No. 8429

Supreme Court of Illinois

Daniel Neal

vs.

Israel Blanchard, et. ux.

71641 7

18 — 8

Neal
vs
Blanchard et al

Ejectment

Affirmed

Reported
32 Ill

1863

18 — 8 —

Daniel Neal
vs
Israel Blanchard
et al

1863

8429

Jackson County Circuit Court May term 1862

At a Regular Term of the Jackson County Circuit Court began and held in the Court House in the Town of Murphysboro Jackson County Illinois on Tuesday May 13th A.D. 1862.

Present the Honorable Alexander M Jenkins Judge of the 3rd Judicial District State of Illinois, and presiding Judge of the Jackson County Circuit Court Illinois.

James P Watson, Clerk, William Cox Sheriff

Whereupon the following proceedings were had.

State of Illinois } Ss. } At the May term A.D. 1862
Jackson County } of the Jackson County Circuit Court

Dannie Neal the defendant in this Suit has been Summoned to Answer unto Israel Blanchard and Dorthula A Blanchard his Wife the plaintiffs in this Suit of a plea of Trespass and Ejectment.

For that whereas heretofore to Wit on the first day of September A.D. 1861 and within said County of Jackson and State of Illinois the said plaintiffs Israel Blanchard and Dorthula A Blanchard in the right of the said Dorthula A Blanchard wife of the said Israel Blanchard were seized of their own demesne in fee simple of certain real Estate situated

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situated in said County and State of Illinois known and described as follows to wit, Lots Number One and Eight in Block Number Twelve in the Town of Murphysboro in said County and State with the appurtenances thereunto belonging and the said Plaintiffs being then and there so possessed of said premises he the said defendant afterwards to wit on the day and year last aforesaid at the County and State aforesaid entered into and upon the said described premises and from the time last aforesaid at the County and State aforesaid has unlawfully withheld from the said Plaintiffs the possession of the said premises to the damage of the said Plaintiffs of One thousand Dollars and therefore they bring their Suit &c

Allen & Thomas Attys
for Plaintiffs

To Mr Daniel Neal

You are hereby Notified that the Declaration, with a Copy of which you are now herewith served and to which this Notice is subjoined will be filed in the Circuit Court in and for the County of Jackson State of Illinois on Friday the Sixteenth day of May A.D. 1862, being the Fourth day of the next Term of said Circuit Court, to be begun and held at the Court house in the Town of Murphys-

bon. on the Second Tuesday in the Month of May A.D. 1862, and that upon filing the Same a rule will be entered requiring you to Appear and plead to the said declaration within Twenty days after the entry of said rule and that if you neglect so to appear and plead a Judgment by default will be entered against you and said plaintiffs will recover possession of the premises Specified and described in the said Declaration

Dated this 14th day of April A.D. 1862

Allen & Thomas
Attys for Plffs

State of Illinois
Jackson County } Of the May term A.D. 1862. of the Jackson County Circuit Court

Israel Blanchard &
Dorthula A Blanchard
his Wife
vs
Daniel Neal

In Ejectment
Damage $1000.00

Israel Blanchard being duly sworn according to law deposes and says that he did on the 15th day of April A.D. 1862 serve Daniel Neal the defendant in this Suit with a true Copy of the above and foregoing Declaration and said Notice in Writing with said Daniel Neal and by reading the Same to

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Given on the 15th day of April A.D. 1862.
Subscribed and Sworn to
Before me this 15th day
of April A.D. 1862.
James P Watson Clerk

Israel Blanchard

Filed May 16th 1862.
James P Watson Clerk.

State of Illinois } In the Jackson County
Jackson County } Circuit Court.

Daniel Neal
vs
Israel Blanchard &
Dorthula A Blanchard
his Wife

Ejectment

And the said Daniel Neal by E. G. Johnson his Attorney Comes and defends the force and injury when &c and Says that he is not guilty of the said supposed trespass and ejectment above laid to his charge or of any part thereof in manner and form as the said Israel Blanchard & Dorthula A Blanchard have above thereof Complained against him; And of this he the said Daniel Neal puts himself upon the Country &c

E. G. Johnson, Atty Defendant,

Filed May 26th 1862
James P Watson, Clk.

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Israel Blanchard & Dorthula A. Blanchard his Wife
vs
Daniel Neal
Ejectment

Friday May 16th 1863

And now on this day came the Plaintiffs by their Attorneys, Whereupon the Defendant Daniel Neal is Ruled to Answer in Twenty Days.

And afterwards to Wit at a Regular term of the Jackson County Circuit Court began and held in the Court House in Murphysboro Jackson County Ills. on Tuesday September 30th 1862

Israel Blanchard & Dorthula A. Blanchard his Wife
vs
Daniel Neal
Ejectment

This Cause Stands Continued, No Order.

And afterwards to Wit at a Regular Term of said Jackson County Circuit Court, began and held at the Court House in the Town of Murphysboro Jackson County State of Illinois, on the 2nd Tuesday being the 12th day of May AD 1863.

The following proceedings were had,

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Israel Blanchard & Dorthula A Blanchard his Wife,
vs
Daniel Neal

Ejectment

Tuesday May 19th 1863.

And now on this day came the Plaintiffs Israel Blanchard and Dorthula A his Wife and by their Attorneys Wm J Allen and Cyrus Thomas, and the Defendant Daniel Neal by his Attorneys John H Mulkey and Richard Dudding, whereupon by agreement of parties Plaintiffs and Defendant and by their Attorneys It is agreed that the Hon Isham N Haynie an Attorney of this Court should preside as Judge in said trial instead of Hon A M. Jenkins Judge of said Circuit Court, And thereupon the said Hon Isham N Haynie took the Judges Seat and the trial proceeded, Whereupon Issue Joined, and a Jury of Twelve good and lawful men being called who were Elijah Robinson, Alambert N Harris, Banister Crews, Wm R Phelps, Jonathan Hepple, Joseph Beasley Sr Thomas Modglin, Hillary Ripley, Andrew Reinier, Evan Holter, John Martin, James A Smith, who were duly sworn according to law, and after hearing the Evidence and arguments of Counsel, Retired

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to consider of their verdict, And Returned into Open Court the Following verdict We the Jury find the Issue for Plaintiffs, find the Plaintiffs to be the Owners in fee Simple of Lots No 1 & 8 in Block No 12 in the Town of Murphysboro Jackson County Illinois. Whereupon a motion is made by Defendant for a New trial and in Arrest of Judgment, Motion for a new trial and in Arrest of Judgment Overruled by the Court, And It was therefore Ordered by the Court that the Plaintiffs Israel Blanchard and Dorthula A Blanchard his Wife have Judgment and do Recover of and from the said Defendant Daniel Neal Lots Number One (1) and Eight (8) in Block number Twelve (12) in the Town of Murphysboro Jackson County State of Illinois, Together with the Costs of this Suit herein to be Taxed. And It is further Ordered by the Court that a Writ of Possession Issue therefor.

J N Haynie
Presiding by Agrmt.

"Motion for a New trial"

Blanchard & Wife
vs } Ejectment
D Neal

And the said Defendant comes and moves the Court for a New trial for the following Causes.

1st The Court Erred in admitting the deed of Grenade to Logan without proof of the Execution the acknowledgment being informal and not in accordance with the provisions of the Statute

2nd

The Court Erred in excluding the fee Bill or process upon which the Land in Controversy was Sold on account of the alleged variance between the Fee Book and the Fee Bill or process.

3d

The Court Erred in Excluding the fee Bill or process On the ground that the fee book had not been introduced as a foundation

The new trial is asked in this case for the above reasons and not under the Statute that for the purpose of this motion being expressly waived.

Wall & Mulkey
For Deft

Filed May 20th 1843.
James P Watson Clk

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"Bill of Exceptions"

Israel Blanchard & Wife vs Daniel Neal.	In the Jackson Circuit Court May Term 1863. Ejectment

Be it Remembered that in the trial of this Cause it was agreed by consent of parties Plaintiff & Defendant that Hon J. A. Haynie an Attorney of this Court should preside as Judge in said trial in lieu of the Hon A. M. Jukins Judge of said Circuit Court.

Upon said trial a Jury having been called tried and Sworn according to Law, the Plaintiff first offered in Evidence the following Instrument to Wit

"James Monroe President of the United
"States of America to all to whom these pre-
"sents shall come Greeting.

Know Ye that Joseph Prenoe of Randolph County Illinois having deposited in the General Land office a Certificate of the Register of the Land office at Kaskaskia whereby it appears that full payment has been made for the South half of Section Four and the North half of Section Nine in Township Nine South of Range Two West Containing Six hundred and Forty Acres. of Lands directed to be Sold at

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Kaskaskia by the Acts of Congress relative to the disposal of the Public Lands in Illinois There is Granted by the United States in pursuance of the Acts of Congress in that Case provided unto the said Joseph French the the half Sections of land above described to have and to hold the said half sections of land with the appurtenances unto the said Joseph French his heirs and assigns forever

In testimony whereof I have caused these Letters to be made Patent and the Seal of the General Land Office to be hereunto affixed

Given under my hand at the City of Washington the Fourth day of September in the year of Our Lord One thousand Eight hundred and Twenty three and of the Independence of the United States of America the Forty Eighth

James Monroe

L.S. By the President

Geo Graham, Commissioner of the General Land office

Recorded Vol 3 Page 327.

To the Introduction of which Evidence the defendant by his his Counsel objected but the Court overruled said Objection and allowed said instrument to go in Evidence to the Jury to which ruling of the Court the Defendant by his Counsel

then and there at the time Excepted.

The Plaintiffs next offered in Evidence the following instrument to Wit—

This Indenture made the third day of October in the year of our Lord one thousand Eight hundred and twenty two between Joseph Heuck and Sarah his Wife of Jackson County State of Illinois of the first part and John Logan of Perry County State of Missouri of the second part, Witnesseth that said Joseph Heuck and Sarah his Wife for and in Consideration of the Sum of Two thousand Dollars lawful Money of the United States to Joseph Heuck in hand well and truly paid the Receipt whereof is hereby acknowledged Have granted bargained Sold aliened released, Conveyed and Confirmed and by these presents do grant bargain sell alien release Convey and Confirm unto said John Logan his heirs and assigns forever all that Certain tract or parcel of Land designated and known on the plat of the United States Lands offered for Sale at Kaskaskia by the South half of Section Four and all that parcel of the North West quarter of Section Nine lying on the North Side of Big Muddy River in Township Nine South of Range Two West of the third Principal Meridian line including

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the said River it being part of a tract pur-
chased by said French from the United States
(which will more fully appear by reference
to the Books in United States Land Office
at Kaskaskia on the first day of Septem-
ber One thousand Eight hundred and Four-
teen per Entry numbered Seventy four-
And all the estate right title interest claim
and demand of him the said Joseph
French and Sarah his wife of in and to
the said premises and every part thereof
Together with all the privileges and appur-
tenances to the same belonging or in any
wise appertaining and the rents issues and
profits thereof: To Have and to hold the
premises hereby bargained and Sold or
meant or intended to be so to be with the
appurtenances to the only proper use and
behoof of the said John Logan his heirs
and assigns for ever - And the said Joseph
French his heirs Executors administrators
and assigns do Covenant promise and agree
to and with the said John Logan his heirs
Executors administrators and assigns that he
the said Joseph French is the true and
lawful owner of the premises hereby granted
and has good right full power and
lawful authority to Sell and Convey the

same in manner and form aforesaid - And further that he the said Joseph French his heirs Executors and Administrators will warrant and forever defend the aforesaid premises with their appurtenances and every part and parcel thereof unto the said John Logan his heirs and assigns against all persons claiming or to claim by from or under him the said Joseph French them or any of them; or by from or under any other person or persons whomsoever.

