

8489

No. _____

Supreme Court of Illinois

Wimberly

vs.

C. Hurst

71641  7

10-2

Wimberly
vs

C. H. Hurst

1863

State of Illinois
Jefferson County

Of the May
Term T. D. 1863. of the
Jefferson County
Circuit Court

Charles R. Hurst
vs
Abraham Kimberly

Ejectment. Change of Venue
from Marion County, Illinois

Be it remem-
bered, that on this thirteenth day of May T. D. one
thousand eight hundred and Sixty three in the May
Term in the said year of the Circuit Court of Jeffe-
rson County, Illinois, before the

Honorable G. J. Marshall, presiding Judge of
said Circuit Court, in a certain action of Ejectment
in said Circuit Court, pending on change of venue
from the Circuit Court of Marion County in said
State of Illinois, wherein Charles R. Hurst was Plain-
tiff and Abraham Kimberly was Defendant, the
same came on for trial, and the Plaintiff to main-
tain the issue therein, introduced evidence as follows
to-wit:

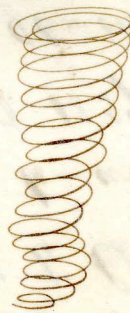
First: A certain Deed from Tutorin Campbell, Ad-
ministratrix of John Taylor deceased to Charles R. Hurst
in the words and figures following to-wit:

"Whereas at the April Term T. D. 1857. of the Circuit
Court within and for the County of Sangamon and State of
Illinois an order was entered upon the record of said Court

in the words and figures following to-wit:

A. Campbell, Administrator of
John Taylor deceased

vs
Geth M. Sinsley, Hannah Sinsley
Edward J. Taylor & others



Petition to
sell Real
Estate

This day
came the said Petitioner in proper person and files
his petition herein for the sale of certain Real estate
herein after described and it appearing to the satis-
faction of the Court, that due notice has been given
to all persons interested of the intention of said Ad-
ministrator to file his petition herein by Publication
in the Illinois State Register in the manner
and for the period required by Law. It also
appearing to the Court, that said John Taylor
died, seized of the Lands in Plaintiffs petition des-
cribed and that his widow Elizabeth Taylor is
deceased and that James Taylor, A. J. Taylor, Edward
J. Taylor, Margaret H. Taylor, since intermarried
with Edmund J. Taylor, Hannah Taylor since intermarried
with Geth M. Sinsley, Jane Taylor since intermarried,
with David Strigh & Ann Taylor since intermar-
ried with Charles R. Hurst are his only lawful Heirs
and that they are all of lawful age. And it further
appearing to the Court from the proof, that said
Administrator has faithfully applied all the property
personal and real, so far as the same has come into his
hand, to the payment of the debts of said deceased

3
and that there is still due & unpaid of said debts,
the sum of \$7,405.⁸⁰/₁₀₀. It is therefore ordered by the
Court, that said Administrator sell the Lands in said
Petition described to-wit:

The E¹/₂ of the N E¹/₄ of Section No Twelve (12.)
The E¹/₂ of the N E¹/₄ of Section No Thirteen (13.)
The S. E¹/₄ of section Twenty Four (24.)
The N W¹/₄ of Section Twenty six (26.) all in Town-
ship No Two (2.) North Range No Two (2.) East of the
3^d principal Meridian in Marion County, Illinois. And
it is further ordered, that he sell the same at public auction
to the highest bidder at the door of the Courthouse in the
Town of Salem Marion County, Ills. on a credit of six
& twelve months equal installments and that he execute
a deed or deeds to the purchaser or purchasers and
take notes with good personal security and a mort-
gage on the premises sold to further secure the pay-
ment of the purchase-money. It is further ordered
that said Administrator report his proceedings herein
to this Court " & whereas the said Tutrim Campbell
Administrator as aforesaid, did on Thursday the 10th
day of September A.D. 1857. between the hours of 9 o'clock
A.M. & sun set of said day offer said Land for
Sale at public auction to the highest bidder at the
door of the Courthouse in the Town of Salem, Marion
County, Illinois, upon a credit of six and twelve
months, having first given more than six weeks pub-
lic notice of the time and place of sale by pub-
lication in the Salem weekly Register a weekly news-

paper published in Marion County Illinois And also by putting up notices at four of the most public places in said County in which notices said Real Estate was described and whereas Charles R. Hurst bid at said sale for the North West quarter of Section No: Twenty six (26) Township No: Two (2.) north Range No: Two (2.) East of the 3^d principal meridian the sum of Eight dollars and fifty cents per acre, which being the highest bid made therefor, said tract was struck off to him and whereas said Charles R. Hurst bid at said sale for the East half of the North East Quarter of Section Twelve (12.) Township Two (2.) north Range Two (2.) East of the 3^d principal meridian, the sum of Ten Dollars per acre, which being the highest bid made therefor, said tract was struck off to him and whereas said Charles R. Hurst bid at said sale for the East Half of the North East Quarter of Section No: Thirteen (13.) Township Two (2.) North Range Two (2.) East of the 3^d principal meridian the sum of seven Dollars per acre, which being the highest bid made therefor, said tract was struck off to him and whereas said Charles R. Hurst bid at said sale for the South East Quarter of Section Twenty Four (24.) Township Two (2.) north Range Two (2.) East of the 3^d principal Meridian the sum of Eight Dollars per acre, which being the highest bid made therefor said tract was struck off to him & whereas said Charles R. Hurst has fully complied with the conditions of said sale. Now therefor this deed made

this 10th day of September. A. D. 1857. between said
Aurim Campbell, Administrator as aforesaid, of the
first part and said Charles R. Hurst of the 2^d
part, Witnesseth: that the said party of the first
part for and in consideration of the premises aforesaid
and by virtue of the authority aforesaid and in further
consideration of the sum of Four Thousand dollars
to be paid according to said decree have sold and
conveyed and do by these presents sell and convey
unto the said party of the second part and unto
his Heirs & assigns forever the said tracts of Land to-
wit: The North West Quarter of Section Twenty six
(26.) The East Half of the North East quarter of
Section Thirteen (13.) The South East Quarter of
Section Twenty four (24.) and the East Half of the
North East quarter of Section Twelve (12.) all in Township
Two (2.) North Range Two (2.) East of the 3^d prin-
cipal meridian, To have and to hold the same
with the appurtenances unto to the said party of the
second part and unto his Heirs & assigns forever.

In testimony whereof I have hereunto set my
hand & seal the 10th day of September A. D. 1857.

Aurim Campbell *Seal*
admr of John Taylor dec'd

The words "and the East Half of the North
East Quarter of Section Twelve (12.)" inter-
lined on this page before signing & sealing
of these presents.

Witness: W. Stafford

State of Illinois }
 Sangamon County } Before the Undersigned Clerk
 of the County Court for said County personally ap-
 peared Tutim Campbell, Administrator of John Taylor
 Deceased, who is personally known to me, to be the iden-
 tical person by whom & in whose name the foregoing
 deed is subscribed & by whom & in whose name the
 same is proposed to be acknowledged & who then ac-
 knowledged his signature thereto to be his voluntary
 act and deed for the uses and purposes therein ex-
 pressed.

Filed
 Trial of
 County Court
 Sangamon Co.
 Ills.
 1857

Given under my hand and
 seal of Office at Springfield this twenty
 third day of November. A. D. 1857.
 W. W. Matheny. Clerk

State of Illinois }
 Marion County. }

I certify that this Deed was
 filed April 11th 1860. and duly re-
 corded in Deed Record Book
 Q Page 442. & 423.

W. W. Egan Recorder
 By J. O. Chance Dep.

To which the Defendant at the time objected, and it was
 agreed, that the special objections, which may be raised
 to each and all the papers, that may be introduced,
 should be stated after the same had been offered. -
 The Plaintiff then secondly introduced a quit claim
 Deed from William S. Kinney to Charles R. Hurst in
 the words and figures following, to-wit:

"This Indenture, made and entered into this first day of May, in the year one thousand eight hundred and fifty six between Wm C. Minney & Maria L. Minney of the County of St. Clair and State of Illinois, of the first part, and Charles R. Hurst of the County of Sangamon and State of Illinois, of the Second Part, Witnesseth: That the said Party of the first Part, for and in consideration of the sum of one Dollars and - cents, the receipt of which is hereby acknowledged, ha Granted, Bargained and Sold, and by these Presents, do Grant, Bargain and Sell, Convey and Confirm unto the said Party of the Second Party, his Heirs and Assigns, Forever all those certain Lots, Tracts or parcels of Land, lying and being in the County of Marion and State of Illinois and described as follows: The East half of N. E. qr. of sect. twelve, East half of N. E. qr. of sect. Thirteen - S. E. qr. of sect. Twenty four, also N. W. qr. of sect. Twenty six all in Township Two N. Range two East 3d principal Meridian. - It being intended by this Deed to convey to the said Charles R. Hurst the same lands conveyed by Wm Minney in his lifetime to John Taylor & none others

To Have and to Hold The above described premises, together with all the privileges and appurtenances there unto belonging unto the said party of the second Part and to his Heirs and Assigns forever.

The said Party of the first Part hereby covenanting that the said Land is Free from all encumbrances and that they will Warrant and Defend the title and pos-

8. session of the said Land unto the said party of the second part, his Heirs and Assigns against the Claim or Claims of all persons whomsoever, claiming by, through or under them, this Deed being intended as a quit claim deed.

In Testimony Whereof, the said Party of the first Part hereunto set their names and seals the day and year first above written.

W. C. Kinney. (L.S.)
M. L. Kinney. (L.S.)

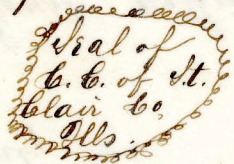
State of Illinois }
County of St. Clair }

I, Wm. G. Thomas, Clerk of the Circuit Court of, within and for the County of St. Clair and State of Illinois, hereby certify, that W. C. Kinney & Maria L. his wife, whose names are signed to the foregoing instrument of writing as having executed the same, are personally known to me, to be the real persons who executed the same, and that they appeared before me and severally acknowledged the said instrument to be their act and deed for the purposes therein mentioned.

And I further certify, that the said Maria L. Kinney, was by me first made acquainted with the contents of said instrument and examined separate and apart from her said husband, whether she had executed the same and relinquished her dower in and to the lands and tenements therein mentioned and described, Voluntarily, Freely, and without compulsion of her

said husband; and that she thereupon declared, that she executed the said instrument and relinquished her dower in the lands and tenements therein mentioned, voluntarily, freely, and without compulsion of her said husband.

In Testimony Whereof, I have herunto signed my name this 3, and affixed the Seal of said Court, the first day of May A. D. One Thousand Eight Hundred and Fifty-six.



Wm J. Thomas Clerk. L. G.

State of Illinois) I, certify that this Deed was filed
Marion County) April 11th 1860. and duly recorded.

in Deed Record Book Q page 440.

H. W. Eagan Recorder

By J. O. Chance Deft. "

The plaintiff then thirdly introduced, a certified copy of the letters of Administration granted to Nutrim Campbell, in the words and figures following, to-wit:

" State of Illinois) Oct
Sangamon County)

The People of the State of Illinois
to all to whom these presents shall come

Greeting:

Know Ye, that whereas John Saylor of the County of Sangamon and State of Illinois died intestate, as it is said, on or about the 31st day of May A. D. 1847, having at the time of his decease, personal property in this State, which may be lost, destroyed or diminished in value, if speedy care be not taken of the same, to

the end, therefore, that said property may be collected and preserved for those, who shall appear to have a legal right or interest therein, we do hereby appoint Nutrim Campbell of the County of Sangamon and State of Illinois, Administrator of all and singular the goods and chattels, rights and credits, which were of the said John Taylor at the time of his decease, with full power and authority to secure and collect the said property and debts, wheresoever the same may be found in this State; and in general to do and perform all other acts which now are or hereafter may be required of him by law.

Witness Thomas Moffett, Probate Justice in and for the County of Sangamon at his Office in Springfield this 29th day of January A.D. 1848.

Thomas Moffett, Probate Justice
 There being no public seal provided, my private seal is hereto substituted

Seal

State of Illinois
 Sangamon County

U. S.

I, S. W. Matheny, Clerk of the County Court, within and for said County do hereby certify, that the foregoing is a true copy of the matters and things therein set forth, as the same appears of record in my Office.

