey the said east half of the quarter section of land before described to the said David Lynn, deceased, as your orators have herein before alleged, but that the same was from the time of the alleged date of the said deed, to the death of the said David the sole and exclusive property of the said Samuel and that he is not indebted to your orators for the rents and profits of the said lands and for money loaned him by the said David, and for moneys received for the said David as is stated in this your orators bill of complaint, whereas your orators charge the contrary to be true, and insist that the said half section of land, was purchased by the said David of the said Munn, and paid for by the said David, and with the money of the said David and of your orators & the said Samuel accruing since the death of the said David, as here inbefore alleged, & that the said Samuel is indebted to your orators as is herein before stated, & that the said Samuel did convey the said east half of the said quarter section of land hereinbefore described to the said David, and that the said David was seized thereof at the time of his said death, as herein before alleged, and that an account ought to be taken of the indebtedness of the said Samuel to your orators as heirs at law of the said David, and distributed between your orators in their respective proportions & that the whole of the said lands ought to be divided and partitioned between your orators and the defendants as the heirs at law of the said David Lynn, deceased, and according to the law of descent existing in this State and the justice and equity of the case

10 Your orators further represent that your orator Charles Henry Brainard, is a minor of the age of about twelve years and is the only child and heir at law of Almira Brainard late Almira Lynn (the daughter of the said David Lynn, deceased) who intermarried with one Asa Brainard, and

that the said Almira Brainard and Asa Brainard have both departed this life intestate and the said defendant Saml. W Lynn, is the guardian of the said Charles Henry Brainard, and that your oratrix Eliza Jane Lynn, is about three years old and is the only child and heir at Law, of John A Lynn the son of the said David Lynn, deceased, who died intestate on or about the 8th day of September AD 1841. and that the said Eliza Jane Lynn has no guardian appointed, and that your other orators David Lynn, Ezekiel W. Lynn, and Prudence Cook are the children, and together with the said Charles Henry Brainard, Eliza Jane Lynn, and the defendant Samuel W Lynn, the heirs, and only heirs at law of the said David Lynn, deceased,

61 And that the said Stephen R. Munn refuses to make a deed for the premises so purchased of him either to the defendant or to your orators, or any of them, untill their respective rights among themselves have been determined & the said Samuel claims the whole of the lands herein before described & refuses to partition and divide the same with your orators as the heirs at law of the said David Lynn, deceased, as in justice and equity he ought to do

In tender consideration thereof, and inasmuch as your orators are without remedy, save in a court of equity where matters of this and the like nature are properly cognizable and relievable,

To the end therefore your orators pray that the said Samuel W Lynn, and his confederates when discovered and the said Stephen R. Munn may be made parties defendant to this your orators bill of complaint, and that this honorable Court will grant a summons in Chancery in favor of your orators, and against the said defendants, and that the said defendants be compelled by this Court, to enter their appearance herein, and to answer all and singular the allegations of the complainants bill, as fully, directly, a-

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minutely and explicitly as if the same were again repeated to them by words of interrogatory, and especially that the said Samuel W. Lynn be compelled to exhibit and incorporate with his said answer true and perfect copies of the said original proposition of the said Munn for the sale of the said half section of land, dated the 18th day of April AD 1834, and of the said obligation of the said Munn, here inbefore referred as dated the 19th day of July AD 1834, and of the said several receipts of the said Munn, by his agents for the installments of the purchase money of the said land herein before mentioned one of the said receipts being dated on or about the 8th day of September AD 1834, and another of said receipts being dated on or about the 29th day of October AD 1835, and another of said receipts being dated on or about the 26th day of October AD 1836, and another of said receipts being dated on or about the 27th day of September AD 1837, and another of the said receipts being dated on or about the first day of October AD 1838, and another of the said receipts being dated on or about the 26th day of October AD 1839, and that the defendant Samuel W Lynn also exhibit and incorporate with his said answer as a part thereof a true, full, and perfect copy of the deed here in before mentioned whereby the said Samuel conveyed to the said David Lynn, deceased, the East half of the north west quarter of section number eleven, in township number ten north of the base line, and in range five west of the fourth principal meridian, in the Military Tract, in this State, and that on the hearing of this cause, the said Samuel be be required and compelled by the Court to produce and exhibit to the complainants for the use of the complainants, on such hearing of this cause, said original proposition of the said Munn and said obligation of the said Munn, and the several original receipts herein before mentioned, and the said original deed from himself to the said David Lynn, deceased,

And the complainants further pray, that upon the hearing of this cause, the Court will direct that an account be taken of the monies due & from the defendant Samuel W. Lynn, to the complainants as heirs at law of the said David Lynn, deceased, for monies received by him for the said David in his life time, on account of sales of the property of the said David in this bill mentioned, and also for monies so received by the said Samuel, on account of and belonging to the complainants as heirs at law of the said David, since the death of the said David, and also for monies due and owing from the said Samuel to the complainants as heirs at law of the said David, arising from the use and occupation, and the rents and profits of all the lands in this bill described, received and enjoyed by the said Samuel, and for principal and interest on money loaned, and advanced and paid by said David to and for said Samuel, since the death of the said David, after deducting from the gross amount of such receipts of the said Samuel, the amount so paid by him as is herein alleged, out of the same, since the death of the said David Lynn, deceased, on the purchase money of the said premises purchased of the said Munn, and that the said Samuel may be decreed to pay the amounts which may be found due from him to the complainants severally within the time to be limited by the Court, and that untill such payment the complainants have a lien on the premises which may be set off and partitioned to the said Samuel, as herein after prayed & that in default of such payment, as decreed by the Court, that the said premises to be as herein after prayed, set off and partitioned to the said Samuel, be by the decree of this Court, sold to satisfy the same

And your orators further pray that upon a hearing of this cause, the Court will order and direct, that all

of the premises described in this bill, to wit! the south half of Section number one, in township ten north of the base line, and in range five west of the fourth principal meridian, in the Military Tract, State of Illinois, be set off and divided between the complainants and the defendant Samuel W. Lynn, in equal portions in value, as the heirs at law of the said David Lynn, deceased, agreeably to the law of descents made and provided, and that the Court appoint Commissioners to make such partition, according to the statute in such case made and provided, with directions to such Commissioners, to set off and partition to the said Samuel, according to the valuation they may fix thereto, in the first place, in whole or in part of his portion of said real estate, the said east half of the north west quarter of section number eleven, in township ten north of the base line & in range five west of the fourth meridian above described, and set off to the said Samuel, the balance of his said portion (if any balance should remain due to him as aforesaid) out of the said premises so purchased of the said Munn

And your orators further prays that after the said premises have been so partitioned off and divided between the said heirs at law of the said David Lynn, deceased, the said defendant Stephen B. Munn, may be decreed by this Court to convey by good warranty deeds of conveyances the several portions assigned out of the premises so purchased of him, to the several persons who may become entitled thereto, under and by virtue of such partition, within a reasonable time to be limited by this Court & that in default of such conveyance by the said Munn, a Commissioner be appointed to make such conveyances for and on behalf of the said Munn

Or grant unto your orators, such other and further relief as to justice and equity may seem fit, or to the nature of their case may belong, all of which your orators, will as in duty bound forever pray

Browning & Bushnell
Sol. for Complt.

And also the east half of the North West quarter of Section number Eleven, in township ten north of the base line, and in range five west of the fourth principal meridian, in the Military Tract State of Illinois

State of Illinois
Henderson County } ss

Circuit Court, November Term AD 1849

David Lynn, administrator and one of the children, & the heirs at law of David Lynn deceased, and Ezekiel W. Lynn, Prudence Cook, late Prudence Lynn, children and heirs at law of the said David Lynn, deceased and Charles Henry Brainard, and Eliza Jane Lynn, grandchildren, and minor heirs at law of the said David Lynn, deceased, who prosecute by their next friend David Lynn and Lucius Cook, who is intermarried with the said Prudence Cook } Complainants

vs in Chancery

Samuel W Lynn & Stephen B. Munn } Defendants

I do hereby enter myself security for costs in the above entitled cause and hereby acknowledge myself bound to pay or cause to be paid, all costs which may accrue in this action, and legally devolve on the said named minors Charles Henry Brainard, and Eliza Jane Lynn, or either of them

Dated November 4th 1849

David Lynn (seal)

David Lynn, one of the complainants, in the above entitled cause, this day personally appeared before the undersigned Clerk of the Circuit Court, in and for the County of Henderson & State of Illinois, and being first duly sworn, saith, on oath that Stephen B. Munn, one of the defendants named in the above entitled cause, does not reside, at and within the jurisdiction of the said State of Illinois, but, that he resides at and within the City of New York, in the limits

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and within the jurisdiction of the State of New York
Subscribed and sworn to before me
this 6th day of November AD 1844 David Lynn
John S Pollock,
Clk,

And afterwards to wit: on the Sixth day of November AD 1844, the Complainants by their Counsel, filed in the Office of the Clerk of the Circuit Court, their precipe, in the words and figures following to wit:

State of Illinois
Henderson County } Set

The Clerk of the Henderson Circuit Court, Illinois will issue a Summons in Chancery, against the defendants in the above entitled cause, directed to the Sheriff of said County, and returnable on the first day of the next term of the said Court,

and oblige Yours
Dated Nov 4th 1844 Browning & Bushnell
Solicitors for Complainants

And afterwards on the 13th Summons issued in accordance with the above Precipe in the words & figures following to wit:

State of Illinois } The People of the State of Illinois
Henderson County } ss to the Sheriff of said County Greeting

We command you to summon Samuel W. Lynn, & Stephen B. Munn, if to be found in your County, personally to be and appear before the Circuit Court of said County, on the first day of the next term thereof, to be holden at the Court House in Oquawka, on the first Monday in the month of June AD 1845. to answer a certain Bill of Complaint, filed in our said Circuit Court on the Chancery side thereof, against them, by David Lynn, administrator & one of the children & the heirs at Law of David Lynn, deceased, and Ezekiel W. Lynn, Prudence Cook, late Prudence Lynn, Children & heirs at Law of the said David Lynn, deceased and Charles Henry Brainard & Eliza Jane Lynn, Grand children and minor heirs at Law of the said David Lynn, deceased, who prosecute by their next friend David Lynn and Lucius Cook, who is intermarried with the said Prudence Cook — And have you then and there this writ & make return thereof in what manner you execute the same

Seal

Witness John S. Pollock, Clerk of our said Circuit Court at Oquawka, this 13th day of March AD 1845. John S. Pollock, Clk

I have served the within summons by delivering a Copy of the same to the within named Samuel M Lynn, May the 23rd 1845

S. S. Seet. Sheriff
N.C. Ills.

I cannot in my County find the within named Stephen B. Munn

S. S. Seet. Sheriff
N.C. Ills.

And afterwards towit on the 2d day of August AD 1845, the Defendant Samuel M Lynn filed his answer in the words and and figures following, towit.

State of Illinois
County of Henderson

Before the Judge of the Fifth Judicial Circuit, sitting in Chancery in and for the County & State aforesaid

The separate answer of Samuel W. Lynn, impleaded with Stephen B. Munn, to the Bill of Complaint of David Lynn, Ezekiel W. Lynn, Prudence Cook and Lucius Cook Charles Henry Brainard and Eliza Jane Lynn, Complainants

This defendant now and at all times, hereinafter saving and reserving to himself all and all manner of benefit, and advantage of exception to the manifold errors, uncertainties, imperfections and insufficiencies in the complainants said Bill of Complaint, contained for answer thereunto, or so much, or such parts thereof as he, this defendant is advised, is material for him to make answer unto, He this defendant answering saith, that he this defendant admits that in the fall of 1832, this defendant left the State of Connecticut, in which he and David Lynn, deceased, at that time resided to seek a location in the state of Illinois, and that he this defendant, as a squatter, made improvement on a tract of land, belonging to the United States, and that he this defendant, returned to the said State of Connecticut in the Spring of 1833, That on the return of this Defendant to Connecticut, he advised his Father, the said David Lynn, deceased, to remove to the State of Illinois and purchase, and settle on the S½ of 1. 10 S 5 W. 4th meridian, which said land was then owned by Stephen B. Munn of the City and State of New York, But this defendant says that the said David Lynn, deceased, well-

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knowing that this defendant, had at great expense, to wit 200 dollars, been from the State of Connecticut to the State of Illinois, and had made a location for the residence of himself and family on the South West quarter of Section No Ten in Township No Ten North, in Range No five West, in the military tract, in the State of Illinois, and had by search and great expense, and to the advantage of this defendant in a large sum of money, to wit, 1000 Dollars - had ascertained the location and value of the South ½ of Sec 1, 10 N 5 W in said Military tract, and had ascertained, ~~and~~ at great expense, to wit, 200 Dollars, that the same was owned by Stephen B. Munn, of the City of New York, and was for sale on a long credit, and at advantageous terms, and for less than one half of its true value, and the said David, being informed of the same, and that the acquisition of the same, would be a great speculation to this defendant, under said terms, to wit, 2000 Dollars, and also well knowing that this defendant, had determined to remove to said lands, with his family, and had undertaken to acquire title to said lands by purchase, and make the same his future home, and the said David well knowing that this defendant through his pecuniary means & accustomed industry would be able to purchase said lands. He the said David, then being a widower of advanced age, and of feeble habit, and requiring the special attention and care of some one of his children, that could and would apply time, care, and attention to his comfort in life, and being desirous of living with this defendant through life, in preference to other of his children proposed to help this defendant through with his said undertaking in acquiring said lands, and well realizing the same, proposed to this defendant in substance - That he the said David would accompany this defendant to the State of Illinois, and examine the said location of him, this defendant, that if in his judgment this defendant had been

judicious in his said location. He the said David would assist this defendant in said location & undertaking to acquire said land, and reside with this defendant in his family provided this defendant would secure the said David with said lands for his advances thereon. Which said proposition of the said David, this defendant then and there acceded to, and proposed as security to him the said David for his advances to this defendant, a lien upon said half section of land, untill the same should be settled between said David and this defendant, either, from money refunded by this defendant to him, or from the rents and profits, accruing from the use of the said land, to which the said David, assented and agreed, and this defendant denies that on his return to Connecticut, in the Spring of 1833, or at any other time this defendant advised his said father, the said David Lynn, deceased, to remove to Illinois, and purchase and settle on the said South half of section No 1, other than under & in pursuance of his proposition to this defendant, and acceded to by him, and agreed upon between them as herein before, in this his answer set forth

This defendant further answering admits, That from the Spring 1833, to the Spring of 1834, This defendant and the said David, frequently conversed upon the subject of said purchase, and removal of said David to this State, that this defendant frequently and earnestly advised the said David thereto, But this defendant says that said conversations, and said earnest advice, arose in consequence of the proposition of the said David to this defendant, and of this the said David assuring this defendant of his desire and intention to reside with this defendant, and assist him, this defendant in his undertakings as aforesaid

This defendant further answering admits, that the said David, was influenced by the representations of this defendant, and sold his property in the State of Connecticut

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and on or about the 13th day of April 1834, the said David left the said State of Connecticut, in Company with this defendant, with the intention of purchasing and settling upon the tract of land, in the Complainants Bill described and referred to under the said agreement with this defendant, But this defendant says that the said David was influenced so to do on the honest representations of this defendant, and by his the said Davids avowed desire to reside with this defendant, and assist this defendant in his undertakings, in this his answer set forth

This defendant further answering admits that the said David and this defendant after leaving the State of Connecticut, as aforesaid, on their way (to the State of Illinois) passed through the City of New York, but not in order to ascertain from the said Stephen B. Munn, the terms on which the said land could be purchased, for this defendant had ascertained said terms long before, the said Munn, executed a written proposal of the terms on which he would sell the said land and allowed three months in whole to accept or reject said proposition, That said written proposition of said Munn was made at the time and place in the Complainants Bill named and as in said Bill set out, after setting forth propositions, in the words following, to wit,

Mr Samuel W. Lynn, may have S½ S. 10 N. 5 W. in the military tract aforesaid Illinois, for nine hundred and sixty dollars, Two hundred dollars cash down, the remainder payable by yearly instalments, of One hundred dollars each, with interest at six per cent per annum, on all unpaid at the payment of each installment, I to give a contract to deliver a warranty deed for same on payment of said Seven hundred and sixty dollars, as aforesaid, with interest money to be paid to Messrs. Tillson, Moore & Co. Quincy, Illinois Mr Lynn to let me know if he takes the above sections in three months from this date, New York, April 18th 1834

(Signed) Stephen B. Munn

But this defendant, denies that the application to purchase was for the purchase of said half section of land from said Munn, by said David, in the event that he might design to make a purchase thereof after examining the same, But says said application was by this defendant, and by the approbation of said David, then under the assurance of said David, that if he the said David approved of this defendants location and undertakings as aforesaid, that he the said David would assist this defendant therein - and this defendant further denies, that by said proposition of said Munn, there was allowed to the said David three months in which to accept or reject said proposition - But says said time was solely allowed to this defendant, and was given him, that he could have his father, the said David, counsel and advise thereon and not otherwise

This defendant further answering admits that the said David Lynn, deceased, was at the time said proposition was made, was aged and infirm, and little acquainted with dealings in western lands, and left the principal part of the negociations with said Munn, for the purchase of said land to the said defendant, and that the name of the said defendant was inserted by said Munn, in said written proposition and not the name of the said David - But this defendant denies that for such reasons, the said David, left the principal part of the negociation with said Munn, to this defendant, and denies that this defendant acted for said David, and under his direction in said negociation - And denies that the name of the defendant was inserted by said Munn, in said written proposition, instead of the name of said David by mistake of the said Munn, and without the knowledge of the said David, or for the convenience of the said David, or for to enable this defendant, the more conveniently to transact the business, and complete the purchase, for the said David, as his agent, in case said David, determined to take said

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land, after examining the same, on the terms contained in said written proposition. Yet this defendant says that he admits that he negociated with said Munn in procuring said proposition under the advice and counsel of said David, he assuring this defendant that if the purchase should prove to be an object to this defendant, and the said David was pleased with the location of said land, he the said David would assist this this defendant, in the accomplishing of his undertakings as aforesaid

This defendant further answering denies that he this defendant, at the time of said negociation with said Munn, had no intention of purchasing said land for himself, and also denies that the part that he took in the business, in the negociation with said Munn, and in the procuring from him said Munn, said written proposition he acted solely for and on account of, and under the direction of the said David as his agent, or that said written proposition was intended to be and was as between this defendant and the said David, to the said David, and for his the said Davids consideration as the intended purchaser – This defendant also denies, that that part of said proposition by which three months time was given to accept, the same was intended for the purpose of giving the said David time to come to and examine the land for himself, and to determine from such examination, whether he would or not, complete the purchase on the terms proposed by said Munn, But this defendant says that by the proposition of said Munn, the three months time was given to this defendant, to enable this defendant to procure the advice of his said father, (the said David) whether or not to make the purchase and to give to his father (the said David) confidence to assist this defendant in his said undertakings, in establishing his, this defendant home, and to enable this defendant to raise money to meet the first payment to him the said Munn, in the

payment for the said tract of land

And this defendant further answering says, that soon after the ~~said~~ arrival of the said David & this defendant in the State of Illinois, and after the full examination of the said half section of land, this defendant under the advice of the said David, concluded to accept the proposition of the said Munn, so far as the same related to the purchase of said half section of land, in accordance with his said proposition — Whereon the said David proposed to this defendant to make advances to him, to assist him in the purchase of the said tract of land, from the said Munn And then and there agreed with this defendant to make advances in money to him this defendant, to enable this defendant so to do, and that this defendant should give the said David, a lien upon the said half section of land, about to be purchased from said Munn, under said proposition as security for such advances, untill said advances should be settled, between said David & this defendant, either from money refunded or dues owing, or to become owing from said David to defendant, or from rents and profits accruing from the use of said land, or such lien on the same, should be donated by the said David to this defendant, all or any of them, That thereupon this defendant, to wit, on or about the 26th day of June 1834 wrote to said Munn a letter of that date, and sent the same to the said Munn, accepting the said proposition, so far as concerned said half section of land, which said letter was of the purport and effect of the letter of that date, set out in the complainants Bill, For this defendant alledges and insists that he this defendant did not by said understanding ~~or~~ agreement, between said David and this defendant, & by said letter, yield, agree to or intend to yield, for any consideration money whatsoever, moving from the said David, to this defendant, his interest in said half section of land, to be acquired under said

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written proposition of said Munn, otherwise than to give said David a lien thereon for the amount he should advance to this defendant, to enable this defendant in his undertaking to purchase, pay for, and settle himself on said lands in the State of Illinois

And this defendant denies that he this defendant at the request of said David, and for him as his agent, wrote and sent said letter to said Munn, accepting said proposition for and as the agent of the said David - or for any other or different purpose, or intent whatsoever, than is in this answer set forth,

And this defendant says that the said Munn, knowing that the said three months were given to enable the said David to determine whether he would advance moneys for the purchase of said land, and that the money for the first payment was to come from the said David, upon the said David's so determining to advance the same if he were pleased with the location which this defendant had made, therefore, this defendant wrote to the said Munn, in said letter, that the said David had concluded to take said land, and the said words in said letter "and pay you as agreed when you send to Quincy, a bond for a deed" then did and only were intended to refer to the said first payment before agreed to be made, and which the said David was to advance upon the condition aforesaid

And therein this defendant promised beyond the said first payment so referred to, for himself to fulfill on his part, and with such understanding the said Munn afterwards executed his Bond of date July 19th A.D. 1834, to this defendant, and not to the said David.

This defendant further answering admits that the said Stephen F. Munn, on the receipt of said letter, on or about the 19th day of July 1834, in pursuance of his said proposition, and of the said acceptance, thereof, wrote on

the back of a copy of said written proposition a contract or obligation, as is set forth in the Complainants Bill, under the hand and seal of the said Munn, to make a deed of the said land to this defendant on his, this defendants fulfilling the terms contained in his said proposition, which said obligation or contract was and is in the words set out in the Complainants Bill,

9 This defendants further answering admits that the said Munn on the day of the date of said agreement or immediately thereafter transmitted the said Contract or obligation, with said copy of said original proposition on which the same was indorsed to the said firm of Tillson Moore & Co., his Agents at Quincy, Illinois, for the purpose and with the directions to them to complete for him the said sale of the lands before described, and that on the receipt thereof by said Tillson, Moore & Co. they informed this defendant thereof but not the said David, as this defendant is informed

11 And this defendant further answering admits that the said David Lynn, soon after the receipt of the information from Tillson, Moore & Co. to this defendant, of the receipt by them of the contract of the said Munn, as aforesaid, and as soon as he could conveniently procure two hundred dollars, the amount of the first payment, (and also sufficient to pay the tax to wit 4 80/100 dollars, to be made on the land and delivered the same to this defendant and this defendant went to Quincy with said money to pay over the same, but was not sent by said David, to the said Tillson, Moore & Co., as the part payment of said land, and that this defendant did on or about the eighth day of September 1834, pay over the said two hundred and four 80/100 Dollars, the money obtained from, but not the money of the said David, to the said Tillson, Moore & Co. as and for the first payment on the said land, and

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at the same time received from said Tillson, Moore & Co a receipt therefor to the said David, which said receipt was in substance and purport as set out in the Complainants Bill of Complaint, And that the said Tillson, Moore & Co did at the time of said payment, deliver to this defendant the said referred to obligation of said Stephen B. Munn, for said land, bearing date the 19th day of July 1834. But this defendant denies that this defendant was sent to Quincy, by the said David, as the agent of him, the said David, with said money to pay over the same for him the said David to said Tillson, Moore & Co, or that he this defendant did pay over the said two hundred and four 80/100 Dollars, the money of the said David to said Tillson, Moore & Co, as the agent of the said David, other and different than what he this defendant, went to Quincy, and paid over the money, pursuant to the proposition & contract of the said Munn to this defendant, and under the agreement between said David, and this defendant, that the said David should and did make advances to this defendant, and this defendant should give to said David a lien upon said land as hereinbefore, in this his answer set forth.

11 And this defendant in further answering says, that he is wholly ignorant, and can not state, whether or not the said Munn, in making out the said obligation, dated July 19. 1834, referred to the original proposition, in the Complainants Bill recited, dated the 18th of April 1834, to ascertain the person, to whom said obligation and contract should be made, and not to the letter of this defendant dated the 26th day of June 1834, and leaves the complainant to make proof thereof, as they shall be advised This defendant in further answering denies that said Munn in making out his obligation, dated July 19th 1834, ought to have referred to the letter of this defendant, dated the

26th day of June 1834, recited in said Complainants Bill and not to the original proposition of him the said Munn, recited in the Bill & dated the 18th April 1834 to ascertain the person to whom said obligation or contract should be made, but if referred to the said letter did not authorize a different obligation, than the one made by the said Munn, and says that all of said papers were, part ~~and~~ of the one ~~of the~~ and of the same transaction, that the said letter of this defendant, was only intended to give to the said David, a lien upon the Contract for the advances he should make, as in this answer before set forth, for the other purposes as in this answer set forth. This defendant further answering denies, that by reason of any mistake by said Munn, the obligation of said Munn, made to this defendant, as in Bill alleged was made to this defendant, or that according to the intention of the said David and this defendant, it ought to have been made to the said David. But this defendant says, that it was the intention of the said David and this defendant, that the papers in relation to said lot of land, should be so made as to give him the said David, a lien upon the land, for the advances he should make this defendant, until said advances should be settled between the said David and this defendant, or the same to be donated by the said David to this defendant, as in this his answer above set forth.