In witness whereof the party of the first part have hereunto set their hands and seals the day and year above written

Sealed and delivered in presence of us
Joel Manning
Wiley O Harrington

Joseph French (Seal)
Sarah French (Seal)

State of Illinois Jackson County Ss.
Before me Joel Manning a Justice of the Peace within and for said County personally appeared Joseph French and Sarah his Wife and acknowledged the foregoing deed of Conveyance to be their voluntary act and deed for the purposes therein expressed, the said Sarah being separate and apart from her said husband by me examined and hearing said deed read and being otherwise informed of its Contents confessed declared

and acknowledge the above Indenture to be her voluntary act and deed for the uses and purposes therein mentioned without any compulsion or coercion of her said husband.

In testimony whereof, I have hereunto set my hand and Seal this third day of October in the year of our Lord One thousand Eight hundred and twenty two

Joel Manning (Seal)

on which are the following indorsements "Joseph French & Wife To John Logan Deed" Recorded in the Recorders office of Jackson County Illinois October 3 1822 in Book B for Deeds page 193 etc

J Manning Rec

State of Illinois } ss. Office of Board of Investigation
Jackson County } October 9th 1843.

I do Certify that this deed has been duly recorded in this Office in Book A on pages 320 & 321.

D. H. Brush Secy

To the Introduction of which instrument in Evidence to the Jury the defendant by his Counsel at the time objected but the Court overruled said Objection and allowed the Same to be read in Evidence to the Jury: to which ruling of the Court the defendant by his Counsel at the time then and there

Excepted.

The Plaintiff, next offered to read in Evidence to the Jury in their behalf the following instrument in Writing to Wit: But before being allowed to read the Same the said Plaintiff Israel Blanchard being first duly Sworn Stated on his Oath that the Original writing of which this purported to be a Copy was not in his possession or control and that he did not know where said Original Could be found

John Logan and Wife to Jackson County
"Deed"

Whereas the Commissioners appointed to relocate the County Seat of Jackson County in the State of Illinois, by an Act of the Legislature of said State Entitled An Act in relation to the County Seat of Jackson County, approved Feb 24th AD 1843. have located the said County Seat on the South West quarter of Section (4) Four in Town~~ship~~ship (9) Nine South Range (2) Two West, which said tract of Land belongs to John Logan, And whereas it is Provided by the third Section of the above recited Act that if the location of the County Seat of said County shall be made on Private property, the Owner shall be required to Donate a tract of Land not less than twenty

Acres which shall include the Town Site selected by said Commissioners, and shall convey the same by a good deed to the County of Jackson. Know all men by these presents that John Logan and Elizabeth his Wife of the County of Jackson and State of Illinois in Consideration of the said County Seat of said County of Jackson being located on said South West quarter Section of Section Numbered (4) four, in Township Numbered (9) nine South in Range numbered (2) two West of the third principal meridian line, and in Compliance with the Requisitions of the above recited Act, of the Legislature of the State of Illinois, have granted bargained Sold aliened, released, Conveyed and Confirmed and by these presents, does grant bargain, Sell alien, release Convey and Confirm, unto the County of Jackson in the State of Illinois, the Inhabitants thereof and their Successors, the following described piece or parcel of land being a part of said South West quarter of Section (4) four in Township (9) nine South, in Range (2) two West of the third principal Meridian. Known and described as follows to Wit, beginning (27) twenty seven Rods North 20 Degrees West from the South

East Corner of the above described quarter section of Land, and running thence North (57) Fifty Seven Rods, Thence West (56½) fifty Six and a half Rods, Thence South (57) Fifty Seven Rods, and thence East (56½) Fifty Six and a half Rods to the place of beginning, Containing Twenty Acres and Twenty One hundred and Sixteen parts of an acre. (20 20/160.) To Have and to Hold the above described piece or parcel of land, with all and singular the rights privileges improvements and appurtenances to the Same belonging or in anywise appertaining to the said County of Jackson in the State of Illinois the Inhabitants thereof, and their Successors forever and the said John Logan and Elizabeth, does hereby Covenant too and with the County of Jackson the inhabitants thereof and their Successors, that they are the legal owners of the Said piece of Land, that it is unincumbered and that they have good right and lawful authority to Sell and Convey the Same in manner and form as they have done and that themselves their heirs executors and administrators will forever warrant and defend the title to the Same against all Claims of every kind of any other person

In Witness Whereof they have hereunto Subscribed their Names and affixed their Seals this 17th

Seventeenth day of August AD 1843

Signed Sealed and delivered in presence of
A. M. Jenkins
Geo Pinkerton

John Logan (Seal)

Elizabeth her × mark Logan (Seal)

The Word North in the Eighth line from the top on the second page interlined before Signing

State of Illinois }
Jackson County } ss. Personally appeared before me the undersigned an acting Justice of the peace in and for said County of Jackson and State aforesaid John Logan and Elizabeth Logan his wife, who are personally known to me to be the same persons who made and signed the foregoing deed of Conveyance and acknowledged that they signed sealed and delivered the same freely and for the uses and purposes therein mentioned and the said Elizabeth being examined by me privately apart from her said husband and the Contents of said Deed made known unto her, She acknowledged that She had signed and sealed the same voluntarily of her own accord freely without any threats or Compulsion from her said husband that She freely relinquished her right of Dower to the premises and desired that the same might be recorded.

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Given under my hand and Seal this 17th day of August AD 1843.

Geo Butler (Seal)

Recorded Sept 13th 1843.

D. H. Brush Recdr JC

State of Illinois } ss.
Jackson County }

I, James P Watson, Clerk of the Circuit Court and Ex Officio Recorder within and for said County do Certify that the above and foregoing is a true and Correct Copy of a Deed made by John Logan & Wife To Jackson County Illinois as appears from the Records now in my Office

(L.S.)

In testimony whereof, I have hereunto Set my hand and affixed the Seal of my Office at Murphysboro this 9th day of May AD 1843.

Five 5 cents JPW May 9th 1843 5 cents

James P Watson Clerk Circuit Court & Ex Off Recorder JC. Ills

To the reading of which instrument in Evidence to the Jury the defendant by his Counsel then and there objected but the Court overruled the said Objection and allowed the Said instrument to be read in Evidence to the Jury by the plaintiffs to which ruling of the Court the defendant by his Counsel then and there at the time Excepted.

The plaintiffs then introduce Sidney Osborn as a witness in their behalf who being duly sworn testified, I am acquainted with the location of the town of Murphysboro - I was present when the Commissioners met to lay off the County Seat of Jackson County, Murphysboro - I think the land described in the deed from John Logan & wife to the County of Jackson is the same land embraced in the survey of the Town of Murphysboro - I have seen several surveys made of the town plat; there is some variance in the surveys, but the land in this deed from Logan to the County embraces the town plat - I know where Lots No 1 & 8 in Block 12 are situated. These lots were included in that survey Defendant Neal has the possession of them, has occupied said Lots for the last year or two - has made some improvements on the same.

The town of Murphysboro is on the SW Sec 4. 9. 2 W.

The plaintiffs next introduced John B Clinton as a witness in their behalf, who being sworn testified as follows.

I dont think I was present when the Town of Murphysboro was laid out - I know where the Town is located. I know from the Records & Surveys.

It is in the SW Sec 4. 9. 2. W
Do not Remember exactly when the Corner Commences – but it is not the Corner of the Section. The Witness is here Shown the Deed from John Logan & Wife to the County of Jackson above referred to, and States "That the land Conveyed in the deed is the Same land on which the Town of Murphysboro the County Seat of Jackson County is located I know where Lots 1 & 8 Block 12 in said Town are Situate they are a part of said tract.

The defendant is in possession of them, and was in April 15. 1862 and has been since – he has made some improvements on the Same an office on one and a garden &c

The Plaintiff next introduce Thos L Hale as a Witness in their behalf who after being Sworn testifies as follows.

I am the County Clerk of Jackson County Illinois. This Book in my hands is one of the Records of the County Court of said County, which I have in my Custody and Keeping – The said Witness then proceeds to read the following record from said Book

At a Special Term of the County Commissioners Court of Jackson

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County held at the Clerks Office in Brownsville on Thursday the 17th day of August AD 1843.

Present George Pulcher
Thomas B Hile
Peter Gile
} County Commissioners

This term of the Court was called for the purpose of receiving the Certificate of Samuel T Rupell, William C Murphy and John Cochran Commissioners appointed by the Legislature of Illinois by an act entitled "An Act in relation to the County Seat of Jackson County" Approved on the 24th February 1843. re-locating the Said County Seat and for the purpose of making allowance to said Commissioners for their Services in Re-locating the County Seat aforesaid, naming the said County seat

Ordered that the Said Samuel T Rupell William C Murphy and John Cochran be allowed Twelve dollars and fifty Cents each in full for their said Services having been engaged five days therein.

The said Commissioners returned to the Clerk of this Court a Certificate of their re-location of the County Seat of Jackson County, which said Certificate is in the words and figures following, to Wit:-

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State of Illinois Jackson County August 17th 1843.