Witness my hand and the seal of said Court at Springfield, this 27th day of August. A.D. 1862.

S. W. Matheny, County Clerk

Seal of
 County
 Court of
 Sangamon
 County
 Ills.

The Plaintiff then fourthly introduced, a certified copy of the Record in the case of Tutrim Campbell, Administrator of John Taylor deceased, against Seth M. Pinsky and others, in words and figures following, to-wit:

" T. Campbell, administrator of John Taylor deceased

vs

Seth M. Pinsky, Hannah Pinsky, Edward J. Taylor and others



Petition for Sale of Real Estate

This day came

the said Petitioner in proper person and files his Petition herein for the Sale of certain real Estate hereinafter described and it appearing to the satisfaction of the Court that due notice has been given to all persons, interested of the intention of said Administrator to file his Petition herein by publication in the Illinois State Register in the manner and for the period required by law. It also appearing to the Court, that said John Taylor died, seized of the lands in Plaintiffs Petition described and that his Widow, Elizabeth Taylor is deceased and that James Taylor, T. J. Taylor, Edward J. Taylor, Margaret W. Taylor since intermarried with Edmund S. Taylor, Hannah Taylor since intermarried with Seth M. Pinsky, Jane Taylor since intermarried with David Krigh and Tom Taylor since intermarried with Charles R. Hurst, are his only lawful Heirs and that they are all of lawful age and it further appearing to the Court from the proof, that said administrator has faithfully applied all the property personal and real, so far as the same

has come into his hands to the payment of the debts of said deceased and that there is still due and unpaid of said debts the sum of \$ 7,405. 80. It is therefore ordered by the Court, that said Administrator sell the lands in said Petition described, to-wit: The E 1/2 of the N E 1/4 of Section N: Twelve (12.) The E 1/2 of the N E 1/4 of Section N: Thirteen (13.) The S. E 1/4 of Section N: Twenty four (24.) The N. W 1/4 of Section N: Twenty six (26.) All in Township N: Two (2.) North Range N: Two (2.) East of the 3rd principal Meridian in Marion County Illinois and it is further ordered, that he sell the same at Public auction to the highest bidder at the door of the Courthouse in the town of Salem Marion County Illinois, on a credit of six and twelve months equal installments and that he execute a deed or deeds to the purchaser or purchasers and take notes with good personal security and a Mortgage in the premises sold to further secure the payment of the purchase money. It is further ordered, that said administrator report his proceedings herein to this Court.

State of Illinois)
Sangamon County) J. J.

I, Stephen J. Whitehurst,
Clerk of the Circuit Court, in and for said County in
the State aforesaid, do hereby certify the above and fore go-
ing to be a full true and correct copy of the Record
of the Decree of sale as made and entered of Record
at the April Term. T. D. 1857. of the Sangamon County
Circuit Court in a certain cause then pending in

said Court, wherein T. Campbell, Administrator of John Taylor Deceased was Complainant and Seth M. Sinsley etal. were Defendants as appears from the Records of said Court for said Term.

*Seal of
C. C.
Orange
Mar
6
Decr* Witness my hand and the seal of said Court here
to affixed at Office in the City of Springfield in said
County, this 9th day of July A. D. 1862.

J. S. Whitehurst C. M.

Autrim Campbell admr Complainant
Against
Heirs of John Taylor Defendants
Pet. to sell

And now at
this day came the said Administrator and presents his fur-
ther report herein, which is examined by the Court appro-
ved and ordered to be filed and Recorded and which said
report is in the words and figures following, to-wit:

"The undersigned report to the Court that in pursuance
of the order of the said Court made at the April Term
thereof A. D. 1857. upon his application as administrator
of John Taylor deceased to sell certain real estate
therein described for the payment of debts, he proceed
to sell said real estate at public auction to the highest
bidder at the door of the Courthouse in the town of
Salem, County of Marion and State of Illinois on the
10th day of September. A. D. 1857. between the hours of
9 o'clock A. M. and Sun set of said day having first
given three months notice of the time place and terms
of sale by publication in the Salem Register a News-
paper published in Salem Illinois a copy of which

is filed herewith, marked (A.) and also by putting up notices at four of the most public places in said County and Merce Vallie bid at said sale for the E $\frac{1}{2}$ of the N $\frac{1}{4}$ of Section No 12. Ten Dollars per acre and for the E $\frac{1}{2}$ of the N $\frac{1}{4}$ of Section 13. Seven Dollars per acre and for the South Eastquarter of Section 24. Eight Dollars per acre, all in Township 2. North Range 2. East 3rd principal Meridian and all in Marion County, all which bring the highest best bids made therefor, said tracts were seperately struck off to said Merce Vallie and Charles R. Hurst. bid at said Sale for the N. W. $\frac{1}{4}$ of Section Twenty six Township and Range aforesaid the sum of \$ 8 $\frac{50}{100}$ per acre, which being the highest best bid made therefor, said tract was struck off to him.

No notes or Mortgages ever executed, but the undersigned files vouchers herewith for the proceeds, deducting costs and expenses. $\frac{3}{2}$ J. B. Campbell Admr

Land Sale, Public notice is hereby given, that by virtue of an order entered at the April Term 1857. of the Circuit Court, within and for the County of Sangamon and State of Illinois, the undersigned Administrator of the estate of John Taylor deceased will sell on Thursday the 10th day of September. A. D. 1857. Between the hours of 9 o'clock A. M. and sunset of said day at the Court House Door in Salem Marion County Illinois the following described real estate to-wit: The East half of the North east quarter of Section Number Twelve (12) The East half of the North East quarter of Section Number thirteen (13)

South East Quarter of Section Number Twenty-four (24) and
the North West quarter of Section number twenty six (26)
all in Township number Two (2.) North Range Two
(2.) East of the 3rd principal Meridian all in the
County of Marion and State of Illinois; said pre-
mises will be sold on a credit of six and twelve
months equal payments, the purchaser to receive a
deed and to execute notes with good personal secu-
rity and a mortgage on the lands sold.

April 30th 1857. - 43.00 S. Campbell, Administrator
of John Taylor deceased

The undersigned Publisher of the Salem Weekly Register
a newspaper published in the town of Salem County of
Marion & State of Illinois does hereby certify, that the
annexed notice was published in said paper for three
months successively the first publication thereof having
been made on the 30th day of May A.D. 1857. and the
last on the 10th day of September A. D. 1857

Salem, Sept. 10. 1857. \$52.00. E. C. Trooe, Publisher
of the Salem Weekly Register

State of Illinois
Sangamon County U. S.

D, Stephen G. Whitehurst
Clerk of the Circuit Court in and for said County
do hereby certify the above and foregoing to be a full
true and correct copy of the Record of the Report of
Sale in said above entitled cause, as the same was
approved and entered of Record at the October Term
A.D. 1857. as appears from the Records of said Court
for said Term.

Seal
of
S. J.
Hamon
Esq
Att. Gen.

Witness my hand and the Seal of said Court hereto
affixed at Office in the City of Springfield in
said County this 9th day of July A. D. 1862.

J. S. Whitehurst, C. M.

The Plaintiff then fifthly introduced a certified copy of
the last will and Testament of William Kinney de-
ceased, in the words and figures following, to-wit:

" Mount Pleasant St. Clair Co. Aug. 9. 1843.

Believing that I am about to die, I give
R. K. Fleming (for an inconsideration of his copying
and writing for me a Pamphlet against Charles Dickens
and other articles) one hundred Dollars to be paid to him
in cash, and one hundred Dollars to my daughter Eli-
zabeth, one hundred Dollars to my daughter Sarah,
or a sufficient sum for the purpose of Redeeming the
land upon which she now lives and which I gave her, one
hundred Dollars to my grandson John Randolph Thomas, and
one hundred Dollars to my daughter Nancy, a reasonable and
competent support for my wife, and the Remainder of my
personal and Real Estate, I hereby will and give to my
only and beloved son William C. Kinney, whom I do also
appoint Executor of this will and testament, I do hereby
further say, that any person, who may undertake to
Revoke, set aside or abrogate, this writing will do
wrong.

Written (and signed with my own hand) the
ninth day of August. A. D. Eighteen hundred and forty
three.

William Kinney.

We the undersigned, being present at the writing of the above and honestly believes Gov. William Kinney to have been in a sound state of mind at the time of writing the same, hereby sign our respective names, and make our seals, as witnesses.

R. H. Fleming. (Seal)

John Long (Seal)

Francis Stoltz (Seal)

James Clark (Seal)

State of Illinois St. Clair County, S.S.

The within last will and testament of the within named William Kinney deceased, was this day presented for Probate according to law, Personally appeared before me John D. Hughes, Probate Justice of the Peace in and for the said County of St. Clair in open Court, John Long and James Clark two of the subscribing witnesses to the said last will and testament, who after being duly sworn on their oaths deposed and says, that they were present and saw the said William Kinney deceased, sign the said last will and testament in their presence, and the said William Kinney the testator acknowledge the same to be his act and deed, and that they believed and still believe the said testator to have been of sound mind and memory at the time of signing the said last will and testament, and that they attested the signing of the said last will and testament in the presence and by the Request of the said testator William Kinney, and in presence of

each other.

Sworn to and subscribed
before me this eighteenth
day of October. A.D. 1843.

John Long
James ^{his} Clark
mark

John D. Hughes P. J. P.

State of Illinois St. Clair County S.S.

I, John D. Hughes, Probate Justice
of the Peace of the said County of St. Clair, do here
by prove, approve and allow the within instrument of
writing this day exhibited as the last will and tes-
tament of the within named William Kinney de-
ceased, and admit the same to Record.

Given under my hand and seal this eighteenth
day of October. A.D. Eighteen hundred and forty three

John D. Hughes P. J. P. (Seal)
State of Illinois St. Clair County S.S.

I do solemnly swear this writing contains
the true last will and testament of William Kinney
deceased, so far as I know or believe, and that I will
well and truly execute the same, by first paying the
debts, and then the legacies therein mentioned, as far as
his goods and chattels will thereunto extend and the
law charge me, and that I will make a true and per-
fect inventory of all such goods and Chattels, Rights
and Credits as may come to my hands and Knowledge
belonging to the Estate of the said deceased, and
Render a fair and just account of my Executorship
when thereunto Required by law, to the best of my
Knowledge and ability so help me god

Sworn to and subscribed William C. Kinney
before me this nineteenth day of
October A.D. 1843.

John D. Hughes P. J. S.
State of Illinois } S. S.
St. Clair County }

I, Bernhard Wick, Clerk of the
County Court, within and for said County & State, do here-
by certify, that the foregoing is a true copy of the last
will and testament of William Kinney deceased, as the
same was approved and of the Probate of said Will
and as appears on file and on Record of Wills Book C
page 77. and 78. in my Office.

In Witness Whereof I have here-
unto set my hand and affixed the seal
of this Court at Office in Belleville this
19th day of August. A. D. 1862.

Bernhard Wick Clerk.

State of Illinois } O. C.
St. Clair County }

I, John D. Hughes, County
judge of said County do hereby certify, that the foregoing
is a true copy of the last will and testament of William
Kinney deceased and of the Probate thereof, as the same
appears of record and on file in said County Court
I further certify, that Bernhard Wick, whose name ap-
pears to the foregoing certificate was Clerk of said
Court at the date of said certificate, that his signa-
ture thereto is genuine and the said certificate is

in due form, and is entitled to full force and credit in all courts of law and equity in this State

Witness my hand and private seal, this this 25th day of August. 1862.

John D. Hughes County Judge
"Seal"

The Plaintiff then introduced sixthly, a paper purporting to be the Registers Certificate of the Land Office at Springfield, Illinois, in the words and figures following, to-wit:

" United States Land Office, Springfield, Illinois
Registers Office, August 27th 1862.

I, Wm F. Elkin, Register of the Land Office at Springfield, Illinois, do hereby certify, that on the 15th day of December: in the year A.D. 1836. William Kinney and John Taylor purchased of the General Government at the Land Office at Vandalia, Illinois the North West quarter of Section number twenty six, in Township number two North of Range number two East of the 3rd principal Meridian, containing 160. acres and and that said land at the time of said purchase was within the district of land, then subject to sale at the Land Office at Vandalia, now Springfield, Illinois, and rendered subject to sale by law - all of which appears of record in my office

Given under my hand, the day and year first above written.