12 And this defendant further answering denies that at the time he paid the afore mentioned money (to wit 204 80/100 Dollars.) to the said Tillson, Moore & Co, or at any other time whatever, he this defendant discovered a mistake in the said proposition and contract of the said Munn, or either of them, or that he called the attention of the said Tillson, Moore & Co. thereto, as being such mistake. But this defendant admits that for the purpose of giving to the said David, a lien

on the said land, he requested the said Tillson, Moore & Co. to procure from the said Munn, a bond to convey the said land to the said David, upon the payment of the purchase money thereof to the said Munn, in accordance with the said original proposition, but the cause for such request was this, the said David, was unwilling to make advances of money to assist this defendant in the purchase of the said land, without having security for such advances according to the agreement aforesaid between this defendant, and the said David, and desired this defendant to procure said Bond, in the said David's name — the said David agreeing with this defendant, that he the said David would reconvey the said land to this defendant upon the payment or settlement of the said advances by this defendant to the said David, either from moneys, or dues from said David to this defendant, or from the rents and profits of said land, or that he would devise the same to this defendant, and upon the execution of the said bond by the said Munn, to the said David, the said last mentioned agreement between this defendant and the said David was to have been, and would have been reduced to writing, but the said last mentioned bond was never executed by the said Munn, and delivered to the said David in the knowledge of this defendant — And only in such manner, and for such causes and considerations, does this defendant admit that he ever requested the said Tillson, Moore & Co to procure a bond for the conveyance of the said land, to the said David

This defendant is not positively informed whether the said Munn, ever executed said articles of agreement or bond, as are or is set forth in the said Bill, to the said David. Yet this defendant, hath good reason to believe, and does believe, that said Munn, never executed any such articles or bond. Yet this defendant hath been informed and believes that the said Munn did sign and seal a Deed conveying the said land to the said David, but not by the request of this defendant

and did procure to be made out a bond and mortgage on said land to himself to secure the payment of the sum of $700. part of the purchase money of the said land, for the purpose of having the same executed by the said David, upon the delivery of the said Deed to the said David, and then to be delivered to the said Munn or his agents. but neither was the said Deed delivered to the said David, nor was the said Bond and Mortgage delivered to the said Munn or his agents which said Bond and Mortgage and said Deed respectively, bear date the twenty sixth day of May AD 1834. And this defendant believes that the said deed of said Munn on the one part, and the said Bond and Mortgage on the other part, were intended to be substited in lieu of the said Bond requested by this defendant to be executed by the said Munn to the said David, but this defendant did not request them so to be executed and with the full knowledge and consent and by the desire of the said David neither were they executed as afore said - And this defendant expressly denies that his said request to have the said bond executed by the said Munn to the said David, was so made upon any consideration moving from the said David to this defendant, or from the said David to the said Munn through this defendant or otherwise, which would or should entitle the said David to the Dee of said lands, or any other interest therein, other than for the security of the payment to the said David of the money so advanced by him to this defendant as aforesaid

This defendant doth not admit that the said articles or Bond from the said Munn, to the said David was executed after the said part payment of the purchase money of said land as stated in the said Bill, for this defendant hath good reason to believe, and doth so, (although not positively informed thereof) that no such articles or bond was or were ever signed by said Munn, and this defendant denies that any such Bond or Articles, was or were ever delivered to or accepted

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by the said David, and farther this defendant saith that as the said Bond or articles was or were not executed as aforesaid, it, or they, could not have been dated back by his this defendant request. Yet this defendant admits that upon requesting as aforesaid such Bond from the said Munn to the said David he did request the same should bear the date of the said contract of the said Munn with himself

This defendant denies that the said Tillson, Moore & Co. sent the said Bond, or Articles as set forth in said Bill from the said Munn, to the said David, to this defendant, and the said David, in duplicate to be executed some time in August 1835. or at any other time, if such were sent to the said David, this defendant hath not now either recollection or knowledge thereof, and because the same was not so sent as aforesaid, this defendant denies that the said David did not execute the same through the persuasion of this defendant for the reasons stated in said Bill, or for any other reasons. Yet this defendant says that one reason why the execution of the said Bond and Mortgage above mentioned, as well as other writings, showing the agreement between this defendant, and the said David, was delayed at the time the same was forward to the said David and this defendant, was the reason alleged in said Bill, for the delay in executing the said Bond or articles from the said Munn to the said David herein set forth, to wit, that a part of the said land was then in the possession of one Jamison, and it was thought good policy by the said David, as advised by this defendant to leave the said Munn, and the said Jamison, to settle the value of said Jamison's improvements on said land. But this was not the sole or most weighty reason for such delay for the said deed on the one part, and the said Bond and mortgage on the other were not such evidences of the contract of sale of said land, as this defendant had requested to be executed by the said David, and so the execution thereof

was delayed, untill the said David became content to trust to this defendant, for the payment of his advance of money to this defendant, without the security of a lien upon the said land

This defendant further answering admits that there were paid to the said Tillson, Moore & Co as the Agents of the said Munn, as the purchase ~~of~~ money of the said half section of land, the following sums of money, at the following times to wit, On or about the twenty ninth day of October AD 1835 the sum of One hundred and sixty one 63/100 Dollars, in full of the principal and interest due the said Munn on the second installment of said purchase money, On the twenty sixth day of October AD 1836, the sum of One hundred and thirty three dollars and sixty cents, in full of principal and interest due the said Munn on the third instalment of the purchase money of said land, On the 27th day of September AD 1837 the sum of One hundred and thirty three dollars and sixty cents, it being the principal and interest in full of the fourth instalment, due the said Munn, as the purchase money of the said land, On the first day of October AD 1838, to the said Moore, Morton & Co, as the agent of said Munn, the sum of One hundred and twenty seven dollars and sixty cents, in full of the fifth instalment, principal and interest of the purchase money of said land, on the 26th day of October AD 1839 to the said Moore, Morton & Co agents as aforesaid the sum of One hundred and twenty one dollars and sixty cents, in full of principal and interest due said Munn, on the sixth instalment of the purchase money of said land,

And this defendant further admits, that the said several sums of money were so paid by this defendant, or his lawful agent to the said Tillson, Moore & Co, and to the said Moore, Morton & Co at the respective times stated above, and that this defendant took and procured to be taken, receipts therefor, to the said David Lynn, in the form in which the said respective receipts

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are set forth in said Bill, with the exception of the receipt having date September 27th 1837. But this defendant expressly denies that he was sent to make the said payments or any of them by the said David, as his agent or messenger but says that the said moneys were advanced by the said David to this defendant, under the agreement between the said David and this defendant above set forth, and because this defendant had directed the said agents of the said Munn, to procure to be executed to the said David a title bond for the purpose, and in the manner stated in this answer above, and for the purpose of giving of right to the said David the evidence of the amount for which he should have a lien on the said land under the agreement between this defendant and the said David, and to have the said evidences direct, and not to compel the said David to rely on the representations of this defendant, this defendant procured the said receipts, to be given in the name of the said David, and this defendant further says that the said advances so as aforesaid, made by the said David, with which the following payments were made, to wit, on the 29th day of October AD 1835, on the 26th day of October AD 1836, on the 27th day of September AD 1837, through John A. Lynn, this defendants agent in that behalf, On the first day of October AD 1838, and on the 26th day of October AD 1839, as above set forth, were afterwards settled between the said David, and this defendant paid by this defendant, and satisfied to the said David, and all claim for ~~on~~ on account of such advances on this defendants extinguished, and as an evidence thereof, the receipt of the said Munn's agents, made for the payment of the instalments on said purchase bearing date successively and respectively, on the five last above mentioned times were delivered up to this defendant by the said David, And this defendant further says, that one of the said payments made on the 27th day of September AD 1837, was made by John

A. Lynn, as the agent of this defendant, that this defendant procured said John A. to make said last mentioned payment and gave to the said John A. the money wherewith to make such payment, and directed him to take a receipt therefor to the said David, this defendant before that time having procured said last mentioned money of the said David, a copy of which said last mentioned receipt is hereto appended and herewith filed marked Exhibit "F" This defendant further answering admits that on the 20th day of August 1840. the said David Lynn, departed this life intestate, and without leaving any widow surviving him, but leaving as his survivors and only heirs at law the Complainants and this defendant, and that David Lynn one of said Complainants afterwards to wit on the day of AD 1841. sued out of the Court of Probate in the County of Warren, and State of Illinois, letters of administration on the goods and chattels, rights and credits of the said David Lynn, deceased, in due form of law, as by the Copy of said letters on file, and marked exhibit A will more fully appear

And this defendant further answering admits, that since the death of the said David Lynn, deceased, He this defendant has paid the full payment of the balance of the purchase money for the said land to the said Moore, Morton & Co the agent of the said Munn, and that the said payment were made by this defendant at the times, and in the amounts as follows, to wit, 115.60/100 dollars on the 31st day of October 1840, and not on the 2d November 1840 as stated in said Bill, the further sum of 61.26/100 dollars on the 10th June 1842, and making in all the aggregate sum of Two Hundred and eighty six dollars and ten cents, mentioned in Complainants Bill, But this defendant denies that he this defendant paid this money, or any part thereof out of funds belonging to the said David Lynn, in his life time

& the further and last installment of 61 26/100 dollars on the 25th Oct 1841

or to the complainant David Lynn, as administrator since his death, or to the heirs of the said David Lynn deceased, And says that this defendant paid said several sums of money from his own individual money in his own right and name, and on the contract of the said Stephen B. Munn, with this defendant bearing date the 19th day of July 1834, and this defendant further says that from the time of acquiring possession of said half section of land, under the purchase from said Munn, this defendant generally paid the taxes, thereon, amounting to a large sum of money to wit. One Hundred Dollars.

This defendant further answering denies, that at the time of the said purchase, from the said Stephen B. Munn, or at any other time whatsoever, the said David Lynn, deceased entered into the possession of said premises, and that said David Lynn, deceased, from said time, or any other time, to the time of his death, continued in the possession thereof, and cultivated the same or any part thereof. But this defendant says that from the time of entering into said contract with said Munn, or soon thereafter, he this defendant entered into the possession of said premises, and from the time of acquiring the possession thereof to the time of the death of the said David, this defendant continued the possession thereof and cultivated the same — And further that the said David, during the said time, resided with this defendant, in his, this defendants family and assist this defendant in the improvement and cultivation of said premises, without having exclusive possession, or control of the same

This defendant further answering admits — that the said David Lynn, being old and infirm, and being also a widower, and being unable to attend to his own business — he the said David resided in the same house, and with the family of this defen-

dant, as a member of the family of this defendant - And that this defendant, attended to the business of the said David, made contracts and paid the money of the said David, for purposes required by said David, and collected and receiving & money for said David and superintended the farming business of the said David for him But this defendant says that the said David had but little farming business of his own to attend to, except some considerable stock in hogs, cattle, horses - Which this defendant, grazed, fed, wintered and fattened for the said David on said lands.

And this defendant further says that that the care, keeping & feeding by this defendant of the said David, and his stock, was of greater value than all the advances made by the said David, to this defendant, not repaid to the said David by this defendant And this defendant insist that the same is a good and sufficient set off, by this defendant, against the said advances by the said David, and as effectually as if this defendant had paid the same

This defendant in further answering - admits that he this defendant, since the purchase of said lot of land from the said Munn - had the making of the improvement on the said premises, but denies that he superintended the making of said improvements on said land, for said David Lynn, deceased, and says, that the said improvements were made on said land by and for him this defendant, at a cost to this defendant of a large sum of money, to wit 3000 Dollars.

This defendant further answering admits that from the time the said David Lynn, first resided with this defendant in the State of Illinois, to his death, he this defendant had access to all of said Davids deeds, title papers notes, receipts, evidences of debt, and all other papers belonging to the said David, up to, and at the time of of the death

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of said David. But this defendant denies that he this defendant during ~~this~~ said time had the actual custody and control of all of said Davids, deeds, title papers, notes, receipts, evidences of debts, and other papers belonging to said David or that he this defendant has at any time, had, or now has any deeds, title papers, notes, receipts, evidences of debts or other papers belonging to the said David, or that he this defendant, has at any time had or now has, any deeds, title papers, notes, receipts, evidences of debt, or other papers belonging to the said David, wrongfully taken from the possession of the said David or rightfully and exclusively belonging to the custody of his the said Davids Representatives

But this defendant says and admits that this defendant has the actual custody and control of the original proposition and obligation of the said Munn, in the Complainants Bill, recited and dated the one the 18th day of April 1834, and ~~on~~ the other on July 19. 1834, and five of the receipts of instalments from the agents of said Munn, the one of Dillson, Moore & Co, dated October 29. 1835 for 101. 43/100 Dollars, one other bearing date September 27th 1837 for $133. 60/100 - one other bearing date October 26th 1836 for $139. 60/100 one other bearing date October 1st 1838 for $127. 60/100, all of which receipts, except the first above mentioned, are signed by Moore, Morton & Co, and one other of Moore, Morton & Co dated October 26th 1839, for 121. 60/100 dollars, ready to be produced as this honorable court may direct, and denies that said papers were among the papers, in the custody of the said David, at the time of his death or rightfully belonging to him, or that this defendant had any other receipt or receipts relation to said matter given in the life of the said David, or that said papers or any of them, contain evidence to prove to the Court that the said premises, were purchased by the said

David Lynn, deceased, and that all the money paid for said land during the life time of the said David, and mentioned in said receipts, was really the money of the said David, or that the same will prove that this defendant during the life time of said David always considered the said land as belonging to the said David as the purchaser thereof. And this defendant further says that said five receipts, in the possession of this defendant are lawfully and rightfully in the possession of this defendant, as the advances of the money therein specified by the said David to this defendant was in the life time of said David, settled between said David and this defendant, and the receipts delivered up to this defendant as the evidences thereof as aforesaid

This defendant further answering admits that the receipt for the purchase money of said premises set forth in the Complainants Bill, and in the custody of this defendant, are substantially recited in the said Complainants Bill, and correspond in substance, as to date, and amount except as before excepted and explained

This defendant further answering denies, that this defendant during the life time of the said David Lynn, deceased, always admitted that the said premises belonged to the said David, and that the said David was the purchaser thereof or any part thereof and denies that by his acts and by his letter in Bill mentioned dated 26 June 1834, the paying of the purchase money, and the receiving of the receipt therefor amount to an acknowledgment that said premises belonged to said David, or that said David was the purchaser, independent of the legal and equitable rights of this defendant, under the agreement between the said David and this defendant. That he the said David should make advances in money to this defen

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dant for the purchase thereof, and that this defendant should give the said David a lien on said land until said advances should be settled either from money refunded, or from the rents and profits arising from the use ~~and~~ of the said land, or the said lien by said David on said premises be donated to this defendant, and preclude this defendant from his legal and equitable claim to said land,

This defendant further answering says that he did on the 14th day of November A.D. 1835, with the knowledge of the said David (but whether at the request of the said David, this defendant does not now recollect, and cannot therefore state, write a letter of that date to Mr Moore, of the firm of Tillson, Moore & Co. the agents of said Munn, a copy of which is set out in the complainants bill, which letter and the contents thereof were in part for this defendant, and in part for the said David, and not for the said David alone, and this defendant did therein admit that the yearly rents of the said land, was then since the purchase of the said land, due to the said David, but so far from admitting thereby or therein that the said land belonged to the said David, as alleged in said Bill this defendant in the same letter last aforesaid, claimed the possession thereof in his own name, and in his own right, And this defendant says that he admitted, and now admits that the yearly rents from the time of the purchase of said land, when the first advance of money was made by said David to this defendant, did by virtue of the said agreement between this defendant and the said David, and on no other account, belong to the said David, and were due to the said David in part payment of the said David's advance to this defendant.

This defendant further answering admits, that at, and from the time of the said orig-

inal purchase, up to and at the date of the said sealed letter of this defendant to Mr Moore, the said Samison had possession and under cultivation about 25 acres of the said half section of land, and that the corn gathered by said Samison, was corn raised and gathered by said Samison on said 25 acres, or some part thereof, and that the rents mentioned in said letter as due the said David was rent the said David claimed that said Samison, owed him, for the use and occupation of said land - and that the purchase mentioned in said letter referred to, meant the purchase of said half section of land from said Munn. But says that said David claimed said rents from said Samison by virtue of an agreement between him and this defendant, on account of advances made by him to this defendant, in the purchase of said land, and in the reduction and liquidation thereof as herein before in this answer set forth, and that the purchase mentioned in said letter referred to meant the purchase of said half section of land from said Munn by this defendant, and in virtue of his proposition to this defendant.

This defendant further answering denies, that the said David Lynn, deceased, after the purchase of said land, from said Munn, up to the time of his death, or at any other time, had made lasting and valuable improvements on said premises to the value of several thousand dollars, or any other sum, or any other improvement thereon. But this defendant says that he this defendant for and during said time, and since the decease of the said David, has made the improvements that have been made on said land, and that said improvements are valuable and lasting, and of the value of a great sum of money to wit, 3000 dollars - that he this defendant, has done the principal part of the labor in making

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said improvements and expended from his own resources the principal part of the cost and expenses thereof, and paid the greater part of the taxes thereon, amounting to a large sum of money, to wit, the further sum of 100 dollars — But this defendant admits that in the making of said improvements, the said David in his life time assisted this defendant to part of the pecuniary means, required for and in extending said improvement and advanced divers sums of money to this defendant for the making thereof, amounting in all to about $ 30 dollars, and says that of said advances have been fully paid, and settled by this defendant.

This defendant admits that said premises, including the improvements, at the time of the decease of the said David were worth a large sum of money to wit $ 5000. This defendant does not know of his own knowledge, whether the said administrator of the said David, hath fully administered all the assets and effects of the said David and fully and finally settled according to Law, with the Probate Justice, and been discharged from the duties of said administration. But this defendant hath been informed, and believes that the said administrator hath not so fulfilled and completed his duties of the said administration, Yet if administration hath been so completed, this defendant admits that the residue of the estate of the said David, if any such should be, would belong in their respective proportions to the said heirs of the said David

This defendant further answering admits that he this defendant, from the time of the death of the said David, to the time of filing Complainants Bill, has had possession of said premises, and that during said time he has had the use and occupation, and the rents and profits thereof, and has appropriated the same to his

own benefit. But denies that the rents and profits of said premises are of the yearly value of $640. dollars, but admits them to be of the yearly value of $150 dollars. And this defendant says that he has had possession of the improved parts of said premises, when the improvements were made since the purchase from said Munn, and since said improvements were made to the time of the death of said David. And this defendant says that he so received the rents and profits of the said lands, by the express consent of the said David, and appropriated the same, by such consent of said David, the said David, having only a right by virtue of his agreement with this defendant to receive the said rents and profits, in liquidation of the sums, advanced by the said David to this Defendant, and by virtue of the lien, by which he the said David was to have for said advances, as above stated And this defendant and the said David settling concerning the said advances as aforesaid, and this defendant paying and satisfying the said advances - partly out of the said rents and profits, and partly by other means of this defendant, this defendant as he lawfully might by such consent of said David received and appropriated, the said rents and profits as aforesaid

This defendant further answering denies that he this defendant, in the Spring or Summer of 1840 or at any other time, sold and delivered to certain persons in Burlington, Iowa Terty) or any other place, by the name of Page and Moore, or any other persons, a lot of beef cattle, belonging to the said David Lynn, deceased, at and about the price of 200 dollars, or any other sum, as the agent of the said David Lynn, deceased, But says that he this defendant, about said time, sold such persons, a lot of cattle, for about such price, and received the pay therefor, and retained the money therefor, for the reason the same belonged to this defendant, and not to the said

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David, and admits that he never accounted to the said David, or his administrator therefor, and says that they nor either of them, have any right whatever to require him this defendant to account for the same. This defendant further says that the moneys he received for said lot of Cattle, he this defendant expended in the improving of said half section of land

This defendant further answering denies, that in the Spring of 1840 or at any other time, this defendant as the agent of said David sold to M. Heaton or any other person, a mare belonging to the said David and as the agent of the said David, received said sum or any other sum, as such agent therefore. But says that he this defendant, about said time, sold said person a Mare for said sum, and received the pay therefore, and retained the money, for the reason that said Mare, belonged to this defendant, and not to the said David, and admits that he never accounted with the said David, or his administrator therefore, and says that they, or either of them had no right to acquire it. This defendant further says that the moneys he received for said Mare, he expended in the improvement of his home

This defendant further answering, denies, that the said sum of 286 dollars and 10 cents paid by him to the agents of the said Munn, on said purchase, of said half section of land, since the death of said David, was paid out of the funds, and money of the said David, received from the sale of beef cattle and a Mare, belonging to said David, or any other money belonging to said David, and from moneys received out of the use and occupation and crops and rents and profits, accruing and enjoyed and received by this defendant, from the said half section of land, as the land of said David, since the death of the said David, Lynn, But says said payments were made

by this defendant from moneys solely belonging to this defendant, arising from sales of property belonging to him solely, or from moneys borrowed by him

This defendant further answering admits, that some time in the year A. D 1835, but whether in the month of June, this defendant can not now recollect, the said Complainant Ezekiel W. Lynn, and this defendant, entered at the United States Land Office, in Quincy, in this State the North West quarter of Section 11. Township 10 North Range 5 West, of the fourth principal meridian. Yet in this manner only, does this defendant admit such entry This defendant and the said Ezekiel, entered another quarter section by entering Eighty acres thereof each which said other quarter was the South West quarter of section No 11. Township 10 North, Range 5 West, of the fourth principal meridian, and by the law of the United States this defendant and the said Ezekiel entering the said last mentioned quarter by preemption, they, this defendant & the said Ezekiel were entitled to a float, on eighty other acres each, and located their said floats, the one, on the one Eighty acres & the other on the other 80 acres of the said quarter of the said section Eleven, And before the payment of the purchase money, of the said two last mentioned quarters and after the proof of the preemption right thereon, the said David, being willing to assist the said Ezekiel, and the said Ezekiel very much desirous to own the Eighty acres of this defendant, on said quarter of section 11. the said David proposed to this defendant, that this defendant should assign his right in the said last mentioned eighty acres, to the said Ezekiel, and that in consideration thereof, the said David would pay for the use of this defendant, One Hundred Dollars, the entrance money to purchase the said eighty acres of land, on said Section Eleven, floated to this defendant as aforesaid, and afterward in full satisfaction of the said

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One Hundred Dollars last aforesaid, this defendant having accepted the said proposition of the said David, before the payment of the said One hundred dollars, by the said David, at his request assigned his interest to the said eighty acres on the said section ten, to the said Ezekiel, and only in such manner - and to such amount does this defendant admit the loan advanced or payment of any money by the said David to or for the use of this defendant, for the purpose of entering said land, on said section eleven, in said Bill mentioned,

This defendant further answering ~~admits denies~~, admits, that before the entrance of said land by the said Ezekiel and this defendant wherein the East half of the said quarter section became the sole property of this defendant.

This defendant further answering denies that he this defendant, in the month of December 1835, or at any other time, sold and conveyed the said East half of the North West quarter of Section Number Eleven, in Township Number Ten North of the base line, in Range Five West of the fourth principal meridian in the Military Tract, and State of Illinois to the said David Lynn, deceased, or that he ever delivered a deed therefor to the said David, conveying the same to him, or that the said David from that time or any other time, to the time of his death, was in the possession of any such deed, or that the said David, at the time of his death, or at any other time was the legal owner in fee simple of the said East half of the said quarter section of land, But this defendant admits that he this defendant, at, or about said time, made out a deed conveying said premises to said David, bearing date about said time, and acknowledged said deed before one John B. Patterson, a Justice of the Peace, in and for the County of Warren, State aforesaid. But says that said David not completing his purchase thereof of this defendant, or paying the

defendant the purchase money therefor, or any part thereof the said deed never was delivered to him, or the sale and conveyance thereof made to him - And this defendant denies that lasting and valuable improvements were made on the said half quarter section, at and before the time of the death of the said David.

This defendant further answering, admits that the said deed never has been recorded in the County where the said premises are situated, and that the same remains unrecorded, and that this defendant for many years previous to the death of the said David had access to his deeds and papers, and this defendant denies, that he, this defendant had access to the said deed, to, and at the time of the death of the said David, or that he this defendant at the time of said death, took the possession of ~~the~~ said deed, and from that time (the time of the death of said David) to this date, or any time since, the death of said David has had, or now has, the custody, possession and control or either of them, of the said deed, or that he can procure and exhibit to the Court, the said original deed and says said sale not having been completed and no consideration paid therefor by said David, and no delivery of said deed by this defendant to the said David had the said deed was destroyed ~~was~~ a long time previous to the death of the said David Lynn.

This defendant further answering denies that said deed will give evidence of and prove to the Court that this defendant sold and conveyed said half quarter section of land, to the said David Lynn, deceased, as in Bill stated, and that said David was at the time of his death, the owner in fee simple of said premises and insists that from the facts in this his answer set forth, no title whatever passed from this defendant to the said David Lynn, deceased. This defendant further

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says that said deed not having been delivered, and the sale not having been completed, the said deed was long since destroyed, and the same can not be procured. This defendant further answering admits that he this defendant since the death of said David, has continued to hold possession of the said half quarter section of land, and has had received and enjoyed the use thereof, and that the rents, uses, and profits were of no value whatever, the same not being improved. But denies that said uses are or were at any time at the value of 200 Dollars per annum but says they were of no value — This defendant further answering admits that since the death of said David, he this defendant has conveyed said 1/2 qr Section of land, to one Darnell for the sum of $ This defendant further answering denies, that at the time this defendant first left the State of Connecticut for the State of Illinois (in the fall of 1832,) he was poor and had not the means to pay the expenses of his said journey, or purchase a home when he arrived in said Illinois. But this defendant admits that in the fall of 1832, about the time he first left the State of Connecticut, for the purpose of raising money the defendant borrowed two hundred dollars, on the credit of said David Lynn, deceased, wherein said David & Ezekiel W. Lynn, as the security of this defendant, executed a note with this defendant therefor, and that afterwards when said David was about removing to the west in the spring of 1834, he the said David took up and paid said note, — But this defendant says that afterwards, to wit, one week after said note was paid by said David, one Oliver B. Coe paid said money for the defendant to said David.

This defendant denies that in the spring of 1834, he this defendant was without property or resources and wholly unable to pay the said note and says

that the said David paid the said note, and received his pay as aforesaid, and in order to save himself the trouble to show said payment to said David, in a transaction so long past, this defendant insists that the said David, or his legal representatives, have not a legal or equitable right at so late a day to call on this defendant to account for said sum of money or any part thereof, for the reason that more than five years have elapsed from the time the said transaction occured to to the commencement of this suit, which defense of this defendant against the accounting therefor at this time and in this manner made, he this defendant should be entitled to set up as if the same had been interposed by plea or demurrer, and so insists thereon.

This defendant further answering denies, that he this defendant never repaid said money, so as aforesaid advanced by the said David, in the spring of 1834, to the said David Lynn, deceased, during his life time, and that the same is now due, and owing to the heirs at Law, of the said David, with interest or any part thereof, or to either of them; and admits that he has not paid any such claim to his administrator since his death But says said sum of money, was paid, settled and adjusted, between the said David and this defendant a long time previous to the death of the said David, in manner aforesaid

This defendant further answering denies, that on a just and equitable settlement, between the said Complainants and this defendant, of the matters mentioned in the Complainants Bill, and in this his answer that this defendant will be found indebted to the said Complainants or either of them, in the sum of several thousand dollars or any other sum of money whatever. But this defendant says and insists that the said David, or his legal repre-

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sentatives are indebted to this defendant in a large sum of money, to wit, $3000. dollars for hogs, cattle, horses goods, wares and merchandize, hay, fodder and grain sold delivered and furnished by this defendant to the said David in his life time and at his request; and for money had and received by him, to and for the use of this defendant; and for rents, issues, and profits of the lands of this defendant, had used, and occupied and enjoyed by the said David at his like request, and for work, labor, care and diligence, and attendance of this defendant and his family for said David, and at his like special instance and request, and for board, washing and lodging furnished by this defendant to the said David and his servants at his like special instance and request; and for pasturage, feeding and wintering of Cattle, Horses & hogs for the said David, and at his like special instance and request; and that on an account of the matters between them, the estate of the said David will be found to be indebted to this defendant, in a large sum of money to wit; two thousand dollars.

This defendant further answering denies, that from the time of the original proposition, and contract for the purchase of the said premises from the said Munn this defendant was or has been wholly unable to have bought and paid for the said land, or at the time of the said several instalments of said purchase money became due this defendant was or has been without funds or property of his own, out of which said instalments could have been ~~made~~ paid, or that from the time he first came to Illinois, he was or has been dependent upon the funds and resources provided for and advanced to him by the said David Lynn, deceased, but this defendant says that he admits that for and during the time, he has been much favored and accommodated by the said David, with his funds.

resources and assistance, and by advances made by him to and for the use of this defendant.