We the undersigned Commissioners appd. to relocate the County Seat of Jackson County by an Act of the Legislature of the State of Illinois Entitled "An Act in relation to the County seat of Jackson County" Approved February 24th 1843. did in pursuance with the provisions of the above recited Act meet in Brownsville in said County, on the second Monday of August instant, being the 14th day of the Month AD 1843 for the purpose of relocating the County Seat of said County (having first been advised that a large majority of the Voters of said County had on the Monday preceeding, at their Election then held, voted in favour of the removal of said County Seat) after being duly sworn agreable to the provisions of said Act to the faithful discharge of our duties, a Certificate of which Oath is hereto attached, we proceeded to ascertain the centre of said County, and to Examine all such parts of the County as seemed to us necessary and all such Sites as were pointed out to us in the vicinity of said centre, and all such others as we could find and to Carefully examine their localities, advantages and disadvantages, taking into Consideration the public good and having due regard to the public interest and Convenience, after having done this we have decided

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in favor of and located the County Seat of said County of Jackson in the State of Illinois on a part of the South West quarter of Section Numbered four in Township numbered Nine South Range numbered two West, of the third Principal Meridian line - which Town site so selected by us as the County Seat of said County of Jackson Contains Twenty Acres. and Twenty one hundred and Sixteeth parts of an acre and is known and described as follows viz: being a part of the South West quarter of section four (4) in Township Nine (9) South Range two (2) West of the third Principal Meridian line, beginning at a Corner (27) Twenty Seven Rods North, Twenty (20 degrees. West from the South East Corner of the above described Quarter Section of land, running thence North (57) fifty seven rods, thence West (56½) Fifty Six and a half rods, thence South (57) Fifty Seven rods, thence East (56½) fifty Six and a half rods to the place of beginning Containing Twenty Acres and Twenty one hundred and Sixteeth parts of an Acre which is included in said Town Site, and donated by John Logan and Elizabeth his wife to Jackson County the inhabitants thereof and their Successors said John Logan being the Owner of the above described quarter section of land, said piece of land included in said Town

site as before stated, has been also conveyed by said John Logan and his Wife by a good and sufficient deed to the County of Jackson the inhabitants thereof and their successors and the deed so made deposited in the hands of the County Commissioners of said Jackson County State of Illinois

We do hereby certify the above & foregoing to be a true Statement of our proceedings as such Commissioners, and that we have by virtue of the authority in us vested by the above recited act relocated and established the County Seat of the County of Jackson in the State of Illinois, on the quarter Section of land and on the Site as herein before described –

In testimony of all which we have hereunto subscribed our names day and date first above written

Samuel T Rupell
W.C. Murphy
John Cochran

Ordered by the Court that the New County Seat of Jackson County Selected and Relocated by the Commissioners aforesaid, be named Murphysborough

Court then adjourned to Court in course

G Butler
Peter Gill
Thos B Hill

To the reading of which in Evidence the defe

by his Counsel objected but the Court overruled said Objection and permitted said record to be read in Evidence to the Jury to which ruling of the Court the deft by his Counsel then & there at the time Excepted

The Plaintiff next offered to read in Evidence to the Jury in their behalf, the following instrument in writing - to the reading of which in Evidence the Defendant by his Counsel Objected; And the Court refused to admit the Same in Evidence until the Plaintiff Should explain the Erasures and interlineations appearing in the body and acknowledgment of the instrument; Whereupon said Plaintiff introduced and read to the Court from the Records of the County Court of Jackson County Previously produced by Thos L Hall the Clerk and read from page 72 thereof the following entry

At a Regular term of the County Commissioners Court of Jackson County Illinois began and held at Murphysboro on Monday the Second day of September A.D. 1844

Present

George Batchen

Peter Gill

County Commissioners

Jefferson Allen who who was at the last

August Election duly elected a County Commissioner of said County came and took the oaths required for him to take a such Commissioner in Open Court" and afterwards on pages 78, 80 & 83. Showing that Jefferson Allen had signed his name as Commissioner to the Orders and Proceedings of said County Commissioners Court.

Upon these Proofs being submitted by said Plaintiffs to the Court the Court permitted the said instrument to be read in Evidence to the Jury by said Plaintiffs in their behalf which said instrument is in the words and figures following to wit, the several Erasures and interlineations in the body and acknowledgement thereof being exactly as the Same Appear in the Original

This Indenture made and ~~entered into~~ Concluded this fourth day of September in the year of Our Lord One thousand Eight Hundred and forty four between George Butcher, Peter Gee and ~~Thomas R. Hale~~ Jefferson Allen County Commissioners of Jackson County in the State of Illinois, of the first part, and John Logan of the County and State aforesaid of the second part Witnesseth that the said George Butcher, Peter Gee and ~~Thomas R. Hale~~ Jefferson Allen Judges of the County Commissioners Court of Jackson County aforesaid for and in Consider-

ation of the Sum of One hundred and Sixty Six dollars lawful Money of the United States, to them in hand paid by the said John Logan to and for the use and benefit of the said County of Jackson, the receipt whereof is hereby acknowledged have granted bargained, sold aliened, released, remised conveyed and confirmed and by these presents do grant bargain, sell, alien, remise, release, convey and confirm unto the said John Logan his heirs and assigns, all of the following Town Lots in the Town of Murphysborough in Jackson County aforesaid, and designated and known upon the Map of said Town now on record in the office of the Recorder of said County as Lots Numbered One (1) Two (2) Seven (7) and Eight (8) in Block number Twelve (12), also Lots Numbered One (1) and Eight (8) in Block Numbered Thirteen (13), Also Lot numbered Six (6) ~~Seven (7)~~ in Block number Eighteen (18) and also Lots Numbered Five (5) and Six (6) in Block numbered Twenty (20) and being part of the Twenty Acres of land conveyed to Jackson County by John Logan and Wife by deed bearing date the Seventeenth day of August in the year of Our Lord One thousand Eight hundred and Forty three — Which said Deed has been duly recorded in the Recorders office the said County of Jackson in Book E on

pages Sixty five, Sixty Six, and Sixty Seven. The said Twenty acres being described as follows, Viz; being a part of the South West quarter of Section Number four (4) in Township number nine (9) South of Range number Two (2) West, beginning twenty seven rods North 28 degrees West from the South East corner of said quarter Section of Land, and running thence North fifty Seven rods, thence West fifty Six & one half rods, thence South fifty seven rods thence East fifty Six and one half rods to the place of beginning — Together with all and Singular the rights, profits, privileges and immunities to the said Lots belonging or in anywise thereunto appertaining, To Have and to Hold the said hereby granted and Sold Lots in the Town of Murphysborough the new County Seat of Jackson County with the hereditaments and appurtenances thereof, unto the said John Logan his heirs and assigns to his and their only proper use benefit & behoof forever And the said George Buseton, Peter Gill and ~~[illegible]~~ Stephen Allen County Commissioners as aforesaid for themselves and their Successors in Office, the said hereby granted premises, unto the said John Logan his heirs and assigns against themselves as County Commissioners aforesaid and their Successors in Office, and against all and every other person and

persons whomsoever lawfully claiming or to claim by from or under them or otherwise shall and will warrant and forever defend by these presents. In testimony whereof the said parties of the first part have hereunto in the character and capacity of County Commissioners as aforesaid, set their hands and affixed their seals the day and year first herein written

Witness
Daniel H Brush

Geo Batchen (Seal)
Peter Gill (Seal)
Jefferson Allen (Seal)

State of Illinois
Jackson County } ss. I, Daniel H Brush Clerk of the County Commissioners Court of Jackson County aforesaid do certify that on this day personally appeared before me George Batchen Peter Gill and ~~Hiram R Hale~~ Jefferson Allen County Commissioners of the said County, all personally well known to me to be the real persons who executed the foregoing deed to John Logan and acknowledged the execution thereof to be their and each of their free and voluntary act and deed for the uses and purposes therein expressed

(Seal)

In Witness Whereof I hereunto set my name & affix the official seal of the said Court at office in

Murphysboro this 4th day of September AD 1844.

Daniel H Brush

State of Illinois
Jackson County } ss. Recorders Office Dec 8th 1845. I do Certify that this deed has been duly Recorded in my office in Book E on pages 388 & 389.

D H Brush Recdr

To which the defendant by his Counsel objected but the Court overruled the objection and allowed said Instrument to be read in Evidence to the Jury, to which ruling of the Court the defendant by his Counsel then and there at the time Excepted

The Plaintiffs next offered to read in Evidence to the Jury in their behalf the following Will of John Logan (which appeared to have been duly probated) in the words and figures following to wit.

State of Illinois

In the name of God Amen, I John Logan Physician of the County of Jackson State of Illinois being Sick in body but possessed of my right reason, being also mindful of my mortality do this day the 7th day of

September in the year of Our Lord One thousand Eight Hundred and Fifty three make and publish this my last Will and Testament in manner and form, to Wit;

First - I desire to be decently buried at the Hamalia Grave yard near Murphysboro

Secondly I give and devise to my Daughter Louisa V Cummins One Town Lot in the Town of Murphysboro in Jackson County, being Lot number (1) one in Block number (3) three in said Town in addition to what I have heretofore given her.

Thirdly I give and bequeath to my Son John A Logan - One Bedstead, Bed & Bedding in addition to what I have heretofore given him, and further it is my desire that while he remains Single he Continue to reside with his Mother and the Children free of any charge for board.

Fourthly. I give and bequeath to my Son Thomas N Logan One half of my Stock Hogs on my farm in and about the Town of Murphysboro, where I now reside, in addition to what I have heretofore given him -

Fifthly I give and devise to my two Daughters Dorathea Adline Thomas & Dorthula Angeline Logan all that piece or parcel of land situate in Jackson County aforesaid and bounded

ded as follows. viz East by the road or lane running or leading out from the Town of Murphysboro towards P. C Halls Steam Mill South by the Town Plat of the aforesaid Town of Murphysboro - West by the land heretofore deeded to John A and Thomas M Logan, & North by the North line of the South West quarter of Section Four (4) in Township Nine South Range two (2) West, of which Quarter Section it is a part, Containing Thirty Acres more or less, in addition to what I have heretofore given them and their husbands.

Sixthly - I give and devise to my daughter Dorthula Angeline Logan all the land down in the South West Quarter of Section Four (4) in Township Nine South Range two (2) West, lying South of the Town of Murphysboro in said Jackson County and between the road leading from Murphysboro to the Ferry on Muddy above and near the Coal Bank on the Same, and the East line of the land heretofore deeded by myself and wife To John A and Thomas M Logan being a part of the Same quarter Section also Town Lots numbered One (1) Seven (7) and Eight (8) in Block Twelve (12) in the aforesaid Town of Murphysboro in addition to what I have heretofore given to them as well in this my last Will & Testament as otherwise.

Seventhly - I give and bequeath to my Son William H Logan five Volumes of Books to be selected by him from my Library, and also my Watch -

Eighthly - I give and bequeath to my Son James V Logan - Pari's Medical Dictionary Dorry's and Thomas' Practice of Medicine - And I also give and devise to Alexander M Jenkins Lot numbered (4) four in Block No 17 in the Town of Murphysboro -

Ninthly - I give and devise to my two Sons William H Logan and James V Logan the South East quarter of Section (4) four Township (9) nine South Range two West Situate East of and adjoining the Town of Murphysboro aforesaid -

Tenthly - I direct that all my Stock of Horses except two Work horses - My Stock of Medicine on hand, Shop furniture, Books, except such as I have herein before bequeathed to my two Sons be Sold by my Executors and out of the Proceeds of such Sale, and money to be Collected from debts due me, all my just debts be paid -

Eleventh after the payment of all my debts and all the legacies, devises and bequests herein before made I give and bequeath to my Wife Elizabeth Logan all the rest and residue of my Estate both Real and Personal, including the houses

and Lots in the Town of Murphysboro in Jackson County State of Illinois on which we now reside, and all other Lots in said Town not before disposed of, and all other Property Choses in action & whatsoever and wheresoever of what nature kind and quality soever the Same may be and not herein before given or disposed of, during her natural life, Provided She remains a Widow to be used by her with the advice and Counsel of my Sons John A and Thomas M Logan for the purposes herein after mentioned—

Twelfth It is my Will that my Wife Elizabeth Logan have the Control and Management of the Farm on the piece of Land herein devised to my Minor Sons Wm H Logan and James B Logan until they respectively arrive at the age of twenty One years, Provided She remains a Widow. And that with the Boys Wm H and James B Conduct and manage the business of the Town House in the aforesaid Town of Murphysboro to the best advantage they can, and that the money arising from the Said Farm and Town House with the debts due me be appropriated by her under the mutual advice and direction of my two Sons John A Logan & Thomas M Logan to the Support of herself and the Support education of my two Sons William H Logan & James B Logan. And it

is my desire that William be educated and prepared for the practice of the Law, and James for the practice of Medicine.