Wm F. Elkin

Register of the United States Land Office
Springfield Illinois

State of Illinois
Sangamon County

I, Noah W. Matheny, Clerk
of the County Court of said County, do hereby certify,
that Wm. A. Elkin Esq. is Register of the Land
Office at Springfield Illinois, that I am well ac-
quainted with his handwriting, that the signature to
the within certificate, purporting to be his, is genuine.

Given under my hand and seal of
Office at Springfield, this 12th
Day of May, A. D. 1863.

N. W. Matheny Clerk

The Defendant then raised special objections to the pa-
pers so introduced as follows, to wit:

To the Deed, from Tutrim Campbell, Adminis-
trator of John Taylor deceased to Charles R. Hurst
first introduced and the certified copy of the Record
in the cause of Tutrim Campbell Administrator &c.
against Seth M. Pinsley and others, fourthly intro-
duced, taken in connection - That the said Record
and Deed as produced were defective among other
things, in this-

first. That the said Record did not show that
the Court had jurisdiction of the subject matter, and
of the parties in interest -

second. That it did not contain, copy of the petition
and notice of filing same, nor that any summons had
issued therein, or any evidence of title in John Taylor
deceased, to the Lands in question, nor did it contain all
the reports in the said cause, and further, that it did

show, that the Lands in question were sold en masse and not in the lowest legal subdivisions. And the Defendant objected to the certified copy of the Will of William Minny fifthly introduced and the Quit claim Deed of William S. Minny to Charles R. Hurst secondly introduced taken in connection - That the Deed conveyed, nothing taken in connection with the will. - That it devolved on the Plaintiff to show, that the Land in question were previously conveyed by William Minny deceased in his lifetime to John Taylor - and that the Deed in itself gave no title to Charles R. Hurst for the Land in question.

All which objections the Court overruled and the Defendant excepted to the ruling of the Court. The Plaintiff then introduced S. P. Hamilton as a witness, who testified that Wm S. Elkin whose name appears to the certificate of Register of the Land Office at Springfield Illinois of purchase of the Lands in question, told him, that he signed said certificate, and was at its date and still is Register of the Land Office at Springfield Illinois. And that he knows said Elkin, and knows his handwriting, has seen him write and that the signature to said certificate is the handwriting of said Elkin and that said Elkin is acting Register of the Land Office at Springfield Illinois.

And the Plaintiff then introduced Jeremiah Williams as a witness, who testified, that he was acquainted with Abraham Wimberly the Defendant

That the Defendant resided on N. W ¹/₄ Section 26. Town 2. North Range 2. E. of the 3rd P. M. in Marion County Illinois and did not know, how long he resided there. Being cross examined by Defendant he testified, he is County Surveyor of Marion County Illinois; that he was requested by plaintiff, to survey said lands, and did go on said lands and ascertained by examination and survey that Defendant lived on the lands in question, and that this was on or about 24th April 1863.

The Plaintiff then called Jacob O. Chance as a Witness, who testified, that he knows Defendant, dont know, what land he lives on, that Defendant lived south of Salem in Marion County Illinois, it might be three or four years, dont know, how long, dont know that he lived there three years, from last fall, can't say, that he lived on the place in September 1860.

The Plaintiff then called Dr Witt C. Jones as a witness, who testified, that Defendant told him last week, that he had lived where he now lives for three years last fall.

The Plaintiff then closed his case

The Defendant then recalled Jacob O. Chance who testified, that he is Clerk of the Circuit Court of Marion County Illinois and ex officio Recorder of Deeds in said County, and that he examined all the Indexes of Records of Deeds in said County and found no Deed on said Indexes of Records from William Kinney to John Taylor, that he examined

the Indexes of Records of Deeds in his Office, that he is satisfied, said Indexes show all Deeds on record in his Office and are correct and no Deed from William Kinney to John Taylor appears on record.

The Defendant then offered to introduce a certified copy of the Record in Marion County, Illinois of the Will of William Kinney and supplemental will of said William Kinney and the Probate thereof to which the Plaintiff by his Attorney objected, and the Court sustained the objection, to which the Defendant by his Attorneys excepted.

And this was all the evidence in this cause.

And the Court then gave its Verdict for the Plaintiff for possession of the Lands and premises in the Declaration herein mentioned and described and costs. Motion by Defendant for a new trial. Motion overruled and Judgment for the Plaintiff, to which opinion of the Court in overruling the motion for new trial and entering Judgment for Plaintiff the Defendant then and thereby by his counsel excepted and prays, that this Bill of Exceptions be signed and sealed, and made part of the Record herein, which is done.

S. S. Marshall (Seal)

"Filed May 14 1863. J. S. Boger Clerk"

State of Illinois
Jefferson County, Ill.

I, John L. Bogan
Clerk of the Circuit Court in and
for the County of Jefferson and State
of Illinois do hereby certify, that the above
foregoing and within is and are true copies
from the original Papers on file in our
said Court in the above styled cause and
from the Bill of exceptions, as filed by Hon
J. S. Marshall, Judge of our said Cir-
cuit Court.

In Testimony Whereof
I have hereto set my hand and
affixed the seal of our said
Circuit Court at Office in
Mount Vernon this 29th May. A.D.
1863.

Clerk.

State of Illinois
Marion County



J. S. Pleas and proceedings had
in the Circuit Court in and
for the County of Marion in a
certain cause heretofore pending
in said Court, wherein Charles
R. Hurst is Plaintiff and Ab-
raham Wimberly Defendant.

Be it Remembered, that on the 22^d day of August
A. D. 1860. the above named Plaintiff filed in the office
of the Clerk of the Circuit Court of said Marion County
his Declaration in ejectment against the above named
Defendant, which is herewith sent, marked Exhibit
"A"

And afterwards at the said 22^d
August 1860. being of the August term of said Circuit
Court, the Hon. H. N. S. O'Melveny presiding, the fol-
lowing order was made in said cause, To-wit:

"Charles R. Hurst

vs.

Abraham Wimberly



Ejectment

Came the Plaintiff and on
his motion the defendant is ruled to plead &c. wit-
hin 20. days &c. "

And afterwards To-wit: on
the 1st day of September A. D. 1860. said Defendant
by his Attorneys filed his Demurrer to Pltffs Declaration,
herewith sent, marked "B"

And afterwards at the March Term 1861.

of said Court To-wit on the 26th day of March the following order appears of Record

173.

Charles R. Hurst
vs
Abraham Wimberly



Ejectment

The Court now hears argument on Demurrer herein, and doth overrule same with leave to Defendant to plead and on consent of parties this cause is continued &c "

Whereupon Deft. filed his plea, herewith sent, marked "C."

And afterwards at the August Term A. D. 1861. of said Circuit Court the Hon. Silas L. Bryan presiding the following order was on the 22^d day of August made To-wit:

119.

Charles R. Hurst
vs
Abraham Wimberly



Ejectment

And now at this day came the parties by their attorneys and the Court having been of counsel herein. It is ordered, that the venue be changed to Jefferson County Illinois. And that the Clerk of this Court transmit the papers and proceedings herein to the Clerk of the Circuit Court of Jefferson County and that he certify same to said Clerk according to Law and the practice of this Court.

Plaintiffs Preceps for subpoenas herewith

sent marked "D" together with three subpoenas marked respectively "E" "F" and "G" and seven witness affidavits marked respectively "H." "I" "J" "K" "L" "M" and "N"

No 119.

Copy of Piss Bill

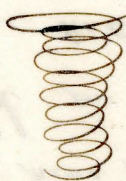
Charles R. Hurst

August term 1861.

vs

Ejectment

Abraham Wimberly



Clks fees

Plaintiffs costs

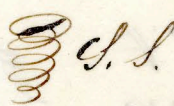
App. & atty 15.	Doc. 20.	Del. prec. & Mon. 10.	45.
Order for costs 20.	Doct. Judgt. 25.	order tax of costs 20.	65.
Bill costs 30.	copy de 20.	cert. & seal 35.	Diff. Ret. 10.
Ser. 15.	Ser. 15.		1. 10.
Swearg. to six affts 60.	Ent. 1. order for con. 20.	filg. 3. papers 15.	95.
Ent. 3. orders 60.	Record of postage 1.40.		2. 00.
Des. & fil. B. subps. 1.20.			1. 20.
Sheriffs fees on subps (to Black)			6. 35.
			3. 40.

Witness fees

R. S. McElwain 1. day 1.00	Sam. Hull 1. day 1.00.	2.00
S. J. Black 1. day 1.00.	H. W. Tagan 1. day 1.00.	2.00
J. S. Martin 1. " 1.00.	J. Shultz 1. " 1.00.	2.00.
B. F. Marshall 1. " 1.00.		1.00.
		7. 00.

Total cost \$ 16.75.

State of Illinois
Marion County



I, J. O. Chance Clerk of the Circuit Court of said County do

hereby certify, that the foregoing is a true and complete transcript of the Record and proceedings had in our said court in the above named cause, that the exhibits

"A" "B" "C" "D" "E" "F" "G" "H" "I" "J" "K" "L" "M" "N" "O"
 are all the papers filed in said cause and that the accompanying Bill is a true copy from my Bill Book
 given under my hand and official Seal at Salem this Sept. 18th
 J. J. 1861.
 J. O. Chance Clerk
 Circuit Court
 Marion Co.
 Ills.

J. O. Chance Clerk.
 Notice herewith transmitted filed after Record was made up, To wit Sept. 23^d 1861. marked "O" and asked to be received as part of this Record
 Filed October 8, 1861 J. S. Bryan, clerk
 J. O. Chance Clerk.

"A." " State of Illinois August Term 1860.
 Marion County J. O. Chance Clerk of the Marion County Circuit Court.

Charles R. Hurst, the Plaintiff in this suit complains of Abraham Memberly the Defendant in this suit of a plea of trespass & ejectment.
 For that the said Plaintiff on the first day of January in the Year of our Lord, One thousand Eight hundred and fifty nine, at the County of Marion afore said, was possessed in his own right of an estate in fee simple, of in and to a certain tract of land, situate, lying and being in said County of Marion, containing 161. acres more or less, and known and designated as follows, to-wit: - The North West quarter of Section No. Twenty six (26) in Township No. Two (2) North of Range No. Two (2) East of the 3^d principal Meridian. And being so possessed thereof, the

Declaration and Notice

said Defendant afterwards to-wit on the 1st day of January 1859. at the County aforesaid, entered into such premises, and that he unlawfully withholds from the said Plaintiff, the possession thereof, to the damage of said Plaintiff Two Hundred Dollars. And therefore he sues &c.

P. P. Hamilton Atty
for Plaintiff

State of Illinois }
Marion County } Thomas J. Mc Mackin being duly
sworn. says: that he served by reading & delivery a
true copy of the within declaration & notice, to the wit
him named Abraham Wimberly upon the premises
within described, on the 18th day of August 1860.

Subscribed & sworn to before me this 21st August, 1860

H. W. Egan Clk. } T. J. Mc Mackin

Serving & mileage - 65 cents

To Mr. Abraham Wimberly the above named Defendant.

You will take Notice, that the above Declaration
will be filed on the third day of the next term of the
Circuit Court of Marion County, and that upon filing
the same, a rule will be entered requiring you to ap-
pear and plead to such Declaration within twenty
days after the entry of such rule; And if you neg-
lect so to appear and plead a Judgement by
Default will be entered against you, and the Plain-
tiff will recover possession of said premises. -

Salem, Marion County August 16. - 1860.

Charles R. Hurst

By P. P. Hamilton Atty

Return

Notice

31

[20499-127]

Filed August 22nd 1860 H. W. Egan, clerk

Filed Oct. 8, 1861, J. S. Boggs, clerk

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Plan

"G"
" Abraham Kimberly
at
Charles R. Hurst



Ejectment.

And the said Defendant comes and defends the force and injury, when &c. and says that he is not guilty of unlawfully withholding the possession of the said premises in said Plaintiffs Declaration described in manner and form, as the said plaintiffs hereto above thereof complained against him and of this, he the said defendant puts himself upon the country &c.