This defendant further says, that the said David, when he left the State of Connecticut, sold his property for only about the sum of Two Thousand Dollars, that he the said David, paid therefrom his debts amounting to about One hundred dollars – that he paid the expenses of his family (including the greater part of said Complainants) at a cost of about three hundred dollars; that from that time to his death, he advanced to his five children, or their representatives, where any such children were dead, about the sum of two hundred dollars each, making a sum equal to One thousand dollars that he advanced to this defendant as a loan or loans to him on the security of the interest of this defendant in the said land mentioned in the said Munns proposition and contract, the several sums set forth in said complainants Bill as follows

1834. September 8th		$200.	
Tax		4.80 making	$204.80
1836 October 26th		principal & interest	139.60
1837. September 27th		principal & int	133.60
1838 October 1st		principal & int.	127.60
1835 October 29		principal & int	161.43
1839 October 26		principal & int	121.60
		making in the Aggregate	$888.63/100

All of which aggregate sum was settled as aforesaid between the said David and this defendant, with the exception of the said sum of $204.80/100. Against which said last mentioned sum, this defendant says he has a set off, and insists that he has a set off for work, labor and services done, and performed by this defendant for the said David, in his life time and at his request, for goods, wares and merchandize

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Cattle, Horses, grain, hay and provisions sold and delivered and furnished, by this defendant, to the said David, in his life time, and at his request, and for board, washing and lodging, and attendance had by the said David, in his life time, and furnished by this defendant at said Davids like instance and request in an amount far exceeding the said advancements by the said David, to this defendant, to wit; two thousand Dollars, which were not included the said settlement, between the said David and this defendant, and that by means of said offsett, the said $204.80/100 have been in effect more than five years since paid and extinguished, and this defendants admits no indebtedness therefor, for that five years are more than elapsed, and the evidences of his said payments lost

And this defendant further answering, says, that the said David, at the time of his death, had personal property, rights and credits, due and owing to him or to his administrator, in value amounting to about six hundred dollars, which said property, rights, and credits, have come or should have come to the said administrator to be administered

Your orator further answering, admits that the said Munn, since the payment of the full purchase money for said premises so purchased of him has been ready and willing to execute a conveyance for said premises in accordance with the contract of sale, or to any person legally entitled to the same; but this defendant denies that said Munn has been ready and willing to execute a conveyance to the heirs at law of the said David Lynn, deceased, or to any other person legally entitled to the same only in the right of the said David Lynn, deceased

This defendant further answering, admits that the Complainant, Charles Henry Brainard, is a minor

of the age of about twelve years, and is the only child of Almira Brainard, the late Almira Lynn, the daughter of the said David Lynn, deceased, who intermarried with one Asa Brainard, and that the said Almira Brainard and Asa Brainard, have both departed this life, intestate, and that this defendant is the guardian of the said Charles Henry Brainard. This defendant further answering admits, that the Complainant Eliza Jane Lynn, is about three years old, and is the only child and heir at law of John A Lynn, the son of the said David Lynn, deceased, who died intestate in September 1841; and that the said Eliza Jane Lynn, has no guardian

This defendant further admits, that the Complainants David Lynn, Ezekiel W. Lynn, and Prudence Cook, are the children, and together with the said Charles Henry Brainard, the said Eliza Jane Lynn, and this defendant are the heirs at law, and the only heirs at law of the said David Lynn, deceased

This defendant further answering admits, that the said Stephen B. Munn, refused to make a deed of the premises so purchased of him, either to the Complainants, or this defendant, or any of them, untill their respective rights, among themselves have been determined and that this defendant, claims the whole of the land before described, and refuses to partition and divide the same, with the complainant as heirs at law of the said David Lynn, deceased

This defendant further answering, says, that he is ready to exhibit, and that he incorporates with this his answer, true and perfect copies of the ~~receipt~~ original proposition of the said Munn, for the sale of said half section of land, Dated the 18 April 1834 - and the obligation of the said Munn, ~~for the sale of the said half~~

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herein before referred to as dated the 19th day July 1834, which said copies are hereunto annexed and marked "B" and "C"

This defendant further answering says that he is ready to exhibit, and he incorporates with this his answer, true and perfect copies of the receipt of the said Munn, by his agents, for the instalment of the purchase money of the said land - within his power, custody or control, which said receipts are dated the 29 October 1835 & 26 Oct 1839, 26th October 1836, 27th September 1837, and 1st October 1838, and which copies are hereunto annexed and marked "D" and "E", F & G and further says that he has not the possession, custody, or control of the receipts of the said Agents of the said Munn, dated the 8 September 1834, and can not produce the same, and knows not where the said receipt lies, what has become of the same & cannot exhibit the same, or incorporate the same as his answer

This defendant further answering says, that he this defendant can not exhibit or incorporate in his answer a true full and perfect copy, or any copy whatever of the deed made and acknowledged by this defendant, whereby this defendant was about to convey to the said David Lynn, the E½ of the N.W qr of Sec 11. 10 N & 5 W of the 4th meridian, in the military tract in this State, that the same is not in his possession, power and control, and has not been since the decease of the said David - but was for a long time before the said David departed this life, destroyed for the reason said sale had not been made, or the purchase money paid, or the deed delivered as in this his answer before set forth,

And this defendant in further answering says that of the May Term of the Henderson County Circuit Court 1842, the said David Lynn, administrator of the said David Lynn, deceased, impleaded this defendant in said

Circuit Court, in action of Trespass on the case for trover and conversion for the sale of property by this defendant claimed to belong to the said David in his life time, and such proceedings were thereupon had at the June Term of 1842, of said Court, a Judgment was recovered in said Court in favor of said David Lynn, administrator of the said David Lynn, deceased, against the defendant for the sum of 450 dollars, besides cost, which said judgment remains in full force and unreversed or annulled. In consequence of the recovery of which said judgment this defendant submits to this Honorable Court - That all and every of the matters in the complainants Bill mentioned, which were of matters that might have been tried, or was tried and determined at Law, the complainants are not entitled to any relief in a Court of Equity, as this defendant hopes he shall have, and insists he should have the same benefit of this defense as if he had plead the before mentioned judgment in bar, or the statute of limitations, against such sums of money, pretended by the bill to have been advanced by the said David, to this defendant, over five years previous to the filing of the Complainants Bill in this cause for which the complainants calls on this defendant, by the said Bill now to account or had this defendant demurred to those parts of the said complainants Bill, that now calls on this defendant to account therefor

And this defendant further submits to this Honorable Court, that all and every of the matters and things in the complainants Bill mentioned which calls on this defendant to account for moneys advanced by the said David to this defendant, more than five years previous to the filing of the complainants Bill in this cause, the said complainants are not entitled to any relief in a Court of Equity, and this defendant insists that he should have

the benefit of this defense, as if he had specially plead the statute of limitations, as against said advances

And this defendant denies all and all manner of combination and confederacy in complainants said Bill charged, without that that there is any other matter, cause or thing in the complainants Bill, contained material or essential in law for this defendant to make answer unto, and not hereby and sufficiently answered avoided, traversed, or denied is true to the knowledge ~~of~~ and belief of this defendant, all which matters and things this defendant is ready and willing to ever maintain, and prove as this Honorable Court shall direct, And humbly prays to be herein dismissed with his reasonable cost and charges in the law in this behalf most wrongfully sustained

Samuel W. Lynn

Manning
Solicitor

State of Illinois }
Henderson County } ss

On the second day of August AD 1865 Samuel W. Lynn, was duly sworn, and on oath stated, that he had read the foregoing answer, and that what was contained in his said answer, so far as concerns his own act and deed was true of his own knowledge, and that what related to the act and deed of any other person, he believes to be true

John S Pollock, Clk

Schedule "B"

Mr Samuel W. Lynn, may have the SW 36. 11 N 5 W, in the military tract, State of Illinois for Two Hundred Dollars Fifty Dollars cash down, the remainder payable by yearly instalments of Twenty Five Dollars each, with interest at six per centum per annum, all all unpaid at the time of payment of each installment, I to give a contract to deliver a quit claim Deed on the payment of above amount of One Hundred and fifty dollars & interest as aforesaid

Mr Samuel W. Lynn, may also have the S½ 1 10 N 5 W. in said Military Tract, for nine hundred and sixty dollars, Two Hundred Dollars cash down, the remainder payable by yearly instalments of One Hundred Dollars each Interest at six per centum per annum, on all unpaid at the payment of each instalment

I agree to give a contract to deliver a Warrantee deed for said Quarter Section on payment of above amount ~~on payment of above amount~~ of Seven Hundred and Sixty Dollars, and interest as aforesaid, Money to be paid to Mess.rs Tillson, Moore & Co Quincy, Illinois — Mr Samuel W. Lynn, to let me know if he takes the above quarter sections on said terms, in three months from this date

New York April 18.th 1834 (signed) Stephen B. Munn.

"C"

Extract from agreement given to Mr Samuel W. Lynn dated New York April 18.th 1834

"Mr Samuel W. Lynn, may also have the S½ 1. 10 N 5 W. in the Military Tract aforesaid (Illinois)" for Nine Hundred and sixty dollars, Two Hundred Dollars, Cash down, the remainder payable by yearly instalments of one hundred dollars each, Interest at six per centum per annum, on all unpaid at the payment of each installment

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I to give contract to deliver a warrantee deed for same on payment of said Seven hundred and sixty dollars, as afore said, with interest money to be paid to Messrs Tillson, Moore & Co. Quincy, Illinois. Mr Lynn, to let me know if he takes the above section, in three months from this date

New York April 18th 1834.

In consideration of the within, and on fulfillment of agreement as aforesaid. I do hereby ~~notify~~ bind myself, my heirs, executors, administrators and assigns to deliver unto the aforesaid Samuel W. Lynn, a full and perfect warrantee deed of lot S½ 1. 10 N 5 W. when he shall have fulfilled on his part, the condition of said agreement a copy whereof is hereunto annexed. In testimony whereof I have hereunto set my hand and seal this nineteenth day of July in the year of our Lord. One thousand. Eight hundred & thirty four

Sealed, and delivered — Stephen B. Munn

in presence of —

John Tillson

"D"

Quincy, Illinois. 29 October 1835. Recd from David Lynn, by hands of Samuel W. Lynn, One Hundred Dollars on a/c of principal & Sixty one 43/100 Doll. interest making full payment up to 1st Nov 1835, on contract from Stephen B. Munn, to David Lynn for S½ 1. 10 N 5 W.

Warren County, — Stephen B. Munn

$100 Principal

61.43 interest by his agent

161.43/100 — Tillson, Moore & Co.

"E"

Quincy. 26 Oct 1839. Recd from David Lynn, One Hundred Dollars, on a/c of principal, and twenty one 60/100 dollars interest to 1 Nov 1839, leaving on principle 1 Nov 1839 - $260.

100 in princ
21.60 int
121.60

Stephen B. Munn
by Moore, Morton & Co.

"H"

Quincy Illinois 1st October 1838. Recd from David Lynn One hundred dollars on a/c of principal and twenty Seven 60/100 dollars interest making full payment up to 1 Nov 1838 on contract for S½ 1. 10. N. 5 W

$100. Principal
27.60 interest
127.60

Stephen B. Munn
by Moore, Morton & Co

leavin on principal $36. 1 Nov 1838.

"J"

Quincy Illinois. 27th September 1837 Recd from David Lynn, by hands of John A. Lynn, One hundred dollars on a/c of principal, thirty three 60/100 dollars interest, making full payment up to 1 Nov 1837. on contract to him from Stephen B. Munn for S½ 1. 10 N 5 W Warren County

100 Principal
33.60/100 interest
133.60/100

Stephen B. Munn
By Moore Morton & Co.

"G"

Ill. Land Agency
Quincy Oct 26th 1836

Received of David Lynn, One Hundred and thirty nine

dollars & 60 cents being amount due from him 1st Nov 1836
on account of purchase of the S½ of Sec 1. 10 N. 5 W.
Sold him on a/c of S. B. Munn. say or principal $100.
One Years Int. on 60 $
at 6 per ct $ 39.60

Moore, Morton & Co
Agents for S B. Munn

And afterwards, to wit, on the 6th day of November
AD 1845 the complainants by their Counsel
file their Replication in the words & figures
following to wit,

David Lynn & others
vs
Samuel W Lynn
} In Chy

And the said Compts
come and say that the matters and things set
forth in their said bill of Complaint &c, be
in substance and in matter of fact, and that
the matters and things set forth in the answer
of the said Deft. contrary thereto are untrue
and this they are ready to make appear, as
by this Court shall be directed

Browning & Bushnell
for Compts

State of Illinois } In the Circuit Court of said County
Henderson County } & State to the June Term AD 1845

David Lynn, administrator and one of the heirs at law of David Lynn, deceased, Ezekiel W. Lynn, Prudence Cook late Prudence Lynn, and Lucius Cook, her husband, the said Prudence and Ezekiel being heirs at law of said David Lynn, deceased, Charles Henry Brainard and Eliza Jane Lynn, grand children and minor heirs at Law of the said David Lynn, deceased by their next friend David Lynn, vs

Samuel W. Lynn & Stephen B. Munn } In Chancery

To Mr Samuel W. Lynn,

Sir - You are hereby notified that we shall on the twentieth day of March AD 1845. by ourselves or our attorney, proceed to sue out of the Clerks Office of the Circuit Court for Henderson County and State of Illinois a Dedimus Potestatem or Commission under the seal of said Court, directed to any Justice of the Peace of the City of New York, in the State of New York, authorising and requiring him, to cause to come before him Stephen B. Munn, and faithfully to take the deposition of said Munn, upon all the interrogatories attached to and enclosed with said Commission, to be read as evidence in a certain case now pending in the Circuit Court in and for the County of Henderson, and State of Illinois, on the chancery side thereof in which we are complainants and You together with Stephen B. Munn, are defendants, a Copy of interrogatories to be put to said Witness being attached thereto when & where you may attend and attach Cross ~~exam~~ interrogatories to be put to said Witness, if you think proper

Yours &c

[11858-38]

at Law of David Lynn, adm^r. and of the heirs
David Lynn, deceased
Ezekiel W. Lynn,
Prudence Cook &
Lucius Cook, and
Charles Henry Brainard, and
Eliza Jane Lynn, Minors
by their next friend David Lynn,

Copy of Interrogatories to be put to Stephen B. Munn on the part of Complainants.

1 Were you acquainted with David Lynn, sen^r. now deceased formerly of Connecticut, and more recently of Illinois, and with his son Samuel W. Lynn?

2 When, where, and under what circumstances did you become acquainted with them?

3 Did you ever sell to them, or either of them, any Land in the State of Illinois? If so, state what land, when sold, at what price sold, to which of them sold, and which of them paid for it?

4 Were the said David and Samuel W. Lynn, both present when the contract for said land was made, and did you have conversation with both of them in relation thereto? Did they say in such conversation (if any they had) which of them was to pay for the land, and which was to be the owner thereof when paid for? State as fully as you can now remember all that occured between you and the said David & Samuel in relation to the sale and purchase of said land?

5 Was any thing said by said Samuel W. Lynn, or by said David Lynn, in the presence of said Samuel, respecting the pecuniary circumstances of said Samuel and his ability or inability to purchase and pay for land, and if so, what was said?

6 Did you ever understand from the said Samuel W. Lynn, whether, in negotiating for the purchase of said land, he was acting for himself, or as agent for his father, the said David Lynn?

7 Did you ever execute any contract or article of agreement between yourself and said David Lynn, (now dec^d) for the purchase of any land in Illinois — If so, state when & where said contract was executed by you, what land was included in it (and if you are able to do so) set forth in your answer to this question a copy of said contract.

8 At whose request was said contract or article of executed (if any were executed) by you? and for what reason was such request made?

9 Is the following a true copy of the contract referred to in Interrogatory 7, between yourself and said David Lynn to wit — "Articles of agreement made the twenty sixth day of June, in the Year of our Lord, one thousand eight hundred and thirty four, between Stephen B. Munn, of the City of and State of New York, of the first Part and David Lynn of S½ 1, 10 N 5 W, Military Tract Warren County, Illinois, of the second Part, Witnesseth that the said Party of the first Part, for and in consideration of the subsequent agreement and covenants of the said Party of the second Part, and of one dollar, to him

[11856-39]

in hand paid by the said party of the second part, hath contracted, and agreed to sell to him the said Lynn all that certain piece or parcel of land, in the Military Tract, State of Illinois, known as the South half of Section One (1) in Township Ten (10) North and range five (5) West, containing three hundred and twenty acres be the same more or less — And the said party of the first part agrees to execute and deliver to said Lynn a warrantee deed for the said land, provided and upon condition nevertheless that the said Lynn, ~~nevertheless~~ his heirs ~~and~~ or assigns pay to said Munn, his heirs or assigns for the said land the sum of money of Nine Hundred and sixty dollars, lawful money of the United States of America, in manner following, viz, two hundred dollars on delivery of this contract, the remainder payable by yearly installments of One Hundred dollars each, on the 5th day of November in each year, with interest at six per cent per annum, on all unpaid at the payment of each installment, and the said David Lynn, in consideration of the above agreement of the said Munn, for himself, his heirs, executors, and administrators, doth covenant and agree to and with the said Munn, his heirs and assigns that the said Lynn will pay the said several sums, as they severally become due, with the interest as aforesaid, and also the taxes on said land after the Year 1833, which shall be from time to time assessed, and it is further agreed between the parties to ~~this suit~~ these presents, that if default be made in fulfilling this agreement or any part thereof by the said party of the second part, then, and in such case, the said party of the first part, his heirs and assigns, shall be at liberty to consider this contract as forfeited and cancelled, and to dispose of the said land, to any other person

in the same manner as if this contract had never been made, In witness whereof the parties to these presents have hereunto set their hands and seals, the day and year first above written,

Sealed and delivered (signed) Stephen B. Munn (seal)
in presence of

10 What was done with such contract after its execution on your part? if sent to any person, state to whom & for what purpose?

11 If you recollect any thing else connected with the sale and purchase of said land, not already stated by you, and which may tend to shed light upon the subject, please state it as fully, as it is now remembered by you, and as minutely as if specifically interrogated thereto?

12 Have you been paid for said land, and have you any interest in the result of this suit?

[1855-45]

State of Illinois
Henderson County } ss. The People of the State of Illinois

to

Any Justice of the Peace, of the City of New York, in the State of New York. Know Ye, that trusting to your fidelity and circumspection, we do hereby authorize and require to cause to come before you, at such time and place, as you may designate, Stephen B. Munn, a Witness on the part of Complainants or Plaintiffs, in a certain matter of controversy, now depending in our Circuit Court of Henderson County, on the Chancery Side thereof in which David Lynn, adm.r &c and others, are Plaintiffs and Samuel W. Lynn, & Stephen B. Munn, Defendants, and then and there diligently examine the said Witness upon his corporal oath touching the said controversy, upon all and singular the Interrogatories hereto attached, as well on the part of the Plaintiffs, as the Defendant, that you reduce to writing each of the said Interrogatories, in the order in which they are propounded, together with the answers of said witness and certify the same to our said Court, under your hand and seal, — returning also this writ.

Seal

Witness John S Pollock, Clerk of our said Circuit Court at Oquawka, in said County this Twentieth day of March A.D. 1846. the Seal of said Court being hereto affixed.

John S Pollock, Clerk

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Interrogations to be administered to Stephen B. Munn, of the City of New York, and State of New York, a Witness to be produced, sworn and examined in a Certain Cause in Chancery now pending, and undetermined in the Circuit Court of the County of Henderson, and State of Illinois, on the Chancery Side thereof. Wherein David Lynn, administrator and one of the heirs at Law of David Lynn, dec^d, Ezekiel W. Lynn, Prudence Cook, late Prudence Lynn, and Lucius Cook, her husband, Charles Henry Brainard & Eliza Jane Lynn, grand children & minor heirs at law of the said David Lynn, dec^d by their next friend David Lynn Complainants & Samuel W. Lynn, & Stephen B. Munn, are Defendants on the part & behalf of said complainants as follows to wit?

Int'g. 1 Were you acquainted with David Lynn, Senr now deceased, formerly of Connecticut, and more recently of Illinois and with his son Samuel W. Lynn?

2 When, where, and under what circumstances did you become acquainted with them?

3 Did you ever sell to them, or either of them any land in the State of Illinois, if so, state what land, when sold, at what price sold, to which of them sold, and which of them paid for it?

4 Were the said David and Samuel W. Lynn, both present when the contract for said land was made, and did you have conversation with both of them in relation thereto, did they say in such conversation (if any was had) which of them was to pay for the land, and which was to be owner thereof when paid for — State as fully, as you can now remember, all that occured between you & the said

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David & Samuel, in relation to the sale and purchase of said land?

5 Was anything said by said Samuel W. Lynn, or by said David Lynn in the presence of said Samuel, respecting the pecuniary circumstances of said Samuel, and his ability or inability to purchase and pay for land, and if so, what was said?

6 Did you ever understand from the said Samuel W. Lynn whether in negotiating for the purchase of said land, he was acting for himself or as agent for his father the said David Lynn,

7 Did you execute any contract or article of agreement between yourself and David Lynn, now deceased, for the purchase of any Land in Illinois, if so state where & when said contract was executed by you, what land was included in it (and if you are able to do so) set forth in your answer to this question a Copy of said Contract?

8 At whose request was said contract or article executed (if any were executed) by you, and for what reason was request made

9 Is the following a true Copy of the ~~interro~~ contract referred to in the interrogatory 7. between yourself & said David Lynn to wit: "Articles of agreement made the twenty sixth day of June in the Year of our Lord, One thousand eight hundred and thirty four, between Stephen B. Munn, of the City and State of New York of the first part and David Lynn of St 1. 10 N 5 W. Military Tract, Warren County, Illinois, of the second part, Witnesseth, that the said Party of the first part, for and in consideration of the subsequent agreements and covenants of the said party of the second part, and of one dollar to him in hand paid, by the said party of the second part, hath contracted and agreed to to sell

to him the said Lynn, all that certain piece or parcel of land in the Military Tract, State of Illinois, known as the South half of Section One (1) in Township Ten (10) North and Range Five (5) West, containing Three Hundred and Twenty acres, be the same more or less — And the said Party of the first part agrees to execute and deliver to said Lynn, a Warrantee Deed for the said land, provided and upon Condition, nevertheless that the said Lynn, his heirs or assigns, pay to said Munn, his heirs or assigns, for the said land the sum of money of Nine hundred and sixty dollars, lawful money of the United States of America, in manner following, viz, Two hundred Dollars on delivery of this Contract, the remainder payable by yearly installments of One Hundred dollars each on the 1st day of November in each Year, with interest at six per cent per annum, on all unpaid at the payment of each installment, and the said David Lynn, in consideration of the above agreement of the said Munn; for himself, his heirs executors and Administrators doth covenant and agree to & with the said Munn, his heirs, and assigns, that the said Lynn, will pay the said several sums, as they severally be come due, with the interest as aforesaid, and also the taxes on said land, after the year 1833 which shall be from time, to time assessed, and it is further agreed between the parties to these presents, that if default be made in fulfilling this agreement, or any part thereof by the said ~~Lynn~~ party of the second part, then and in such case, the said party of the first part, his heirs and assigns, shall be at liberty to consider this contract as forfeited and cancelled, and to dispose of the said land to any other person, in the same manner, as if this contract had never been made, In witness whereof the parties to these presents, have hereunto set their hands and seals, the day and year first above written.

Sealed and delivered in presence of (Signed) Stephen B. Munn (Seal)

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10 What was done with such contract after its execution on your part, if sent to any person, state to whom, & for what purpose

11 If you recollect anything else connected with the sale and purchase of said land, not already stated by you and which may tend to shed light upon the subject, please state it as fully as it is now remembered by you and as minutely as if specially interrogated thereto.

12 Have you been paid for said land, and have you any interest in the result of this suit?

Cross Interrogatories by solicitors of defendant. S. W. Lynn

State of Illinois } Henderson Circuit Court.
Henderson County } To the June Term AD 1846.

David Lynn admr et al } Complainants
vs
Samuel W. Lynn } Defendants

Cross interrogatories to be put to Stephen D. Munn, on behalf of the said defendant, to accompany the Dedimus Potestatem, or Commission sued out of the said Court to take deposition of the said Stephen D. Munn.

1 Did you not first become acquainted with Samuel W. Lynn about the middle of the month of April AD 1833 in the City of New York

2 Did not the said Samuel W. Lynn, at your first interview with him, propose to purchase of you the South half of Section One, Township Ten North, Range Five West, of the fourth Principal Meridian in Illinois,

3 Did you not in the summer of AD 1833, and in the month of May or June, of that year, write to the said Samuel W. Lynn by your agent Francis C. Moore, as follows.

"Mr Camp has this day called on me in your behalf in relation to the South half of Section One, Township Ten North and Range five West, Military Tract, Illinois. I will sell you this half section of Three hundred and twenty acres for three dollars the acre, payable one or two hundred dollars down, and the balance payable fifty dollars each year thereafter together with annual interest payable annually, at six per cent

Respectfully
Stephen B. Munn
for Francis C. Moore

4 Did you not next see the said Samuel W. Lynn, on or about the 18th day of April AD 1834, in New York City, and did you not there propose to sell him the said half section mentioned above?

5 Had you at the time last aforesaid ever seen the said David Lynn, deceased, or had you then had any conversation or communication with or from him concerning the sale of the said half section?

6 Did you not on the 18th day, of April AD 1834, execute to Samuel W. Lynn, and not to David Lynn, your proposal for a contract of sale of the said half section And was not this before you had ever seen David Lynn, (now deceased) and had not all the prior proposals, and offers concerning the said sale between you and the said Samuel W. Lynn?

7 Was not the payment of the said land all made to

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your agents at Quincy, Illinois, and was not such payment made upon the contract executed upon the said proposal aforesaid, bearing date April 18th 1834.

8 If you had any conversation with the said David Lynn deceased, concerning said sale, was it not after the execution of the said proposal for a contract, and in Jersey City, New Jersey.

9 Do you swear that on or about the 18th day of April A.D. 1834, you saw the said David Lynn, deceased, and the said Samuel W. Lynn, in Company, either in New York or Jersey City?

10 After the execution of the said proposal for a contract did you not cross the River Hudson, and see said David Lynn, in Jersey City, and return before said Samuel W. left the City of New York on the 18th day of April A.D. 1834, and was not that the only time you ever saw the said David?

11 Was not the Contract for the sale of the said land executed by you, to the said Samuel, in the express words of the said proposal, and does not the said contract bear date May 10th 1834?

12 If you ever executed any article of agreement concerning said land, to the said David Lynn, deceased, was the said article ever delivered to, and accepted by the said David

13 If there were any such article made by you to the said David, is it not now in your possession?

14 Do you know anything concerning the payment of the purchase money of the said half section of land, except what you have learned from your agents in the State of Illinois.?

15 Were not Tillson, Moore & Co and afterwards Moore, Morton & Co your agents for the sale of said half section, and the receipt of the purchase money of said half section, between the 18th of April 1834 and August 1st 1845, and during what part of said time was the Tillson, Moore & Co your said agents, and during what part of said time were the said Moore, Morton & Co your said agents?

16 Have you not made a contract with some other person or persons, by which you have engaged to withold the deed to the said land from the said Samuel W. Lynn?

17 Have you not tendered a portion of the purchase money paid by the said Samuel W. Lynn, back to the said Samuel, with the intention of avoiding your said contract dated July 19th 1834.?

Richardson & Manning
Solcrs for S W. Lynn.

Deposition of Stephen B. Munn, taken before William S. Sterling, a Justice of the Peace of the City of New York to be read as evidence in a certain cause now pending in the Circuit Court of Henderson County, Illinois, on the Chancery side thereof, in which David Lynn, administrator & one of the heirs at law of David Lynn, decd. Ezekiel W. Lynn, Prudence Cook, late Prudence Lynn, & Lucius Cook her husband, Charles Henry Brainard & Eliza Jane Lynn grand children & minor heirs at Law of the said David Lynn deceased, by their next friend David Lynn, Complainants

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and Samuel W. Lynn, & Stephen B. Munn are defendants = taken pursuant to the commission hereto annexed at the City of New York, on the thirteenth, fourteenth & fifteenth days of May, One thousand eight hundred and forty six, the said Witness Stephen B. Munn, having been first duly affirmed by said Justice previous to his examination to testify the truth, in relation to the matters in controversy, upon the interrogatories following = that is to say =

Interrogatory 1st. Were you acquainted with David Lynn, Senr. now deceased, formerly of Connecticut & more recently, of Illinois & with his son Samuel W. Lynn?

Ans. I have seen David Lynn, Senior, once, and have seen Samuel W. Lynn, twice, and know of them from having had some business transactions with them.

Interrogatory 2. When, where, and under what circumstances did you become acquainted with them?

Answer I saw David Lynn, Senior at Jersey City, in the State of New Jersey, in April 1834, when he was there on his way to Illinois, with his ~~family~~ family. Samuel W. Lynn, first called on me at my office in the City of New York in the fall of 1832, or I rather think in the winter or spring of 1833, on his way from Illinois to Connecticut = On the subject or business of purchasing some land owned by me in Illinois and on his way from Connecticut to Illinois I saw him for the second time on the same business, which was in April 1834, and was the same day I seen David Lynn, Senior, but did not see them together, I believe it was the same day that I saw Samuel W. Lynn at my office the second time, that I saw David Lynn, senior at Jersey City as aforesaid.

Wm. G. Stebbins
Justice of the Peace

Interrogatory 3. Did you ever sell to them or either of them any land in the State of Illinois, if so, state what land, when sold, at what price sold, to which of them sold, and which of them paid for it?

Answer I did sell to David Lynn, Senior, some land in the State of Illinois & never sold any to Samuel W. Lynn. The land I sold to David Lynn, Senior, was the south ½ of 1. 10 N 5 W est. Military Tract, Warren County, Illinois, for nine hundred and sixty dollars. Two Hundred dollars Cash down, the remainder Payable by yearly installments of One hundred dollars each, interest at six per cent per annum, on all unpaid at the payment of each installment. David Lynn, Senior paid for this land except a balance which remains unpaid. I sold the land in the month of May or June 1834, and is the only piece of land I ever sold to David Lynn.

Interrogatory 4. Were the said David and Samuel W. Lynn both present when the contract for said land was made, and did you have conversation with both of them in relation thereto, did they say in such conversation (if any was had) which of them was to pay for the land, and which was to be the owner thereof when paid for. – State as fully as you can now remember all that occured between you & the said David & Samuel in relation to the sale and purchase of said land?

Answer They were not both present – I dont think I saw them together at all, and I dont think I had any conversation with David Lynn, Senior in relation to said land – In April 1834 I wrote a proposition to said Samuel to sell him the said tract of land, at his request I gave him the terms upon which I would sell the land to him. I have no recollection of the exact words of our conversation, but I have no doubt the understanding between us was, that David Lynn, Senior

was to pay for the land and own it, and not Samuel W Lynn, and I was to be informed within three months, whether Samuel's father, would take the land or not, after Samuel W. was at my office the first time, I made enquiries about his circumstances & learned that he was poor at that time, I believe that it was understood between Samuel & myself, that David his father was to pay for the land & own it if it was purchased of me on the proposition I made him On their arrival at Illinois I received a letter signed "Samuel W. Lynn for his father David Lynn," stating as follows — "My father has concluded to take the S½ of 1. 10 S 5 West and pay you as agreed — when you send to Quincy a Bond for a Deed, then your agent will send me a line, and I will fulfill on my part. You ought not to be so hard with me, as to charge me interest this year, for I have to sell the improvements to Jamison, the same as I pay you for the lots, for to keep peace with the Kentuckians and I shall get nothing from it this year." On the receipt of said letter, I signed and forwarded to my agents, Tillson Moore & Co, at Quincy, Illinois, my contract for the sale of said land to said David Lynn, senior, according to the proposition given to Samuel W. Lynn, in April 1834.

Wm. G. Stebbins
Justice of the Peace

Interrogatory 5th Was any thing said by said Samuel W. Lynn, or by said David Lynn, in the presence of said Samuel, respecting the pecuniary circumstances of said Samuel, and his ability or inability to purchase and pay for land, and if so, what was said?

Answer Not a word by either.

Interrogatory 6th Did you ever understand from the said Samuel W. Lynn, whether in negotiating for the purchase of said Land, he was acting for himself, or as agent for

his father, the said David Lynn?

Answer I have no recollection of any conversation about it, but I have no doubt he was acting for David Lynn senior.

Interrogatory 7th Did you execute any contract or article of agreement between yourself and David Lynn, (now dec.) for the purchase of any land in Illinois. If so, state where and when, said contract was executed by you what land was included in it (and if you are able to do so.) set forth in your answer to this question a copy of said contract?

Answer I did execute in the City of New York, a contract of which the following is a copy, putting the month & day of the month, in pencil as I think to be altered by my agents Tillson, Moore & Co, as I think I gave them liberty to put in the proper date in the contract. "The following is a copy of said contract.