Thirteenth. It is my Will and direction that immediately after my decease my Executors have all the property both real and personal of which my wife Elizabeth Logan gets into possession by virtue of this my last Will and Testament inventoried and appraised and that said Inventory and Bill of appraisement be filed in the Clerks Office of the County Court of said County. Should my Wife Elizabeth Logan Marry another person before my said Sons William H Logan and James O Logan become of the age of Twenty One years. It is my Will that my Sons John A Logan & Thomas M Logan should immediately take possession the land and the farm herein devised and bequeathed to the said Mr A Logan & James O Logan and the property both real and personal herein devised and bequeathed to the said Elizabeth during her natural life on Condition She remains my Widow, and have her dower assigned and set apart to her of all the said property both real and personal as She is Entitled by law to have and with what remains after her Dower is assigned, and the proceeds of the farm, pro-

ced to Complete the education of the said William and James as herein provided for and directed Should any thing remain after their Education is Completed it is to be divided equally between them Should the said Elizabeth Marry after the said William and James become of the age of twenty one years my Sons John A Logan and Thomas M Logan are to proceed in the Same manner with the property devised & bequeathed to her during her Widowhood as directed herein, in Case She Should Marry before they become of age and what remains of the said property both real and personal devised & bequeathed to her as aforesaid after her Dower is assigned I give and bequeath to my Children John A Logan, Thomas M Logan, Dorotha A Thomas Dorthula Angeline Logan, Wm H Logan & James O Logan to be divided between them equally

Lastly At the decease of the said Elizabeth Logan it is my Will that the said William H Logan and James O Logan, John A Logan Thomas M Logan Dorotha Adeline Thomas & Dorthula A Logan have all the rest and residue of my Estate both real and personal and hereby Devise and bequeath it to them. And I do hereby Constitute and appoint my Wife Elizabeth my Executrix and my two Sons John A Logan and Thomas M

Logan my Executor of this my last Will and Testament.

In Witness whereof I have hereunto set my hand and Seal the day and year first herein Written

Signed & Sealed in our presence we being called as Witnesses by the Testator and the Excisions and the Interlineations devising a Lot to A. W. Jenkins as made before said Will was Signed & all other interlineations

John Logan (Seal)

Michael H Smartzlope
H. H. Walls.

To the reading of which in Evidence to the Jury the defendant by his Counsel then and there at the time objected — but the Court overruled said objection and allowed the said Instrument to be read in Evidence by the Plaintiff, to the Jury To which ruling of the Court the defendant by his Counsel then and there at the time Excepted,

The said Plaintiff next offered and were permitted to read in Evidence to the Jury the following Written instrument to Wit

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State of Illinois } ss.
Jackson County } The People of the State of Illinois to any person by law authorized to Solemnize the rites of Matrimony, You are hereby Authorized to join together as husband and Wife Mr. Israel Blanchard and Miss Dorthula Angeline Logan. and return a Certificate thereof to my Office, and for so doing this shall be your Sufficient Warrant

Seal

Witness Thos L Hall Clerk of the County Court and the Seal thereof at Office affixed in Murphysboro 28th day of January AD 1856

Thos L Hall, Clk

This is to Certify that the bands of Matrimony was Solemnized between Israel Blanchard an D. A. Logan according to law by me on the 30 day of Jan 1856

F H Wale Gospel minister

State of Illinois } ss.
Jackson County } I Thos L Hall Clerk of the County Court within and for the County & State aforesaid, do hereby Certify that the above and foregoing, is a true and Correct Copy from the Original, as appears from the files of my Office

In testimony whereof I have hereunto set my hand and Official

28427-28

Seal at Murphysboro this 19th day of May AD 1863.

Thos L Hale Clerk
By North. Dpty

The Plaintiffs next offered the testimony of Alexander M Jenkins who by Consent of Parties was allowed to testify without first being Sworn and who Stated as follows.
I am acquainted with Mrs Blanchard the Wife of Israel Blanchard Plaintiff in this Suit - She is the daughter of my Sister & John Logan - I have known her since a child - John Logan was the husband of my Sister and always nurtured and raised Mrs Blanchard as his child - I know her to be the Same person named as one of the Plaintiffs in this Suit and the same person named in the Will of John Logan as his daughter - I drew the Will myself - The Plaintiffs offered No further testimony and Rested their Case

The Defendants then Introduced James S Watson as a Witness in his behalf who being first duly Sworn testified as follows to Wit -
I am Clerk of the Circuit Court of Jackson County Illinois and have the Custody of

the Records of said Court. The Book in my hands One of the books of the Records of said Court – I find the following entry of a proceeding in said Court on the 19th April 1848 being of the April Term 1848 of said Circuit Court

Bush & Hansen
vs
John Logan } Appeal

This day came the Plaintiffs by their Attorney, Allen; and came also the Defendant in person & by his Attorney Marshall The Attorney for the defendant filed an Affidavit for a Continuance in this Case, and on his Motion founded on said Aff the Case is Continued to next term of Court at the Cost of the defendant: Whereupon It is Considered that the Plaintiffs do recover from the said Defendant their Costs and Charges herein to be Taxed &c – To the recording of which Record the Plffs by their Attorney objected but the Court overruled their objection and permitted said Record to be Read

The defendant then offered to Read in Evidence in his behalf the following Bill Obl with the several indorsements thereon, to wit

"A"

42

Jackson Circuit Court April Term 1848
Burch & Hansen vs John Logan
Bill of the Costs of the Term for which Judgment went against Deft.

Clerk. Swearing Defts to Affts. 12c filing Affts 6	18 3
Issuing 3 Subpoenas 1.50 filing them 18 3.	1.68 3
Swearing 4 to Affts 50c filing Affts 25	.75
Entering Judgt for Costs 25 Entering Satisfaction of Same 25 Docketing Same 12c	37c
Making Copy of fee Bill 25 - Certificate & Seal on Same 50	.75
	$4.00
Sheriff Redfield. on 3 Subpoenas. Mileage 3.06 Serving on ten 2.50. Returning 3 37c	5.93 3
Witnesses B. J. Holloway 2 days $1 A Harris 2 days 1 $.	2.00
R Dudding 2 days $1. Jas Moosley 2 days 1 $.	2.00
	$13.93 3

State of Illinois } The People of the State of Illinois
Jackson County } to the Sheriff of Jackson County
Greeting

I, Daniel H Burch Clerk of the Jackson Circuit Court do certify the above to be a correct bill of the Costs of said Term in said Case for which Judgment was Rendered against the said Defendant

We therefore command you that of the goods & chattels Lands & Tenements of the said John Logan in your County you cause to be made the said Sum of Thirteen Dollars and Ninety three & 3/4 Cents

the amt of said Bill together with your costs and make due return thereof to the Clerks Office of said Court within ninety days from the date hereof

Seal

Witness my hand & Seal Official at Murphysboro this 22d day of April AD 1848

D H Brush Clk

Come to hand on the 25th April at 9 O'clock A.M.

John Redfield Sheriff

I have levied this fee bill on lots No One, two, Seven and Eighte in Block No twelve in Murphysboro and advertized the same for Sale on the 24th day of June 1848 –

June 24. 1848 I sold said lots to Brush & Hansen the Plffs herein as follows viz lot No One for four dollars lot No two for four Dollars lot No Seven for four dollars & lot Number Eight for four dollars & 7 cents amounting in all to Sixteen Dollars & Seven cents which satisfies this fee Bill in full

John Redfield Sheriff

	$13.93
Lev & Ret	.62½
Adv Sale	.25
Certificate of sale	50
Commission	76
	16.07½

Returned Satisfied by levying on four town lots which was sold to Plffs.

John Redfield Shff

Felix June 26th 1848

D. H. Brush Clk

To the reading of which in Evidence the Plaintiffs objected, and the Court sustained the objection and Refused to allow the same to be read until the Defendant should first produce the fee Book from which said fee Bill purported to be Copied

To which Ruling of the Court in refusing to allow said fee Bill to go in Evidence the Defendant by his Counsel then and there at the time Excepted

The Defendant then recalled as a Witness in his behalf James P Watson who Stated, that he was Clerk of said Jackson Circuit Court as aforesaid the Book in my hands is the fee Book of said Court, the following is the Entry & Record in Said fee Book in the Case of Brush & Hansen vs John Logan on page 187. being the Bill of Costs in Said Cause to Wit

187.

[8429-30]

Brush & Hansen vs John Logan — April Term 1848

Bill of Cost of Term for which Judgment agt Deft.

Clerks. Swearing Deft to Affdt. 12½ Filing Affdt. 6¹ 18³

Issuing three Subpoenas 1.50 Filing Same 18³. 1.68³

Swearing 4 to Affdts 50¢ filing ~~Affdts~~ 25 75

Docketing Judgment 12½

Entering Judgt. for Costs Entering Satisfaction of Same 25¢ 25

Copy of fee Bill 25¢ Affdt & Seal 50

1848 June 24 – Fee Bill returned Satisfied by Sale of Lots to Plffs.

Shff John Redfield on 3 Subpoenas Mileage 3.06¹ Serving on 3 ten 250 Returning 3 Sps 37½ 5.93³

Shff Cost Cr to Redfield on B & H's Books

Witnesses B J Hollister 2 Ds. $1 A Harris 2 Ds 1$ 2.00

R Drooing 2 ds 1$. Jas Woosley 2 Ds 1$. 2.00

Witnesses fees Cr to them on B & H's Books.

Which said Entry and Record in said fee Book was by the allowed to be read in Evidence to the Jury.

Whereas Daniel H Brush and John M Hansen did at the April Term of the Jackson County Circuit Court held at Murphysboro in Jackson County in the year of Our Lord One thousand Eight Hundred and Forty Eight, recover a Judgment against John Logan for the Costs of the Term in a certain Suit then pending in said Court between said Parties which Judgment was for the Sum of Twelve dollars and Eighty One Cents, upon which Judgment a fee Bill was Issued dated on the Twenty second day of April AD 1848 directed to John Redfield then Sheriff of said County to Execute, and by virtue of the said Fee Bill the said John Redfield levied upon the Town lots in Murphysboro hereinafter described and the Same were Struck off and Sold to said Daniel H Brush & John M Hansen on the 24th day of June AD 1848. for the Sum of Sixteen Dollars and Seven Cents, they being the highest and best bidders therefor, and the time and place of the Sale thereof having been duly advertised according to Law— Now therefore, Know all by this deed that I John Elmore Sheriff of said County of Jackson (the said John Redfield being no longer Sheriff) in Consideration of the Premises and of the said Sum of Sixteen Dollars and Seven Cents to the said John Redfield Sheriff as aforesaid in hand paid by the said Brush & Hansen have

granted bargained and Sold and do hereby Convey to the said Daniel H Brock & John M Hansen their heirs and assigns, the following described Town Lots in Murphysboro in said County, to Wit: Lots Number One (1) Two (2) Seven (7) and lot number Eight (8) in Block Number Twelve (12) in said Town, To Have and to Hold the said described premises with all the appurtenances thereto belonging to the said Daniel H Brock and John M Hansen their Heirs & Assigns forever.