Raynie, Parrish, Bassett
& Smith.

Attys for Deft.

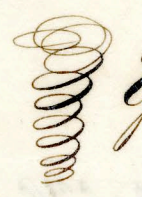
And the said Plaintiff doth the like.

Marshall, Jones & Martin

Filed March 26th 1861, J. D. Chance, clk. - By A. W. Engen, Deputy
Filed Oct. 8, 1861, J. S. Bogan, clerk

" State of Illinois
Warren County S. S. In Jefferson County
Circuit Court, October Term
J. T. 1861.

Charles R. Hurst
vs
Abraham Kimberly



Ejectment

Sir/ You are hereby notified that on the trial of the issue in this cause, you are required to produce the patent or patents granted by the United States to William Kinney and John Taylor for the E 1/2 and for the W 1/2

Notice

of N. W. 1/4 of Section 26. Township 2. N. R. 2. E. of
the 3^d P. M. in Marion County Illinois. And in case
you neglect or refuse to produce same, that the Defendant
will produce and offer in evidence on the trial of said
issue secondary evidence of the issue of said patent
or patents and the entry of said tracts by said per-
sons.

Alam, Septe 23^d 1861.

Yours Respectfully

Bryan Shaeffer, Agent,

Smith & Bapett, Depts Attorneys

Filed 23^d Septbr. 1861. D. C. Chance Clerk.

Filed Oct. 8. 1861. J. G. Bogan Clerk.

Served Copy on J. P. Hamilton Defts. Attys. Sept. 23/61.
J. Bapett.

State of Illinois
Jefferson County J. G.

I, John G. Bogan
Clerk of the Circuit Court, in and for the
County and State aforesaid, do hereby certify,
that the foregoing, above and within, is a
and are true copies from the Papers in the
above said styled cause, filed in the
said Circuit Court of State & County afove
aid.

Given under my hand and Seal
this May 24th 1863.

clerk.

State of Illinois
Jefferson County

Of the Jefferson County
S.S. Circuit Court
May Term A.D. 1863.

Pleas and Proceedings had in the
Circuit Court in and for the County
of Jefferson in a certain cause
heretofore pending in said Court
wherein Charles S. Hurst is Plain-
tiff and Abraham Wimberly is
Defendant

Be it remembered, that on the (14th) fourteenth
day of October A.D. 1861. and eight day of the Octo-
ber Term A.D. 1861. of the Jefferson County Circuit
Court, Illinois, before the Honorable S.S. Marshall
presiding Judge of said Circuit Court in a cer-
tain action of Ejectment in said Circuit Court
pending an Change of Venue from Marion County
in said State of Illinois, wherein Charles S. Hurst
is Plaintiff and Abraham Wimberly is Defendant
the cause came on for trial and the following or-
der appears of Record in said Court, in words
and figures, to-wit:

"Monday the 8th day Oct. 14th A.D. 1861.

No. 152.

Charles S. Hurst

vs
Abraham Wimberly

Ejectment.

Ordered by the Court that
this cause stand continued to the next term of this Court.

35.
And afterwards to-wit, on Friday the 9th day
of May A. D. 1862. and 5th day of the May Term
A. D. 1862. of the Jefferson County Circuit Court, the
following order of said Circuit Court, was entered
of Record and is in the words and figures as follows
to-wit:

" 5th day Friday May 9. 1862.

No. 52.

Charles R. Hurst

vs
Abraham Kimberly

Ejectment Change of Venue
from Marion County

Same
this day the Plaintiff by Marshall, Jones & Martin his Attor-
neys, and the Defendant by Brewitt & Shaeffer his Attorneys and
this cause coming on to be heard, by agreement is submitted
to the Court. The Court having heard the evidence, and al-
so the arguments of Counsel, It is ordered, that the said
Defendant have Judgement in his favor and against the
said Plaintiff for his costs in this behalf expended, to be
taxed & c.

Thereupon, On Motion of Plaintiff by
his Counsel, a New trial is awarded in pursuance of the
provisions of the Statute in such cases made and provided,
payment of costs having been made, and on Motion It is
Ordered, that this cause stand continued.

And afterwards on Thursday, the 9th
day of October. A. D. 1862. and fourth day of the Octo-
ber Term A. D. 1862. of the Jefferson County Circuit
Court, an order was entered of Record in said Circuit

Court, which is in the words and figures as follows,
to-wit:

No. 24.

Thursday, October 9th A.D. 1862.

Chas. R. Hurst

vs
Abraham Wimberly



Ejectment. - Change of venue
from Marion County.

Same
this day the Parties by their Attorneys and on motion,
it is ordered by the Court, that this cause stand con-
tinued.

And on Wednesday the 13th day of May A.D. 1863.
and 10th day of May Term A.D. 1863. of the Jefferson
County Circuit Court, the following order was entered of
Record, in words and figures to-wit:

10th day - Wednesday May 13. A.D. 1863.

No. 15.

Charles R. Hurst

vs
Abraham Wimberly



Ejectment. - Change of venue
from Marion County

Same this
day the Parties by their respective Attornies, and this cause
coming on to be heard, is submitted to the Court, upon
proofs and evidence. - The Court having heard the evidence
and arguments of Counsel and fully examined and con-
sidered the proofs, and being well advised in the pre-
mises, is of the opinion, that the Defendant is Guilty, and
that the Plaintiff is the owner in fee simple of the pre-
mises described in the Declaration herein filed, to-wit:
The North West Quarter of Section No. Twenty - Six (26)

37
in Township No Two (2.) North of Range No Two (2.)
East of the Third principal Meridian, and that he is en-
titled to the possession of the same. To which finding of
the Court, the Defendant by his Counsel, excepts and there-
upon enters his motion for a New Trial.

The Court having heard the arguments of counsel
upon said motion, and being well advised, It is or-
dered that said Motion be, and it is hereby overruled.

And thereupon the Court proceeding to Judgement
upon the Verdict, as rendered of this day, It is ordered,
Adjudged and Decreed, that the said Plaintiff have
judgement in his favor and against the said Defendant
upon the verdict of Guilty as rendered herein, and that
said Plaintiff have his writ of possession under the seal
of this Court to said premises, that is to say, The
North West quarter of Section No Twenty - Six (26.) in
Township Two (2.) North of Range No (2.) East of the
Third principal Meridian, situated, lying and being
in the County of Marion and State of Illinois.

And it is further considered and ordered by the
Court, that the said Plaintiff recover of and from the
said Defendant, his necessary costs, in his said suit in
this behalf expended, to be taxed &c. and have execution
therefor.

State of Illinois
Jefferson County S. S.

J. John S. Bogan,
Clerk of the Jefferson County Circuit Court

And State aforesaid, do hereby certify, that
the above, foregoing and within, is a true,
perfect and correct copy, from the Pleas and
Proceedings had in our said Circuit Court
and as it appears of Record in our said
Court.

In Testimony Whereof, I
have hereto set my hand and
put the Seal of our said
Court, at Office, Mount
Vernon, this May 29th A.D.
1863.

John S. Bryan

Clk Circuit Court

Fee \$10.40

And now comes the defendant by James Bassett Lewis
and Michael Shaeffer his Attornies and assign error in
the said Verdicts, findings and Judgment of said Circuit
Court as follows, to wit.

I.

State of Illinois
Jefferson County
Circuit Court

May Term A.D. 1863

Charles R. Hurst

vs

Abraham Wimberly

Ejectment,

Pleas, Proceedings &c.
with Bill of
Exceptions

Postage - 35.cts
Per p 9. 75. ct
Stamps 130. ct
\$10. 48. cts



Errors Points assigned

I The Court erred in giving judgment for the Plaintiff on the affirmative proof adduced, which was.

1. The Dept possession of the Lands in question at commencement of the action.
- 2 - That William Kinney and John Taylor entered the Lands in question as purchasers from the General Government in 1836.
- 3 - That Antonio Campbell was Administrator of John Taylor deceased.

This proof combined did not show any title whatever in Charles K. Hunt, the Plaintiff in Ejectment.

II The Court erred in giving judgment for the Plaintiff in Ejectment, who relied solely on documentary proof of title, and should have shown complete title, without omission of any material link, and such material links not being complete, the Court should have concluded that defective documentary proof

Jenkins vs. Stock & Stewart, Cal. p. 60.

and see 1 Greenleaf Ev. Sec. 70 p. 102.

The material links, ^{omitted} are 1st as to the Adult Heeds in connection with the Records as shown in point N^o III.

2nd. As to the Adult claim Heeds in ^{view of} connection with its internal structure, and in connection with the will of William Kinney as shown in point N^o V below

3rd As to the will of William Kinney ^{which was} ~~was~~ ^{incomplete} ~~incomplete~~ ^{as to the} ~~as to the~~ ^{material links} ~~material links~~ ^{omitted} ~~omitted~~ ^{to be} ~~to be~~ ^{shown} ~~shown~~ ^{and} ~~and~~ ^{should} ~~should~~ ^{have been} ~~have been~~ ^{complete} ~~complete see point N^o VI below~~

III

The Court erred in admitting the bill to read in evidence the Adm^r's Deed in connection with a clearly defective record of the proceedings on which it was based. The defects in the records are first.

1. It gives no caption to show the Term when the proceedings commenced, ~~or~~ nor the Court, nor the Judge presiding who rendered the Decree of Sale.
2. It contains no copy of the Petition for sale
Moralawes Vanduyke 37 Clk 184
Rev Stat 1845 Sec 103 p 588.
3. It contains no copy of the notice of intention to file and present such Petition.
Rev Stat 1845 Sec 103 p 588
4. No summons appears to have been issued nor written notice served, nor copy of petition ^{attached} ~~attached~~ _{to the bill}
5. No evidence of default of Deft to appear and answer is shown, nor is such default stated in the Decree of Sale, nor does it appear that the application was made at the Term specified in the notice, no notice having been shown there was nothing to inform the Court nor ^{it} show ~~the~~ ^{it} ~~the~~ Court in the Ejectment case that the proceedings were regular
Turney vs Turney 54 Clk 1855.
6. No exhibits or evidence of Title in John Taylor to the Lands in question was shown.
Rev Stat 1845 Sec 103 p 588 pp 588, 9
7. No evidence of the indebtedness of the Estate nor of the Adm^r's faithful application of the funds received is shown. ^{ibid} See 103, 104, 108
the Decree does not show necessity for selling the whole or part
8. All the Adm^r's reports are not given, but only a ^{part} _{ibid See 103, 104}

further Report of date. No 10 below suggest the necessity for all the Reports.

9 - The Report of sale given and the notice of sale are variant from the Statute, which requires some time between the hours of 10 O'p in the forenoon and 8 O'p in the afternoon. While the Report and notice are between the hours of 9 A.M. and sunset of said day. ^{Rev Stat 1845} ~~1844~~ Sec 106 p 59

10 - The Report and Admt Deed are contradictory. ^{and suggest omission} 1. The Admt Deed shows that Charles R. Hornet purchased all the Lands, while the Report of sale shows that on Nicos Valley purchased at same sale some of the ^{same} Land ~~and the Admt Deed shows that Charles R. Hornet~~ Both statements cannot be true, which is correct? No explanation is given. Inds the Deed says that Charles R. Hornet the purchaser as it states complied with all the conditions of said sale; while the Report shows that no notes or mortgages were executed, which the Deed did require.

11 - The Report refers to vouchers filed therewith for the proceeds, but none such are given. and hence not seen a substantial compliance with the conditions of sale of the Deed is given, and is a technical compliance and not the contrary.

12 - The Report and Admt Deed show that the Lands were sold in mass, and not in

the lowest legal subdivisions.

Day vs Graham 1 file 435

Graham vs Day 4 file 384

Ross vs Wears 5 file 171

Dewant vs Gay 5 file 442

Greamp vs Stokes 13 file 24

Phelps vs Crown 25 file 313.

13 - The proceedings for said sale were not a chancery proceeding (so as possibly to induce the Court to presume in the decree all that was requisite was done) but is a statutory proceeding, and therefore all the requisites of the statute should have been shown

to have been complied with, not does Section 105 Rev Statute 1845 p 559 conflict with this.