"Articles of agreement made the 26th day of June "in the year of our Lord, one thousand eight hundred and "thirty four, between Stephen B. Munn of the City and "State of New York of the first part & David Lynn of "S½ S. 10 & 5 W. Military Tract, Warren County, Illinois "of the second part, Witnesseth that the said party of "the first part for & in consideration of the subsequent "agreements and covenant of the said party of the sec"ond part, and of one dollar to him in hand paid "by the said party of the second part: Hath contracted "and agreed to sell him the said Lynn all that certain "piece or parcel of land, in the Military Tract, State of "Illinois, known as the South ½ half of Section One (1) "in Township Ten (10) North and Range five (5) West

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containing Three hundred and twenty acres be the same
more or less - And the said Party of the first part
agrees to execute & deliver to said Lynn a warantee
deed for the said Land - Provided and upon condition
nevertheless, that the said Lynn, his heirs or assigns
pay to said Munn, his heirs or assigns for the said land
the sum of Nine hundred and sixty Dollars, lawful
money of the United States of America in manner follow-
ing, viz. Two Hundred Dollars on delivery of this con-
tract, the remainder payable by yearly installments
of one hundred dollars each on the day of
in each year with interest at Six per cent per annum
on all unpaid at the payment of each installment.

And the said David Lynn, in consideration of the
above agreement of the said Munn, for himself his
heirs, executors and administators does covenant
and agree to & with the said Munn, his heirs and assi-
gns that the said Lynn will pay the said several
sums as they severally become due, with the interest
as aforesaid, and also the taxes on said land after the
year 1833, which shall be from time to time assessed.

And it is further agreed between the parties
to these presents that if default be made in fulfilling
this agreement, or any part thereof, on the part of the
said Party of the second part, then and in such case
the said Party of the first part, his heirs and assigns
shall be at liberty to consider this contract as forfeit-
ed and annulled and to dispose of the said Land
to any other person in the same manner as if this
contract had never been made. In witness whereof
the Parties to these presents, have hereunto set their
hands & seals the day and year first above written
Sealed & delivered (Signed)
in presence of

Stephen D. Munn. (Seal)

Wm. G. Stubbs
Smithfield
of the Peace

Interrogatory 8th. At whose request was said contract or article of agreement executed (if any were executed) by you, and for what reason was request made?

Answer The contract was executed, in pursuance of the proposition of April 8th 1834. Which I have before mentioned and according to that proposition I agreed to give the contract when the proposition was accepted by Samuel W. Lynn's letter, which I have before mentioned saying that his father would take the land

Interrogatory 9th. Is the following a true copy of the contract referred to in Interrogatory 7. between yourself and said David Lynn, to wit: "Articles of agreement made the twenty sixth day of June, in the year of our Lord, One thousand Eight hundred and thirty four between Stephen B. Munn, of the City and State of New York of the first part and David Lynn, of S½ 1 10 N 5 W. Military Tract Warren County, Illinois of the Second Part, Witnesseth that the said party of the first part, for and in consideration of the subsequent agreement & covenant of the said party of the second part, and of one dollar to him in hand paid by the said party of the second part, has contracted and agreed to sell to him the said Lynn, all that certain piece or parcel of land, in the Military Tract, State of Illinois, known as the South half of Section one (1) in Township Ten (10) North, and range five (5) West Containing Three hundred and twenty acres be the same, more or less and the said party of the first part agrees to execute and deliver to the said Lynn, a warrantee Deed for the said Land, provided and upon condition nevertheless that the said Lynn, his heirs or assigns, pay to said Munn his heirs or assigns for the said land, the sum of money of Nine Hundred and sixty dollars, lawful money of the

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United States of America, in manner following, viz. Two Hundred dollars on delivery of this contract, the remainder payable by yearly installments of One hundred dollars each on the 1st day of November in each year with interest, at six per cent per annum, on all unpaid at the payment of each installment, and the said David Lynn, in consideration of the above agreement of the said Munn, for himself, his heirs, executors and administrators doth covenant and agree to & with the said Munn, his heirs and assigns that the said Lynn will pay the said several sums as they severally become due with the interest as aforesaid, and also the taxes on said land after the year 1833. which shall be from time to time assessed, And it is further agreed between the parties to these presents, that if default be made in fulfilling this agreement or any part thereof by the said party of the second part then and in such case, the said party of the first part his heirs and assigns shall be at liberty to consider this contract as ~~aforesaid~~ forfeited and cancelled and to dispose of the said land, to any other person in the same manner as if this contract had never been made. In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written

Sealed and delivered in presence of } signed

Stephen B. Munn (Seal)

Answer The contract set forth in my answer to the 7th interrogatory is the only contract I ever made with the said David Lynn and is copied correctly from my contract book, wherein I copied the original contract about the time of its execution, and does not differ materially from the copy of contract set forth in this Interrogatory

Affirmed & Sworn to May 11 1848 Wm. G. Stevens Justice of the Peace

Interrogatory 10th. What was done with such contract after its execution on your part, if sent to any person, state to whom! & for what purpose?

Answer I sent it to Tillson, Moore & Co my agents at Lincy Illinois, for the purpose of fulfilling my agreement with David Lynn = to be delivered by them to said David Lynn, according to the terms of my proposition of April 18th 1834, to Samuel W. Lynn,

Interrogatory 11th. If you recollect any thing else connected with the sale and purchase of said land, not already stated by you, and which may tend to shed light upon the subject, please state it as fully as it now remembered by you and as minutely as if specially interrogated thereto,?

Answer In the fall of 1833, in September I think, Mr Sherman, of the house of Moore, Morton & Co was here in New York, I saw him & complained to him of the conduct of Moore, Morton & Co (my agents) for receiving money from Samuel W. Lynn, on account of my contract with David Lynn, and Mr Sherman, replied to me, that Moore, Morton & Co had the receipts that had been given to David Lynn, and before he left this City, he, Mr Sherman told me I should have no more trouble with it, I have never recognized any money that Samuel W. Lynn, may have paid as a payment under my contract with David Lynn & directed Moore, Morton & Co, to return the money, that they wrote me, they had received from Samuel W. Lynn to said Samuel, and they wrote me that they had offered to return it to said Samuel W. Lynn, and that he refused to receive it, and on the 11th of May 1836, I wrote

Wm. G. Stirling
Justice of the Peace

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to Moore, Morton & Co again to return the money to said Samuel W. Lynn with interest from the time they received it.

Interrogatory 12th Have you been paid for said land, and have you any interest in the result of this suit?

Answer As appears from my account current, which I believe to be correct, there was due me from David Lynn, on the 26th of October 1839 $262 $\frac{79}{100}$ and nothing has since been paid me by said David Lynn, In my accounts current received from Moore, Morton & Co they credit me with Cash received on the 1st of November 1840 $115 $\frac{60}{100}$ on the 26th October 1841. $109 $\frac{60}{100}$ & on the 10th June 1842 $61 $\frac{90}{100}$ which was credited in my books to David Lynn, on account of the land in question — After I understood how it was that the ~~three~~ last three payments had been received by Moore, Morton & Co from Samuel W. Lynn, I wrote Moore, Morton & Co to refund the same to said Samuel W. Lynn, & they wrote me they offered to return it & that said Samuel W. Lynn, refused to receive it.

(signed) Stephen B Munn,

Cross Deposition of Stephen B Munn on behalf of defendant Saml. W. Lynn

Cross Interrogatory 1st Did you not first become acquainted with Samuel W. Lynn, about the middle of the month of April AD 1833, in the City of New York,?

Answer It was in the fall of 1832, or in the winter or spring of 1833. I think in the spring of 1833, do not recollect the exact time, He was on his way from Illinois to Connecticut, and I then saw him at my office in the City of New York,

Cross Interrogatory 2d. Did not the said Samuel W. Lynn, at your first interview with him propose to purchase of you the South half of section One, Township Ten North, Range five West, of the fourth principal meridian in Illinois, ?

Answer His business with me then was as I believe, to inform me about this land, as he had seen it, and to ascertain from me at what price & upon what terms, I would sell it

Cross Interrogatory 3d. Did you not in the summer of AD 1833 and in the month of May or June of that year, write to the said Samuel W. Lynn, by your agent Francis C. Moore, as follows, –

Mr Camp has this day called on me in your behalf in relation to the South half of section One, Township Ten North and Range Five West, Military Tract Illinois, I will sell you this half section of Three hundred and twenty acres, pr. three dollars the acres payable one or two hundred dollars down, and the balance payable fifty dollars each year thereafter together with annual interest payable annually at Six per cent.

Respectfully

(signed) "Stephen B. Munn"
"pr. Francis C. Moore"

Mr. J. Sterling
Justice of the Peace

Answer I have no recollection of any such letter – there may have been, Francis C. Moore, was in my office about seven years – and I have no recollection or belief that he ever signed a letter for me, he may have done so upon reflection I think there was a communication,

Cross Interrogatory 4th. Did you not next see the said Samuel

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W. Lynn, on or about the 18th day of April AD 1834, in New York City, and did you not then propose to sell him the said half section mentioned above?

Answer In April 1834 I next saw the said Samuel W. Lynn in New York City, & I then made a proposition to sell him the said tract of land, at his request. I gave him the price & terms on which I would sell the land to him

Cross Interrogatory 5th Had you at the time last aforesaid, ever seen the said David Lynn, deceased, or had you then had any conversation or communication with or from him concerning the sale of the said half section?

Answer I never saw him but once, and that was at Jersey City, as I have before mentioned, and I dont think I said anything to him then, about selling him the land, but I think it probable I told him how good the land was for I understood he was going on there, to reside there, and to purchase this land if he liked it. I think I had given Samuel W. the proposition before I saw his father David and I had had no ~~conversation~~ communication from David Lynn, concerning the sale of said land at this time

Cross Interrogatory 6th Did you not on the 18th day of April AD 1834, execute to Samuel W. Lynn, and not to David Lynn, your proposal for a contract of sale of the said half section, and was not, before you had ever seen David Lynn, (now deceased) and had not all the prior proposals and offers concerning the said sale between you & the said Samuel W. Lynn,

Answer I executed to Samuel W. Lynn, such a proposal & my answer to this cross interrogatory is contained in my

answer to the 5th cross interrogatory.

Cross Interrogatory 7th Was not the payment of the said land all made to your agents, at Quincy, Illinois, and was not such payment made upon the Contract, executed upon the said proposal aforesaid, bearing date April 18th 1834.?

Answer All the payments that have been made for said land have been made to my agents at Quincy, Illinois, and my further answer to this cross interrogatory is contained in my answer to the twelfth direct interrogatory.

adjourned to May 15th 1845
Wm. G. Sterling
Justice of the Peace

Cross Interrogatory 8th If you had any conversation with the said David Lynn, deceased, concerning said sale, was it not after the execution of the said proposal for a contract and in Jersey City, New Jersey?

Answer My answer to this interrogatory is contained in my answer to the fifth cross interrogatory.

Cross Interrogatory 9th Do you swear, that on or about the 18th of April AD 1834, you saw the said David Lynn, deceased and the said Samuel W. Lynn, in Company, either in New York or Jersey City?

Answer I dont think I saw them together. After I saw Samuel at my office, I went to Jersey City to see David his father and did see him & on my return from Jersey City to New York, I saw Samuel Lynn at the ferry, New York side on his way to Jersey City.

Cross Interrogatory 10th After the execution of the said proposal for a contract, did you not cross the River Hudson and see said David Lynn, in Jersey City and return before

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said Samuel W. left the City of New York, on the 18th day of April 1834, and was not that the only time you ever saw the said David?

Answer Yes.

Cross Interrogatory 11th Was not the contract for the sale of the said land, executed by you to the said Samuel in the express words of the said proposal, and does not the said contract bear date July 10th 1834.?

Answer The only contract I ever made for the sale of this Land is set forth in my answer to the 7th direct interrogatory

Cross Interrogatory 12th If you ever executed any article of agreement concerning said land to the said David Lynn (deceased,) was the said article ever delivered to and accepted by the said David?

Answer I executed the contract set forth, in my answer to the 7th direct interrogatory & forwarded it to my agents at Quincy, Illinois, Tillson, Moore & Co to be delivered and a counter part taken I presume so, I have no knowledge that it was ever delivered – but I have been advised by my agents Moore, Morton & Co at Quincy, Illinois, by their letter of December 10th 1841, that they had the contract in their possession.

Cross Interrogatory 13th If there were any such article made by you, to the said David, is it not now in your own possession?

Answer It is not.

Cross Interrogatory 14th Do you know any thing concerning the payment of the purchase money of the said half section of land, except what you have learned from your agents in the State of Illinois?

Answer Nothing! except I have received letters from one of the heirs of David Lynn, other than Samuel W. Lynn, to the purport that their father David Lynn had made the payments that had been made up to the time of his death.

Cross Interrogatory 15th Were not Tillson, Moore & Co and afterwards Moore, Morton & Co your agents for the sale of said half section, and the receipt of the purchase money of said half section, between the 18th of April 1834. and August 1st 1845. and during what part of said time was the Tillson, Moore & Co your said agents, and during what part of said time were the said Moore, Morton & Co your said Agents?

No. 9 Stirling Shelton for the Case

Answer Tillson, Moore & Co were my agents "till the fall of 1835 I think & from that time to the present, Moore, Morton & Co have been my agents, during which time their firms were my general agents - But they did not sell the said land in question - but I sold it my self. They were to consumate the business, and receive the purchase money, the money was to be paid to them.

Cross Interrogatory 16th Have you not made a contract with some other person or persons, by which you have engaged to withold the deed to the said ~~David~~ land from the said Samuel W. Lynn?

Answer No.

[1850-52]

Cross Interrogatory 17th. Have you not tendered a portion of the purchase money, paid by the said Samuel W. Lynn, back to the said Samuel with the intention of avoiding your said contract? dated July 19th 1834.?

Answer As I have said in my answer to the 12th direct interrogatory, I ordered ~~that~~ three payments that had been received by Moore, Morton & Co from Samuel W. Lynn, to be refunded back to Samuel W. Lynn, and he refused to receive the same – The reason I ordered the money to be refunded was because Moore, Morton & Co received the money improperly, as Samuel W. Lynn, did not owe me anything and I never made any other contract for the sale of this land, except that set forth in my answer to the 7th direct Interrogatory.

(Signed) Stephen B. Munn

State of New York
City & County of New York } ss

I William G. Sterling, a Justice of the Peace of the City of New York, in the County & State of New York, duly commissioned & sworn do certify that the foregoing deposition of Stephen B. Munn, was taken and subscribed, and sworn to by the said Stephen B. Munn before me at my office No 7 Nassau Street, in the City of New York, on the thirteenth, fourteenth, and fifteenth days of May, One thousand eight hundred and forty six.

In witness whereof I have hereunto set my hand & seal this 15th day of May 1846

Wm. G. Sterling (seal)
Justice of the Peace of
the City of New York

State of New York } ss
City & County of New York

I James Conner, Clerk of the City and County of New York and also Clerk of the Court of Common Pleas for said City and County a court of Record. Do hereby certify that William G. Sterling whose name is subscribed to the annexed deposition was on the 13th, 14th & 15th days of May 1846 and now is a Justice of the Peace, in and for said City and County, duly commissioned and sworn and authorized to take the same, and further that I am acquainted with the signature of said Justice and verily believe the same is genuine

Seal

In Testimony whereof, I have hereunto set my hand and affixed the seal of the said Court and County, the 16th day of May 1846

James Conner, Clerk

[11850-53]

And afterwards, to wit on the 29th day of May AD 1846, the Complainants filed the following Transcript from the Superior Court of the County of Middlesex and State of Connecticut, in the words & figures following

Court.

At a Superior Court holden at Haddam in & for the County of Middlesex, in the State of Connecticut, on the 4th Tuesday of August AD 1833.

Lynn vs Creditors } Upon the Petition of Samuel W. Lynn, against his creditors, showing to this Court, that he is of Durham in said County, that he has always sustained & now has a fair Character for probity & industry & is not justly chargeable with idleness or mismanagement in his affairs, that by reason of various losses & misfortunes has become insolvent & unable to pay his just debts that he has not conveyed any of his estate with intent to defraud his Creditors, that he is indebted to sundry persons named in his said Petition as respondents thereto in various sums, the precise amount whereof he is unable to State & praying the Court to order, decree & adjudge him to be an insolvent debtor, within the true intent & meaning of the act entitled "An Act to authorize the Supr Court to grant relief in certain cases of insolvency & to grant him the benefits of sd Act, as by petition on file dated the 8th day of Augt AD 1833 — The said Petition was brought to the present Term of this Court, was duly served upon all the respondents therein named & entered in the Docket of the sd Court — And now the Petitioner appeared & the respondents (except Guernsey Bates) being three times publicly called made default of appearance — This Court on due hearing, examination & enquiry doth find the allegations contained in said Petition to be true Whereupon it is ordered and decreed by this Court, that the said Saml W. Lynn be & he is hereby deemed & adjudged to be an Insolvent Debtor, within the true intent & meaning of the Act aforesaid & this Court doth appoint Messrs Saml Cooper Joseph Taylor & Stillman K. Wightman, all of Middletown in sd County judicious & disinterested persons Commis

sioners to exercise the powers & to grant the relief in the S^d. Act specified to the said Saml. W. Lynn & the said Commissioners having first taken the oath prescribed by S^d. Act are hereby directed to advertise the times & places of their meetings as required by S^d. Act, three weeks successively in the American Sentinel & Witness a Newspaper printed in S^d. Middletown & having in all respects pursued the requirements of S^d. Act & the Act in addition thereto the said Commissioners shall make return of their proceedings according to Law

Pass^d. in Court

Test Jno. Fisk. Clk

To the Hon^le. Superior Court of the State of Connecticut to be holden at Haddam within & for the County of Middlesex on the fourth Tuesday of August 1834. the undersigned Commissioners in the case & on the Estate of Saml. W. Lynn of Durham in said County, adjudged by said Court to be an Insolvent Debtor, beg leave to report, that in pursuance of their appointment which was made by said Court at the Term, thereof holden at said Haddam on the 4th. Tuesday of August 1833. they took the oath prescribed by Law & said Court having risen on Saturday the 7th. day of Sept 1833. afterwards on the 17th. day of S^d. September the undersigned left with John Fisk, Clerk of the said Court a written notice under their hands specifying that they would meet at the office of Stillman E. Wightman one of the undersigned at Middletown in S^d. County on Wednesday the 25th. day of Sept. 1833 at 9 Clock in the forenoon for the purpose of receiving the assignment & disclosure of S^d. Insolvent, & on S^d. 25th. day of said September they met at the Hour & place aforesaid & again by adj^t. on Friday the 27th. day of S^d. Sept at 9 Clk in forenoon at S^d. Office & again at S^d. Office by adj^t. on Monday the 30th. day of S^d. Sept at 9 Clk in the forenoon

& again by adj.t at s.d Office on Friday the 4.th day of Oct.r 1833. at 2 Clk in the afternoon & again by adj.t on Saturday the 5.th day of s.d Oct.r at 7 Clk in the Evg. at s.d Office, but none of the creditors except George W. Stanley & Guernsey Bates named in his Petition appeared Whereupon the undersigned proceeded in the Business of their appointment administered interrogatories to s.d Insolvent touching his Estate under Oath, & received an assignment of all his Estate as required by Law, the s.d Stanley & Bates having likewise put interrogatories & having been fully heard, the undersigned being fully satisfied with the disclosure & assignment so made as aforesaid, they the said Commissioners gave to s.d insolvent a certificate thereof in due form, — And on Wednesday the 23.d day of Oct.r 1833. the undersigned in pursuance of the requirement of s.d Court inserted in the Sentinel & Witness, a Newspaper printed in s.d Middletown, an advertisement which was published three weeks then next successively, stating that they should meet to receive, examine & adjust the claims of the Creditors of s.d Insolvent on the 23.d day of Dec.r 1833. & on the 23.d days of Jan.y & April 1834, at 2 Clk P.M. on each of s.d days at the Office of the said Stillman K. Wightman in s.d Middletown, when & where the undersigned met, but no claims of Creditors of the said Insolvent have been at any time presented to them.

There having been no property assigned by said Insolvent to us as said Commissioners from which any avails or funds can be realized, the undersigned are relieved from the necessity of accounting therefor respectfully submitted — Dated at Middletown the 25. Aug.t AD 1834.

Sam.l Cooper
Joseph Taylor } Comm.rs duly sworn
Stillman K. Wightman

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The foregoing are true Copies of the Record & files.

In Testimony whereof I have hereto set my Hand & affix. the Seal of S. ~~Court~~ Sup. Court this 28th day of April 1846

Seal

Dno. Fisk Clk

And afterwards at a Court holden at the Court house in Ogunquit on Monday the Second day of June AD 1845 Court (June 7th 1845) the following order was made Court

David Lynn admr &c
v
Samuel Lynn et al

This day came the Complainants by his Solicitor and on his motion it is ordered that the defendant answer the said complainants bill by Thursday Morning the 11th Inst —

And afterwards, Court, at a Court holden at the Court house in Ogunquit on Monday the third day of November Court November 7th AD 1845 the following order was made Court.

David Lynn admr &c
v
Samuel W Lynn et al

This day came the defendant by his attorney and entered his motion to strike the plaintiffs Replication to Defendants answer herein from the files in said Cause

And afterwards Court, on Monday the first day of June AD 1846, Court (June 6th 1846) at Court holden in Ogunquit the following order was made Court

David Lynn admr &c
v
Samuel W Lynn et al

Chancery

[11850-52]

Ordered that this cause stand continued untill the next term of this Court

And afterwards to wit, at a Court holden in Ogeechee on the first Monday of November AD 1846, to wit the 6th day of November AD 1846

David Lynn admr. &c
vs
Samuel Lynn et al } Chancery

This day came the the defendant Samuel W Lynn by his attorney and entered his motion for a continuance herein. Thereupon it is considered by the Court that this cause stand continued untill the next term of this Court, and that the Plaintiffs have and recover of the defendants their costs by them in this behalf laid at this term of this Court laid out and expended &c

And afterwards to wit at a court holden in Ogeechee on the the fourth Monday of April AD 1847, to wit April 26th AD 1847 the following order was made

David Lynn admr. &c
vs
Samuel W Lynn &
Stephen B. Mann } Bill &c

This day came the parties and their Solicitors, and by consent and agreement it is ordered that this cause stand continued untill the next term of this Court

State of Illinois
Henderson County

The Depositions of William R. Jamison, James Warbinson, Thaddeus Eames, Wm. D Henderson Witnesses produced, sworn & examined in pursuance of the above notice hereto attached, to be read in evidence on the trial of a certain suit in Chancery. Now pending and undetermined in the Henderson County Illinois, Wherein David Lynn adm.r of the Estate of David Lynn, dec.d and one of the heirs at law, Ezekiel W. Lynn, Prudence Cook, Lucius Cook Charles Henry Brainard, and Eliza Jane Lynn, heirs at law of David Lynn, deceased, are Complainants - and Samuel W. Lynn, & Stephen B. Munn, are Defendants - The said witnesses having been first duly sworn on oath, according to Law, depose and say as follows, on the part of Complainants

To James Warbison

Quest 1, Are You acquainted with the parties, Plaintiffs & defendants, and were you acquainted with David Lynn deceased, previous to his death?

Ans. I am acquainted all but the Minor heirs & Stephen B. Munn & was acquainted with David Lynn, dec.d

Quest 2, Where has Samuel W. Lynn, resided since your first acquaintance with him?

Ans. Where he has resided all the time I can not tell, he has resided on the place, formerly occupied by David Lynn, dec.d his Father - I dont know that he resides there now, but is residing there to the best of my Knowledge, now.

Quest 3. Did you ever call on the said Samuel W. Lynn,

as a Constable; with an execution to levy upon his Property if Yea! state at what time! and whether you levied on any Property?

Ans. I did, the time I cannot tell, but from my memory about five years ago, I did levy on property, I levied on a Yoke of Steers.

Quest. 4. Describe the Cattle you levied upon, as near as you can?

Ans. They were I think young steers, the color principally Red, if I remember.

Quest 5. Where was such levy made?

Ans. The levy was made, in the vicinity or neighborhood of Samuel Lynns house.

Quest 6. Did any conversation take place, at that time or previously, between yourself and said Samuel W. Lynn in relation to the ownership of any property by said Lynn? if Yea! state the conversation as near as you can?

Ans. There was some conversation between Mr Lynn, & myself at the time, Mr Lynn, denied owning property — Stated that the property belonged to his Father.

Quest 7. Did Mr Lynn, refuse to give up property on the said Execution, if Yea! state on what ground he thus refused?

Ans. He did refuse, on the ground of the illegality of the execution, likewise on the ground of having no property.

Quest 8. What was done with said Steers, levied on by you by virtue of said execution?

Ans. I drove said Steers to Olena, put them into a lot — belonging to Robert Kendall.

Quest 9. Were said Steers taken from your possession, by any person or persons, or did they make their escape, from said lot?

Ans. From my own personal knowledge I cant say. The man in whose care I left the Cattle, says they were taken from the lot, by Samuel W. Lynn, a man by the name of Senkes,

and others, I wont say who. meaning simply I cant say who
This answer objected to.

Quest 10. Did you ever see said Cattle in the possession of any person after that time?

Ans. I believe not.

Quest 11. Were you ever sued by any person, after levying on said Cattle, for taking said Cattle off, if Yea, state what kind of suit? when you were sued? before whom were you sued? and who was the plaintiff in the action?

Ans. It was a suit of Trover. I think probably five years since the suit was before Esq. Patterson in Ogdawka. David Lynn was the Plaintiff in the action.

Quest 12 Was said David Lynn, who brought said suit, the father referred to by said Samuel W. Lynn, during the conversation, which took place, at the time of the levy upon said Steers by you

Ans. I think he was.

Quest 13 Did said Samuel W. Lynn, offer himself as a witness on the trial of said cause, and make any statements, as to what he was willing to swear to, as to the ownership of said Cattle, if Yea? state what he said?

Ans. He did offer himself as a witness, he stated that he wished to prove, that the Cattle belonged to his Father?

Quest 14 Was there other property, Cattle, horses, or farming utensils upon the place occupied by Samuel W. Lynn, at the time You made the levy aforesaid — if yea? state the probable number of live stock as near as you can & the amount of the other property?

Ans. There was other property on the place, there was some ~~probably~~ I think probably four or five head of horses, probably ten or fifteen head of cattle, as to farming utensils I did not notice

Cross Examination of James Harbison

Quest 1. How do you know, that David Lynn, deceased, ever occupied the place, on which Samuel W. Lynn, formerly resided,

[11850-58]

as you have stated on examination in chief?

Ans. I passed frequently, and I seen Mr Lynn, living there

Quest 2 Was it before or since Samuel W. Lynn occupied that place that you passed, and saw Lynn, living there?

Ans. I do not know that I saw David Lynn, living there, before I saw Samuel living there, I saw him living there at the time I saw Samuel living there.

Quest 3 With whom did David Lynn, live, when, he resided there

Ans. I saw David Lynn, living with himself, in a house occupied by himself, with no other man person being there, I dont know that he lived there all the time,

Quest 4 Was there ever any other dwelling house on that place, other than that occupied by Samuel W. Lynn,

Ans I think probably there was.

Quest 5 On what part of said place was the other dwelling house, in which you saw David Lynn, and how near was it to the house occupied by Samuel W. Lynn?

Ans. I cannot at this time recollect the relative situation of the two houses, I think they however were not far distant.

Quest 6 Are not the two houses, that you have just spoken of, adjoining to each other?

Ans I do not recollect,

Quest 7 Did the house in which you saw David Lynn, have a chimney or stove about it?

Ans. It may have had both, I dont know that it had either,

Quest 8 Did it have the appearance of a dwelling house, or of an apartment of one?

Ans. I was once in a house, it had the appearance of the residence of an old gentleman, that was once David Lynn, the reason why it had that appearance, was because the old gentleman was in the house at the time,

Quest 9 How do you know, that that house was the residence of David Lynn

Ans. I do not know it at all, only from conjecture of appearances

as I would any other mans house,

Quest 10 How do you know, that no other person occupied that house?

Ans I dont know it all, I saw no other person occupying it.

Quest 11. Did that house have a window in it, or any appearance of a dwelling house?

Ans. Whether it had a window or not, I know not, as to the appearance of the house I know not whether it was a dwelling house or not, it was not a splendid mansion, my impression at the time was, that it was the residence of David Lynn, but whether it was or not I know not,

Quest 12 Were there any cooking implements in it?

Ans I must just answer as formerly I cannot, whether there was or not I dont recollect, there was a table Knife handed me

Quest 13 Have you any reason for believing that David Lynn, resided in that house, other than once having seen him in it?

Ans. I saw him once in the house, he invited me into the house he invited me to a seat in the house, and I have at other times saw him about that house, and in the absence of any contrary evidence, I supposed it to be the residence of David Lynn,

Quest 14 Does that house join the dwelling house?