Witness my hand and Seal this Twenty seventh day of June in the year of Our Lord One thousand Eight Hundred and Fifty

John Elmore Sheriff (Seal)
of Jackson Co. Ills

State of Illinois }
Jackson County } S. On this day personally appeared before the undersigned Clerk of the Circuit Court in and for the County of Jackson aforesaid John Elmore personally well known to me to be the real person who executed the foregoing deed and also to be Sheriff of said County and acknowledged that he freely and voluntarily executed said Deed for the uses & purposes therein mentioned.

In Witness whereof I hereunto set my name and affix the Seal

Seal

of the said Court at Office in Murphysboro
this 27 day of June AD 1850
Daniel H Brush Clk
by Richd Dudding Dep

Filed for Record 27 June 1850 & Recorded Same day in
Book letter H on Pages 451. & 452
Daniel H Brush Clk Jack
Cir Court
by Richd Dudding Dep

To which the plaintiffs by their Counsel objected
and the Court sustaining their objection and
refused to allow the said Instrument in
Writing, to go to the Jury — To which ruling
of the Court the defendant by his Counsel
then and there at the time Excepted.
The defendant next offered to read in evidence
in his behalf the following instrument in Writing
to Wit

This Indenture made and Entered into this 21st
day of April AD 1850 between Daniel H Brush
& Julia his Wife of the County of Jackson and
State of Illinois of the first part, and Daniel
Neal of the County of Jackson and State
of Illinois of the second part Witnesseth:
that the said parties of the first part,
for and in Consideration of the Sum of

One hundred Dollars in hand, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell, Convey and Confirm unto the party of the Second part his heirs and assigns forever, all and Singular, the following described Land or Town Lots Situate lying and being in the County of Jackson and State of Illinois and designated as follows:- The One undivided half part of Lots number One, two, Seven and Eight in Block Number Twelve in Murphysboro, County and State aforesaid, Together with all and Singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining. To have and to hold the above described premises, unto the said party of the Second part his heirs and assigns forever. And the said parties of the first part do Covenant to and with the said party of the Second part, that they will forever Warrant and defend the title and possession of the said Land or Town Lots from the Claim or claims of all and every person lawfully claiming the Same. In testimony whereof the said parties of the first part have hereunto set their hands and Seals the day and year above Written

Signed Sealed and delivered in presence of.

Danl H Brush (Seal)
Julia Brush (Seal)

57

State of Illinois. Jackson County S.S.

I the undersigned D N Hamilton Police Magistrate of Carbondale within and for the said County, do hereby certify that Dennis H Brush and Julia his wife whose signatures appear to the foregoing Deed of Conveyance, and who are personally known to me to be the identical persons whose names are subscribed to said Deed as having executed the same, this day appeared before me and acknowledged that they had signed sealed and delivered the same as their free act and deed for the uses and purposes therein expressed, And the said Julia Brush wife of the said D H Brush being examined by me separate and apart from her said husband & the contents & effect of said Deed made known & explained to her declared that she of her own free will and accord executed the same thereby relinquishing all right to dower in said premises freely & voluntarily without coercion or compulsion on the part of her said husband In Witness Whereof I hereunto set my name and affix my seal this 21st day of April A.D. 1860.

D N Hamilton P.M. (Seal)

Filed for Record April 21st 1860. Recorded Book N Page 124 June 11th 1860. Ed H Rees Clk

by G. W. Davis
Fee 80 cts

[8429-24]

To which the Plaintiff by his Counsel objected and the Court Sustained the Objection and Refused to allow the Same to go in Evidence to the Jury — to which Ruling of the Court the defendant by his Counsel then and there at the time Excepted.

The Defendant here rested his Case; and no more or other Evidence was offered on the trial of said Cause by either Party Plaintiff or defendant but the above is all the Evidence offered by the Parties respectively on the trial of said Cause.

The Cause being Submitted to the Jury the Jury Retired to Consider of their verdict. And afterwards returned into Open Court the following Verdict to Wit,

"We the Jury find the Issue for Plaintiffs — find Plaintiffs to be the owners in fee Simple of Lots No 1 & 8 in Block No 12 in the Town of Murphysboro Jackson County Illinois"

And afterwards comes the Said defendant by his Counsel and enters his Motion for a New trial, in Writing which is in the words and figures following to Wit

53

Blanchard & Wife
vs
D Neal } Ejectment

And the said Defendant comes and moves the Court for a new trial, for the following Causes

1st The Court erred in admitting the deed of Hendle to Logan without proof of the Execution The Acknowledgment being informal and not in accordance with the provisions of the Statute.

2nd The Court erred in excluding the Fee Bill or process upon which the Land in Controversy was Sold on account of the alleged variance between the Fee Book and the Fee Bill or process—

3d The Court Erred in excluding the Fee Bill or process on the ground that the Fee Book had not been introduced as a Foundation.

The new trial is asked in this Case for the above reasons and not under the Statute — that for the purpose of this motion being expressly waived

Wall & Mulky
for Defs.

Filed May 20th 1863.
James P Watson Clk

[8429-27]

But the Court refused to grant a new trial in said Cause and overruled the motion and rendered Judgment for the Plaintiffs on the verdict of the Jury to which ruling of the Court in refusing a new trial and in rendering Judgment on said verdict the said Defendant by his Counsel then and there at the time excepted.

And now again on this day comes again the said Defendant and tenders this his Bill of Exceptions and prays that the same may be Signed and Sealed and made a part of the record which is accordingly done

J. A. Haynie (Seal)
Presiding by Agreement
of Counsel
A. M. Jenkins Judge 3d Judicial
Cir Ills. and Presiding Judge of the
Jackson Co Circuit Court. Ills.

Filed May 21st 1863.
James P Watson. Clerk

State of Illinois }
Jackson County } ss. I, James P Watson
Clerk of the Circuit Court

within and for said County of Jackson and State of Illinois, do hereby certify that the above and foregoing is a true and Correct Copy of all the Original papers, Orders of Court Bill of Exceptions, and all other papers appertaining thereto in the above entitled Cause as appears from the Records, and papers on file in my Office.

In testimony whereof I have hereunto set my hand and affix the Seal of the Circuit Court at Murphysboro this 30th day of June AD 1863.

James P Watson, Clerk

And now comes the said deft by his atty and says there is Error apparent on the Record & proceedings in this Cause, and assigns the following Causes of Error

1st. The Court erred in admitting the deed from Finch to Logan

2nd The Court erred in admitting the deed from the County Commissioners to Logan

3rd ~~The Court erred in admitting the will of John Logan~~

4 The Court erred in Excluding the Fi Fa Bill

5 The Court erred in Excluding the deed from Sheriff to Bush & Hanson based on the Sale under the Fi Fa Bill

6th The Court erred in excluding the deed from Bush & wife to deft.

[8427-28] 7th The Court erred in refusing a new trial

8 The Court erred in rendering judgment for plff.

9 The Court erred in not rendering judgment for deft

Wherefore and for other errors apparent upon this Record the Defendant brings this Cause before the Supreme Court and asks that said judgment &c may be reversed &c

John H Mulkey
& Geo W Wall
Atty for Daniel Neal
Plff in Error

And now come the said Defendants in Error, Israel Blanchard and Dorthula A. his wife by W. C. Goodwin & M Wheeler, their attys & say that in the judgment aforesaid & in the record & proceedings aforesaid there is no error & [illegible] they pray that said judgment aforesaid may [illegible] all things affirmed &c

W C Goodwin
M Wheeler
attys for defts

Daniel Neal Plff
in error
vs
Israel Blanchard
and Dorthula A his
wife – Defts in Error

Daniel Neal

18

Record

Filed Oct. 6. 1863.
N. Johnston Clk

Paid by Dudding ~~$ 11.50~~
$11.50

The Clk Supreme Court will issue Sci Fa to Shff Jackson Co. for said Israel Blanchard & Dorthula A his wife

Mulkey & Wall
for Daniel Neal

18

I. Blanchard & wife
vs
Daniel Neal

Record

IN THE SUPREME COURT OF THE STATE OF ILLINOIS.

FIRST GRAND DIVISION.

At Mount Vernon, November Term, A. D. 1863.

DANIEL NEAL Plaintiff in Error,
vs.
ISRAEL BLANCHARD, et ux. Defts in Error.
} Error to Jackson.

ABSTRACT.

pp. 1 to 5. This was an action of Ejectment, brought by defendants in error against plaintiff in error. Declaration filed and rule entered in Jackson Circuit Court, May term, 1862. Plea filed, "Not guilty."

At the October term, 1862, the cause stood continued without order; at the May term 1863, the cause came on for trial by agreement of parties, the Hon. I. M. Haynie. an attorney of said Court, was selected to preside as Judge at said trial in place of Hon. A. M. Jenkins, Judge of the Circuit Court. Jury
[6.] was called tried and sworn.

The evidence being heard and the arguments of counsel, the jury returned into Court a verdict for the plaintiffs, finding them to be the owners in fee simple of Lots 1 and 8, Block No. 12, in town of Murphysboro Jackson County, Illinois; whereupon defendant moved for a new trial in arrest of judgment, but said motions were overruled by the Court, and judgment was entered on
[7.] the verdict; And it was ordered that writ of possession issue for the premises.

BILL OF EXCEPTIONS.

Be it remembered, that upon said trial the plaintiff first offered in evidence to the jury a patent from James Monroe, President of the United States, to Joseph French, for the south half of section four, and the north half of section nine, in township nine south, range two west, dated the 10th day of December 1823, to the introduction of which said evidence defendant by his counsel objected; but the Court overruled said objection and allowed said instrument to go in evidence to said jury, to which ruling of the Court the defendent by his
[9. 10.] counsel then and there at the time excepted.

The plaintiff next offered in evidence an instrument under seal, from Joseph French and Sarah his wife, conveying unto John Logan his heirs and assigns forever, the south half of section four, and all that parcel of the north west quarter of section nine, lying on the north side of Big Muddy river, in township
[11.] nine S., R. 2 W., 3 P. M. To which said instrument was attached the following certificate of acknowledgment, to wit:

State of Illinois, } ss. Before me Joel Manning, a Justice of the peace
Jackson County. } within and for said county, personally appeared Joseph French and Sarah his wife, and acknowledged the foregoing deed of conveyance to be their voluntary act and deed for the uses and purposes therein expressed. The said Sarah being separate and apart from her said husband by me examined, and hearing said deed read, and being otherwise informed of its contents, confessed, declared, and acknowledged the above indenture to be her voluntary act and deed, for the uses and purposes therein mentioned, without any compulsion or coercion of her said husband. In testimony whereof I have hereunto set my hand and seal this third day of October 1822.