~~of the same matter~~ - *Medine Company vs Webster 26 file 333.*

Pherson vs Washburn 2 of R 213

IV The Court erred not only in overlooking the omissions in point III stated ^{above} but also in overlooking the recitals and statements of said Adm^r Heeds in connection with the evidence given, and the obvious contradictions of both.

1. The Heeds alleges all the tracts of Land embracing that in question was in seisin of John Taylor at his death

which the Letters of administration shows to have been on 31 May 1847. ^{approximately} but no se-

-se of seisin of the whole was given, but only of an undivided one half with William

Heiney - proof was offered of a Leib claim 9 years after death of Taylor

Heeds which supposes one undivided half and the other in Taylor

who in Charles R. Hurst (Hence at time

of the Adm^r proceeding Hurst and Taylor

supposing that but claim deeds valid, which is denied
be do pretty and not Taylor solely.) The
proceedings and decree were therefore defective
supposing the but claim deeds valid (which
is denied) but taking it as invalid show
Taylor on the part shown died seized of one
undivided half and Wm C Kinney ^{of} the
other ~~undivided half~~, in either case the pro-
ceeding and decree are ^{defective} ~~invalid~~. and no
conveyance having been shown to Taylor
from either of the Kinneys. Taylor clearly
died seized of only an undivided one half
all which the Court overlooked.

V The Court erred in ^{permitting} ~~admitting~~ the plea to read in
evidence the but claim deeds in view of its internal
structure and in connection with the will of William
Kinney deceased, when the material links were omitted,
which are

1. In view of its internal structure, in not
requiring production of the conveyance (if any)
from William Kinney in his lifetime to John
Taylor. that conveyance is an essential link of the
chain.
2. In connection with the will of William Kinney
in not requiring the connection between the
but claim deeds and the show. to
make such connection it should have been
shown that the will and said deeds ^{on their face} ~~are~~ ^{they} ~~are~~ ^{are}
executed, or that Wm C Kinney executed that
deed as residuary legatee of said William
Kinney deceased.

VI.

The Court erred in admitting the said Record of the will of William Hiney to be at all ready in evidence in view of our findings of material links.

1. It should have been shown it was a material ^{in title} link, which it could only have been was it connected with the said claim deed, but not being so connected it should have been wholly excluded as being at all a link of title.

2 - If ready at all it should have been read in connection with the supplemental will that the Court excluded and took a part for the whole, heard ~~only~~ not the complete will but only a part. no evidence ^{County was not settled} or that it was ^{doubted at death} ^{also in Marion County Illinois} ^{form of execution said} ^{Marion} ^{Illinois} ²

3. The Court overlooked the attestation of said will which in objection might be questioned.
Rev Statutes 1845 Sec 2-11 536.
~~2~~ ~~1190~~

Bourne's Law Dict. (attestation)

McCraw vs Gentry 3 Camp 232 (Eq)

Mullen vs McKelvey & Watts 899 Pa,

Rugg vs Wilson 13 Alls 18

Ackland's Receipt Press Books 76

Ferguson vs Hunter 2 Selw 663.

Thus far as to material links omitted.

VII

The Court erred in giving judgment for the Plaintiff while ~~no~~ a clear prima facie title was not even shown, much less a legally valid one to the whole of the tract of Land in question. ~~was~~ ^{not} ~~was~~ ^{not} yet in view of the our findings and evidence

tion in the Adm^t Deeds and Record of proceedings was a prima facie title, and a legally valid one shown to the undivided one half in Pleff. much less in the whole and this is fatal - Rupert vs. Mack, 15 Ills 541.
Jackson vs Demont 9 Mc 55

VIII. The Court erred not only in allowing a defective recd of the will to be read, and excluding the supplemental will, but it also erred in allowing that defective Recd of the will to be read in connection with the ^{defectively proved} Deed. They stood distinct and unconnected. W^m C Kinney did not make that Deed as residuary legatee, and that Deed on its face connects itself with a supposed act of W^m Kinney the ancestor in his lifetime, and not with his will or any devise under it. ^{The will does not do it.} in itself that Deed gave no title to pleff. and

IX The Court erred in allowing the Deed claim Deeds to be read until it was affirmatively shown by pleff that William Kinney did in his life time convey to John Taylor.

X The Court erred in ~~allowing~~ requiring the Deft to prove a negative, to wit that William Kinney did not in his lifetime convey to John Taylor, while the affirmative of the issue, to wit, having title in his own right in pleff of an estate in fee simple to the whole of said tract lay with pleff. This the greater affirmative included all the lesser affirmatives, and the very fact of requiring such negative proof showed the necessity of such proof on Deft claim Deed - 1 Greenleaf Ev § 107 & 111. Sections 74 & 78

XI The Court erred in overlooking the negative proof offered by Deft (though not of right required to offer such) that William Kinney in his lifetime convey to Taylor as shown

by the Records of the County where the tract in question lay.

XII. The Court erred in not sustaining the limitation in said Trust claim Deeds, which limitation was binding on the grantee (Trust the p^{ty}) while it sustained the other limitations therein making it a Trust claim Deed though in form a warranty Deed

Kelton vs Ward 3 Monroe 310

Vanable vs McDonald 4 Dana 336

Thronton vs Masterson 9 Dana 328

Butterfield vs Smith 11 Am 486

Brady vs Spruce 27 Am 482

McConnell vs Reed 4 Scam 121

XIII The Court erred in overruling the depts special objections to the p^{ty}s documentary proof, and in refusing new trial so as to enable p^{ty} to complete if possible his negative ^{proof}, there requiring such negative proof being a total surprise, and ^{also} to complete his positive proof he being under an obligation to show his title until p^{ty}s was proved thereby. It erred in view of defective records - omissions of material links, and of critical history and unexplained Records, and erred in giving judgment at all for p^{ty}, and in not giving judgment for depts.

Wherefore depts prays that this Record be made a writ of supersedeas and that same issue as a writ of Error

Abraham Wamplerly p^{ty} in Error.

By James Bassett &

Michael Shaeffer his atty.

And the said debt in error, Chas R Hunt
comes and finds in error, & says that
there is no error apparent upon
the record of this cause by reason
of which the judge rendered in this
cause ought to be in any wise
reversed. — And this he prays
may be considered by the Court
Chas R Hunt
By P. P. Hamilton

State of Illinois vs: The Clk. of Sup. Court
will make the writ of error in this case
a ^{superior degree} on the Plaintiff in error executing a bond
in the penalty of five hundred dollars with
Rufus P. McHewain and Samuel C.
Davis his securities, conditioned accord-
ing to law - done at Chambers June 24
1863
Sidney Meece,
Prof. Sup. Court

10
Supreme Court Clerk
1st and 2nd Divisions
Nov Term 1863

Abraham Kimberly
and
Charles McHewain
and
Records
and

Filed Aug. 3. 1863.
N. Johnston Clk
Paid - \$11.00

Recd 10:40
Paid by
J. H. Meece

State of Illinois }
Jefferson County } ss.

Supreme Court Ills.
November Term 1863

Abraham Wumberly

Plff in Error

vs

Charles R. Trust

Def in Error.

Error to Jefferson

Wm B. Trust for

Plff in Error.

action

This was an action in Ejectment tried before Hon J S Marshall at May Term 1863. Judgment for Plff (Trust) and comes before this Court on writ of error and superseded on fact of death.

Lands

The Lands are NW 1/4 Sec 36 T2 N R2 W in ^{in Ejectment} Marion County Ills. The Plff claims title to the whole tract. Deed made 1 Jan^y 1859. Declaration de filed 18 Aug^t 1860.

The following dates are important.

Dates

1836. Dec 15. purchase from US by William Kinney & John Taylor.

1843 Aug 9. Will of W^m Kinney

" Sep 10 Supplemental will of same

" Oct 18 Probate of same to W^m C Kinney

1847 May 31 Death of John Taylor.

1848 Jan 29 Letters of Admⁿ to A Campbell on Estate of John Taylor.

1856 May 1 Deed claim made W^m C Kinney to C R Trust.

1857 April Term. proceedings for Admⁿ sale.

1857 Sep 10 Admⁿ Deeds to Trust.

Exhibit
dates.

1860 Aug 18. Declaration filed.

1861 March Term Issue joined

" Aug Term venue changed

1862 May Term 1st trial. Judgment for Def.

1863 May Term 2nd trial Judgment for Plff.

=====

Plffs Evidence

1st. - Adm^r's Deeds of Sept 10, 1857. to Dec 1st

2nd - Adm^r's claim Deeds May 1, 1856. to 1860.

3rd - Letters of Adm^r to A Campbell

4th - Record of Adm^r's proceedings viz.

5th -

1. Deed of Sale

2. Report of Sale (Further Report)

3. Notice of Sale & publisher's certificate

6th - Will of Wm Skiney of 9 Aug 1843 and

1 Proof

2) order to Probate

3 Executives oath (W. Skiney)

6th - Register of Lands office Certificate of purchase by W. Skiney & John Taylor.

7th - J. P. Hamilton proof of Reg^r's official character and handwriting.

8th - Jas Williams - of Olchance - N C Jures proof of Def^t's possession at commencement of action

=====

Def^t Evidence

1st - Negative proof Wm Skiney did not convey the lands to John Taylor.

2nd - Supplemental will of Wm Skiney (excluded by the Court)

Points

I

That the affirmative proof of Plff did not sustain the issue to wit Plffs title. for all that was proved affirmatively was.

1. Noft possession

2. Entry by Quincy & Taylor.

3. That Memphis was Taylor's Adm^r.

all which showed no title in Plaintiff. all other matters of proof offered were defective & failed

II

That plff having relied on documentary evidence of title, should have omitted no material link, and such being omitted his documentary proof should be excluded in toto, because a complete title is required

In Jenkins vs Stock 3 Stewart Reports p 60 (Alabama) decides. "that where Plain

" tiff relies on documentary proof of title

" a complete title must be shown and if

" a material link be wanting, his docu

" mentary proof should be excluded from

" the jury."

In 1 Greenleaf Sec 74 p 98. The assentor

" of the affirmative of the issue is not

" permitted to go into half his case, and

" resume the remainder, he must develop

" all" —

2 Hilds page 1193 ante

referring to 6 Bask 341

How 9 Smude vs Marsh 244

How 3 Stew & Hart 184

III. As to material links omitted, in the Admt^s Recds
in connection with the Recds of proceedings.

It is clear that the Admt^s Recds alone could not be
read, hence the necessity of producing the Recds,
and that Recds should be complete, at least in
all material matters. The Recds is defective

1. In not showing the Term at which the proceeding
commenced - nor the Court - nor the Judge presiding.
all these are material to show jurisdiction.

2. No copy of the Petition is given.

In Monsieur vs Vanduyke 27 Ills 1824. The
Court Judge Caton decided. "That
" proceedings for the sale of Lands by an
" administrator will be reversed, if
" the Recds does not show any petition
" by the Administrator "

and see Rev Stat 1845 Sec 103 p 588

3. No copy of the notice of intention to present and
file the Petition is given.

Rev Stat 1845 Sec 103 p 588.

4. No Summons appears when issued, nor
any written notice, & copy of Petition & papers
See Rev Stat ibid.

5. No evidence of default to appear is given, nor
does the decree state said. ^{does} nor ^{it} show the
application was made at the Term specified in
return. Rev Statute 1845 Sec 104 p 588

In Turvey vs Turvey 214 Ills 635 The

Court decided that, "the application by
" an administrator to sell real estate must be
" made at the term specified in the notice
" published by him. and if not made at that
" term the proceeding is abated, and the par-
" ties must be brought into Court by another action
" before any further steps can be taken."

6 - No evidence of letters in favor Taylor to the Land
was shown.

Rev Stat 1845. Sec 103 p 558 provides
for sale of testator or intestate real Estate of
which he died seized. No particular evidence
is shown that he died so seized, or that contrary
- by all that is shown is that he died seized
of an undivided half. The allegation of the
Decree is not sustained.

7 - No evidence of indebtedness or of a
application of funds shown.

Rev Stat 1845 Sec 103. 104 p 558
and Sec 108 p 559.

8 - The Decree does not show necessity for
selling the whole, or part

Rev Stat 1845 Sec 103. 104 p 558.

8. All the Reports are not given, but only
a further Report. (The necessity for all
the Reports is suggested by No 10 below).