Ans. I do not know

Quest 15 How far was that house from the dwelling house of Samuel W Lynn, & where did it stand?

Ans. Well I do not know the distance, I think there was an other house, or houses not far distant

Quest 16 How far distant was the other house or houses from it, to the best of your knowledge?

Ans. My impression is that they were some rods, they may have joined the house, my impression is they did not,

Quest 17 Who resided in the other house or houses?

Ans. I think Samuel W. Lynn, resided there,

Quest 18 Did not Samuel W. Lynn, reside in the house, nearest the house, in which you say, you saw David Lynn?

Ans. I think likely he did.

Quest 19 Was there any other dwelling house on that place or nearer, than Samuel Jamison's, save Samuel W. Lynn's?

Ans. I do not know whether there was or not

Ques 20 Did not David Lynn, eat at the table of Samuel W. Lynn?

Ans I really do Not know where he eat. I never saw him eating.

Quest 21 Did he not live with him?

Ans. I do not know whether he did or not.

Quest 22 Was not the house, in which you have stated you saw David Lynn, on that place, the place about which you have last spoken,?

Ans. I suppose it was.

Ques 23 When was it that you saw David Lynn, in that dwelling house?

Ans. It is probably as much as seven years.

Quest 24 In what year, and about what time of year was it?

Ans What year I cannot recollect. it was the fall season of the year.

Quest 25 Was it before or since you levied on the Yoke of Steers, that you have before spoken of?

Ans. It was before, some length time before,

Quest 26 About how long before, you levied on the Steers?

Ans. I think as much as two or three years.

Quest 27 Where did you levy an execution, on said Yoke of Steers?

Ans In the neighborhood of Samuel W. Lynn,

Quest 28 How far from Samuel W. Lynn's house?

Ans. I think between half a mile & mile, I should suppose it something near that distance,

Quest 29 Were the Yoke, in sight Samuel W. Lynn's place or house?

Ans. I think not in sight

Quest 30 Where was Samuel W. Lynn, when you made the levy aforesaid,?

Ans. I do not know where Mr Lynn was.

Quest 31 Did you see any other stock, or personal property, where and when you made said levy?

Ans. I think there were other stock around,

Quest 32 To whom did it belong, and what kind was it?

Ans. I do not know to whom they belonged, I think they were principally young Cattle,

Quest 33 Do you know on whose farm or place they were?

Ans. I am not certain. they were not far from James Jamison's, deceased, I can not say on whose farm they were,

Quest 34 Have the Complainants in this suit, recovered a Judgment, against the said Samuel W. Lynn, for the value of the Use of Steers, about which You just testified?

Ans. Well I really do not know,

Quest 35 Were you a witness for Complainants in a suit for which they sued Samuel W. Lynn, for said Steers?

Ans. I was a witness in a suit against Samuel W. Lynn, in which suit I suppose the Steers formed a part

Quest 36 Did you testify in regard to said Steers, in said suit, in behalf of the Complainants?

Ans I think likely I did

Quest 37 Did you testify in regard to any thing else in said suit except the Steers?

Ans I do not recollect that I did,

Quest 38 Was final Judgment rendered on said suit?

Ans. I have no other Knowledge of that than report

Quest 39 At what Court & at what ~~term~~ term of the Court, did you testify in said suit?

Ans. It was Henderson County Circuit Court, & the May Term 1842

Quest 40 Who were the Parties to that suit?

Ans. It was David Lynn, admr. of David Lynn, deceased, against Samuel W. Lynn.

Quest 41 What was the nature of the suit?

Ans. Trespass.

Quest 42 Who issued the execution, that you levied on said Steers?

Ans. It was an Execution or Military Warrant, signed by Matthew D. Pitchey, as Colonel.

Quest 43 To whom were the Cattle, that you were sued for taking, proved to belong by the event of said suit? and what kind of a suit was it?

Ans. I considered that my claim held them.

Quest 44 Were they not found by the event of said suit, to be subject to the levy made you upon them, as Constable, by virtue of an execution against Samuel W. Lynn?

Ans. I consider they were.

Quest 45 In what year, & about what time in the Year, did you levy said execution on said Yoke of Steers?

Ans I think as much as five years ago.

Quest 46 About how was it before the death of David Lynn?
Ans. Probably six months, probably longer, and probably not so long.

James Harrison

[11850-61] claims one day 50 cts

Examination of Thaddeus Eames.

Quest 1 Were you acquainted with David Lynn, deceased, previous to his decease, if Yea, state when and where, you became acquainted with him? and are you acquainted with Samuel W. Lynn, if Yea, state when and where you became acquainted with him?

Ans. I was acquainted with David Lynn, in the fall of 1835 was my first acquaintance at the place where Samuel Lynn, now lives and then lived, the same farm, & the same house, I became acquainted with Samuel Lynn, at the same time, they both lived together,

Quest 2 Was the house in which they lived a double house? state in what manner it was built?

Ans The house in which they first lived was single, a log cabin There was a smaller one built about one year after, cornering with the first,

Quest 3 State as near as you can, the age of the said David Lynn at the time you became acquainted with him?

Ans. As to the age I dont know, but I supposed to him to be about seventy years old

Quest 4 How near did you reside to them at that time & how frequently did you see them?

Ans I lived in Ohio, in the fall of 35, I came here in the spring of 36. I remained here through the summer of 36 & went back in the fall of 36. and lived within 3 miles of them when here, I was out here in the fall of 35 & bought land & staid

some two weeks, in the summer of 36. I saw them frequently, as often as once a week & sometimes two or three times a day,

Quest 5 Where did said David Lynn, reside from the time of your acquaintance with him, up to his death?

Ans. He lived in the same house above mentioned with Samuel W. Lynn, & died there,

Quest 6 Was there a farm connected with said residence, if Yea! who claimed to own the same?

Latter part objected to

Ans. There was a farm connected with it, David Lynn, deceased claimed to own the farm,

Quest 7 Was the land upon which said farm was made purchased of any person, or persons, if Yea, State of whom, the same was purchased to the best of your knowledge?

Objected to

Ans. I dont know any thing about it, only what the old gentleman told me, that he bought it of Munn,

Quest 8 Did Samuel W. Lynn, at any time, during the life of said David Lynn, claim in your presence to own said land?

Ans. I dont recollect that he ever did say who owned it, either himself or his father,

Quest 9 Did said David Lynn, have a wife or family, while you knew him of his own?

Ans He had no wife or family of his own,

[11850-2]

Quest 10 Was he infirm by reason of his age?

Ans. I think he was

Quest 11 Did you ever sell any property to said David Lynn, if Yea! state what property, and when you sold it?

Ans. I sold a mare to him, in the fall of 1835.

Quest 12 What did You receive in payment for said Mare?
Objected to

Ans. I recd a note payable the next summer for a pair of Oxen, and the balance in wheat, said Note being on David Lynn,

Quest 13 Did Samuel W. Lynn, act as agent for the said David Lynn, or take any part in said trade? if Yea, state all the circumstances?

Ans. Well he did, and I did not know but that I sold her to him, untill the Note was given,

Quest 14 Did the said Samuel W. Lynn, counsel with the said David, when said trade was being made, if Yea! state about what he counselled with him?

Ans. I dont know that he did at all,

Quest 15 Describe said Mare, as near as you can?

Ans. She was a Bay, with a blazed face, with one or two white feet. She was 8 Years old when I sold her,

Quest 16 Was Samuel W. Lynn, present when you went to receive

payment of said Note, if Yea, state what conversation if any passed between him & said David Lynn, in relation to the Cattle to be paid on said Note, and all that occured at that time in relation to that matter?

Ans. He was present, I dont recollect of hearing any conversation between he and his father, they did converse together I suppose concerning that, but I dont know what was said, I was talking with Samuel W. Lynn, about what Cattle I was to have, he gave me no answer, but went and spoke to his father, then he came back from his father to me, and said that I might have the choice of two Pair,

Quest 17 Was that Mare, sold by You as aforesaid to David Lynn, been sold either before or since, the death of said Lynn, if Yea, to whom was she sold? and by whom was she sold and when?

Ans She was sold, I dont know by whom, nor to whom, she was sold, I dont recollect to whom she was sold, not a great ways from the time of his death, I cant recollect whether before or after his death.

Quest 18 Did you ever see said Mare, since the death of said David Lynn, in the possession of a man by the name of Heaton?
Objected to

Ans I have,

Quest 19 Was the said Heaton, using the said mare, as his own property, or exercising acts of ownership over her
Objected to

Ans He was, if that was the name, I dont recollect whether that was the name or not.

[11850-63]

Quest 20 Is that the name, to the best of your recollection,

Ans. Well it is.

Quest 21 Do you recollect the christian name, if Yea! state it of said Heaton?

Ans. I dont recollect of ever hearing it.

Quest 22 Where does Heaton now reside,

Objected to

Ans. That I dont know.

Quest 23 Did said Samuel W. Lynn, act as agent & superintendent of the affairs of said David Lynn, during the lifetime of said David?

Ans. It had that appearance, its all I know about it.

Quest 24 Did said David Lynn, during your acquaintance with him, make trades without Samuel W. Lynn, acting as his agent?

Ans. He never did, that ever I knew of.

Quest 25 Do you know the respective situation of the said Samuel W. and David Lynn, as to property when they came to this Country?

Ans. I do not know any thing about that.

Quest 26 In what year, did you remove to this State, with your family?

Ans. The last of May 1837.

Quest 27 Have any improvements been made upon said farm, since your acquaintance with said ~~David~~ Lynn's. if Yea, state the amount of said improvements, and their probable cost ue—?

Ans. There has been improvements made, how much improvements I could not tell very near, I have not much of an idea of what amount or what value,

Ques 28 Was there a Barn built upon said Place before the death of said David Lynn, if Yea, state the size as near as you can,

Ans. There was a Barn built before his death, I think the size something over thirty feet in breadth, and nearly fifty feet long, may be quite that long,

Quest 29 State as near as you can, the number of acres of said farm in cultivation, at the death of the said David Lynn?

Ans Well I think there was about 120 acres, it appears to me there were 3 fotys

Quest 30 Did said David Lynn, by himself or by his agent, Samuel W. Lynn, make said improvements?

Objected

Ans They were made by his Agent as I supposed by Samuel Lynn, The old man seemed to have an interest in it even they both did as to that matter,

Quest 31 State as near as you can, the annual value in Cash of the rent of said improved land?

Ans. The first year that I knew ~~that~~ any thing about it, I supposed

there were about fifty acres under improvement and worth about one hundred dollars rent, I say that was in 1836. The next years there was something more, I think about 20 acres, or something about that, was worth about $2. pr Acre $40. that was in 1837 – After that I never knew much about it

Quest 32 " " Who received the Crop of the two years, that you have just spoken of?

Objected to

Ans. It was gathered in there on the place, it appeared to be made use of by them both as one family.

Ques. 33 Can you tell what improvements were made on said place after the Year 1837?

Ans. There were some considerable improvements made, but I could not tell much about it.

Cross Examination of Thaddeus Eames.

Ques. 1 With whom did said David Lynn, decd reside during your acquaintance with him?

Ans He lived with Samuel W. Lynn, they lived together as one family.

Ques 2 Was there ever any dwelling house or houses, on the place occupied by Samuel W. Lynn, as aforesaid? if Yes! state who occupied it or them, and by whom it or they were built?

Ans. Yes there was a dwelling house there, there was a small house standing cornering the other, and occupied as an out house.

Quest 3 Was there ever any dwelling house, or houses on the place, occupied by Samuel W. Lynn, as aforesaid, other than that occupied by himself, if Yea. state who occupied it or them, and by whom it or they were built

Ans. There was not that I ever knew of.

Quest 4 Did David Lynn, dec^d sign a note to you with Samuel W. Lynn, for the price of the Mare, aforesaid, payable in a Yoke of Oxen, & Wheat as aforesaid?

Ans. He did not.

Quest 5 Did you testify in a certain trial, between David Lynn as Administrator of the Estate of David Lynn, deceased, Plaintiff, against said Samuel Lynn, defendant, that said Samuel W. Lynn, and David Lynn, dec^d signed the note last mentioned as being given to you for the price of a mare?

Ans. I dont think I did, it is my impression that David Lynn alone, signed the note.

Quest 6 Might not you have made that statement?

Ans. I dont think I ever did. Samuel W. Lynn wrote the Note and the old gentleman came up & signed the note, and I am confident in my belief that if Samuel Lynn, had signed the note, I would have recollected it.

Quest 7 Who paid you the amount of the note?

Ans The note I suppose was paid by property, belonging to David Lynn,

[11050-45]

8 In what was said payment made to you? & by whom? And where was David Lynn, dec^d when it was made?

Ans A pair of Oxen, and wheat, It was in July or in June, that the Oxen were paid, and in the latter part of August, or in September, that the wheat was paid, all in 1836, and was paid by David Lynn I suppose; David Lynn, was present at the bars.

9 Who delivered to You, the Wheat and Oxen as aforesaid?

Ans. It was Samuel W. Lynn.

10 Did said David Lynn, ever say anything to You, or said Samuel W. Lynn, to your knowledge, concerning the payment of said Oxen, & Wheat to You; in liquidation of said Note, if Yea? state what he said and when, and where he said it, and who was present, if any one?

Ans I dont think he ever did, I have no recollection of it.

11 Did said David Lynn, dec^d ever tell You the particular property to be paid or that was paid, in liquidation of said Note?

Ans. I dont recollect that David Lynn, dec^d ever told me so

12 You have testified as to improvements made on said place by the labor of whom? were they made?

Ans Well the old gentleman labored along the for part of the time Samuel appeared to labor the whole of the time, and took hold of it himself, and he appeared to be the principal hand, there were occasionally hired hands, but I cannot tell who.

14 Was Samuel W. Lynn working there as a hired hand, or otherwise as a hand?

Ans. That is more than I can tell, what he was to receive for compensation for his labor I cannot tell, I never heard either David or Samuel Lynn say what he was to receive?

15 Do you know that Samuel W. Lynn, was to receive any compensation from any person or persons for said work or improvements done on said farm, if so, state from whom and how you know it?

Ans I dont

16 Under whose control were all the hands aforesaid, in doing said work and making said improvements?

Ans They appeared to be under Samuel W. Lynns control

17 Did, or did not said Samuel W. Lynn, conduct the progress of said improvements as his own?

Ans. He did to all appearance, as far as I knew anything about it,

18 By whom was the work and materials furnished for making said improvements?

Ans By Samuel W. Lynn, as far as I know, I know of no other person furnishing any work or materials.

19 Were you a witness on behalf of the Plaintiff, in a certain suit tried at the May Term 1842, of the Henderson County Circuit Court, wherein David Lynn, admr. of the estate of

[11850-65]

David Lynn, decd. was Plaintiff and said Samuel W Lynn was defendant, if so. state whether the mare, about which you have testified, constituted a part of Plaintiffs demand, which was proven by you, as said Witness, and whether final Judgment was rendered in said Suit?

Ans I was a witness in that suit. I testified in relation to that mare, it is more than I can tell whether she was a part of the Plaintiffs demand or not.

20 As a witness in that suit was You interrogated concerning that Mare, and as to her value and description by said Plaintiffs Counsel?

Ans Yes. I was I think
Witness Claims 2 days $1.00 (signed) Thaddeus Eames

Examination of Wm. D. Henderson,

Quest 1 Were you acquainted with David Lynn, deceased, prior to his decease, and are you acquainted with Samuel W. Lynn; if Yea; state when, and where, you became acquainted with them?

Ans I was acquainted with David Lynn, prior to his decease & I am acquainted with Samuel W. Lynn, I became acquainted with them in the Summer of 1835, in Jane in this County, then Warren County.

2 Did said Samuel W. and David Lynn, reside together, and did they continue to reside together up to the period of David Lynn's death, if Yea. state as near as you can, the tract of land upon which they resided, giving a description thereof?

Ans. Samuel W. Lynn, and David Lynn did reside together & I think continued to reside together up to the period of David Lynn's Death, the tract of land upon which they resided is the South ½ 1. 10 N 5 W.

3 Does Samuel W. Lynn, continue to reside upon the same half section of land, upon which they resided?

Ans I think so. I generally see him there when I pass.

4 Did you ever have any conversation with said David Lynn in the presence of said Samuel W. Lynn, in which the title to said tract of land was spoken of? if Yea, state what was said in said conversation in relation to the title to said land, and all that occured during said conversation?

Objected to

Ans I had a conversation with said David Lynn, and in that conversation Samuel W. Lynn, was present. David Lynn said that said land was his. Well he said that I had cut two trees on his land, and that he intended to prosecute me for cutting them, that is all that he said, in relation to the title, so far as I have any recollection.

5 Was Samuel W. Lynn, within hearing of said conversation And did he hear the same, and take a part therein, if Yea state what he said?

Ans. He was in hearing, I have no doubt he heard the same I have no recollection of his taking part in the conversation, in regard to the title to the land? so far as I recollect, he said nothing in relation to title in said conversation

[11850-47]

6 Was the land upon which said trees were said to have been cut by You, in said conversation, by said David Lynn the said South half of Section One, before referred to, or not?

Ans It was.

7 Did said Samuel W. Lynn, act as agent for said David Lynn, and take charge of the business of said David during your acquaintance with them?

Ans I dont know.

8 How far did you reside from said Samuel W. & David Lynn from the time of your acquaintance with them to the death of said David Lynn?

Ans A short time I resided about half a mile from them and afterwards about three miles up to the time of David Lynns death.

9 In what year and what time of the year, did said conversation before referred to take place?

Ans In July or August 1835.

10 Did said David Lynn, make any improvements on said land, or cause, or direct the same to be made by any other Person or Persons or not? if yea! state what improvements?

Ans I have saw David Lynn, labouring on that land, and others also, I dont know who employed any Person to labor on the premises, there was land broke and fenced on the

premises during his life time,

Cross Examination of Wm. D Henderson,

Quest 1 What has been the state of your feelings towards the said Samuel W. Lynn, since your first acquaintance with him. and have you had any personal difficulties with him. if Yea. State when and where they were, and the nature of them, as fully as you can. and conversations that happened in them if any?

Ans Shortly after my first acquaintance with Samuel W. Lynn we had a personal quarrel at Oquawka, he commenced the quarrel with me. he said that I and some of my friends, were going to get ourselves into trouble for assisting Bill Jamison in harvesting and taking away his or our wheat I cant say which. It was a house on the bank of the river where Phelps then kept store. It was in the year 1835. in July or August I cant say which,

2 Was there any thing said in the last mentioned difficulty in relation to the cutting of a tree or trees. if Yea. State what, by whom, and to whom. and in whose presence it was said?

Ans. It was during the quarrel between Samuel W. Lynn, and myself, that David Lynn, accused me of Cutting the trees on his land. I think Samuel W. Lynn, joined with his father, in saying that I should be prosecuted for cutting them. Aaron Earnest was present, I think David Lynn his brother was present - I think Dr. Rupell, John B. Patterson & Wm. Cousland were all present. I am not positive for I was a Stranger, and I think I am correct, there may have been others present, but if there were I do not recollect

[11850-LB]

Quest 3 Was the last mentioned conversation a part of that testified by you, in answer to complainants question No. 2 concerning a conversation between you and David Lynn?

Ans. It was

4 What has been the state of your feelings towards the said Samuel W. Lynn, from your first acquaintance with him untill the present time, and what was the nature of the difficulty spoken of by you as being between you and him?

Ans Samuel Lynn & me, from shortly after our first acquaintance have not been friendly from July or August 1835. up to this time,

5 Did said Samuel W. Lynn, in said difficulty and conversation, accuse you of cutting one black oak tree, on his land and did you or did you not reply that you had cut one for a board tree to cover my house, and he said Samuel W Lynn, might help himself, for he said Samuel W Lynn, had nothing but a bond for his land, and then did not said Samuel W. Lynn draw his knife, and did you not gather weighing weights off the counter of Phelps and did this or something like it, or any part of it occur, between you, and in the presence of William Cousland, and was not this the first difficulty that ever happened between you and Samuel W. Lynn,

6 ~~Was~~ Was what you have last testified to, the former or latter part of the conversation, about which you have first testified, and have you referred to any other conversation in your testimony,?

Ans I refer to only one conversation, it was the first and last

in relation to that matter, that I have any recollection of I could not tell whether it was the first or last part of the conversation, it was all through,

7 Who participated in said conversation?

Ans David Lynn, now deceased, and Samuel W. Lynn, I think Aaron Earnest, conversed some and perhaps others, among whom was William Cousland & I think David Lynn his brother, but I am not positive,

8 Was said David Lynn, dec.d present in Phelps store house, during all of said conversation? And who saw him there at that time & if so. What did he say

Ans I will not state positively that he was present during all the conversation between Samuel Lynn & me, he was present there during part of the time and I saw him there, And I think Samuel W Lynns father accused me of cutting a black oak tree & a hickory — And Samuel W. Lynn, joined with his father in threatning to prosecute me for cutting them, he probably may have said it was his land, I do not recollect that he said it was his land, I have no recollection of any thing being said about a bond, I may have made the remark I do not recollect of making the remark, I do not pretend to say that I did not say so. It was not in relation to the cutting of the tree, nor any quarrel about that, that Samuel W. Lynn, drew his knife out, in regard to the helping of Jameson to harvest and haul away his wheat I did not see Samuel W. Lynns knife, he put his hand in his pocket, and swore that he could swim fi me. I then picked up a weight off the counter, and drew it

[1856-69]

at him, and told him that if he drew a knife on me, that I would kill him, or knock his brains out, or something like that, I do not pretend to say what the words precisely were, I think Mr Cousland was present - That was the first difficulty between Mr Lynn & myself, that I recollect of, He was present during the greater part of of the time, He threatned to prosecute me for cutting the trees on his land, he said that he had brought lots of money to this Country, and turned round to William Cousland I think, and said, and Cousland knows it,

9 Could Cousland and others that You have stated was present, at the same time, have seen the said David Lynn, decd. if there - Were you all in the same room? How long was David Lynn, decd. present with You? and who was there besides Cousland?

Ans I think they could, We were all in the same room, as far as I can recollect, I cannot state as to the time David Lynn, was present, but I think he was present the greater part of the time - I think that Aaron Earnest & Samuel W. Lynn was present, John B. Patterson and Dr. Russell was present part of the time, and may have been all the time,

10 Was John B. Patterson, Aaron Earnest and Dr. Russell, or any or either of them, and if any, which of them? as near to you and said David Lynn, decd., when the conversation about the trees and land took place between you and the said David Lynn, decd. than the said Samuel W. Lynn?

Ans John B. Patterson was behind the Counter, and dont think as close as Samuel W. Lynn, - I think Earnest was as

near me as Samuel W. Lynn was. I recollect nothing about Dr. Russell at that time, only that during that conversation he paid me some money, I dont think that Cousland was as close, as Samuel W. Lynn, for Samuel and David Lynn were talking to me,

11 Can you state the precise words spoken by David Lynn dec.d conversation in relation to the trees and land, if Yea? state them?

Ans. I do not know that I can state all of the words used by him, he told me that I had cut an Oak & Walnut tree on his land, I told him that it was a Hickory, in speaking of the trees I had cut, David Lynn, sometimes called it a hickory & sometimes a walnut, He told me that he intended to make me pay him $8. per tree for them, these are all the precise words that I can recollect

12 Did said Samuel W. Lynn, in said conversation, threaten to prosecute you, for cutting said trees on his land?

Ans He threatned to prosecute me, for cutting said trees. I do not know that he said it was his land, but he told me that he believed that I had built my house on his land, and he intended to take that if I had.

13 When he told you, that if You had built your house on his land he would take it, did he refer to the S½ Sec 1, 10 N 5 W, the land on which said trees were cut?

Ans I presume he did

14 Have you the same reason for believing that William Cousland, J. B. Patterson and David Lynn, heard the

[11850-76]

Conversation between you, and David Lynn, dec.d. in relation to the bees and land, as you have, that Samuel W. Lynn heard it?

Ans No.

15 What was the relative situation of the last mentioned persons to David Lynn, dec.d. and yourself during said Conversation between David Lynn dec.d. and yourself and what part of the room did you and the said David Lynn, dec.d. occupy at said time? and how near were you to said weighing weights?

Ans. Patterson was behind the Counter as much as five feet, or more from me, Cousland I think was setting in the South West corner of the room, and not more than fifteen feet from me & I dont think that far. & I dont think he was more than ten. I think David Lynn dec.d. was not more than three feet from me, and to the left of me and Samuel W. Lynn was to the right of me, and about five feet from me, excepting at the time when the drawing of the knife & picking up of the weights, I could not tell what the relative position was. farther excepting that Patterson was behind the Counter, & I was in the room, In the corner where Cousland was setting there were three or four guns. my first intention was to seize a gun, but Earnest was standing between the guns and me, and as he had the reputation of being a dangerous man, I picked up a weight lying on the Counter which I thought sufficient to defend myself with.

16 In what tone of voice, did the said David Lynn, dec.d. speak the words used in the Conversation between him-

self and you, as you have before stated?

Ans. It was not very loud, but loud enough to be distinctly heard by any person in the room, who was paying attention to the conversation.

17 Did said conversation happen since you moved to this County, then Warren County?

Ans Yes.

18 When did you move to this County?

Ans Between the first & tenth of June 1835.

19 Have you advised with Parties Attornies or Witnesses in this Suit, if Yea! state with whom, and what you have said in regard to it

Ans I answer No (Signed) W. D. Henderson,

Examination of William R. Samison

Quest 1 Were you acquainted with David Lynn, previous to his decease, and are you acquainted with Samuel W. Lynn, if Yea! state when and where you became so acquainted with them?

Ans I was acquainted with David Lynn, decd and I am acquainted with Samuel W. Lynn, I believe it was in the year 1833, that I became acquainted with Samuel W. Lynn, I think it was in the Year 1834. I became acquainted with David Lynn, It was in the neighborhood in which Samuel now lives, that I became acquain

[11850-71]

-ted with them,

2 On what tract of land did said David and Samuel W Lynn, reside during your acquaintance with them?

Ans On the North half of Section 1. 10 N 5 W. No I ~~believe~~ I am wrong. I believe it is the South ½ Sec 1 10 N 5 West.

3 How far did you reside from them during your acquaintance with them, How frequently did you see them?

Ans On the adjoining section. between a quarter and half mile, I saw them every few days.

4 Who claimed to own said South ½ 1. 10 N 5 W. objected to

Ans David Lynn Senr told me that he had bought it.

5 Was that claim made in Samuel W. Lynns presence and in his hearing?

Ans I do not recollect certain about that,

6 Did said Samuel W. Lynn, ever claim to own said land in your presence previous to the death of said David Lynn, objected to

Ans I dont think he did, Samuel W. Lynn, took an interest in the management of it, but I think he did not claim to own it. from their first settling there,

7 Did you ever hear said Samuel W. Lynn, say previous to the death of said David Lynn, decd. who was the owner of said land?

Ans I dont recollect certain that I did.

8 What was the pecuniary condition of the said David and Samuel W. Lynn, when you first became acquainted with them. Please state what you know about it?

Ans As to the Property they brought to this County, I never see much. I dont think they had much. I dont think I ever see them have much money.

9 Which of them owned the Property that you did see?

Ans As to the Personal Property they both had it together, so far as I ever seen.

10 How much of this said South ½ 1. 10 N.5 West. was under improvement at the time of the death of said David Lynn? and how much under cultivation at the time

Objected to

Ans I think there was, or some where about 160 acres in cultivation

11 What was the rent of said Land, worth Pr Annum, Pr acre, that was in cultivation in Cash. Objected to

Ans I suppose from a $1.50 to $2.00.

12 Did Samuel W. Lynn, act as agent of said David Lynn in making bargains, or transacting business of any kind?

Ans I dont know whether he acted as Agent or not.

[1858-72]

Cross Examination of William R. Jamison

Quest 1 Have you not demanded payment from Said Samuel W Lynn, for improvements made by you, on Said South ½ Sec 1. 10 & 5 West? if Yea, State the time at which you did it.

Ans I dont recollect demanding directly from him payment

(signed) Wm. R. Jamison

State of Illinois }
Henderson County } ss

I John S Pollock, Clerk of the Circuit Court in & for the County and State aforesaid, do hereby certify, that on the 11th day of May AD 1846 between the hours of 9 o'clock in the morning and six o'clock in the evening of the same day, at my office, in the town of Oquawka, in said County & State, in pursuance of the above notice to take the deposition of James Harrison & on the 12th day of April AD 1846, to take the deposition of Thaddeus Eames, between the same hours of the ~~same~~ day & on the 13th day of April AD 1846, to take the deposition of William D Henderson, & Wm. R. Jamison, between the same hours of the day as above, & in pursuance of the same notice as above named, And that one of the defendants Samuel W. Lynn, appeared, as well as the complainants by their attorney appeared before me, and at the said times and place I proceeded to examine the said witnesses, on their respective oaths, upon all such interrogatories as were directed to be put by either Party litigant And that I in my own hand, reduced to writing such interrogatories, together with the answers of all the said witnesses, in the order in which they were proposed and answered, and that at said times and place, the said

above depositions so as aforesaid taken by me, were sworn to, on the day that each witness testified & subscribed by the said deponents before me & in my presence

L S

In Testimony whereof I have hereunto set my hand and affixed the Seal of said Court, at Ottawa, this 13th day of May AD 1846.