Joel Manning. [SEAL.]

Upon which said deed was the following endorsement of record:

Recorded in the Recorder's office of Jackson County, Illinois, Oct. 3rd 1822, in Book B for Deeds, page 193. James Manning, Rec.

State of Illinois, } Office of Board of Investigation.
Jackson Co. } October 9th 1843.

I do hereby certify, that this deed has been duly recorded in this office in Book A, on pages 320 & 321. D. H. Brush, Sec'y.

To the introduction of which instrument in evidence to the jury, deft. by his counsel at the time, objected; but the Court overruled the objection and and allowed the said instrument to go to the jury, to which deft. by his coun-
[13 14] sel then and there objected.

Plff. next offered in evidence a deed of conveyance under seal, from John Logan and Elizabath Logan his wife, dated and acknowledged Augst 17th 1843, reciting that, whereas, the commissioners appointed to re-locate the county seat of Jackson county, under an act of Legislature, approved Feb. 24th 1843, had located said county seat on the S. W. qr. of sec. 4, T. 9 S., R. 2 W., which said land belonged to said John Logan; and whereas, it was provided by the said Act, that if said county seat should be located on private property, the owner thereof should donate a tract of land not less than twenty acres, which should include the town site selected by said commissioners. Now therefore, in consideration of said premises, the said John Logan and his wife, granted, bargained, &c., unto said Jackson county, the inhabitants thereof, and their successors, the following piece of land, being a part of said S. W. qr. of sec. 4, T. 9 S., R. 2 W., to wit: beginning 27 rods north 20 degrees west from the S. E. corner of the above described qr. sec., running thence north 57 rods,
[15 16 thence west 56 1-2 rods, thence south 57 rods, thence east 56 1-2 rods to the
17 18] place of beginning, containing 20 20-100 acres. To the introduction of which instrument the defendent objected, but the Court overruled the objection, to which the defendant then and there excepted.

The plaintiff next introduced Lindorf Osborne as a witness in their behalf, who testified: I am acquainted with the location of the town of Murphysboro, was present when the commisssoners met to lay off the county seat of Jackson county, Murphysboro: think the land described in deed from John Logan and wife to Jackson County, is the same land embraced in the survey of the town of Murphysboro. Have seen several surveys made of the town plat. There is some variance in the surveys, but the land in this deed from Logan to the county embraces the town plat. I know where lots 1 and 8 in block 12 are situated; these lots were included in that survey. Deft. has had possession of them for the last year or two; Murphysboro is on the S. W. qr. sec. 4, 9 2 W. Plaintiff next introduced John B. Clinton, who testified: Don't think I was present when the town of Murphysboro was laid out; know where the town is located; I know from the records and surveys; it is the S. W. qr. of sec. 4, 9 2 W; don't remember where the qr. commences, but it is not the corner of the section. Witness is here shown the deed from John Logan and wife above referred to, and states that the land conveyed in the deed is the same land on which the town of Murphysboro is located. I know where lots 1 and 8, B 12 in said town are situated; they are a part of said tract; defendent was in possession of them April 15th 1862, and has been since.

Plff. next introduced Robert L. Hall, who testified: Am County Clerk of Jackson county; the book in my hands is one of the records of the County
20 21] Court of said county, and proceeds to read therefrom. At a special term of the County Commissioners' Court of Jackson county, held at the Clerk's office in Brownsville, Thursday August 17th 1863. Present, George Butcher, Thomas B. Hill, Peter Gill, County Commissioners. This term of the Court was

called for the purpose of receiving the certificate of Samuel Y. Russell, Wm. C. Murphy, and John Cochran, Commissioners appointed by the Legislature by an act entitled an act in relation to the county seat of Jackson County, approved Feb. 24th 1843, re-locating the said county seat, and for the purpose of making allowance to said commissioners &c. * * * * *
The said commissioners returned to the Clerk of this Court a certificate of their
[22.] re-location of the county seat of Jackson County, which said certificate is as follows: Here follows the certificate as it appears on said record, in which the said commissioners report that they had located the said county seat on the following described land, containing 20 20-160 acres, described as follows: Beginning &c. (Being the same description as appears in the deed from Logan and wife to said Jackson county, above referred to.) After which certificate appears on the record the following order: Ordered by the Court, that the new county seat of Jackson county, selected and re-located by the commission-
[23 24 ers aforesaid, be named Murphysboro. Court then adjourned. The reading
25.] of which record in evidence the defendant objected, but the Court overruled the objection, and permitted the said record to be read in evidence to the jury, to which ruling of the Court the defendant then and there by his counsel excepted. The plaintiff next offered in evidence the following instrument in writing, the reading of which the defendant objected, and the Court refused to admit the same until the plaintiff should explain the erasures and interlineations appearing in the body and acknowledgment of the instrument, wherereupon the plaintiff read from the records of the County Court of said county from page 72, the following entry: "At a regular term of the County Commissioners' Court of Jackson County, Illinois, held at Murphysboro, on the 29th day Sept. 1844. Present—George Butcher, Peter Gill, County Commissioners. Jefferson Allen, who was at the last August election duly elected a County Commissioner, came and took the oath required for him to take as such Commissioner in open Court." And afterwards on page 78 80 and 83, showing that Jefferson Allen had signed his name as commissioner, to the order and proceedings of said County Commissioners' Court. On these proofs submitted by the plaintiff, the Court permitted said instrument to go to the jury, in which instrument appear several erasures and interlineations, as follows:

"This indenture, made and concluded the 4th day of Sept. in the year of
Jefferson Allen
our Lord 1844, between Geo. Butcher, Peter Gill, and ~~Thomas B. Hill~~, county commissioners of Jackson county, State of Illinois, of the first part, and John Logan of the county and State aforesaid of the second part, witnesseth,
Jefferson Allen
that the said George Butcher, Peter Gill, and ~~Thomas B. Hill~~, Judges of the
27.] County Commissioners' Court of Jackson County, for and in consideration of sixty-six Dolls. &c., &c., conveying unto the said John Logan his heirs and assigns the following town lots in Muryhysboro, "Lots No. One (1) Two (2) Seven (7) & Eight (8) and Lot No. Twelve (12) also Lots No. One (1) and
Six (6)
Eight (8) Block No. Thirteen (13) also Lot No. ~~Seven (7)~~ Block No. eighteen (18) also Lot No. Five (5) and Six (6) in Block No. Twenty (20) and being
[28.] part of the twenty acres of land conveyed to Jackson County by John Logan and wife by deed bearing date the 17th of August 1843." Said instrument after containing the usual clauses of conveyance, signed and sealed by George Butcher, Peter Gill, and Jefferson Allen. The acknowledgement is in the usu-
[30.] al form, and containing an erasure of the name of Thomas B. Hill, and the interlineation of the name of Jefferson Allen, as appears above in the body of the
[31. deed. To the reading of which instrument the defendant objected. The Court overruled the objection, and the defendant excepted. The plaintiff next of-

fered in evidence the will of John Logan, and read the same to the jury, to the reading of which the defendant objected, the Court overruled the objection, the defendant excepted. The sixth clause of said will contains a devise as as follows: "I give and devise to my daughter Dorthula Angeline Logan all the land down in the S. W. qr. of sec. 4, in T. 9 S., R. 2 W., lying south of the town of Murphysboro in said Jackson county, and between the road leading from Murphysboro to the ferry on Muddy, above and near the coal bank on the same and the east line of the land heretofore deeded by myself and wife to John A. and Thomas M. Logan, being a part of the same qr. sec., also town lots No. One (1) Seven (7) and Eight (8) in Block Twelve (12) in the
pp 32 aforesaid town of Murphysboro, in addition to what I have heretofore given
to 36] to them in this my last will and testament as otherwise.

The plaintiff next proved marriage of plaintiff Israel Blanchard, to Dorthu-
pp 39 la Angeline Logan, and that the said Dorthula is the same person named in
40] the said will of John Logan deceased.

The plaintiff offered no more testimony, and here rested their case.

The defendant then introduced as a witness in his behalf, James P. Watson, who swore, I am Clerk of the Circuit Court of Jackson County, Illinois, and have the custody of the records of said Court. The book in my hand is one of the books of the records of said Court. I find the following entry of a proceeding in said Court on the 19th April 1848, being of the April term 1848 of said Circuit Court.

Brush & Hanson,
vs. } Appeal.
John Logan.

This day came the plaintiffs by their atty. Allen, and came also the defendant in person, and by his atty. Marshall. The atty for the defendant filed an affidavit for continuance in this case, and on his motion founded on said affidavit the case is continued to the next term of Court, at the cost of the defendant, whereupon it is considered that the plaintiffs do recover from the said defendant their costs and charges herein to be taxed, &c. To the reading of
p 41.] which record the plaintiffs objected, but the Court overruled the objection and permitted said record to be read. The defendant then offered to read in evidence the following Fee Bill, with the several endorsements thereon, to wit:

Jackson Circuit Court, April term, 1848. Brush & Hanson vs. John Logan.

Bill of costs of the term, for which judgment went against the defendant.

Clerk's	Swearing deft. to affidavit 12½ filing afft. 6¼		18¾
	Issuing 3 subpoenas 1.50 filing them 18¾		1.68¾
	Swearing 4 to affts 50c. filing affidavits 25		75
	Entering judgment for costs 25 entering satis		25
	faction of same 25 docketing same 12½		37½
	Making copy of fee bill 25 certificate & seal on same 50		75
			$4.00
Sheriff,	Redfield on 3 subpoenas, milage	$3.06¼	5.93¾
	Serving on 10 $2.50 returning on 3	37½	
Witness	B. J. Holliday 2 d 1$ A. Harris 2 d 1$		2.00
	R Dudding 2d 1$ Jos Moody 2d 1$		2.00
			13.93¾

State of Illinois, } ss. The People of the State of Illnois, to the Sheriff of
Jackson County. } Jackson County, Greeting:

I, Daniel H. Brush, Clerk of the Jackson Circuit Court, do hereby certify the above to be a correct bill of the costs of said term in said case for which judgment was rendered against the said defendant. We therefore command

you, that of the goods and chattels, lands and tenements of the said John Logan in your county, you cause to be made the said sum of thirteen dollars and ninety-three and cents, the amt. of said bill, together with your costs, and make due return thereof to the Clk's office of said Court within ninety days from the date hereof. Witness my hand and seal official at Murphysboro

[SEAL.] this 22nd day of April 1848. D. H. Brush, Clk.

Came to hand on the 25th April at 9 o'clock a. m. John Redfield, Sheriff.

I have levied this Fee bill on lots No. one, two, seven and eight, in block No twelve in Murphysboro, and advertized the same for sale on the 24th day of June 1848.

June 24th 1848. I sold said lots to Brush & Hanson the plaintiffs here-
p 43.] in as follows, viz: Lot No. one for four dollars, lot No. two for four dollars, lot No. seven for four dollars, and lot No. eight for four dollars and seven cents, amounting in all to sixteen dollars and seven cents, which satisfied this fee bill in full.