9 - The notice of sale & Report are not accord-
ing to Law Rev Stat 1845 Sec 106 p 559

10 - Shows contradiction as to purchaser
at sale between Adm't Needs and Report.
- Which is correct? - They also show con-
- tradiction as to compliance with terms
of sale as decreed.

11 - The Report says vouchers for proceeds
of sale are filed - none such are presented,
so as to show even a substantial compli-
ance, technical^{ness} compliance is shown.

12. The Lands were sold en masse and
not in formal legal subdivisions, and
no reason for such sale is given.

In Phelps vs Connor 25 Ills p 313.

The Court says, "that it has uniformly decided
" when it shall appear that Lands or lots
" which could be divided and sold in parcels,
" shall be sold in a mass such sale is
" irregular and will be set aside, and
refers to Day vs Galbraith 1 film 435 and
Galbraith vs Day 4 film 389 and to Ross
vs Meade 5 film 171. Stewart vs Gay 5 fil
442. and says Greenup vs Stokes 12 Ills
24 is no exception and that the seller
must offer to sell in smaller divisions and
if no reasonable bid there in mass, the
offer returning the facts and Stewart
vs Gay 1 film 442 refers to Executors
sales & master sales as under same rule.

13 - These proceedings are Statutory not Chancery proceedings. Hence the Court cannot be held as assuming anything. The Statute must appear to have been complied with.

In Moline Company vs Webster 26 Ills 333 the Court says. (Judge Catron) that "a proceeding to sell real estate" is not a chancery proceeding."

See 106 Rev Stat 1845 p 559. merely directs that the surveyance by the Adm^t shall set forth the order at large. It is only directory. If setting forth the Deeds be enough, where the necessity for the decisions of Illova law vs Vanduyke 27 Ills 154 - of Turney vs Turney 24 Ills 635. and of the Moline Company vs Webster 26 Ills 333 cited above. The whole statute is binding as in the analogous statutory proceedings and decisions on Sheriff Deeds, and Mechanic's liens which are creations of the Statutes -

See Johnson vs Hasbrouck 2 of No 213

IV. As to material links omitted as above shown, the Court ^{erroneously} overlooking ~~the~~ the contradictions between the statements of the Adm^t Deeds and the evidence adduced by pl^{ff} in Exemption -

Taylor died 31 May 1847
Lut claim 1 May 1856
differs years 9

1 - The Adm^t Deeds and the Lut claim Deeds contradict each other. The former alleges John Taylor died seized of all said Lands, (31 May 1847) while the Lut claim Deed (1 May 1856 nine years later) shows a supposed title in Hunt to an undivided half (admitting for sake of argument only that Lut claim Deed to be valid) and to Taylor in the other half. So that at April Term 1857 when Adm^t proceedings were supposed to have commenced Hunt & Taylor owned jointly and Taylor did not own solely as alleged in Adm^t Deeds -

2 - Supposing the Lut claim Deed invalid then Taylor and W^c Kinney held the Lands jointly and not Taylor solely as alleged in Adm^t Deeds.

3 - Supposing the Adm^t Deeds invalid as above shown - then Hunt ~~was~~ took nothing through Taylor, and supposing the Lut claim Deeds invalid he took nothing through Kinney. Hence he took nothing under the evidence. But if the Adm^t Deeds be held valid ^{then} at best he took only a half and his action must fail under Report as track 15 Ills 541 cited below.

V The ^{error} account as to material links omitted between the Lut claim Deed and Will of William Kinney, and also in view of the internal structure of said Lut claim ^{Deed}

1. The internal structure of the Beeds considering the limitation at end of description of the Sands, the Court should have required ^{it} to show that William Kinney in his lifetime did convey to John Taylor, and it is essential ^{link} _^
- 2 - The connection between the will and that Beeds should have been shown, either that the will recognized such conveyance, or that W C Kinney executed that Beeds as residuary legatee - The will itself is not a link of title and being unconnected with that Beeds is clearly no link.

VI material links as to the will were omitted.

- 1 The will not being itself a link, unless connected with the land claim Beeds should have been excluded.
- 2 If read at all the supplemental will should not have been excluded. in the absence of evidence that Manin County was not W Kinney's domicile at death, or that it was ^{also} _^ ^{the land lies} _^ ⁱⁿ Manin County ^{and execution} _^ ^{there} _^ ^{that is his} _^
- 3 The attestation of the will as read ^{was} _^ not according to the Statute, and this might be ~~be~~ questioned in Ejectment.

In Adkins vs Sheriff, Beeds 339 76 and Forquer vs Hunter 2 Gilw 663. The Court held that proof of a will may be collaterally assailed in Ejectment.

The Statute of Wills (Rev Stat 1845 Sec 3 p 536) requires that they be attested in the presence of the testator or testatrix by two or more credible witnesses

for attestation, and attesting witness. See Bourne's Dist^r and Mc Crow vs Gentry 3 Camp 232 (Eng) and Mullen vs M^r Kelvey 5 Watts 399 (Penn).

In Rigg vs Wilton 13 Mts 18. The Court says "the indispensable requisites of a will are, it must be signed by Testator, or by some one in his presence, and by his direction, and attested by two or more witnesses. A paper that has not thus been subscribed and witnessed has no force as a will under our Statutes."

Thus far as to material links of evidence omitted.

VII. A clear prima facie case was not shown by plff, nor a legally valid one to the whole tract, in view of omipious and contradictory above shown. not even a clear prima facie case to the undivided one half, much less in the whole, and this is fatal for in Rupert vs Mark 15 Mts 541 the Court

and in Jackson vs Belmont decided. the Court looks steadily to the legal title.

decides, "that where a declaration claims title to the whole of a lot of Lands, an undivided interest in the lot cannot be recovered under it."

VIII. Error in allowing defective Rec^ds of the will to be read in evidence and including the supplemental will - It should not allow it to be read in connection with last claim

See N^o VI above as to this point and the
point VIII itself.

ix Error in not requiring proof to sustain the affirmative of the
issue and show that W^m Kinney did convey to John Taylor.

In 1 Greenleaf Ev see 74 p 98. "The burden of
" proof lies with the assenter of the affirmative
" line of the issue - and the assenter of the
" affirmative of the issue is not permitted to go
" into half his case, and reserve the remainder
" he must develop all."

x Error in requiring proof to prove a negative, while the affir-
mative of the issue lay with the plaintiff to prove lawful title
as laid in his declaration. The fact of requiring such negative
proof showed that prior conveyance was necessary to sustain that
title claim deed or defeat it -) The rule of logic cited in the point is plain
and is good as a rule of Law.

xi Error in overlooking the negative proof given by Deft.
where would record of such a deed be found
as to notify subsequent claimants but in
the records of the County, and this proof
is all under the circumstances could be
required. If W^m Kinney did not know that
his testator deeded, who could. The plaintiff
might know or Taylor admit, but neither
produced it, not the admit in his proceeding
to sell - nor plaintiff in this his Exemption
suit. Deft did all could reasonably
be required of him, and if that burden
of proof did not lie on him, but on
plaintiff to show such conveyance if made.

the plea did not give any primary evidence
nor secondary evidence, as reputation in the
family - loss, and evidence of contents. The
Court clearly sees herein, facts in not re-
-quiring plea to show the affirmative, seemingly
in excluding or overlooking best negative
proof. See Greenleaf cited above.

XII The Court sees very clearly in not sustaining the limit
ation in last claim Deeds at end of description of Lands.

// In Colton vs Ward 3 Monroe (Ky) p 310. the
Court held "the description is given under
" a videlicet, and is preceded by a general ex-
" ception of the part sold and conveyed to
" Gwaltney. The general exception is plain
" would have been sufficient to prevent any
" part of the lot owned by Gwaltney from
" being included in the Deeds of conveyance
" to Colton." In Usable vs McDonald

// 4 Dana 336 (Ky) the same doctrine is
Laid down. In Thornton vs Masters
// 9 Dana (Ky) 228. It is held that "a con-
" -veyance of all a grantor's lands, within a
" certain district of county, with a reservation
" pro many acres to be taken at his election, in
" any part of the premises vests the grantee
" with a title to the whole, subject to the grantor
" right to restoration of the quantity reserved whenever
" he shall make his election.

In Butterfield vs Smith 11 Mo 485. it is held
that "a quit claim deed is as effectual for the
" purposes of transferring real estate as a deed
" of Bargain and Sale, unless there are words
" in the deed showing an intention on the part
" of the grantor to make ~~xx~~ limitations to his
" conveyance, of which are, than the grantee is
" bound by all the limitations it contains."

This was a case of Ejectment. The deed at
issue of description of lands had this exception
" intending to convey such only as are now
" owned by said Walker, and not any that may
" have been conveyed to any one else." The
Court says "the intention of the parties guides
" construction, the Land had been previously
" conveyed, and now passed under the deed"
and the Court cited McCounells vs Reed
4 Seam 117 and Brown vs Jackson & Wheaton
449.

In Brady vs Spinks 27 Mo 402. it is held
that "a quit claim deed is any other deed
" which is effectual to convey lands, passes
" to the grantee the conveyance meaning with
" the Land, unless there be words in the deed
" limiting the conveyance" and cites McCoun-
- nells vs Reed 4 Seam 117. Butterfield vs Smith
11 Mo 485. above cited.

I see' freuleaf p 102 & 103.

XIII Error in overruling Deft's special objections - and in refusing new trial - seeing the surprise the decision as to a negative wrought on Deft. - Error in overlooking defective records - omission of Deft's material links - and the contradictions cited - Error in giving Judgt for Plff and not giving for Deft.

James Raffett } Deft's atty.
Michael Shaaffer } for Plff in
Error

Supreme Court Mo
Nov Term 1863

Abraham Wimberly
vs
Charles Mc Hurst

Brief for Plaintiff
in error

1863

James B. Pettit
Plffs atty.

Winnery

on Error from Jefferson.

Rec'd

The Record shows that the evidence on which the Recovery was had was as follows.

1. The Certificate of the Register of the Land office showing the purchase of the land by John Taylor and William Kinney

2. A deed from the Administrator of Taylor to plaintiff, - in connection with letters of Administration, and an order of Court authorizing the sale, and the order confirming sale,

3. A deed from William C. Kinney to plaintiff, in connection with the will of William Kinney devising the land to the grantor.

4. Proof of possession, -

Upon the question of the Admissibility of the Administrators deed as evidence, left in Error contends, that the order of sale shows all the facts necessary to give the Court Jurisdiction, and that Errors of proceeding, cannot affect the title of the purchaser, who was not

would to look further back, than to the
order of sale. — Pigg's is book 4 G. 348
Philips is Coffin 17 G. 156
Lane is Brummbaum 17 G. 96.
Swijert is Harbord's 4 Seams 371 G.
Jousson is Soling 26 G. 182.
2 Vol. Purple Statutes see 105. 106.

There is nothing in the objection to the
and from Kinsey, —

November 11 1863.

Wm Thomas
for Kinsey.

No 10.

Mindley

by 3/2 from
Lifford

Hurst

Brief by Thomas

for left.

1863

Salem Aug 4. 1863

Wash Johnston Esq
Clk Supt Ct
W Vermont

Dear Sir

I return the Supersedeas
of Scire facias - Mr Hunt lives at
Springfield Illinois, the Scire
facias will have to be attend
from "Marion" to "Sangamon"
County. Please attend neces
sarily and transmit to the
Sheriff of Sangamon County
for service and to report his
fees to you for payment

Yrs Respectfully
James Russell

Abraham Winberly }
vs }
Charles R. Hunt }

Pliffs additional
Argument in reply.

The 2nd section of Point III in Plaintiffs Brief is not disturbed by the cases cited by Def^t nor the ruling in Manahan vs Vanduyke 27 Illinois 154.

The cases cited are

- 1 Rigg vs Cook 4 Gilw 348.
- 2 Lane vs Hornumelnew 17 Ills 96
- 3 Phillips vs Coffey 17 Ills 156
- 4 Swiggart vs Harbor 4 Scam 371
- 5 Iversen vs Loberg 26 Ills 183.

All these were cases in Ejectment.