John L Pollock, Clk

And afterwards, towit, on the 21st day of Sept. AD 1847 the following tax receipt with the endorsement thereon were filed as evidence in said cause, towit

State of Illinois }
Marion County } Sheriffs Office July 21. 1834

Received of Samuel M Lynn four Dollars and Eighty cents, being the amount of tax due the State of Illinois on the following described land for the Year herein set forth

Acres	Description	Year	Amount of Tax	
320	S½ 1. 10 N 5 W	1836	$ 4	80

John G. Haley Sheriff M. C

Endorsement thereon

As Solicitors for Complainants I agree that this receipt shall be admitted in evidence without proof of Haleys hand writing and admit that he was Sheriff of Marion County at the time of signing the same, Sept. 21. 1847

Browning & Bushnell

[11850-79]

The Depositions of Delight Camp, Julia Coates, Samuel Daniel and Orin Camp Witnesses produced, sworn and examined in a certain cause now pending and undetermined in the Henderson County Circuit Court, Wherein David Lynn admr. Ezekiel W Lynn, Prudence Cook, Lucius Cook Charles Henry Brainard and Eliza Jane Lynn are ~~Lafs~~ Complainants and Samuel W Lynn and Stephen B Munn are defendants on the part of the said defendant Samuel W Lynn

Examination of Delight Camp

1 Are You acquainted with the parties Plaintiffs and Defendants in this Suit, and how long have You Known them respectively?

ans I am acquainted with all but Stephen B Munn and have been acquainted with some of them as much as Eleven Years, and others not so long

2 Have You resided with Samuel W Lynn, if Yea, when and how long?

ans I have resided there, it was in 1836, the length of time about 2 Months

3 Were You acquainted with David Lynn deceased prior to his decease, if Yea, how long?

ans I was acquainted with him from the Year 1836 untill his death

4 Are You acquainted with the place where

[11850-84]

Samuel Lynn has resided from the time You became acquainted with him, until the present time?

Ans I am

5 From what You have seen, from the mannagement of the said farm upon which the said Samuel W. Lynn resides, and from the conversations which You have had with David Lynn deceased, to whom did said farm belong?

Ans To Samuel Lynn, so far as I have heard David Lynn express himself, I have seen David Lynn deceased sell grain which grew on the place at different times, and bring in the money and give it to the wife of Samuel Lynn, and she has offered him some back and he would reply that he had money of his own

6 Did Samuel W Lynn act as the agent or hired Servant of David Lynn deceased in the cultivation and management of said farm or as owner?

Ans As owner as far as I could judge, he did not appear to be as hired Servant by any means

Cross Examination of Mr. Camp

1 Did Samuel W Lynn appear to control the farm in a different manner from what is common for a Son to do on his fathers farm?

Ans I should think that he acted as owner of the farm

Any thing that I ever saw of him or his wife would go to show that he was owner

2 Was David Lynn deceased an old and feeble man at the time that Samuel Lynn appeared to manage the farm?

Ans He appeared to be, although he made garden sometimes, but I never saw him work in any of the fields

3 Did David Lynn deceased manage the gardening or did he act under the direction of Samuel Lynn?

Ans I do not know, I have seen him work in the garden at weeding and hoeing, and Mr. Lynn was frequently at the same work with him, Samuel Lynn often directed us to go in and get garden sauce, and the old man would go along and assist me in getting it,

(Signed) Delight Camp

Examination of Julia Curtis

1 Are You acquainted with the parties to this suit if Yea how long have You known them, and were You acquainted with David Lynn deceased?

Ans I am acquainted with all but Stephen B. Munn, I have been acquainted with all of them 10 Years, Eliza Jane Lynn I have known for three Years, I was acquainted with David Lynn deceased from the Year 1837 untill his death

[11850-75]

2 Are You acquainted with the farm upon which Samuel Lynn resides and has resided since You became acquainted with him, and have You resided with him, and when?

Ans I am acquainted with the farm, and have resided with him, and have lived there at different times, some four months during the Summer that the old gentleman died, and prior to his death.

3 Have You at other times been frequently at Samuel Lynns?

Ans I have—

4 Did You hear the old gentleman say any thing concerning the said farm or the grain that grew on it?

Ans I did not that I recollect particularly—

5 Did You ever hear him give directions or exercise any control over the farm, if Yes, what was it?

Ans I dont know that I ever heard him give any directions or exercise any control over the farm

6 Did Samuel Lynn act in the management of said farm as the agent or the servant of David Lynn dec.d or did he act as the owner of said farm, having the entire control and management of the same?

Ans He acted as the owner of the place

7 Did You hear any conversation between Ezekiel N Lynn and Mr. Graves, if Yes, where & when and what did Ezekiel N Lynn say in relation to this land?

Ans I did hear Ezekiel N Lynn and Mr. Graves have a conversation in Ohio in the Year I think 1837 but I am not positive, I heard him tell Mr. Graves that Samuel Lynn had a large farm in this country, he said that Samuel Lynns farm was on the Bluff and his own on the bottom, I think he told the price of the land, I think he said that Samuel Lynns place was about 3 Miles from his own —

8 What place did Ezekiel N Lynn refer to at the time You heard him speak

Ans I think it was the place where Samuel Lynn now resides —

9 With whom did David Lynn decd reside during the time that You were acquainted him here in this country?

Ans With Samuel Lynn

10 You have stated in Your Answer to question No. 2 that You resided with Samuel Lynn some four months previous to the death of David Lynn deceased, were You employed, and if Yea, by whom, and by whom paid

Ans I was employed by Samuel Lynn, and Samuel Lynn paid me

(Signed) Julia A Curtis

Examination of Samuel Dannell

1 Are You acquainted with the parties to this suit and how long have You known them respectively

[11850-78]

And were You acquainted with David Lynn decd.

Ans I am well acquainted with them all but Stephen Bellamy, I have Known them all, but the infant heir of John A. Lynn for about 11 Years and I have Known the infant heir for four or fives Years, and I was acquainted with David Lynn decd.

2 Are You acquainted with the land upon which Samuel W Lynn resides and has resided since You became acquainted with him?

Ans I am

3 To whom does said land belong, and State all You Know concerning the ownership of the same, or tending to show who is the owner?

Ans I always supposed before the suit was commenced that Samuel W Lynn was the owner of the land, and lived on it and improved it, he had the whole control of the farm, hired hands, and done all the business so far as I Know any thing about it, I helped him about the building of the Barn, and sent hands and he paid me for it, I also rented ground from him on that farm, no person had any thing to say to me about that but Samuel W Lynn, he Samuel W Lynn spoke to me about loaning some money and wished to know if I could inform him where he could borrow some, the old gentleman at that time being present, he also said that Cousland had promised to let him have it, but disapp-ointed him, I told him that my brother had some money and I thought that he

could get it from him, Mr. Samuel Lynn was sick and in bed, and appeared to be in great trouble about getting the money as a payment was about comeing due on the farm, and he desired to meet it — In a day or two whilst he was yet sick, my brother, myself and Benjamin Jenks were going to Burlington and on our way we called in at Samuel Lynns there he spoke to my brother about the money, but I think he got no difinite reply about it — David Lynn decd went with us to Burlington as I understood to get the money for Samuel, I understood that the money was to pay on the land, on our return home again we called at Samuel W Lynns, then he spoke to my brother again about the money and he agreed to let him have it — The old gentleman David Lynn decd came to my house the next day and I suppose got the money. I was not at home but I saw the note when I came home, It was put in my possesion to keep — So far as I have been acquainted with the older heirs of David Lynn decd Mr. Cook had a claim on the land where he now resides, Ezekiel W Lynn had also a claim where he now resides, John A Lynn had a claim on a piece of land South of Ezekiel W Lynn, David Lynn bought a claim of Jonathan J Lewis which cost the sum of seventy five Dollars as I understood, and knew David Lynn to be in possesion of the place — Asa Brainard also had a claim where Ebenezer Russell now resides, and Samuel Lynn lived where he now resides, each one was cultivating his respective piece of land or improving the same —

[11850-77]

4 Have You or have You not as good reasons to believe that Samuel W Lynn was improving and cultivating the land upon which he lived for himself as owner of the same as that the other heirs, were improving their respective pieces of land for themselves

Ans, Yes, I have just as good reason to believe that he was improving his for own special benefit as that the other heirs were improving theirs for their own benefit

5 Did David Lynn decd as far as in Your knowledge have any control over the land which Samuel Lynn cultivated than he did over the land which the balance of the heirs cultivated?

Ans As far as I know, or as far as I was concerned or had any dealings, I dont think that he had any more control over it—

6 If David Lynn decd had been the owner of the premises was he unable from age or any other infirmity to have given directions as to the same?

Ans I have seen older men manage, and he was able to be about over the farm, and do some work in the garden, When I was first acquainted him for four Years or five Years —— The last Year or two before he died he was not able to do much or did not appear to do much

7 How from Samuel W Lynn did the aforesaid older heirs reside, from Your acquaintance with them until the death of David Lynn

Ans David Lynn resided about 3 or 4 miles from

Samuel N Lynn's for a short time, afterwards he moved to Samuel N Lynn's and remained there for a while, he then moved to or near Virginia Grove in Iowa, and remained there 2 or 3 Years, then moved back to Samuel N Lynn's and there remained until the death of his father or some time after, perhaps the next Spring after the demise of his father, Mr. Cook and E N. Lynn about two and one half miles from Samuel N Lynn's, John A Lynn resided about five miles distant, Asa Brainard resided about two miles distant for a time and after that had no fixed place of residence for any length of time, for one or two Years he rented some ground from Samuel N Lynn

8 In whose family did David Lynn dec^d live during Your acquaintance with him

Ans He appeared to live with Samuel N Lynn until he died —

9 How far have You resided from Samuel N Lynn during Your acquaintance with him?

Ans About two miles.

10 You say in Your answer to a certain Interrogatory that until the commencement of this suit You always supposed that Samuel N Lynn was the owner of the land, have You any reason for changing Your belief, if Yea, what are the reasons?

Ans The only reason that I have was that this suit was commenced, I never before heard of any one claiming the land but Samuel N Lynn.

[118507]

11 When did Samuel W Lynn first take possession of the land in dispute

Ans I think it was in 1833.

Cross Examination of Samuel Darnell

1 You state in your answer to question No. 5. that money was borrowed of your brother, state how much and for what purpose?

Ans I think it was for a payment on his land and the amount was about one hundred and sixteen or twenty dollars.

2 By whom was the Note that was left with you signed, and to whom payable?

Ans I cannot tell who signed the note only from information from my brother, he said that David Lynn decd signed the note and that Samuel W Lynn authorised my brother to sign the note for him, for the money was for Samuel W Lynn as the old man stated to my brother.

3 Was the name of David Lynn now decd signed to said Note in the hand writing of the said David Lynn?

Ans I cannot tell, I am not acquainted with his hand writing. Samuel W Lynn's name was signed by my brother for I am acquainted with his writing.

4. Was said Note ever presented to Lucius Cook or any of the heirs of David Lynn decd for payment?

Ans, Not to any of them but Samuel, I spoke to David Lynn at one time about it, but he flew into a passion or pet, and said if there was any money borrowed, that Samuel borrowed

it for himself, I replied that if he the administrator claimed the land, he ought to pay the Note.

5. Why was demand made of David Lynn adm.r of David Lynn dec.d for the money specified in said Note?

Ans. He claimed the personal property and the land, I was not authoised by my brother to make the demand, I did not present the Note only mentioned it, not expecting that he would pay it, only merely to hear what he would say.

(Signed) Samuel Daniell

Examination of Orin Camp.

1 Are You acquainted with the parties to this suit if Yes, how long have You known them respectively. were You acquainted with David Lynn dec.d

Ans. I am not acquainted with Stephen B Munn, I was somewhat acquainted with David Lynn dec.d and Ezekiel W Lynn for some 30 Years, I have known Henry Brainard for 10 or 11 Years, I do not know that I am acquainted with Eliza Jane Lynn I was acquainted with David Lynn dec.d

2 Are You acquainted with the land upon which Samuel W Lynn resides, and do You know the numbers of the same?

Ans I am acquainted with the land, the Nos, are the South half half of Sec, No. 1, Township 10 N. Range 5 West.

3 Do You or do You not know whether all the heirs of David Lynn dec.d except the minor heirs together with Asa Brainard and John A Lynn

who are now deceased, the former a son in law and the latter a son of David Lynn decd. respectively make selections of land in this (then Marion) County, if Yea, did David Lynn decd. assist them respectively in purchasing the same?

Ans I think I heard them all say so everyone, I heard David Lynn decd. say that he helped all of them to buy their Land.

4. What piece of land did Samuel N Lynn select in said selection above mentioned?

Ans I understood that that he took the South one half of Section No. 1. 10 N 5 W. and Ezekiel N Lynn selected a lot of timber land in partnership about one half mile West of where Samuel N Lynn now resides.

5. Has Samuel N Lynn continued to improve and cultivate the South one half of Sec. No. 1, since he made the selection?

Ans. He has.

6. Did You ever hear David Lynn decd. say anything in respect to the location of a Barn on said half section, if Yea, state what he said?

Ans The calculation had been to put it up near the timber and make a bank Barn of it, the old gentleman was opposed to that, he said if Sam was willing to put it up near the house, he would help him what he could but he said if he would set it up near the timber he would be damned if he would help him any.

8. Did you hear David Lynn decd. say any thing in regard to what he would do for his children, save Samuel W Lynn, if you, state what he said?

Ans I heard him say that they had ~~all~~ got every damned cent that they would ever get, I dont think that he meant to include John A Lynn and Samuel W Lynn.

(Signed) Orin Camp

State of Illinois }
Henderson County } I John S Pollock Clerk of the Circuit Court in and for the County of Henderson and State of Illinois do hereby certify that on the 24th day of April AD 1847, at my office in the Town of Oquawka in said County, I examined Delight Camp, Julia Curtis, Samuel Darnell and Orin Camp on their respective oaths, on all such Interrogatories as were directed to be put by either party litigant, and I reduced to writing in my own hand, all such interrogatories together with the answers thereto, in the order in which they were proposed and answered which said Depositions hereto attached so as aforesaid taken, were sworn to and signed respectively by said deponents before me and in my presence, at the said time and place aforesaid

L.S. Given under my hand and the seal of said court at Oquawka this 24th day of April AD 1847

John S. Pollock Clk

[11850-80]

John H. Mitchell Esq

You will please take Notice that on the 26th day of December A.D. 1846 between the hours of Eight O'clock in the morning and Nine O'clock in the evening of the same day, and to continue from day to day if necessary before Joseph Montgomery Clerk of the Circuit Court of Schuyler County in the State of Illinois, and at said Clerks Office in the town of Rushville proceed to take the Deposition of Jesse Darnell and others to be read in evidence on the trial of a certain Cause now pending and undetermined in the Circuit Court of Henderson County Illinois, on the Chancery side thereof Wherein David Lynn administrator of the Estate of David Lynn deceased and one of the heirs at law, Ezekiel W Lynn, Prudence Cook, Lucius Cook, Charles Henry Brainard and Eliza Jane Lynn heirs at law of David Lynn deceased are complainants and Samuel W Lynn and Stephen B Munn are defendants, when and where You may appear, if You see proper and examine said witnesses &c, Oquawka Dec, 9th 1846

Samuel W Lynn
By Harris & Swift his Sols

I have Served the within Notice by delivering a true copy of the same to the within named John H. Mitchell the 11th day of December 1846

John Brown Sheriff
Warren County, Illinois

State of Illinois }
Schuyler County } ss December 26th 1846

David Lynn et al }
vs } In Chancery
Samuel W Lynn et al }

This day the attorny for the Defendant Samuel W Lynn appeared and the Complainants not no one for them having appeared before me the undersigned clk of the Circuit Court within and for said County & State, and it appearing that no service had been had on the Witnesses Subpoenied to appear before said Clerk on this day the taking of the Depositions were continued until the 29th Inst ——— December 29th AD 1846

The Deposition of Jesse Darnell a witness produced sworn and examined before Joseph Montgomery clerk of the Circuit Court within and for the County of Schuyler & State of Illinois, to be read in evidence in the trial of a certain Suit now pending & undetermined in the Circuit Court of Henderson County and State of Illinois, wherein David Lynn administrator of the Estate of David Lynn deceased and others are Complainants and Samuel W Lynn and other are Defendants, on the Chancery side of said Court in pursuance of a Notice hereto annexed who in answer to the several interrogatories herein propounded to him doth depose and say as follows, <u>towit</u>, on the part of the said defendant Samuel W Lynn,

1 Are you or not acquainted with the parties Plaintiffs and defendants in the

[11850-81]

above entitled cause, if Yea, how long have You Known them, and when and where did You Know them?

Ans I was acquainted with David Lynn decd. in fall of 1839 in the Iowa Teriton and in Warren County now Henderson County Illinois, I am also acquainted with Ezekiel W Lynn, also with Lucius Cook & Prudence Cook and also with Charles Henry Brainard but not with Eliza Jane Lynn, and also with Samuel W Lynn who I have known almost ever since I came to the State of Illinois which I think was some time in 1834, I am not acquainted with Stephen Bellamy,

Quest 2 Were You or not acquainted with David Lynn decd. if Yea, when where and how long have You Known him?

Ans I became acquainted with said David Lynn decd in 1839, but had seen him often before that time, in what is now Henderson County Ills

3, Did or did not the said David Lynn decd live by himself, if not with whom did he live, and how long did he live with any one?

Ans He lived with Samuel W Lynn from the time he came to this State up to the time of his death.

4 How far did You live from the residence of the said Samuel W and David Lynn during the period of Your acquaintance with them up to the time of the death of the said David?

Ans I resided within a mile and a half of their

residence for six months in the Years of 1839 & 1840, and was occasionally there before and after that time.

5th Are You or not acquainted with the land upon which the said Samuel W and David Lynn decd resided at that time, and from whom was said land purchased?

Ans I am well acquainted with said land I tried to purchase it myself, and I believe it to be land in controversy in this suit, and that said land was purchased from Stephen B Munn by Samuel W Lynn.

6 Did You or did You not loan money to pay for said land, if Yea, to whom did You loan it, and what were the circumstances under which you loaned the money?

Ans I did loan One hundred and thirty one Dollars to pay for said land, Samuel W Lynn first spoke to me for the loan of said money and said that he would be down after it in a few days and the said Samuel W was taken sick, and the said David Lynn decd came down for the money, and was the bearer of an order authorising me to sign the name of the said Samuel W Lynn to a note for said money, which said order was signed by the said Samuel W Lynn, I let David Lynn have the money, he the said David signed his name to the note as security, as I understood it at the time, and I signed Samuel W Lynn's name to the note in pursuance of said order, I saw Samuel W afterwards and he offered to give me a new note if I wished it, and take up the

old one which I had signed the said Samuel W, name to, which I did not do at that time believing that said Samuel W would was good and would pay me without it.

7 Has said Note been paid or any part of it, if Yea, by whom was it paid and what has become of said Note?

Ans Samuel W Lynn paid me twenty dollars on the 20th day of January 1841, and has since given me his individual Note for the residue of said money and taken up the old Note.

8 Did You at the time that the said David Lynn decd came for said money have any conversation with him in relation to said land and money if Yea, State what that conversation was?

Ans I cannot state positively what was said by the said David but from the best of recollection he said that he had assisted the said Samuel W to pay for his the said Samuel W land, and that he had assisted Samuel W more than his other Children, for the reason that he had lived with him, and expected to live with him as long as he lived

9 To what land did the said David refer to in Your last answer

Ans To the land on which the said Samuel W and David Lynn decd resided at that time,

10 Did You understand from the said David Lynn decd, at the time that he got the money from

Son, who borrowed the said money whether for his use or the said Samuel W;

Ans My understanding was that the money was borrowed by said Samuel W to pay for the land before referred to, from what said David said at the time the money was borrowed of me and I looked to the said Samuel to refund to me my money

(Signed) Jesse Darnell

State of Illinois }
~~Hancock~~ Schuyler County } S

I Joseph Montgomery Clerk of the Circuit Court within and for said County State do hereby certify, that the above deposition Jesse Darnell was sworn to and signed by the deponent before me and in my presence, and that the said deposition was taken by me on the 29th day of December AD 1846 at my office in Rushville in the County of Schuyler State of Illinois between the hours of Ten O'clock in the morning and four O'clock in the afternoon of said day

In Testimony whereof I have hereunto set my hand and seal of said Circuit Court at Rushville this 29th day of December AD 1846 Joseph Montgomery Clk

(L S)

It is agreed by the complainants to waive all exception to this deposition on account of the want of notice of the time of taking the same, and on account of its being taken at a time not specified in the notice and to waive all exceptions to said deposition not relating to the substance thereof

Browning & Bushnell
for Compts

[1850-83]

Please take Notice that on the fourteenth day of April A.D. 1846, between the hours of Ten O'clock in the morning and five O'clock in the evening of the same day, and to continue from day to day if necessary before John S. Pollock Clerk of the Circuit Court of Henderson County and State of Illinois, at the said Clerks office in the Court House at Oquawka I shall proceed to take the deposition of Daniel Putnam who is about to depart from this State and of others to be read in evidence in a certain Suit in Chancery now pending and undetermined in the Circuit Court of Henderson County and State of Illinois, wherein David Lynn, Lucius Cook, Prudence Cook, Ezekiel W Lynn, Charles H Brainard and Eliza Jane Lynn are complainants, and Samuel Lynn and Stephen B Munn are defendants when and where You may attend if You think proper, and cross examine the said witness

Samuel Lynn
By Manning & Swift
his Sol

Sheriffs Return thereon

I have served the within Notice by leaving a true copy of the same in the hands of Lucius Cook, E. W. Lynn, Prudence Cook, David Lynn David Lynn, Eliza Lynn & Charles Henry Brainard, April 4th 1846

S. S. Lee. Sheriff H C Ills
By Samuel Bird Deputy

State of Illinois }
Henderson County }

The Deposition of Daniel Putnam of the County of Henderson & State of Illinois a witness produced sworn and examined before John S. Pollock Clerk of the Circuit Court within and for the County and State aforesaid on the 14th day of April AD 1846 at the Clerks office in the Court House in Oquawka in pursuance of a Notice served on the said Complainants to be read as evidence on the trial of a certain cause in Chancery now pending & undetermined in the Circuit Court of said County on the Chancery side thereof, wherein David Lynn admr. &c, Ezekiel W Lynn, Prudence Cook late Prudence Lynn and Lucius Cook her husband & Charles Henry Brannan and Eliza Jane Lynn, grand Children & minor heirs at law of David Lynn decd. who prosecute &c Complainants and Samuel W Lynn and Stephen B Munn are defendants, on the part and behalf of the said defendants, the said Daniel B. Putnam being first duly sworn according to law, deposeth and saith in answer to the several Interrogatories on the part of the said defendants as follows Cont.

Quest 1 Are You acquainted with the parties to this suit

Ans I am acquainted with all excepting Stephen B Munn.

2 Were You acquainted with David Lynn decd.?

Ans Yes,

3 Did You ever hear said David Lynn decd. say that

[1850-84]

that he had given as a child, part, money to purchase land for himself, Samuel W Lynn & if Yes, what land did he refer to?

Ans I heard him say that he had given his children all money to buy land, with the exception of Mr. Brainard I think.

4 Did You understand from the said David Lynn dec^d what land Samuel W Lynn purchased with the money advanced to him?

Ans I understood that he had purchased the land upon which he then and Yet resides.

5 To whom did You understand from the said David Lynn that the South half of section one Township Ten North, Range five West belonged to when Stephen Bellum was paid for the same?

Ans I understood that the land upon which they then lived, belonged to Samuel W Lynn when paid for,

6 How long and when were You acquainted with the said David Lynn previous to his death?

Ans I was acquainted with him from the summer that he came to this County, then Warren County, until his death.

7 With whom did the said David Lynn live from the time of You acquaintance with him till that of his death?

Ans I never knew of him living with any other person than Samuel W Lynn.

Cross Examination of Daniel Putnam

Quest 1 How far did You live from the said David Lynn

Ans Between three and four miles.

2 Did You have more than one conversation with the said David Lynn on the subject of giving money to his Children for the purpose of purchasing land and as to the ownership of the land said to be purchased by Samuel W Lynn. if You, State how many, and when, and when they took place,

Ans I cant say that there was more than one, but there may have been others, I cant say how long it was before his death, it was not far from where Samuel W Lynn now lives where it occurred

3 Did David Lynn say in that conversation that he had given Samuel W Lynn any Money with which to purchase land for himself

Ans I understood that he had given all his Children money to purchase land with, but one he had not given as much to as the rest, or had not given any to.

4 Did he in that conversation say that Samuel W Lynn was the owner of any land at that time?

Ans I cannot recollect what the old man did say nor what he did not say in relation to that land but I understood that it belonged to Samuel W Lynn when he paid for it.

5 Was this understanding on Your part Your own inference from the conversation or what David Lynn then said?

Ans It is hard for me to say whether he did really say it or not, but it was my understanding.

[11850-95]

6 How much money did he say that he had given each of his children to purchase land with?

Ans I cannot say how much, if he told me I cannot recollect.

7 State what said David Lynn said in said in that conversation in regard to the purchase of the S½ 1. 10 & 5 W.

Ans I dont know that he stated the No of the land, if he did I dont mind it — I cannot state the precise words, but there was a conversation and there was a chat over the country about it —

8 Did not David Lynn claim in that conversation that the land upon which he and Samuel W Lynn then lived was his own?

Ans He said what is here is mine, but at my death all is Samuels, he said that he lived with Samuel and at his death all was to be Samuels

9 Was that place which he and Samuel were then living upon the S½ 1. 10 & 5 W.

Ans He then lived where he now lives, that is Samuel W Lynn.

10 Did this conversation take place at or near where Samuel then lived

Ans It was not far from where he now lives

11 How many Years have elapsed since this conversation took place

Ans I cannot state precisely but it is within the last 6 or 7 Years, it was previously to his death, but I cannot state how long —

12 Did said David Lynn at that time state to you what was the contract for the purchase of

the

the S½ 1. 10. N 5 W. from Stephen B. Munn, and who furnished the money to pay for the same, if You, State the contract as he said, and who furnished the money?

Ans If he said any thing in regard to it. I cannot recollect it,

13 What was the situation of David Lynn at the time of that conversation, was he intoxicated or not?

Ans He was able to go about, but I could smell liquor on his breath, I would not consider him a drunk man,

14 Did David Lynn ever after that conversation claim said property where he was living as his own in Your presence?

Ans I dont recollect that he did.

Reexamination in Chief by the Defendant.

1 Did You not understand from said conversation with the said David, that the said David gave the said Samuel money to purchase the land which he and Samuel then lived upon,

Ans He gave all the children money to purchase land, with the exception that I made before, I understood in that conversation that the land upon which Samuel lived was to be his when paid for.

2 In said conversation did said David claim the said land, upon which they then lived to be his,

Ans He said what is here is mine, but I live with Samuel, and at my death all is Samuels,

3 Did he not say in that conversation, that he the said Samuel, had not obtained the title to

his the said Samuels land, the land upon which they then lived?

Ans He said that Samuel had not yet paid for it, but it was his when paid for.

4 In answer to question 8 on Crop examination might not David Lynn when he said what is here is mine, have had reference to the moveable property that was then there?

Ans He might. I dont know. I did not ask him.

Reexamination by the Complainants.

1 Did David Lynn in that conversation say any thing in regard to the purchase from Stephen B Munn, of the land he and Samuel W Lynn then lived upon, if yea, state what was said?

Ans I cant say the precise words, and understood in the same conversation that the land was Samuels when paid for.

2 Did your understanding arise from what was said during that conversation, or from what was said in the neighbourhood, and through the country, by others about the matter

Ans I understood it from our conversation, and also from neighbourhood talk.

3 Are you interested in the result of this suit in any manner? Objected to by Defts Counsel

Ans I am not — (Signed) Daniel B Putnam

State of Illinois
Henderson County } I John S. Pollock clerk of

the Circuit Court within and for the County and State aforesaid do hereby certify that on the 14th day of April AD 1846, between the hours of Ten O'clock in the morning and five O'clock in the evening of the same day at my office in the Town of Ogdensburgh in said County and State in pursuance of the above notice, to take the Deposition of Daniel B. Putnam, that one of the defendants Samuel H Lynn and also the complainants by their attorney appeared before me, and at the said time and place I proceeded to Examine the Witness Daniel B Putnam upon oath, upon all such interrogatories as were directed to be put by either party litigant and that I in my own hand, reduced to writing such Interrogatories, together with the answers of the said witness, in the order they were propounded and answered, and that at the said time and place, the said above deposition so as aforesaid taken by me, was sworn to and subscribed by the said deponent, before me and in my presence

In Testimony whereof I have hereunto set my hand and affixed the Seal of said Court At Ogdensburgh this 14th day of April AD 1846

(L S)

John S. Pollock Clk

The following Depositions were read in evidence in the trial of said cause, the Notice ~~Notice~~ to the Defendants, cannot be found among the file, the depositions read in the words and figures following to wit, "

The Deposition of the witness produced, sworn and examined at the Clerks office of the County Commissioners Court, of the County of Warren and State of Illinois in a certain Cause now depending in the Circuit Court of Henderson County and State of Illinois on the Chancery side thereof, between David Lynn administrator of the Estate of ~~Samuel~~ David Lynn decd Ezekiel W Lynn, Prudence Cook Lucius Cook, Charles Henry Brannon and Eliza Jane Lynn Complainants, and Samuel W Lynn and Stephen B Munn Defendants on the part of the Complainants

Peter Butler of lawfull age answered to the following Interrogatories

Inter. 1 Are You acquainted with the parties complainants and Defendants, and if so how long?