John Redfield, Sheriff.

	$13.93¾
Sw. & Ret.	62½
Adv. Sale	25
Certificate of sale	50
Commission	76
	$16.07½

Returned satisfied by levying on four town lots which were sold to plffs.

John Redfield, Sheriff.

Filed June 26th 1848. D. H. Brush, Clk.

To the reading of which the plaintiff objected, and the Court sustained the objection, and refused to allow the same to be read until defendant should first produce the fee book from which said fee bill purported to be copied, to which ruling of the Court the defendant by his counsel then and there excepted. The defendant then re-called the said Clerk, James P. Watson, who stated,
p 44.] tho book in my hands is the fee book of said Court, the following is the entry and record in said fee book in case of Brush & Hanson vs. John Logan on page 187, being the bill of costs in said cause, to wit;

BRUSH & HANSON vs. JOHN LOGAN.

APRIL TERM 1848.

Bill of Costs of term for which judgment agst. Defendant.

Clerk's swearing Deft. to afft. 12½ filing afft. 6′	18¾
Issuing 3 subpoenas 1.50 filing same 18¾	1.63¾
Swearing 4 to affts 50c. filing affts 25	75
Docketing judgment	12½
Entering jugt. for costs entering satisfaction of same 25c	25
Copy of fee bill 25c ctft & seal 50c	
Shff. John Redfield on 3 subpoenas milage 3.06′ Serving on ten 2.50 returning 3 spa. 37½	5.93¾
Witness B. J. Holiday 2 da $1. A. Harris 2 da $1.	2.00
R. Dudding 2 D $1. Jas. Woosley 2 D $1.	2.00

1848
June 24. Fee bill returned satisfied by sale of Lots to Plffs.

Shrff. costs Cr. to Redfield on B. & H.'s Books.

Witness fees Cr. to them on B. & H.'s Books.

Defendant then offered to read to the jury, Sheriff's Deed from John Elmore, Sheriff of said county, for said Lots One, Two, Seven, and Eight, Block 12 to Brush and Hanson, based on said sheriff's sale, which deed and acknowledgment will be found on pages 47 and 48 of record. To the reading of which deed the plaintiffs objected, and the Court sustaining the objection, refused to
p 49.] allow the said instrument to go in evidence to the jury, which ruling of the Court the defendant excepted to.

Defendant then offered to read deed from Brush and wife to himself for the undivided half of said lots 1, 2, 7, and 8, in block 12, which deed and acknowledgment will be found on pages 49, 50, and 51, of the record. To the reading of which the plaintiff objected. The Court sustained the objection, and refused to allow the same to go to the jury, to which ruling of the Court the defendant then and there excepted.

The defendant here rested his case, and no more evidence was offered by
p 52.] either party. Cause was submitted to the jury, who retired to consider, and returned into open Court with a verdict for the plaintiffs.

The defendant moved for a new trial for the following reasons: First—The Court erred in admitting the deed of French to Logan without proof of the execution, the acknowledgment being informal, and not in accordance with the provisions of the statute. Second—The Court erred in excluding the fee bill upon which the land in controversy was sold, on account of the alleged variance between the fee Book and fee Bill. Third—The Court erred in exclud-
p 53.] ing the fee bill, on the ground that the fee book had not been introduced as a foundation, &c.

But the Court refused to grant a new trial in said cause, and overruled the motion and rendered judgment for the plaintiffs on the verdict of the jury, to which ruling of the Court in refusing a new trial and rendering judgment on the verdict the defendant then and there excepted.

The defendant brings the cause into this Court, and makes the following

ASSIGNMENT OF ERRORS.

1. The Court erred in admitting the deed from French to Logan.
2. The Court erred in admitting the deed from the County Commissioners to Logan.
3. The Court erred in admitting the will of John Logan.
4. The Court erred in excluding the Fee Bill.
5. The Court erred in excluding the deed from Sheriff to Brush & Hanson, based on the sale under the Fee bill.
6. The Court erred in excluding deed from Brush & wife to defendant.
7. The Court erred in refusing a new trial.
8. The Court erred in rendering judgment for plaintiff.
9. The Court erred in not rendering judgment for defendant.

For these and divers other errors apparent on the Record, defendant asks that the judgment may be reversed, &c.

J. H. MULKEY,
GEO. W. WALL,
For Plaintiff in Error.

[8429-35]

x x 18

Neal
v
Blanchard

Abs.

Filed Nov. 10. 1863.
J. Johnston Clk

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 Jackson 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* Jackson *county, before the Judge thereof between*

Israel Blanchard and Dorthula A Blanchard his wife *plaintiffs and*

Daniel Neal *defendant it is said manifest error hath intervened to the injury of the aforesaid* Daniel Neal *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 Sunday after the 2d Monday in 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. Caton *Chief Justice of the Supreme Court and the seal thereof, at* MOUNT VERNON, *this* Sixth *day of* October *in the year of our Lord one thousand eight hundred and* Sixty-three.

Noah Johnston
Clerk of the Supreme Court.

[8429-36]

18

SUPREME COURT.

First Grand Division.

Daniel Neal

Plaintiff in Error,

VS.

Blanchard & wife

Defendant in Error.

WRIT OF ERROR.

Issued Sealed, Stamped and FILED October 6-1863-

N. Johnston Cl

IN THE SUPREME COURT OF ILLINOIS,

FIRST GRAND DIVISION----------NOVEMBER TERM, 1863.

Daniel Neal,
VS
Israel Blanchard, Et Ux. } Error to Jackson.

BRIEF FOR PL'FF IN ERROR.

The main question presented by this record is upon the construction of sec. 41 Practice act. (Scates' stat. p. 266) which provides that a Fee Bill not IN SUBSTANCE a copy of the recorded bill on the Fee Book shall be void. In this case the Defts. in Error, (pl'ff's below) insist that there is a fatal variance between the Fee Bill as issued, and the record in the Fee Book, because the clerk in making up the Record of costs on the Fee Book omitted to state the "amount" charged for "entering judgment for costs," which the law fixes at twenty-five cents, (25 cts.) The "item" is charged, but the "amount" of his fee therefor is not stated. The Fee Bill as issued, contains the item and the amount charged therefor. Is not this, "in substance, a copy of the recorded bill?" If the Legislature had intended that the Fee Bill should be an exact copy of the Fee Book, would they have used the words, "in substance?"

The fair and rational import of the words in connection with the subject matter is the true mode of reaching the proper construction of a statute. Sandrisp

The court may look at the inconveniences, ~~needless~~ and absurd consequences, that would follow a particular construction; and it is always to be presumed that the Legislature intend the most reasonable and beneficial construction of their acts. 19 Ver. R. 131, 3 Kelly R. 146, 21 Ver. R. 152, 3 Mo. R. 496, 25 493, 9 Cranch R. 203, 3 Scam. 153.

Statutes should be so construed, if the words and subject matter will admit of it, that the existing rights of individuals will not be impaired. 4 Gilman, 272.

The court should have allowed the Fee Bill to go to the jury without requiring the Fee Book to be produced as a foundation.

The Deed from French to Logan should have been excluded, the abknowledgment not being sufficient.

~~The Will of John Logan should have been excluded, there being no proof that the same had ever been admitted to Probate.~~

G. W. WALL, For Plaintiff in Error.

Wall. The only question here is the construction of Sec. 41 Practice act 1 Scats 266

Gooby. reads the proff. and entries in fee book first separation from the law is in making up the fee book - it does not distinguish between the pltff and defts costs -

2 No authority to issue a fee bill - an execution should have been issued for them -

3 Deed should have been excluded -

4 The fee bill void - not a copy in substance of the recorded bill of costs -

Wall refers to 17 Ill. 156 =
28 " 264

Neal refers to Sect. 28 of rev. Statutes
Gooby 13 Ill. 251 -

[8429-37]

18

Neal

v

Blanchard

Opps Bp.

Filed Nov. 11 - 1868 -

N. Schweitzer Clk

State of Illinois,
SUPREME COURT,
First Grand Division. } SS

The People of the State of Illinois,

To the Sheriff of Jackson 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 Jackson county, before the Judge thereof between

Israel Blanchard and Dorthula A. Blanchard his wife plaintiffs and

Daniel Neal defendant it is said that manifest error hath intervened to the injury of said Daniel Neal 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

Israel Blanchard and Dorthula A. Blanchard his wife

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

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

Noah Schuster
Clerk of the Supreme Court.

[2429-38]

18

SUPREME COURT.

First Grand Division.

Daniel Neal

Plaintiff in Error,

vs.

Blanchard & wife

Defendants in Error.

1863

SCIRE FACIAS.

FILED.

Serving 2 subpoenas 100
Mileage 1000
Return 10
1110

Return the within writ executed by reading the same to Earl Blanchard and Dorthula Blanchard October 10th 1863

P. H. Reeves
Sheriff of Greene County Illinois

Daniel Neal pltff in Error
vs
Israel Blanchard & Arthusa A. Blanchard his wife defts in Error } Error to Jackson

The clerk Supreme Court
1st Gr. Div will issue Sci. Fa in above case
to Shff. Jackson Co. for the Nov. Term 1863

Nevitt Key & Wall
for pltff in Error

Ann Arbor Oct. 5 1863.

Noah Johnston Esq

Dear Sir

I return you the cord in above case with Error assigned. Please issue the Sci fa immediately—

I believe the necessary amount of "Greenbacks" has been deposited with you. If not issue, and notify me of the amt. yet back and it shall be forthcoming—

Truly yrs

Geo. V. Wall

Ann Arbor Oct 5 1863

[8429-39]

18

Daniel Neal -
Pltff in Error.

vs

Israel Blanchard
& wife - Defts in Error

Praecipe

Filed Oct. 6. 1863.
N. Johnston Cl

Canton Miss 28th Aug 1863

Noah Johnston Esq

Dear Sir

I received your favor of 13th inst. in relation to fees &c in the case in which I sent to you the Record - (Blanchard & Ross)

I have since learned (through the inscription of Mr Mulkey) that no abstract of the Record has yet been made - Mr Wall of Sin Lawrence is engaged in the case, and I have arranged with him to make such abstract, and to enable him to do so, be pleased to send it to him at your earliest convenience - I send enclosed Six Dollars more, to be applied as follows - Clerks fee $5. Int. Rev. Stamp for Proof 50¢ & 50 for postage of Record to Mr Wall.

I am

Your respectfully

Richd Dudding

[8429-40]

IN THE SUPREME COURT OF ILLINOIS,

FIRST GRAND DIVISION----------NOVEMBER TERM, 1863.

Daniel Neal,
VS
Israel Blanchard, Et Ux. } Error to Jackson.

BRIEF FOR PL'FF IN ERROR.