The 1st case cited is not in point, we are not collaterally attacking the proceedings but only claiming that the Record produced did not contain the Petition. The same remark applies to cases Nos 3, 4 and 5 above cited. The case No 2 is not in point, because our objection is not against the judgment, but that the Record produced does not show the Court had jurisdiction nor does it show any Court (See Section 1 Point III of Plaintiff).

The other references to 2 Kruple 1213 Sec 105 and 106 do not apply, if they do, then the case of Manahan vs Vanduyke 27 Illinois 154 was unnecessary.

The other arguments of Defendant's
counsel are only matters of their individual
opinion

James Rapett
atty for Plaintiff in
Error.

The case of Stow vs Kimball 28 Me 93 does
not present Point III made by Plaintiff
in his Brief.

James Rapett
atty for Pltff in Error.

Supreme Court
Nov 7. 1863

10

Abram Wimbury

vs

Charles B. Kimball

Plaintiff additional
argument in reply




Filed at Stow. 11. 1863

W. S. Linscomb atty

Know all men by these Presents that we
Abraham Winberly, Samuel & Davis and
Rufus W. Elwain of the County of Marion
and State of Illinois (the said Samuel &
Davis being resident in Saint Louis State of
Missouri) are held and firmly bound unto
Charles McHurst his heirs Executors and
Administrators in the sum of Five hundred
Dollars lawful money of the United States
of America for the payment of which sum we
do hereby jointly and severally bind ourselves our
heirs executors and administrators well and
truly to be made. Witness our hands and
seals this third day of June A D 1863.

The Condition of the foregoing obligation
is such that whereas the said Abraham Win-
berly has sued out a writ of error and Super-
sedes from the Supreme Court of the State
of Illinois against a certain judgment in an
action of Ejectment in a certain cause lately
pending in the Circuit Court of Jefferson County
Illinois on behalf of venue from Marion County
Illinois wherein said Charles McHurst was
plaintiff and said Abraham Winberly was
defendant, and said judgment was rendered
in favor of said Charles McHurst. Now if the
said ~~Abraham~~ Abraham Winberly shall pro-
secute his said writ of error and Supercedes in
said Supreme Court without delay and to effect

and shall pay all damages, costs, charges and expenses which may be awarded against him by said Supreme Court and shall fully perform and do all said Court shall order against him in the premises, and abide all said Court shall decree them these presents to be void otherwise to remain in full force and virtue.

Abraham ^{his} ~~W~~umberly 
Samuel ^{manly} C Davis 
Rufus P. McElvain 

witness present.

James Bafett

State of Illinois }
Marion County } ss

James Bafett of said County being duly sworn saith that he knows Samuel C Davis and Rufus P. McElvain in the foregoing bond named, and their solvency and saith that each of them are abundantly solvent for several thousands of Dollars over and above the penalty of said Bond and all their several debts and liabilities of every kind and that they own large unencumbered Real Estate in the County of Marion Illinois and in the State of Illinois in other Counties as to said Samuel C Davis.

James Bafett

Subscribed and sworn to before me this 19th day of June AD 1863.

J. C. Chancel clerk
Marion County
Circuit Court

10
Supreme Court
1st Grand Jury

Abraham Mintenby
vs
Charles R. Hunt

Bonds.

Filed Aug. 3 - 1863 -
St. Johnston City
H

[1863-1864]

State of Illinois }
Jefferson County } ss.

First Division Supreme Court
November Term AD 1863.

Abraham Wimberly

vs. Plff in Error

Charles R. Hurst.

Def in Error.

Error to Jefferson.

Abstract of Records.

This was an action in Ejectment brought by Def in error against Plaintiff in Error, and was tried at May Term AD 1863 before Hon S S Marshall Circuit Judge at Jefferson County Circuit Court on change of venue from Marion County Illinois.

The Declaration, Notice and return were filed in Marion County Circuit Court on 22nd August 1860

p 30 The Declaration states that on 1st January 1859 at Marion County Mo, the Plaintiff (Charles R Hurst) was possessed in his own right of an Estate in fee simple of the NW 1/4 of Section 26 Town 2 North Range 2 E of 3^d P Mo in said Marion County. That being so possessed the Defendant (Abraham Wimberly) afterwards on said 1st January 1859 at he entered into such premises, and unlawfully withheld from Plaintiff such possession to his damage of \$200.

p 31 The notice dated 16 August 1860 is in the usual form - The return states service on Def. on 18 August 1860 on the Lands in question.

p 27 On 23 Aug 1860. The Marion County Circuit Court ruled Def to plead in 20 days &c

On 1 Sept 1860 Def filed his general Demurrer: to the Declaration.

In March Term 1861 the Court overruled ~~the~~ said
p 28 Demurrer, with leave to Def^t to plead to, whereupon the
p 32 Def^t filed plea of not guilty, and Pl^{ff} filed Demurrer, and
the cause was continued to August Term 1861

p 33 On 23rd Sept^r 1861 Def^t filed notice on Pl^{ff} to
produce in the trial the Patent or Patents to said tract
of Land issued to William Kinney and John Taylor.

p 28 August Term 1861. Order changing the venue to
Jefferson County Circuit Court, the Judge (Byrnes) being of
competence to, and the papers were certified to the Jefferson
Circuit Court.

p 34 October Term 1861. Jefferson Circuit Court, Order con-
tinuing cause to May Term 1862.

p 35. May Term 1862. This cause was tried by the
Court, and judgment for Def^t (Wimberly) with costs.
New trial was awarded to Plaintiff (Hurst) and cause
continued to October Term 1862.

p 36 October Term 1862, order of continuance

May Term 1863, to wit, on Wednesday May 13th 1863
this cause was tried on consent of parties by the Court,
and the following evidence was introduced by Plaintiff

p 1 1st. A deed, ^{dated 10 Sept^r 1857} from Andrew Campbell Adm^r of
John Taylor deceased to Charles M. Hurst (Plaintiff) set
out at pages 1 to 6 of records. This deed sets out an order
made at April Term 1859 of Sangamon County Circuit
Court in a cause therein pending on Petition for sale of
Real Estate, wherein said Andrew Campbell as Adm^r
of said John Taylor was Petitioner and Seth M. Tinsley

p 2

and others were Defendants. which order states —
That Petitioner in proper person filed his Petition for
sale of Real Estate therein described — That it appeared
to the satisfaction of the Court that due notice to all
persons interested of the intended filing such Petition
by Publication in the Illinois State Register was given
in the manner and for the period required by Law
— That it appeared to the Court said John Taylor
died seized of the Lands in petition described, to wit,
E 1/2 N E 1/4 Sec 12, and E 1/2 N E 1/4 Sec 13, & S E 1/4 of Sec 24
and N W 1/4 Sec 26 (the tract in question) all in Town
2 North Range 2 E of 3^d P.M. — That the several persons
named were his only lawful heirs, and were all of
full age — That it appeared to the Court from the
proof that the said Adm^r had faithfully applied
the property to decedents debts, and that the sum of
\$7405⁰⁰ remained unpaid. The Court ordered

p 3

that said Lands all in Marion County be sold at
public auction to the highest bidder at the Court
house door in Salem Marion County Ill. on a credit
of 6 and 12 months equal installments, that he do
execute ^{Deeds} to the purchaser and take notes and Mortgages
and that he Report to. Said Deeds then stated
that on Thursday 10 September 1857 between the hours of
9 O'Clock A.M. and sunset of said day said Adm^r offered
said Lands for sale, having given more than six weeks
public notice of time and place of sale by publication
in the Salem Weekly Register, and by posting four notices.

284107-02

p 4.

— That Charles R. Herust (Plaintiff) bid at said sale

\$8 per acre for NW¹/₄ Sec 26 T2 N62E (the tract in question) and for E¹/₂ NE¹/₄ Sec 12 T2 N62E \$10 per acre, and for E¹/₂ NE¹/₄ Sec 13 T2 N62E \$7 per acre, and for SE¹/₄ Sec 24 T2 N62E \$8 per acre, all which were struck off to him - (being all the Lands in said order)

p 5. That he complied with the conditions of sale, and thereupon the said tracts were conveyed to him his heirs and assigns for ever.

p 6 Certificate of acknowledgment dated 23 Nov 1857 and of Recording in Mainw County April 11th 1860 in Book Q pages 442 & 443

The Def^y by his Counsel objected to the reading of this Deed, and it was agreed that the special objections which may be raised to each and all the papers that may be introduced should be stated after same had been offered.

p 7 2nd The Plaintiff then secondly introduced a quit claim Deed dated 1st May 1856 from William K Kinney to Charles B Horst (Plaintiff) which is set out at pages 7, 8 and 9 of Records.

This Deed witnesses that the party of the first part in consideration of one dollar granted as to the party of the second part his heirs and assigns for ever certain tracts of Land, to wit, E¹/₂ NE¹/₄ Sec 12, and E¹/₂ NE¹/₄ Sec 13, and SE¹/₄ Sec 24, and NW¹/₄ Sec 26 all in T2 N62E (the last being the tract in question) of and of description it has as follows "It being intended by this Deed to convey to the said Charles B Horst the same Lands conveyed by Wm Kinney

p 20

6th - The plaintiff then sixthly introduced the Registers Certificate of the Land Office at Springfield, Vt. dated Aug 27. 1862 that William Kinney and John Taylor purchasers of the general Government at the Land Office Vandalia Mo NW 1/4 Sec 26 T 2 R 10 E of Twp 160 acres - to which was appended Certificate of Sangamon County Clerk

p 21.

The Defendant then raised objections to the papers so introduced, to wit.

To the Deeds first introduced and the certified copy of the Records in the case of Campbell and Lindsey and others fourthly introduced, that said Record and Deeds were defective among other things.

1st - That said Records did not show that the Court had jurisdiction of the subject matter and of the parties in interest

2nd - That it did not contain copy of the Petition and notice of filing same - nor that any Summons had issued thereon, nor any evidence of Title in John Taylor deceased to the Lands in question - nor did it contain all the Reports in said case - and further that it did show that the Lands in question were sold en masse, and not in the lowest legal subdivisions.

p 22

And Defendant objected to the Certified Copy of the Will of William Kinney fifthly introduced, and the Deed claim Deed of Wm C Kinney to Charles R Hurst secondly introduced taken in connection. That the

Lands in question was sold on mass and not in the
least legal subdivision.
Def^t objected to the certified copy
deeds conveyed nothing taken in connection with the
will - That it devolved on the Plaintiff to show, that
the Lands in question were previously conveyed by
William Kinney deceased in his lifetime to John Taylor
- and that the deeds in question gave no title to
Charles Hunt for the Lands in question.

The Court overruled all said objections and
Def^t excepted.

The plaintiff then introduced J. J. Hamilton
as a witness who testified that Wm^r H. Elkin was Register
of the Land Office at Springfield, and told him that
he signed said ^{certificate}, and was at its date and now is
such Register, that he knows ^{said} Elkin's ^{and his} handwriting
has seen him write, and that the signature to said
certificate is in Elkin's handwriting, and that said
Elkin is now such Register.

The plaintiff then introduced R. R. Hamilton
Jesse W. Williams as a witness, who testified
that he knew the Def^t lived on the lands in
question, but not how long he resided there. That
he is County Surveyor of Marion County Ill., and on
24 April 1863 at Plaintiff's request surveyed said
lands, and by examination ascertained Def^t
lived thereon.