Ans I have been acquainted with Samuel W Lynn Lucius N. Cook and Ezekiel W Lynn some twelve or thirteen Years more or less and with David Lynn (not intimately) but I think some Ten Years.

2 Have You ever been Sheriff of Warren County in the State of Illinois — and if so what Years.

Ans I was Sheriff of the County of Warren in the State of Illinois, elected in August in the Year of our Lord one thousand eight hundred and

his the last Surveyed land, the last year thirty two, and went out of office when my successor was qualified in the Year of our Lord one thousand eight hundred and thirty four,

3 Are You acquainted with the half section of land on which David Lynn deceased, in his life time resided, and on which Samuel W Lynn now resides?

Ans I am acquainted with a tract of land, am not positive whether it be a quarter section, or half section on which both David Lynn now deceased, formerly resided, and at the same time Samuel W Lynn also resided, and believe Samuel W Lynn to reside there still,

4 State if You please, whether You Surveyed the land You speak of in answer to the 3rd. Interrogatory: if so for whom did You survey it.

Ans I did Survey it, and I believe I recorded the Survey in the name of David Lynn deceased and my present impression is that Samuel W Lynn paid me for surveying, and the time was between the Years AD 1831. and August AD 1834,

5th. State whether or not, You ever heard Samuel W Lynn say to whom said land belonged? if You say to whom he said it belonged, and at what time the Conversation occurred?

Ans I have not a distinct recollection of hearing him say to whom it belonged.

Cross Examined.

Quest 1 Do You recollect of ever having heard Samuel W Lynn say to whom the land about which You have been

testifying belonged?

Ans I dont now recollect.

(Signed) Peter Butler

Patrick R Haley of lawful age presented himself and answered to the following Interrogatories.

Quest 1 Are You acquainted with the parties Complainants and Defendants? and if Aye, how long?

Ans I am acquainted with a part of them, to wit Samuel W Lynn, David Lynn deceased, Ezekiel W Lynn, and Lucius H. Cook, and the acquaintance was about ten or twelve Years since,

2, State whether or not You were ever Sheriff or Deputy Sheriff of Warren County, if either during what Years, and did You collect taxes in that Capacity in Warren County?

Ans I was Deputy Sheriff of Warren County, and collected Taxes in that Capacity for the Years AD 1835 and 1836.

3 Are You acquainted with the tract of land on which David Lynn deceased, resided during the Years 1835 and 1836 and on which Samuel W Lynn then resided and now resides, if Yea, who paid the taxes on said land, during the Years 1835 and 1836?

Ans I was acquainted with the land at that time and both were living on it, but cannot tell who lives on it now, I recollect calling at old Mr. Lynn's, and of him paying me some taxes, at first I did not recollect with regard to the taxes, but by refreshing my memory by looking at the Tax list, I recollect to have received taxes

of old Mr. Lynn, or David Lynn Sen, which taxes were received in the Years 1835 or 1836.

Cross Examination

Quest 1 Do You know who paid the taxes on the land about which You have been testifying for the Years 1835 and 1836, or any other Years, or at any time?

Ans I have no recollection of receiving any taxes at any but one time, I collected the taxes in Warren County for two Years.

2, Can You State from Your tax list, that You say You have examined, who at any time paid the taxes on the land about which You have been testifying

Ans I see that I have marked paid, opozite to David Lynn Sen name, which is against the same land, as I uniformly did in receiving taxes, beyond that, and what I have stated above I have no recollection.

3, Have You not stated since being here examined that You could not ascertain from the tax list who paid the taxes on the land about which You have been testifying

Ans I do not recollect whether I made such a statement or not, but I now State from the tax book I cannot tell whether old Mr. Lynn paid the taxes on that land or not

(Signed) P. R. Haley

Jno T. M Butler of lawful age presented himself and answered the following Interrogatories

Quest 1 Are You acquainted with the parties Complainants and defendants, to this suit, if Yea, how long?

Ans I have been acquainted about thirteen Years with Mr. Samuel W Lynn, David Lynn decd. till his death but not quite so long back, with Mr. Cook this wife nearly as long and with Ephr W Lynn some eight or ten Years.

2 State whether or not You were Sheriff or Deputy Sheriff of Warren County, if either, during what Years and if any, did You collect taxes in Warren County and if so how long?

Ans From Sept. 1832, to about that time in 1834 I was Deputy Sheriff, and from about Sept 1836 to about that time in 1840 I was Sheriff of Warren County and collected taxes in 1833 and 1834, also in the other four Years above named.

3 Are You acquainted with the tract of land on which David Lynn deceased resided from the Year 1834 till his death, and on which Samuel W Lynn then resided and now resides if Yea, who paid the Taxes on said land during the Years in which You collected taxes, and in whose name were the receipts given?

Ans. I am acquainted with it, It is the S½ 1.10 N R 5 W. In 1833 & 1834, I have no recollection that that the taxes on said land was paid to me for 1836. to 1840 they were paid to me in the name of David Lynn by Samuel W Lynn, the receipts were always given in the name of David Lynn the money was always paid to me by Samuel W Lynn

(Signed) Ira H. M. Butler

State of Illinois
~~Henderson~~ Warren County

I Daniel McNeil clerk of the County Commissioners Court in and for said

[11850-92]

County hereby certify that the foregoing Interrogatories were reduced to writing, together with the answers thereto in the presence of the parties litigant (by their Counsel) and signed by the witnesses severally towit, Peter Butler, Patrick R Haley and Ira F. M Butler who severally affirmed to the answers to the Interrogatories put to them severally before me, at my office in Monmouth this 11th day of September AD 1847

In Testimony whereof I hereunto subscribe my name, and affix the Seal of said Court at Monmouth this 11th day of September AD 1847

David W Neil Clk

And afterwards towit at a court holden at the Court house in Aquawka on the third Monday of Septemb AD 1847 the following order was made towit,

David Lynn admr. &c
v. } Chancery
Samuel W Lynn et al

This day came the parties and their attorneys, and by agreement it is ordered that this cause be submitted to the Court upon the bill answer, depositions, and written argument of counsel, to be by him decided in vacation, and the decision to be forwarded to the Clerk of this Court together with the papers filed herein

And afterwards to wit, on the 6th day of October AD 1848, the following Decree was filed in the Clerks office, in the words & figures following to wit,

David Lynn, Ezekiel W Lynn
Prudence Cook and Lucius Cook
her husband, Charles Henry Brainard
and Eliza Jane Lynn by her next friend
David Lynn

vs

Samuel W Lynn &
Stephen B Munn

In the Circuit Court
of Henderson County
In Chancery

This cause having been submitted to the court by the Counsel of the respective parties, and by their consent to be decided in vacation upon the Bill answers, Replication, exhibits proofs &c And the Court being now sufficiently advised in the premises; It appearing to the court from an examination of the premises aforesaid that David Lynn late of the County aforesaid deceased, died at the time mentioned in the said complainants bill, and that the said complainants David Lynn, Ezekiel W Lynn Prudence Cook, Charles Henry Brainard & Eliza Jane Lynn together with the said Defendant Samuel W Lynn are the children and only heirs at law of the said David Lynn deceased, and that such are entitled in Equal parts as tenants in Common to inherit the real Estate of the said David Lynn deceased, he having died intestate, And it further appearing to the Court

that the said David Lynn at the time of his death, by virtue of his contract of purchase with the defendant Stephen Bellamy was the equitable owner of the South half of Section No (1) one, in Township No (10) Ten North of the base line, in Range (5) Five West of the fourth principal Meridian, he having paid all the purchase money therefor in his life time, with the exception of $115.60 paid by the said defendant Samuel W Lynn on the 2nd Nov, 1840, and $109.60 paid by said defendant on the 25th October 1841, and $61.90 paid by said defendant on the 10th day of June 1842, making the sum of $286.10, paid as aforesaid by the said defendant towards the purchase money of the said land; And it further appearing to the court that the whole of the purchase money of the said land has been paid by the said David Lynn in his life time, and by the said Samuel Lynn since the death of the said David — It is therefore ordered adjudged and decreed that the said Stephen Bellamy do within the period of six months from the date of this decree make, execute and deliver to the said Complainants and the said Samuel W Lynn as tenants in common, a good and sufficient Warranty deed for the premises before described, according to the true intent and meaning of the contract of purchase by the said David Lynn deceased, from the said Stephen Bellamy. And it further appearing to the Court that the

On the 21st. day of September AD 1847, the following tax receipt with the indorsement thereon was filed as evidence in said Cause Covil.

State of Illinois
Warren County } Sheriffs Office July 21. 1836

Received of Samuel W Lynn four Dollars and Eighty cents, being the amount of Tax due to the State of Illinois on the following described land for the Year herein set forth,

Acres	Description	Year tax	Amount of Tax
320	S½ 1. 10 N 5 W	1836	4.80

John G. Haley Sheriff
WC.

Endorsement,

As Solicitor for complainant I agree that this receipt shall be admitted in evidence without proof of Haleys hand writing, and admit that he was Sheriff of Warren County at the time of signing the same, Sept. 21. 1847. Browning & Bushnell

said Defendant Samuel W Lynn since the purchase of the said premises by the said David Lynn deceased, has used occupied and enjoyed the same, and received the rents and profits thereof, and has also made large and valuable im-
-provements on the same, and the amount and value of the said improvements, rents and profits being uncertain, It is therefore further ordered adjudged and decreed that the Master in Chancery of Henderson County, after giving ten days Notice to the parties or their attorneys proceed to enquire into and ascertain the value of the rents and profits of the said premises, from the time they were first occupied by the said defendant Samuel W Lynn to the present time, And also that the said Master proceed to enquire into and ascertain the value of all the improvements heretofore made on the said land, said facts to be ascertained by an examination of the bill, answers Depositions, exibits and the testimony of witnesses, and that the said Master report his proceedings herein to the next term of this Court — And it further appearing to the Court the said Complainants as heirs of the Estate of the said David Lynn deceased are entitled to five Sixths of the value of the rents and profits of the said land, and the said Samuel W Lynn to one Sixth of the same, And that the said Samuel is also entitled to receive pay for five Sixths of all the improvements made on said land, and also to be refunded

[1850-97]

with interest the purchase money paid by him upon the same, It is therefore ordered adjudged and decreed, that the said rents and profits when ascertained and reported to the Court, be set off and allowed against the purchase money advanced by said Samuel W Lynn and the improvements made by him said Samuel W Lynn on said land, and that for the balance that shall remain due to said Samuel W Lynn if any such balance shall remain, and shall have and retain a lien upon the said land untill the same shall be fully paid and satisfied either by the administrator or other heirs of the said David Lynn deceased, And the said land or so much thereof as shall be necessary to pay the same, shall be liable to be sold therefor, as in cases of Judgments at law, and to be redeemed from such sale in the same manner and at the like periods of time as is allowed in cases of Judgments at law, And it is further ordered adjudged and decreed, that in case the said rents and profits shall exceed the said improvements and advances made by the said Lynn, then the said complainants shall have a like lien upon the said premises for the collection of the same, as is herein provided and adjudged for the benefit of the said Samuel W Lynn, and in case of sale the said premises shall be subject to the same redemption as aforesaid — And it is further ordered adjudged and decreed that so soon as the respective rights and interests

of the parties relative to the improvements advances, and rents and profits shall have been ascertained as aforesaid and adjusted and settled as herein before directed, partition shall be made of the premises aforesaid by Commissioners to be appointed by this Court, according to their respective interests, and rights herein before adjudged to them, quantity and quality relatively considered, And it is further ordered adjudged and decreed that the complaindants and Defendant Samuel W Lynn each pay one half the costs of this proceeding, and that Execution issue therefor, And it is further ordered adjudged and decreed, that as to all other matters and things in the complainants bill contained not herein provided for, the said Complainants bill be dismissed

Sept. 30th 1848 (Signed) N. H Purple

And it is further ordered that either party be allowed to appeal from this Decree by filing a Bond according to law at the next term of the Circuit Court of Henderson County

Sept. 30. 1848 (Signed) N. H. Purple

And afterwards, to wit, at a Court holden in Aquaska on the 5th Monday of April AD 1849 (to wit on the 2nd day of May AD 1849) the following order was made, in the words and figures as follows –

David Lynn adm. &c
vs
Samuel W Lynn et al

In Chancery

This day came the defendant Samuel W Lynn by his Counsel and prayed an appeal to the Supreme Court

Thereupon it is ordered by the Court that the prayer be granted and the appeal allowed upon the said Defendant entering into Bond in the Sum of Five hundred Dollars with Samuel Daniel and Azro Patterson as Security within the space of thirty days from this date —

And afterwards to wit on the third day of May A.D. 1849 the Defendant Samuel W Lynn filed his Bond in pursuance of the above order, in the words and figures following to wit, "

Know all men by these presents that We Samuel W Lynn as principal and Samuel Daniel and Azro Patterson as Securities are held and firmly bound unto David Lynn, Ezekiel W Lynn, Prudence Cook and Lucius Cook, Charles Henry Brennand and Eliza Jane Lynn in the penal sum of Five hundred Dollars lawful money of the United States, for the payment of which well and truly to be made, we hereby bind ourselves, our heirs, Executors, administrators and assigns, jointly and severally and firmly by these presents, witness our hands and Seals this Second day of May A.D. 1849 — Whereas in the case of David Lynn

administrator and one of the children and heirs at law of David Lynn deceased and Ezekiel W Lynn, Prudence Cook late Prudence Lynn children and heirs at law of ~~Dav~~ the said David Lynn deceased, and Charles Henry Brannard and Eliza Jane Lynn grand children and minor heirs at law of the said David Lynn deceased, who prosecute by their next friend David Lynn, and Lucius Cook who is intermarried with the said Prudence Cook complainants against Samuel W Lynn and Stephen B Munn defendants pending on the Chancery side of the Circuit Court in and for the County of Henderson and State of Illinois there was by agreement of the said parties a Decree signed and made in the vacation between the September Term thereof AD 1848 and the April Term thereof AD 1849 from which said Decree by the terms thereof either of said parties had the right to appeal at the April term of said Court AD 1849, and whereas at the said last mentioned term of said Court, on application of the said Samuel W Lynn; and by consideration of the said Court, the said Samuel W Lynn was granted an appeal from the said decree, to the Supreme Court of the State of Illinois, on condition that the said Samuel W Lynn should enter into an appeal Bond in said cause in the penal sum of Five hundred Dollars, with Samuel Darnell and Azro Patterson as his securities, within thirty days from the day of granting said appeal Court, within thirty days from the second day of May AD 1849,

Conditioned according to law. Now therefore the Condition of the above obligation is such that if the said Samuel W Lynn shall well and truly pay the Judgment costs, interest and damages, which may be adjudged against him, and shall do and perform the requirements of said decree in all things if the decree in the said cause aforesaid be affirmed by the Supreme Court aforesaid, and shall also duly prosecute his said appeal, then the above obligation to be void, otherwise to be and remain in full force and effect— Samuel W Lynn Seal
Samuel Darnell Seal
Azro Tatterson Seal

State of Illinois
Henderson County } I John S. Pollock clerk of the Circuit Court within and for the County And State aforesaid, do hereby Certify that the foregoing sheets contain full perfect and true Copies, of the Bill, Summons, Answer, Replication, all the Depositions on file in said Cause, Transcript of Record from the State of Connecticut, Tax receipt, all the orders in said Cause, Decree and Appeal Bond, the foregoing comprising the full Record in said Cause ~~[illegible]~~ ing the Papers and Matter ~~[illegible]~~

~~[illegible]~~

Testimony whereof I have hereunto my hand and affixed the Seal Court at Oquawka this th, day of June AD 1849

John S. Pollock Clk

David Lynn admr. et al.
vs
Samuel W. Lynn et. al.
Record

Filed June 11. 1849.
S. Leland Clk.

State of Illinois ss Supreme Court
Northern Division
June Term A.D. 1849

Samuel W. Lynn, appellant
vs
David Lynn, administrator and heir of David Lynn, dec.d et al. appellees } Appeal from Henderson.

And now comes the said appellant by Manning his counsel and says that in the proceedings adjudications and decree in the said cause had and made there is manifest error appearing on the face of the record now before the Court here: And the said appellant assigns and shows to the Court now the following errors on the said record, and in the said decree to wit:

1. The Court below erred in finding and decreeing that David Lynn deceased was at the time of his death the equitable owner of the South half of section One in Township Numbered Ten North in range five west of the fourth principal meridian

2. The said Court erred in finding adjudging and decreeing that the said David Lynn deceased had paid all the purchase money for said tract of land excepting $115.60, $109.60, & $81.90 paid by Samuel W. Lynn as in said decree set forth.

3. The Court below erred in adjudging and decreeing that Stephen B. Munn should convey to the complainants in the Court below, and the said appellant as tenants in common the said tract of land

4. The said Court erred in not decreeing that the said Munn should convey the said tract of land to the said appellant.

5. The said Court below erred in not decreeing that the said Munn should convey to the said appellant a part of said land equal in proportion to the whole of said land, as the part of the purchase money paid by said appellant is in proportion to the whole amount of said purchase money –

6. The Court erred in decreeing to the heirs of David Lynn deceased a part of said land greater in proportion to the whole of said land, than the part of the purchase money paid by David Lynn dec. was to the whole amount of said purchase money –

7. The Court below erred in finding that David Lynn deceased had paid any part of the purchase money of the said land.

8. The Court erred in decreeing that the complainants below were entitled to five sixths of the value of the rents and profits of said lands.

9. The Court erred in decreeing that the said appellant was entitled to only five sixths of all the improvements on said land

10. The Court erred in decreeing that partition of the said land should be made between the said complainants and the said appellant according to their rights adjudged in said decree –

11. The Court erred in decreeing that the said appellant should pay one half the costs in the Court below

12. The Court erred in not decreeing that the said bill should be entirely dismissed

Wherefore for the errors aforesaid the said appellant prays the Court here

that the said decree and judgment of the said Court below may be reversed, set aside and for nought held as if the same had never been, and that the Court here decree that the said bill be dismissed —

Julius Manning
Sol. & Counsel for Appellant.

[1850-76]

Saml. W. Lynn

vs

David Lynn adm. et al.

Assignment of Errors

Filed June 12. 1849
L. Leland Clk.

Lynn

vs

Lynn.

On the 18th of April 1834 Stephen B Munn ~~proposed in writing to~~ made a written proposal, by the terms of which he offered to Samuel W Lynn ~~to sell~~ the premises in question upon certain specified terms, and allowed ~~him~~ three months within which ~~time~~ to accept the proposition. On the 26th of June 1834 S W. Lynn wrote to Mr Munn stating that his father, who was David Lynn deceased accepted the proposition with perhaps some slight modification, and signed it "Samuel W Lynn for ~~deceased~~ his father David Lynn." On the back of a copy of this letter, on the 19th of July 1834 Munn, wrote and executed a covenant, ~~to convey the premises~~ to Company ~~to Lynn upon the payments being made~~ the premises to S W. Lynn, upon the payments being made according to the terms as specified in the letter of acceptance ~~of the proposition~~ which agreement was delivered to Samuel, who made the first payment, with the money as is alleged of David Lynn, and a receipt taken stating that the money was received of David by ~~Samuel~~ the hands of Samuel. Similar receipts were taken for all the balance of the purchase money, which was paid up to the time of the death of David. The balance $286.10 ~~dollars shall remain unpaid which was subsequently~~ was paid by S W Lynn to the agents of Munn. Some time after the execution of the agreement of the ~~26th~~ 19th of July ~~Munn, [illegible]~~ at the suggestion of Samuel W. Lynn Munn executed in New York and forwarded to his agents in Lunenburg a more formal indenture, for the conveyance of the land to David Lynn, which was ~~never~~ probably never seen or executed by David, but ~~probably~~ still remains in the agents hands.

The Bill charges that it was the design and intention of all parties that the sale of the land should be made to David ~~Lynn~~ and not to Samuel, and that the name of Samuel, was inserted

in the original proposition and in the agreement of the 19th July ~~1834~~ by mistake; and that all the payments which were made ~~with~~ up to the time of ~~Sam~~ Davies death were made with his money.

Samuel W. ~~avers~~ in his answer, ~~say~~ denies the alleged mistake and insists that the sale was intended to be made to him; and that although the money with which the payments were made came from his father, yet it was ~~loaned~~ advanced to him ~~by his father~~ as a loan and that the receipts were taken in his fathers name as an evidence of the amount ~~loaned~~ of money paid and for which David was entitled to a lien on the land. ~~and for which the was David was entitled to a lien on the land~~ The answer admits that Samuel W. after the agreement of 19th July, requested Minnis agents to get a bond for a deed running to David, that he might hold the land ~~or~~ David agreeing ~~that he would convey~~ as they say in order that David might hold the land who was to arrange himself to convey the land to Samuel W. or devise it to him, upon settlement. And that this agreement would have been rescinded to rectify but that Minnis never executed the bond. It may be here remarked, that if Minnis never executed such a bond he ~~forwa~~ did executed and forwarded to his agents, an agreement or indenture, the effect of which was the same, which in all human probability, was executed in pursuance of the suggestion made by Samuel W. to Minnis agents. ~~that his father should have a bond for a deed.~~ Samuel went into possession ~~of the premises, and~~ made ~~valuable and lasting~~ improvements and cultivated a farm upon the premises ~~him and cultivated a farm upon them~~, and David resided there with him ~~till his~~ the time of his death. David was ~~infirm~~ old ~~and~~ and infirm and appears to have been ~~unable~~ able to do ~~any~~ but little manual labor at most. Minnis swears that he sold the land to David and to no other person and pertinaciously insists, that he never made any contract for the sale of the land except the one which he sent on to his agents, and which appears never to have been executed by, or accepted by David.

In such a state of facts a trust is created by law and not by the agreement of the parties Balsford vs Burr 2 John. Ch R 405.
In case of a resulting trust there should be a transfer of the legal title to one, while is possessed of the Equity. Here there has been no transfer of the legal title, but that still remains in Brown, whose liability to transfer it grows out of his contract of sale, and does not depend upon the simple fact of his having received the purchase money. The true character of this bill is, for the specific performance of that contract, and not to compel the performance of a resulting trust.

A good deal of evidence is adduced showing the circumstances of Samuel, and his conduct and professions as well as those of David in relation to the purchase and the ownership of the land.

It is not a question of so much real as apparent difficulties to determine for whose benefit the contract & purchase was really made, and to whom in equity this land really belongs. Upon a careful examination of the whole record we are satisfied with the decree of the circuit court. Were David alive and this claim set up by him instead of his heirs, there can be little doubt that his right should be sustained and yet his legal representatives occupy precisely the same position.

Strictly speaking, it cannot be said that here is a resulting trust, for that is raised by implication or operation of law from a particular state of facts, evidencing the equitable rights of the parties, and does not depend upon a contract for its existence. As where land is purchased by money of one man and the deed taken in the name of another. Here the party who receives the legal title, by operation of law is made the trustee of the other, and not by the agreement of the parties. A resulting trust may be raised, even where the trustee is entirely ignorant of the transaction. Nor can a resulting trust ever arise, where the title is not transferred, but still remains in the hands of the vendor. He can only become trustee, by virtue of some agreement to sell the land which is binding under the statute of frauds. In cases of resulting trust it is frequently competent to inquire into the agreements of the parties, but then it is for the purpose of ascertaining with whose

money the purchase was made. ~~In this case~~ Samuel W. Lynn does not hold the legal title and cannot be considered a trustee ~~in any aspect of the case for he does not hold the legal title~~. Mann ~~who~~ still holds the legal title which he has agreed to convey, and the question is ~~to the trustee, and the trust arises out of the contract~~ to whom he shall specifically perform this agreement ~~of sale and in favor of the person to whom he sold the land or his representatives~~. This ~~renders~~ the whole case ~~in the~~ reduced to this ~~one~~ one question:- Was it the intention of the parties that the sale and purchase should be for the benefit of Daniel or ~~of~~ Samuel?- It will not do to rely upon the last formal indenture running to Daniel Lynn, which was executed on the part of Mann ~~by~~ but never executed by Daniel on his part, as the contract of sale, ~~and sent to him at Dover~~, for that was never completed, ~~and never accepted by Daniel~~ into effect. ~~Whether he was known of its existence is uncertain~~. We must therefore look to the antecedent negociations, and transactions, together with the ~~other~~ circumstances of the case, as explanatory thereof, in order to determine to whom the sale was actually intended to be made. ~~The first is~~ So far as the written evidence ~~is concerned~~ shows, the first is a proposition ~~by Mann~~, for the sale of the land, in terms running to Samuel. This is answered by Samuel for ~~by~~ accepting the ~~letter~~ proposition for and in the name of his father upon the back of a copy of this ~~note~~ letter of acceptance Mann ~~writes~~ executes an undertaking, ~~to convey~~ "In consideration of the within and in fulfilment of the agreement as aforesaid" he bound himself to convey to Samuel ~~the premises in question~~ "when he shall have fulfilled on his part the conditions of said agreement a copy whereof is hereunto annexed". These three papers constitute the only evidence of the contract of sale upon which we can ~~must~~ rely, ~~and we must the only evidence of any sort~~ except so far as it is competent for a court of Equity to look to the other evidence to correct any mistake which was committed in

drawing up the written evidences of the contract. For that purpose parole evidence is competent but not to explain the meaning of the Parties as expressed in the writings. If we are to look alone to these papers, no ~~doubt of~~ doubt can exist, that it was the intention of Samuel W. Lynn, only to accept the position alone of an agent, and not of a purchaser. He intended to bind his father and not himself for the payment of the purchase money. ~~It was his understanding and intention that the sale should be made by and~~ He professed to purchase ~~for his father and as his agent~~ for his father and not for himself. Such is undoubtedly the legal construction of that letter of acceptance and as we have before seen it is not competent to explain its meaning either by parole evidence or ~~by~~ the defendants or in any way to alter it answer except by showing a mistake, which is not pretended. ~~Had~~ Mann ~~brought an action for the purchase money he could~~ could have maintained no suit against Samuel for the purchase money for he never ~~obligated himself~~ undertook to pay it. ~~It is true that in his answer~~ Samuel's attempt in his answer to explain away the effect of the letter ~~of acceptance by stating what he intended by it~~ must be unavailing for he does not pretend there was any mistake in its terms and hence the letter ~~but as he insists upon no mistake, the paper contains the only~~ alone must be evidence ~~of his~~ that intent. But if we were ~~permitted~~ proper to look to the other evidence in the ~~cause~~ case, the truth is abundantly proved even in opposition to ~~the defendants~~ any thing contained in his answer. That it was his intention that the sale should be made to his father and that it was his understanding that ~~it should~~ it was so made. After he saw that Mann had agreed to ~~be~~ ~~convey from Mann to~~ convey to himself, he requested ~~Mann's agent to procure~~ that a Bond for a deed ~~from Mann to convey the land~~ to his father should be given. The ~~money to make the payment~~ purchase money was all advanced by his father, in whose name the receipts were taken ~~and the receipts taken in his own name~~. His father lived with Samuel upon the land, and claimed to own it during his lifetime although he sometimes manifested an intention to donate or devise it to Samuel and once or twice even expressed himself as if it actually belonged to ~~him~~ his son. ~~For~~ Indeed the personal

property upon the farm. When it was taken to sale of Samuel's debts, was claimed by David, and Samuel offered to swear that it belonged to him, ~~although we think it most probable that the personal property belonged to Samuel, as he seems to have been the principal manager in making the improvements, and appears to have carried on the farm on his own account.~~

~~All~~ These circumstances which tend so strongly to prove that the purchase was made by and for David and so understood and intended by Samuel, the latter attempts to explain away in his answer, by insisting that the purchase money, thus advanced by his father, ~~for the purchase of the land~~, was ~~advanced by his father to him~~ really intended, as a loan to him, and that the conveyance was to go to his father, merely as a security ~~for the repayment of the money~~ David agreeing to convey to Samuel upon a settlement of the advances so made ~~for to assign the land to him~~. But the allegation of a loan, it must be remembered, that this allegation of a loan is a new element set up in the ~~bill and~~ answer and which is not proved by it, but must be sustained by ~~other~~ affirmative evidence. Such evidence is wanting in the record. We are of opinion that this record shows that it was the intention and understanding of both David and Samuel to Lynn, that the purchase was made by and for David, ~~who~~ who alone was bound to pay the purchase money. Such is both the legal and equitable construction of this contract of purchase. Such being the case, under the circumstances as presented even if Munn intended to sell and supposed he was selling to Samuel instead of David most probably the latter ~~would have~~ or his heirs would be entitled to a ~~conveyance~~ specific execution of the contract in this case. But we think it equally clear that Munn intended to sell and supposed he was selling to David ~~and not Samuel~~, and that the name of Samuel was inserted in the instrument ~~in mistaken~~ endorsed on the copy of the letter of acceptance, ~~was inserted~~ instead of David's by mistake ~~instead of David's~~. By that letter Munns proposal ~~for~~ to the sale of the land, was accepted by Samuel, as the agent

of David, and for ~~and~~ him and in his name. The covenant to sell and convey was endorsed on the back of a copy of this and refers to it as the consideration of his undertaking, and professes to be in fulfillment of it. And says ~~I will convey the land~~ "they land shall be conveyed when he shall have fulfilled on his part the conditions of said agreement a copy whereof is hereunto annexed." No man can read this covenant without being convinced that it was the intention of Mumm, to make his covenant which was his part of the contract of sale, conform to the other part, which was contained in the letter ~~of accept~~ referred to, ~~and~~ which bound David Lynn to purchase and pay for the land. ~~He could have had no~~ It took both of these papers to constitute the contract of purchase and sale, and Mumm could have had no other design, than to make his part of the agreement conform to the other, if he intended to avail himself of the obligations contained in ~~the other~~ it. We therefore think that the papers themselves ~~show~~ furnish sufficient evidence of the alleged mistake. But more than this; Mumm swears that he never intended to sell and never did sell ~~the land~~ premises to Samuel W Lynn, but that he sold it to David alone. It is true he does not state directly that the name of Samuel, was inserted, ~~instead of David~~ by mistake, in that covenant, ~~by mistake~~ for it seems impossible to make him recognise that ~~covenant~~ agreement at all. And he insists that the subsequent indenture which ~~he sent to his agent~~ it does not appear was executed by David contains the only evidence of Fall. In this however he is manifestly mistaken for the other papers stand here unquestioned which as we have already seen show of themselves a complete contract ~~of sale~~. ~~But~~ At any rate his testimony ~~however~~ serves to show that at no time did he ever intend to sell to Samuel, and consequently if by the terms of the agree-

ment he proposed to sell to ~~Samuel~~ him, it was by mistake. The decree ~~so~~ ~~upon~~ very properly provides for reimbursing Samuel for whatever permanent improvements he may have made ~~upon~~ on the land as well ~~as~~ for ~~the money~~ the purchase money which he has paid since his father's death, and with this he must be content. It may be true that it was the intention of his father, to, donate or ~~bequeath~~ devise this land to him, perhaps as a consideration in part for the care which he took of him in his old age, but until such intention was carried out, by a conveyance or ~~will~~ bequest, it could create no legal or equitable right which the courts can recognise. If he is entitled to any compensation, for taking care of ~~his~~ and providing for his father, we cannot award it to him in this proceeding, but he must seek his remedy elsewhere.