The plaintiff then called J. O. Chance as a
witness who testified he knew Def^t, did not know

" in his lifetime to John Taylor and more others "

p 8 They cover the usual habendum, tenement against
membrances, and Covenant of Warranty and
concludes thus, " This Deed being intended as a quit
claim deed". (The Land are those in Adm^r Deeds)

p 9 Certificate of acknowledgment dated 1 May
1856 and Certificate of Recording in Mannin County
Missis dated 11 April 1860 in Book Q page 440.

p 10 3rd - The plaintiff then truly introduced
a certified copy of the Letters of Administration granted
to Arthur Campbell by Sangamon County Court on the
Estate of John Taylor deceased who died 31 May 1847
which letters were dated 29 January 1848, and were
certified by the County clerk of said County on 27
August 1862

p 11 4th The plaintiff then faithfully introduced
certified copy of the Record in the cause of Arthur
Campbell Adm^r of John Taylor deceased against
Seth Mc Finley and others, set out in Records pages
11 to 16 inclusive, which Record first set out an
order or decree, which is that set out in Record firstly
introduced, and Certificate of Clerk of Sangamon

p 12 Circuit Court dated 9 July 1862 as to said order and Decree

p 13 - The said Record then set out the further Report of said
Adm^r, which the Court approved - ^{which} It states that
pursuant to the said order, he proceeded to sell said
Real Estate at public auction at the Court House door
in Salem Mannin County Mo on 10 Sept 1857 between
the hours of 9 O'Clock AM and sunset of that day, having

just given 3 months notice by publication in the
Salem Register and posting four notices. That Ners
Walker bid at said sale \$10 per acre for E $\frac{1}{2}$ N $\frac{1}{4}$ Sec 12
and for E $\frac{1}{2}$ N $\frac{1}{4}$ Sec 13 & 7 per acre, and for S E $\frac{1}{4}$ Sec 24
\$8 per acre, all in T 2. N 6 E & they were struck off to
him, and Charles R Hunt bid for NW $\frac{1}{4}$ Sec 26 T 2
N 6 E & \$8⁰⁰ per acre and said tract was struck
off to him - No notes or mortgages were presented, but
the above files vouchers for the proceeds, deducting
p 14 costs and expenses. - Then followed notice of sale
p 15 and certificate of the publisher of Salem Weekly Register
- and Certificate of Sangamon County Circuit Clerk
p 16 dated 9 July 1862 as to said Records.

5th - The plaintiff then ^{by affidavit} introduced a certified
copy of the will of William Kinney deceased dated
Aug 9. 1843 giving certain legacies, and the residue
of his personal and Real Estate to his son William
C Kinney, whom he appointed Executor - The
attestation of said will is as follows "We the under
p 17 " signed being present at the signing writing of the
" above honestly believe Gov William Kinney to have
" been in a sound state of mind at the time of writing
" the same, hereby sign our respective names and
" make our seals as witnesses" - Then followed
p 18 the affidavit of two of the witnesses dated 18 Oct 1843
- Then followed order probating same of 18 Oct 1843
- Then followed the oath of W C Kinney as Executor
p 19 and Certificate of Clerk of County Court of Sangamon
with Certificate of Judge of said Court dated 25 Aug 1862.

the Lands he tried on, that Def^t lived south of Salem
3 or 4 years, could not say he lived there in Sept
1860.

The Plaintiff then called Mr. Little Jones who
testified that Def^t told him last week ^{that} he lived
where he now lives for three years last fall.

The Plaintiff then closed his case.

The Def^t then recalled J. O'Chamere who testified
that he is Clerk of the Circuit Court of Manion
County Ill, and ex officio Recorder of Deeds in said
County, that he examined all the indexes of Records of Deeds
in said County, and found no deeds thereon from William
Kinney to John Taylor, that he is satisfied said indexes
show all deeds or records in his office, and are correct
and no Deeds from William Kinney to John Taylor
appears on records.

p 24

The Def^t then offered in evidence a certified copy
of the Records in Manion County Ill of the will of William
Kinney and the supplemental will of said William
Kinney and the Probate thereof, to which Plaintiff objected
and the Court sustained the objection, and Def^t
excepted.

And so this was all the Evidence

The Court gave its verdict for the Plaintiff
for possession of said Lands with costs. Def^t moved
for a new trial, which motion the Court overruled,
and Def^t excepted to the opinion of the Court in
overruling said motion for new trial and entry of judgment.

of judgment for Plaintiff, and prayed that this Bill
of exceptions be signed and sealed and made part of the
Records herein, which is done.

p 36

Whereupon the Court entered judgment for Plaintiff
that he have writ of possession and his costs, and
Execution &c

p 38

All which is duly certified by Clerk of Jefferson County,
Circuit Court.

And now comes the Writ by James Raffett
and Michael Shaaffer his attorneys and assigns
error in the rulings, findings and judgment of the
Court as follows, to wit:

Abraham Winbury

Writ by

James Raffett &
Michael Shaaffer

& Kayrie his attorneys.

10
Supreme Court
1st Grand Division
Nov Term 1863

Abraham Wembely
vs
Charles R. Howest.

Abstract of
Records

Filed Aug. 31 1863 -
A. Johnston Clk

James Bassett
Michael Shaepfer
Plffs attorneys.

In Supreme
Abraham Kimberly } Court - First
vs } Grand Division
Charles R. Hurst } Nov Term 1863

The Deft in error, feeling satisfied that there is "no error in the Record & proceedings in this Cause, submits the same to the Court for adjudication without argument on his behalf - He would call the attention of the Court however to a few facts as presented in the record. It is apparent from the Record that the Plt in error, has no right title or interest in or to the land except occupancy, as tenant. He makes no pretence to title. He never did have any title or shadow of title. Nor did he ever claim to have any.

The only question then is, has the Deft in error, proved title in himself sufficient to warrant the Verdict in this case - Of this I have no doubt. -

The points presented

And authorities Cited by the P^lt^f
in Error, are not applicable to
This Case.

What is the Evidence
in the Case? It is This

Kimney &
Taylor entered the land, afterwards
Kimney sold his interest to Taylor.
(The deed however was not recorded)
This is apparent from W. C. Kimney's
deed. — The adm^r. (of Taylor)
under an order of the Circuit
Court of Sangamon Co. sold
the land in question to Deft
in Error, — all the proceedings
under which were regular,
The deed from Mr Kimney
to Taylor, not having been
recorded the Deft in Error
procured a deed from W. C.
Kimney, the legatee of Mr Kimney
de^d as appears from the will,
thus placing upon record
all the links necessary to make
and which does make the
complete Chain of title
What more could the Deft
in Error do? The title is traced
from the Gov^t to him, without

a link missing - Of this there is
no doubt - therefore relying
upon the correctness of the
Verdict & order of Court below
I have no hesitancy in submitting
the case

J. J. Hamilton
for Dept in Error

No 10

Hamberly

vs

Harsh

Appellant

of

Dept in Error

Filed Nov 11-1863

A. Johnston clk

In addition to the brief filed in this
Case and ~~points~~ made by Mr Bassett
I desire to call attention to one point
which it occurs to me may be error
in the record - in addition to those cited by B.
On Page 24 of the record it appears
that defendant offered to introduce as
part of his case a Certified Copy of
the record in Marion County of the
Mill of William Kinney & Supplemental
Mill of William Kinney & the probate
thereof - This was ~~admitted~~ and
referred by the Court -

From all that appears in the record
this said Mill and Supplemental Mill duly
protested. Ought to have been admitted
Parma facie the Mill & Supplemental
Mill duly authenticated of record is
Evidence in all cases & especially
in this case where the very question
was as ~~to~~ whether the mill introduced
by proof below conveyed title to Mr
Kinney & from him to Taylor & to Hunt
Vide Sec 16 Statute of Mills
Peoples Statutes P. 1199.

It may be that this Mill and Supple-
mental Mill would have shown a
Revocation of the one Plaintiff claimed
under

or specifically gives the food in question
to another, at all events the mill
and supplemented mill duly certified
was evidence to be admitted -

Atty for
P. W. in Error

Abraham Newberry

vs
Ward

Point Suggested

as Error by

Atty

for party in

Error

Filed Nov. 14. 1863.

A. Johnston Clk

November term - Supreme Court 1863-

Abraham Mirebelly
 Plaintiff in error } Error to Jefferson -
 vs }
 Charles R. Hunt } Judgment affirmed.
 Defendant in error }
 P'ty's Costs

1863-	To filing transcripts 20 - docketing Court 12-	32.
"	Writ of Error made Supremas & Stamp	1.50.
"	Sci fee	1.00
"	2 Certificates of Supremas & Stamps	1.20
"	filing Papers	0.50
"	Abstracts (2500 words each)	35.00
"	Entering orders	50
"	" Opinion of Court	2.50
"	Docket fee	6.00.
"	Court bill 37 - Portage 30 -	67.
"	per bill 50 - Stamp 5 -	55.
		<hr/>
		49.74
Gr. Prepared of 11 - Also furnished for		16.00
	Net. Due on P'ty's Costs -	<hr/>
		\$ 33.74

Defts Costs.

1863-	To filing Papers	18.
"	Court bills & Ent Surm	37
"	Ex. 50 - Portage 6-	56
		<hr/>
		\$ 1.01
	Net. Due from P'ty \$ 33.74	
	Am't. Due on Defts Costs	1.01
		<hr/>
		\$ 34.75

Total bal. of Costs with Ex. bill of 34.75

If paid without Ex. bill then take off 1.11

Bal. due 33.64

Amc to with Bureau May 28. 64.

Ministry

in

Hand

book

Entire page

579

1863

10

State of Illinois, }
CLERKS OFFICE OF THE SUPREME COURT, } SS
First Grand Division.

I hereby certify that a writ of error hath issued
from this Office for the reversal of a judgment obtained by
Charles R Hurst
Against *Abraham Mirebely*
in the Circuit Courts of *Jefferson* County, at the
May Term, in the year of our Lord one thou-
sand eight hundred and *Sixty-Three* in a certain action of
Ejectment for which writs of error
is to operate as a Supersedeas, and as such is to be obeyed by all
concerned.

Given under my hand, and the seal of the
said Supreme Court, at MOUNT VERNON, this
third day of *August*
in the year of our Lord one thousand
eight hundred and *Sixty Three*
Noah Johnston
Clerk of the Supreme Court.

SUPREME COURT.
First Grand Division.

Abraham Mumbely -
Plaintiff in error.

vs

Charles R. Hurd
Defendant in Error.

WRIT OF SUPERSEDEAS.

FILED.

State of Illinois
CLERK'S OFFICE OF THE SUPREME COURT
First Grand Division

from the Office for the purpose of a judgment rendered by

Charles R. Hurd

*Abraham Mumbely vs Charles R. Hurd
Plaintiff in error vs Defendant in error
WRIT OF SUPERSEDEAS
FILED*

*Charles R. Hurd
Defendant in error*

*Charles R. Hurd
Defendant in error*

State of Illinois,
SUPREME COURT,
First Grand Division.

} SS

The People of the State of Illinois,

To the Sheriff of Madison County.

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

Charles R. Hurst plaintiff and

Abraham Nimbley defendants it is said that manifests error hath intervened to the injury of said Abraham Nimbley as we are informed by his complaint, the record and proceedings of which said judgments, we have caused to be brought into our Supreme Court of the State of Illinois, at Mount Vernon, before the justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said Charles R. Hurst

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

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

Noah Johnston
Clerk of the Supreme Court.

SUPREME COURT.
First Grand Division.

Abraham Wickliffe

Plaintiff in Error,

VS.

Charles R. Stewart

Defendant in Error.

SCIRE FACIAS.

FILED.

1863

The writ of error, issued and filed in this cause,
is made a Supersedeas, and as such, is to be
obeyed by all concerned - August 7th 1863.
Noah Johnston Clk



State of Illinois,
SUPREME COURT,
First Grand Division.

} SS

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

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

Charles R Hurst plaintiff and

Abraham Winbury defendant it is said that manifest error hath intervened to the injury of said Abraham Winbury as we are informed by his complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Mount Vernon, before the justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said Charles R Hurst

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

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

Wm. Johnston
Clerk of the Supreme Court.

10
SUPREME COURT.
First Grand Division.

Abraham Hinckley

Plaintiff in Error,

VS.

Charles R. Knott

Defendant in Error.

SCIRE FACIAS.

FILED.

The writ of error issued and filed in this
Cause, is made a Supersedeas, and as
such, is to be obeyed by all concerned -
August 3^d. 1868.

Wm. H. Johnston



State of Illinois,
SUPREME COURT,
First Grand Division.

} SS

The People of the State of Illinois,

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

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

Charles R. Hurst plaintiff and

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

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

Noah Hurst
Clerk of the Supreme Court.

SUPREME COURT.
First Grand Division.

Abraham Michelsky

Plaintiff in Error,

VS.

Charles R. Street

Defendant in Error.

WRIT OF ERROR.

Leave-Stamped and

Made a Supersedeas

and FILED August

3, 1863,

A. Stewart

This writ of error is made a Supersedeas, and is to be obeyed accordingly. August 3, 1863 -
Wm. Stewart

10

A. Winbury

207
© Hurst

Count of Letters

Appendix

(Reported)

1863

8457

x