The decree of the circuit court is affirmed, and a procedendo awarded to the circuit court.

Opinion by J. Caton

Dissenting Opinion &c

Filed July 27. 1847.
Wm. Caldwell Clk.

Supreme Court of Illinois
Northern Division
June Term A. D. 1849

Samuel W. Lynn, appellant
David Lynn, admr. &c. et al. appellees } Abstract.

The bill sets forth in substance:

That the appellant and appellees are heirs at law of David Lynn deceased - that in 1832 Samuel W. Lynn came to Illinois from Connecticut, settled on a tract of Government land as a squatter, and returned to Conn. in 1833 - that he persuaded his father David dec^d to remove to Illinois and purchase and settle on the S½ 1 10 N. 5 W. 4th prin. merid. then owned by Stephen B. Munn - that influenced by Saml, the father started in Spring of 1834 in company with Saml - and came thro' New York to ascertain of Munn the terms on which the land could be purchased by David dec^d - that Munn executed a written proposal and allowed David dec^d 3 months in which to accept or reject said proposal - which proposal was in the words and figures following:

"Mr Samuel W. Lynn may also have the S½ 1 "10 N. 5. W. in the Military Tract aforesaid for nine hundred & sixty dollars two hundred dollars cash down, the remainder payable by yearly installments of one hundred dollars each, interest at six per cent per annum on all unpaid at the payment of each installment. I to give a contract to deliver a warranty deed for same on payment of said seven hundred and sixty dollars as aforesaid with interest money to be paid to Mess. Tillson Moore & Quincy

Illinois. Mr Lynn to let me know if he takes the above sections in three months from this date

New York April 18. 1834 Stephen B. Munn"

— that David was old and left the business principally to Samuel, and that the name of Samuel was inserted instead of the name of David in said proposition by mistake, and without David's knowledge, or for convenience to permit Samuel to do the business as David's agent — that in this Samuel acted merely as David's agent — that the 3 months were given to enable David to examine the land determine whether he would purchase it.

— That on the 26th June 1834 Samuel wrote to Munn for his Father as follows:

"Quincy the 26th A.D. 1834

"Mr Munn, Sir, My Father has concluded to take the South ½ 1, 10 N. 5 West and pay you as agreed when you send to Quincy a bond for a deed, then your agent, then your agent will send me a line and I will fulfill on my part you ought not to be so hard with me as to charge me interest this year for I have to sell the improvement to Harrison the same as I pay you for the lots for to keep peace with the Kentuckians and I shall get nothing from it this year. we all arrived safe, my father enjoys good health and the rest of us, the wood lot on the bluffs 36. 11 N. 5 W is a poor lot and I do not want it. I think you could get $150 if you want to take this please to write one Elliott wants it for his farm — Yours &c Samuel W. Lynn for his father David Lynn"

That on the 19.th July 1834 Munn wrote a contract on the back of a copy of the above proposition as follows:

"In consideration of the within and in fulfillment of agreement as aforesaid I do hereby bind myself my heirs executors administrators and assigns to deliver unto the aforesaid Samuel W. Lynn a full and perfect warrantee deed of Lot Six 1. 10 R. 5 W. when he shall have fulfilled on his part the conditions of said agreement a copy whereof is hereunto annexed. In testimony whereof I have hereunto set my hand and seal this nineteenth day of July in the year of our Lord one thousand eight hundred and thirty four

sealed & delivered in presence of John Pilson Jr. — Reuben B Munn Seal"

That the agreement thus made was delivered to Samuel who paid the first payment out of his father's money, and as his father's agent and took a rect. from Munn's agents

"Received of David Lynn by Samuel W. Lynn his son — &c &c"

— that in making out the agreement Munn by mistake referred to the proposition of April 18.th instead of to Samuel's letter of June 26.th; and thereby made the contract to run to Samuel instead of David:

That Samuel discovered the mistake and requested Munn's agents to procure another to be executed to David — that accordingly Munn executed other articles, running to David and sent them to his agents at Quincy to be delivered (which Articles are set out) — that David did not execute and accept the last mentioned agree

ment, at that time, through the persuasion of Samuel.

That Samuel made the remaining payments on said land with David's money, and took receipts in David's name up to the 20. August 1840. when David died — that after David's death Samuel made payment of the balance of the purchase money, with moneys belonging to David's estate —

That soon after the purchase David and Samuel entered into possession of the land — David being a widower and unable to attend to his own business lived with Samuel as a member of his family, and permitted Samuel to attend to his (David's) business.

That Samuel up to David's death always admitted that the land was David's, that he wrote to Munns agents Nov. 14. 1835, that the rents of the land were due to his father —

— That David Lynn made valuable improvements on the land — that Samuel has had the use of the land since David's death — worth $140. annually — that Samuel sold cattle &c belonging to David and has not accounted for the proceeds.

29 — That in June 1835 Ezekiel Lynn & Samuel entered N.W. 11. 10 N. 5 W. — that David loaned Saml. $200. with which to enter the same — that on a partition thereof Saml. had the E½ — that in Oct. afterward Saml. sold and conveyed said E½ to David — that David retained the deed until his death — that David resided with Saml. on said E½ and made valuable improvements thereon — that Saml. got possession of said deed and still has it: — that since David's death Saml. has enjoyed the use of this land to the value of $200 annually, and has mortgaged it to some

innocent mortgage.

That David as security for Samuel paid $200. in Court. which has not been repaid and that on a settlement Samd. will be found indebted to the estate several thousand dollars —

That at the time of the purchase of the land Samd. was poor and unable to purchase with his own means — that Munn has been willing to execute a deed to the heirs of David Lynn

Prayer, that Samuel be compelled to exhibit all papers in his possession &c (specifying them) that an account be taken of the amt. due the estate from Samuel — for moneys advanced and interest and for use, rents & profits of the land — and prays a lien on Samuel's part of the land for the amount found due — prays a partition among the heirs of the real estate, according to their respective interests as heirs — that Munn be required to convey according to the partition made

The answer of Samuel W. Lynn

Admits he came from Connecticut to Illinois in 1832 — returned in 1833. — that he advised his father to remove to Illinois and purchase and settle on S½ 1. 10 R. 5 W. — but his father knowing that he had at expense &c been to Illinois and ascertained the location of said S½ and that it could be purchased &c — He (David) being old &c and wishing to live with Samd. in preference to his other children proposed to Samd. ~~to assist him in making the purchase~~ that he (David) would accompany him to Illinois and examine the location, and if he (David) thought Samd. had been judicious &c He David would

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assist Saul in making the purchase, and reside with Saul in his family, provided he (Saul) would secure him (David) for the advances - which proposal Saul accepted, and offered to give David a lien on the land purchased, until the advance should be settled for, either by the repayment of the money or from the rents and profits of the land - and to these proposals they agreed - denies that he ever otherwise advised his father to remove to Illinois - except under said agreement; - admits that he earnestly and honestly advised his father to remove to Illinois

Says - that he did not come through New York to ascertain the terms of the purchase for he knew those terms long before -

Admits the written proposal of Apl. 18. 1834 but denies that it was made or intended to be made to David - ~~that~~ says that he made the application to purchase - that the 3 months were allowed to him and not to his father - that he (Saul) might have his father's advice under the agreement between them, and his father's aid, if his father approved. -

Denies that he acted for David or under his direction - denies any mistake in the name inserted in the said proposition of Munn. - and that Saul's name was inserted without David's knowledge, or for convenience. - Yet he admits that he had his father's advice in making the purchase according to the terms of the agreement between him and his father - and generally denies all acting under his father except as before said.

Says that he concluded to buy Spl. and his father agreed to advance him money for that purpose, and that he should give his father a

him upon the land until it should be settled between them or until David should "donate" the same to him (Samuel) — That thereupon he Saml. wrote the letter of June 26th. to Munn — Denies that he wrote said letter as the agent of David, or that thereby he intended to give David any right in the land, further than a right to the lien aforesaid — He says that Munn knew the agreement between himself and his father, and that the first instalment was to come from his father, and that he could not get this unless his father approved of the "location" — and therefore he wrote to Munn that David had concluded to take the land" and that the words "and pay you as agreed when you send to Quincy a bond for a deed" referred to the first payment which David was to advance as Munn knew — And in the letter Saml. for himself promised to fulfil on his part the residue of the contract and Munn so understanding it executed the Bond of July 19th. to Samuel —

Says that Munn's agents informed him and not David of the receipt of Munn's bond — that David advanced the 1st. payment to him Saml. and that he paid it over to Munn's agents — not as Davids money but his own

Is not informed whether Munn referred to ~~his letter~~ the proposition of Apl. 18. instead of the letter June 26th. in making the bond — but denies that he should have referred to the letter for that purpose, or that if referred to it would have authorized one different from the one executed — and denies that there was any mistake about it — and that he ever discovered any mistake as charged but he says that for the purpose of securing a lien to David for his advances he did

request Munn's agents to procure a bond to convey the land to David on the payment of the purchase money - David agreeing that he would convey the land to Samuel or Devise it to him upon a settlement - and that this agreement would have been reduced to writing but Munn never executed the bond.

He is not informed about the "articles of agreement set out in the bill but Munn executed a deed to David for the land, and sent a mortgage to secure $760 - to be executed by David - but David refused to accept the deed, or execute the mortgage -

Denies that any such articles as set out in the bill were ever executed or accepted by David -

Admits that one reason of delay in executing the writings to David to secure David's lien on the land was that a part of the land was in the possession of another, but the more weighty reason was that such evidences of the contract as he Saml had requested were never furnished - and this delay continued until David became content without any lien on the land -

Admits the payment of the sums of money, and the taking of receipts therefor as charged in the bill - and says the receipts were taken in David's name to show David the amt. of money paid on the land for which David had the right to require a lien - that these advances were settled for between him and David, and as an

evidence thereof these receipts were surrendered to him (Saml.).

Admits that he has made the payments as stated since his father's death but denies that it was done with David's money, or money belonging to the estate — but with his own money.

Denies that his father entered into possession of the premises — but says he (Saml.) entered into possession, and his father resided with him as a member of his family — that his father was old and infirm and that he attended to his David's business — that David had little to do — had some considerable stock &c — which Saml. took care of fattened &c — boarded the father &c and insists on this as a set off against all the advances —

Says the improvements were made for himself at a cost of to wit: $3000 —

Denies taking any of David's papers improperly

Denies admitting that the land was David's —

Admits the writing of the letter of Nov. 14. 1855 and still admits that the rents & profits belonged to David by virtue of the agreement between him & David — but in the same letter he claimed possession of the land in his own right. —

Admits David advanced $50 to aid in improvements — admits the premises at David's death were worth $3000 — Admits that he has since David's death had the use and occupation of the premises — and appropriated the rents and profits — of the annual value of only $150 — and that he received the rents and profits of the improvements from the time they were made to the time

of David's death, by the consent of David - having otherwise satisfied David for his advances of money -

Denies selling David's Cattle in 1820 says they were his own - denies in like manner selling other property of David's for his own benefit -

Admits that he and Ezekiel in 1835 entered N.W. 11. 10 R. 5. W yet only in this manner — they each entered ½ of S.W. 11. 10 R. 5 W. by preemption, and thereby had a float for 80. a. each which they located on the former quarter - and Ezekiel wishing to obtain Samuel's float - David purchased Samuel's float for Ezekiel for $100. the money charged to be loaned by David to Samuel to enter said land - the assignment being made before payment to the U.S. -

Denies that he ever conveyed the E½ of 11. to David - that he ever delivered a deed therefor to David, and that he was ever paid any consideration for so doing -

Denies that he was poor and unable to pay his expenses when he left Connecticut admits he borrowed $200. on the credit of David in Conn^t. that David paid the note, and that one Coe paid the note to David - and sets up the limitation against demand for the money

The answer claims that a large amt. is due from the estate to Samuel - for things therein mentioned -

Denies his dependance on David for means but acknowledges he was accommodated with advances as aforesaid -

Says that David sold in Conn^t. for

about $2000. - that he (David) paid debts to about $100 - paid expenses here (including complainants) $300 - that during his lifetime he advanced to his 5 children or their representatives $200 each making $1000 - and that he advanced to Samuel $888.63 - which last mentioned sum has been settled except $204.80 against which he claims a set off - and insists on the limitation -

Says that David had personal property at his death to the amt of about $600 - which should have come to the hands of his administrator

The answer further sets up that the administrator obtained a judgment against Samuel for $450 - in an action of trover and insists on the judgment as a bar against all ~~thing, property~~ right - which might have been tried in that cause -

To this answer there was a replication

Deposition of Stephen B. Mugan -

Has seen David Lynn Sr. once, Saml. twice saw David in Apl. '34. in Jersey City on his way to Illinois - Saw Saml. in '32 or Spring '33 - on the subject of purchasing some land owned by me in Apl. '34 saw him on same business - didnt see them together - Sold to David Lynn 5/4.1.10 N. 5 W. - (never sold any to Samuel) for $960 - $200 down. balance $100. annually with interest - sold the land in May or June 1834: Dont think he had any conversation with David Lynn about the land. In April '34 wrote a proposition to Samuel to sell him the land - no recollection

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of the exact words of the conversation but has no doubt the understanding was that David Lynn Sr. was to pay for the land and own it, and not Samuel W. Lynn, and I was to be informed in 3 months whether Saml's father would take the land - received the letter of June 26th and thereupon forwarded his contract --
Has no recollection about it, but has no doubt Samuel was acting for his father. - executed a contract for the land to David Lynn - giving a copy thereof of date 26th June 1834. (date in pencil) - {which articles are entirely different in form from the proposition and bond set out in the bill and admitted in the answer} - the contract was executed in pursuance of the proposition of Apl. 18. 1834 - Sent the contract to his agents at Quincy to be delivered to David Lynn - Has directed his agents to return the money received from Samuel. - States the amt. of money rec.d from David Lynn

Cross. ex. Saml's first business with witness as he believes was to ascertain from him on what terms and at what price he would sell it (the land) has no recollection or belief that Francis C. Moore ever signed a letter for him - on reflection he thinks there was a communication. Apl. 18. '34 gave Samuel the terms on which he would sell the land: thinks he had given Samuel the proposition before he saw his father, and had no communication from David concerning the sale of the land at that time - the only contract he ever made for sale of this land is contained in his answer to 4th interrogatory.

has been advised by his agents that they have the Contract (of June 26th.) in their possession - repeats that he never made any other Contract, except of June 26th.

2d. Ev. Copy of Discharge of Samuel W. Lynn under insolvent laws of Connecticut - first date 4th Tuesday of August 1833. last date 25th Aug. 1834.

Deposition of James Harrison

Knows the parties. Saml. W. Lynn has resided on the place formerly occupied by David Lynn dec.d his father - is residing there to best of his knowledge about five years ago levies on a yoke of steers as Saml. property (described) Saml. denied owning property stated the property belonged to his father - Saml. refused to give up property on the ground of the illegality of the execution, likewise on the ground of having no property - was sued by David Lynn for taking off the cattle - Saml. offered himself as a witness & wished to prove the cattle were his fathers - there was other property on the place probably 4 or 5. head of horses - 10 or 15 ~~cow~~ head of cattle -

Cross ex. Saw David living there at the same time Saml. was living there - saw David living by himself in a house on the place (immaterial evidence about situation of the houses) - testified about the steers in ~~Contract~~ David Lynn adm.r vs Saml. W. Lynn May Term 1832 - Steers were found to be Samuels by event of the suit where his (wife's) execution held them

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Deposition of Rhodes Eams —

Supposes David to have been 70 years old. David lived with Samuel and died there — David Lynn claimed to own the farm — the old man told him he bought the place of Mann (objected to) —

— (There is much of this deposition concerning the manner of trading personal property by Samuel as David's agent —)

Witness supposes the improvements on the place were made by Samuel as David's agent — the crop was gathered on the place as if they were both one family

Crop ex. They lived as one family — Samuel appeared to conduct the improvements as his own — Samuel furnished the work and materials as far as he knew — the mare spoken of, was in suit in David Lynn adm. v. Samuel W. Lynn

Dep. of Wm D. Henderson —

David Lynn & Samuel W. Lynn resided together up to the time of David's death on Sept. 10 1835 W. Sam. still lives there — David Lynn said witness had cut 2 trees on his David's land and he (David) intended to prosecute him for cutting them — Sam. was within hearing and said nothing about title — the land on which the trees were was on the same ¼ section — it was in July or August 1835.

Crop — has had quarrel with Sam. Lynn. It was in a quarrel that the conversation mentioned occurred — not friendly with Sam. ; Sam. joined his father in threatening to prosecute ; Sam. said

he witness had built a house on his Sam's land and he Sam'l intended to take it — meaning S½ 1. 10 N. 5 W. as wit: presumes —

Deposition of Wm R. Jamison

David Lynn said he had bought the land — dont recollect whether it was in Samuel's presence — thinks Samuel didn't claim to own it (the land) from their first settling there — Dont think the Lynns had much money when they came here — had the personal property together

Deposition of Delight Camp

Acquainted with the Lynns — in 1856 lived with Samuel about 2 months. Place belonged to Samuel so far as she has heard David express himself — has seen David sell grain raised on the place and bring the money and give it to Samuel's wife, and when she offered him some back he said he had money of his own. Samuel acted as owner as far as witness could judge. Old man ~~was~~ appeared feeble — worked in the garden sometimes. —

Deposition of Julia Lentz —

Acquainted with the parties except Munn knows the form of Lynn (Samuel) — has lived with him — 4 months summer of old man's death, and prior to his death — has been there frequently at other times — — dont know that ever heard David give any directions about the farm or exercise any control over it. Sam'l acted as the owner of the farm: heard Ezekiel W. Lynn (One of Complts.) say that Samuel had a large farm in this County — said Samuels farm was on the bluff — thinks the place referred to was the place where Samuel resides: David lived with Samuel:

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was employed by Samuel and he paid witness:

Deposition of Samuel Durnell

Acquainted with the parties, except Alunn knows the land (S½ 1.) – Always supposed before the suit that Sam. was the owner of it – he had entire control of the farm, hired hands, did all the business – so far as witness knew any thing about it – witness helped him (Sam) about the building of the barn, and sent hands and Sam. paid for it – rented ground on the farm – and no body had anything to say about it but Sam. – The old man went to borrow money for Sam. to pay part on the place as witness understood – witness's brother agreed with Sam. to let Sam. have it – As to the heirs of David Lynn dec.d – Cook had a claim on the land where he lives – Ezekiel had a claim where he lives – John A Lynn had a claim on a piece of land South of Ezekiels – David Lynn (adm.) bought a claim of Lewis which cost $75. as witness understood and knew David Lynn (adm.) to be in possession of it – Asa Braiwand also had a claim where Russel now lives, and Samuel lived where he now resides – each cultivating or improving his own – has as good reason to believe Sam was improving for his own benefit – as that the others were for theirs – As far as witness knows David S.r had no more control over Sam's than the others – all the heirs lived in the neighborhood of art: except David who moved to Iowa for 2 or 3 years – David S.r appeared to live with the Sam.d – thinks Sam.d took possession of the place in 1833 –

Saml. Darnell

Cross cx. think the money was borrowed of his brother to pay on the land – dont know who signed the note, except what his brother said – witness presented the note to the admr. but he said if any money was borrowed, Sam borrowed for himself

Deposition of Orrin Camp

Knows the land (S½ 1.) – Think he heard all the heirs say they made selection of land and David Sr. assisted them to pay for it – has heard David Sr. say he helped all of them to pay for their land – Saml selected S½ 1. 10 N. 5 W – Sam. has continued to improve his Old man said if Sam. was willing to put the barn up near the house he would help him otherwise he would not. – Heard David Sr. say his other children (except Sam.) had got every d-d cent they would ever get – dont think he meant to include John A Lynn (dec.)

Dep. of Jesse Darnell

Acquainted w. – David Sr. lived with Saml. Knows the land – loaned money to pay for land Saml. first spoke about it – David came down & got it, brought an order authorizing witness to sign Sam's name to a note for the money – which was done and the money loaned – the note has been taken up by Samuel to the best of witness's recollection David said he had assisted Samuel more than his other children, because he lived with him Samuel, and expected to live with him for life –

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witness understood that the money was borrowed by Samuel to pay for the land.

Deposition of Daniel Putnam

David Lynn Sr said he had given all his children money to buy land with the exception of Mr Brainard - thinks understood Samuel's land was the land where he lives - understood that the land belonged to Samuel when paid for - David lived with Samuel

Cross. ex Witness, in that conversation understood that David had given all his children money to buy land, but one he had not given so much as the rest, or had not given any to. - David Lynn Sr said (in reference to the land (S/L.)) "What is here is mine but at my death all is Samuels, that he lived with Samuel and at his death all was Samuels.

Re ex. David said Samuel had not yet paid for the land but it was his when paid for

Deposition of Peter Butler

Wit. was Sheriff of Allarren from '32 & 34 - Surveyed the land, recorded survey in name of David, Saud. paid for surveying

Dep. of Patrick R. Haley

Collected taxes in '35 & '36 - called at old Mr. Lynns and collected some taxes - Cannot tell whether old Mr. Lynn paid the taxes on that land or not the tax on the land was paid by Samuel, the receipt given to David (by name).

Tax receipt for 1836. given to Samuel W Lynn for the land —

Decree –

That the S½ 1. 10 N. 5 W. be partitioned among the heirs – David Lynn having been equitable owner thereof –

That Samuel pay the rents and profits of the land while in his possession –

That Samuel be paid for the lasting and valuable improvements made by him on the land.

That Samuel be refunded that part of the purchase money paid since his fathers death with interest –

That the cause be referred to a master to ascertain the value of the rents & profits & the improvements – A lien on the land decreed in favor of whoever should have a balance in his or their favor –

That Munn should make a deed to the heirs according to their respective portions –

As to all other matters the bill dismissed and each party pay half the cost.

Lynn ~~admr. et al~~
vs
Lynn admr. et al

Abstract.

Filed June 13. 1849
J. Leland Clk.

Supreme Court, 3d Grand Division — June Term 1849.

Samuel W. Lynn insp. &c.
vs
David Lynn admr. &c. & others
Appellees costs —

} Appeal from Henderson.
Decree affirmed —

Apper. 25, fil. & ent. jander 37½, Ord. affg. Decree 25, Ord. for Procedo. 25,	1.06¼
Fil. Opinion 6¼, Ent. Decree & Opinion 49 fol. 8.82,	8.88¼
Procedendo & seal 1.00, copy of Decree & judt. 50, Certf. & seal 50,	2.00
Ent. judt. for costs 25, Ord. for execution 25, Execution 50, fil. & Dk. 18¾,	1.18¾
Supps. retn. 12½, bill of costs 37½, copy 25, postg. 20, Sets for. 25,	1.20
Amt.	$14.33¼

A true copy from my fee book as taxed & recorded therein.

L. Leland Clk. Sup. Court.

State of Illinois, ss.

Supreme Court, Third Grand Division, at Ottawa:

The People of the State of Illinois, to the Sheriff of Henderson County --- Greeting:

WE COMMAND YOU, That of the goods and chattels, lands and tenements, and real estate of Samuel W. Lynn

you cause to be made the sum of Fourteen dollars and Ninty three & a fourth cents costs in the said Supreme Court, which David Lynn adm. &c; Ezekiel Lynn, Prudence Cook & Lucius Cook, Charles Henry Brainard & Eliza Jane Lynn

lately recovered against him — before the Justices of our said Supreme Court, as appears to us of record, and make return hereof in ninety days.

WITNESS, the Hon. Samuel H. Treat, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this ninth day of August in the year of our Lord one thousand eight hundred and forty nine —

S. Leland *Clerk of the Supreme Court.*

Came to hand August 13th 1849 at 8 o'clock A.M.

Perkins Gilmore Sheriff
by A. Gibbs

I hereby certify the within instrument in full to be true.
Witness this 28th day of August 1849

Perkins Gilmore Sheriff
By A. Gibbs

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Supreme Court

Samuel M. Lynn
vs
David Lynn & others

Execution vs Plaintiff

Bill of costs — $14.33¾
Fee Bill — 6.82½
Amt. $21.15¾

Samuel Darnell & Sureties
Azro Patterson — in the appl. Bond.

Filed Dec. 3d 1849
Sylvan Clk.

Supreme Court, 3d Grand Division - June Term 1849.

Samuel W. Lynn, impld. &c.
vs
David Lynn adm'r. &c, Ezekiel Lynn, Prudence Cook, Lucius Cook, Charles Henry Brainard & Eliza Jane Lynn
Appellants Costs -

Appeal from Henderson.

Decree affirmed -

Fil. transcpt. 20, Dk. cause 12½, Ent. apper. of appellant 25,	.57½
Fil. errors 6¼, fil. 4 abstrts. 25, Ord. to join in error 25,	.56¼
Ent. failure to join in error 25, Ent. argument ex parte 25, taking time to consider 25,	.75
Ent. judgt. argt. 25, Ent. subm. 25, Ord. taking time 25,	.75
Bill of costs 37½, copy 25, Cert. & seal 50, fil. & Dk. 18¾,	1.31¼
Sheff's. retn. 12½, Satisfn. 25, Dk. fee 2.50	3.87½
Amt.	$ 6.82½

State of Illinois, ss.

Supreme Court—Third Grand Division, at Ottawa:

The People of the state of Illinois to the sheriff of Henderson county---Greeting:

WE COMMAND YOU, that of the goods and chattels, lands and tenements of Samuel W. Lynn you cause to be made the sum of Six dollars and Eighty two & a half cents, the amount of the foregoing bill, which is due and unpaid, and is a true copy from the Fee Book in my office; and hereof make due return in ninety days.

WITNESS, the Hon. Samuel H. Treat, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this Ninth day of August A. D. 1849.

S. Leland *Clerk of the Supreme Court.*

Supreme Court

Samuel W. Lynn

vs

David Lynn & others

Fee Bill — $6.82½

Filed Dec. 3d 1849.

Leland Clk.

I hereby certify the within to be true copy of Lawrence W. Lynn this 28th day of Sept 1849

Julius C. Gifford Sheriff

A. C. C. C.