The main question presented by this record is upon the construction of sec. 41 Practice act. (Scates' stat. p. 266) which provides that a Fee Bill not IN SUBSTANCE a copy of the recorded bill on the Fee Book shall be void. In this case the Defts. in Error, (plff's below) insist that there is a fatal variance between the Fee Bill as issued, and the record in the Fee Book, because the clerk in making up the Record of costs on the Fee Book omitted to state the "amount" charged for "entering judgment for costs," which the law fixes at twenty-five cents, (25 cts.) The "item" is charged, but the "amount" of his fee therefor is not stated. The Fee Bill as issued, contains the item and the amount charged therefor. Is not this, "in substance, a copy of the recorded bill?" If the Legislature had intended that the Fee Bill should be an exact copy of the Fee Book, would they have used the words, "in substance?"

The fair and rational import of the words in connection with the subject matter is the true mode of reaching the proper construction of a statute.

hardship

The court may look at the inconveniences, ~~heedless~~ and absurd consequences, that would follow a particular construction; and it is always to be presumed that the Legislature intend the most reasonable and beneficial construction of their acts. 19 Ver. R. 131, 3 Kelly R. 146, 21 Ver. R. 152, 3 Mo. R. 496, 25 493, 9 Cranch R. 203, 3 Scam. 153.

Statutes should be so construed, if the words and subject matter will admit of it, that the existing rights of individuals will not be impaired. 4 Gilman. 272.

The court should have allowed the Fee Bill to go to the jury without requiring the Fee Book to be produced as a foundation.

The Deed from French to Logan should have been excluded, the abknowledgment not being sufficient.

~~The Will of John Logan should have been excluded, there being no proof that the same had ever been admitted to Probate.~~

G. W. WALL, For Plaintiff in Error.

[8429-41]

18

Neal

v.

Blanchard

Pltff Bf.

Filed Nov. 11-1863.

N. Johnston Cl

272
12
1088
272
3808
20
7600
7
5320

71

257
12
3000
2
600
7
4200

IN THE SUPREME COURT OF THE STATE OF ILLINOIS.

FIRST GRAND DIVISION.

At Mount Vernon, November Term, A. D. 1863.

DANIEL NEAL Plaintiff in Error,
vs.
ISRAEL BLANCHARD, et ux. Defts in Error. } Error to Jackson.

ABSTRACT.

pp. 1 to 5. This was an action of Ejectment, brought by defendants in error against plaintiff in error. Declaration filed and rule entered in Jackson Circuit Court, May term, 1862. Plea filed, "Not guilty."

At the October term, 1862, the cause stood continued without order; at the May term 1863, the cause came on for trial by agreement of parties, the Hon. I. M. Haynie. an attorney of said Court, was selected to preside as Judge at said trial in place of Hon. A. M. Jenkins, Judge of the Circuit Court. Jury
[6.] was called tried and sworn.

The evidence being heard and the arguments of counsel, the jury returned into Court a verdict for the plaintiffs, finding them to be the owners in fee simple of Lots 1 and 8, Block No. 12, in town of Murphysboro Jackson County, Illinois; whereupon defendant moved for a new trial in arrest of judgment, but said motions were overruled by the Court, and judgment was entered on
[7.] the verdict; And it was ordered that writ of possession issue for the premises.

BILL OF EXCEPTIONS.

Be it remembered, that upon said trial the plaintiff first offered in evidence to the jury a patent from James Monroe, President of the United States, to Joseph French, for the south half of section four, and the north half of section nine, in township nine south, range two west, dated the 10th day of December 1823, to the introduction of which said evidence defendant by his counsel objected; but the Court overruled said objection and allowed said instrument to go in evidence to said jury, to which ruling of the Court the defendent by his
[9. 10.] counsel then and there at the time excepted.

The plaintiff next offered in evidence an instrument under seal, from Joseph French and Sarah his wife, conveying unto John Logan his heirs and assigns forever, the south half of section four, and all that parcel of the north west quarter of section nine, lying on the north side of Big Muddy river, in township
[11.] nine S., R. 2 W., 3 P. M. To which said instrument was attached the following certificate of acknowledgment, to wit:

State of Illinois, } ss. Before me Joel Manning, a Justice of the peace
Jackson County. } within and for said county, personally appeared Joseph French and Sarah his wife, and acknowledged the foregoing deed of conveyance to be their voluntary act and deed for the uses and purposes therein expressed. The said Sarah being separate and apart from her said husband by me examined, and hearing said deed read, and being otherwise informed of its contents, confessed, declared, and acknowledged the above indenture to be her voluntary act and deed, for the uses and purposes therein mentioned, without any compulsion or coercion of her said husband. In testimony whereof I have hereunto set my hand and seal this third day of October 1822.

Joel Manning. [SEAL.]

[8429-42]

Upon which said deed was the following endorsement of record:

Recorded in the Recorder's office of Jackson County, Illinois, Oct. 3rd 1822, in Book B for Deeds, page 193. James Manning, Rec.

State of Illinois, } Office of Board of Investigation.
Jackson Co. } October 9th 1843.

I do hereby certify, that this deed has been duly recorded in this office in Book A, on pages 320 & 321. D. H. Brush, Sec'y.

To the introduction of which instrument in evidence to the jury, deft. by his counsel at the time, objected; but the Court overruled the objection and and allowed the said instrument to go to the jury, to which deft. by his coun-
[13 14] sel then and there objected.

Plff. next offered in evidence a deed of conveyance under seal, from John Logan and Elizabath Logan his wife, dated and acknowledged Augst 17th 1843, reciting that, whereas, the commissioners appointed to re-locate the county seat of Jackson county, under an act of Legislature, approved Feb. 24th 1843, had located said county seat on the S. W. qr. of sec. 4, T. 9 S., R. 2 W., which said land belonged to said John Logan; and whereas, it was provided by the said Act, that if said county seat should be located on private property, the owner thereof should donate a tract of land not less than twenty acres, which should include the town site selected by said commissioners. Now therefore, in consideration of said premises, the said John Logan and his wife, granted, bargained, &c., unto said Jackson county, the inhabitants thereof, and their successors, the following piece of land, being a part of said S. W. qr. of sec. 4, T. 9 S., R. 2 W., to wit: beginning 27 rods north 20 degrees west from the S. E. corner of the above described qr. sec., running thence north 57 rods,
[15 16 thence west 56 1-2 rods, thence south 57 rods, thence east 56 1-2 rods to the
17 18] place of beginning, containing 20 20-100 acres. To the introduction of which instrument the defendent objected, but the Court overruled the objection, to which the defendant then and there excepted.

The plaintiff next introduced Lindorf Osborne as a witness in their behalf, who testified: I am acquainted with the location of the town of Murphysboro, was present when the commisssoners met to lay off the county seat of Jackson county, Murphysboro: think the land described in deed from John Logan and wife to Jackson County, is the same land embraced in the survey of the town of Murphysboro. Have seen several surveys made of the town plat. There is some variance in the surveys, but the land in this deed from Logan to the county embraces the town plat. I know where lots 1 and 8 in block 12 are situated; these lots were included in that survey. Deft. has had possession of them for the last year or two; Murphysboro is on the S. W. qr. sec. 4, 9 2 W. Plaintiff next introduced John B. Clinton, who testified: Don't think I was present when the town of Murphysboro was laid out; know where the town is located; I know from the records and surveys; it is the S. W. qr. of sec. 4, 9 2 W; don't remember where the qr. commences, but it is not the corner of the section. Witness is here shown the deed from John Logan and wife above referred to, and states that the land conveyed in the deed is the same land on which the town of Murphysboro is located. I know where lots 1 and 8, B 12 in said town are situated; they are a part of said tract; defendent was in possession of them April 15th 1862, and has been since.

Plff. next introduced Robert L. Hall, who testified: Am County Clerk of Jackson county; the book in my hands is one of the records of the County
20 21] Court of said county, and proceeds to read therefrom. At a special term of the County Commissioners' Court of Jackson county, held at the Clerk's office in Brownsville, Thursday August 17th 1863. Present, George Butcher, Thomas B. Hill, Peter Gill, County Commissioners. This term of the Court was

called for the purpose of receiving the certificate of Samuel Y. Russell, Wm. C. Murphy, and John Cochran, Commissioners appointed by the Legislature by an act entitled an act in relation to the county seat of Jackson County, approved Feb. 24th 1843, re-locating the said county seat, and for the purpose of making allowance to said commissioners &c. * * * * *
The said commissioners returned to the Clerk of this Court a certificate of their
[22.] re-location of the county seat of Jackson County, which said certificate is as follows: Here follows the certificate as it appears on said record, in which the said commissioners report that they had located the said county seat on the following described land, containing 20 20-160 acres, described as follows: Beginning &c. (Being the same description as appears in the deed from Logan and wife to said Jackson county, above referred to.) After which certificate appears on the record the following order: Ordered by the Court, that the new county seat of Jackson county, selected and re-located by the commission-
[23 24 ers aforesaid, be named Murphysboro. Court then adjourned. The reading
25.] of which record in evidence the defendant objected, but the Court overruled the objection, and permitted the said record to be read in evidence to the jury, to which ruling of the Court the defendant then and there by his counsel excepted. The plaintiff next offered in evidence the following instrument in writing, the reading of which the defendant objected, and the Court refused to admit the same until the plaintiff should explain the erasures and interlineations appearing in the body and acknowledgment of the instrument, wherereupon the plaintiff read from the records of the County Court of said county from page 72, the following entry: "At a regular term of the County Commissioners' Court of Jackson County, Illinois, held at Murphysboro, on the 29th day Sept. 1844. Present—George Butcher, Peter Gill, County Commissioners. Jefferson Allen, who was at the last August election duly elected a County Commissioner, came and took the oath required for him to take as such Commissioner in open Court." And afterwards on page 78 80 and 83, showing that Jefferson Allen had signed his name as commissioner, to the order and proceedings of said County Commissioners' Court. On these proofs submitted by the plaintiff, the Court permitted said instrument to go to the jury, in which instrument appear several erasures and interlineations, as follows:

"This indenture, made and concluded the 4th day of Sept. in the year of
Jefferson Allen
our Lord 1844, between Geo. Butcher, Peter Gill, and ~~Thomas B. Hill~~, county commissioners of Jackson county, State of Illinois, of the first part, and John Logan of the county and State aforesaid of the second part, witnesseth,
Jefferson Allen
that the said George Butcher, Peter Gill, and ~~Thomas B. Hill~~, Judges of the
27.] County Commissioners' Court of Jackson County, for and in consideration of sixty-six Dolls. &c., &c., conveying unto the said John Logan his heirs and assigns the following town lots in Muryhysboro, "Lots No. One (1) Two (2) Seven (7) & Eight (8) and Lot No. Twelve (12) also Lots No. One (1) and
Six (6)
Eight (8) Block No. Thirteen (13) also Lot No. ~~Seven (7)~~ Block No. eighteen (18) also Lot No. Five (5) and Six (6) in Block No. Twenty (20) and being
[28.] part of the twenty acres of land conveyed to Jackson County by John Logan and wife by deed bearing date the 17th of August 1843." Said instrument after containing the usual clauses of conveyance, signed and sealed by George Butcher, Peter Gill, and Jefferson Allen. The acknowledgement is in the usu-
[30.] al form, and containing an erasure of the name of Thomas B. Hill, and the interlineation of the name of Jefferson Allen, as appears above in the body of the
[31. deed. To the reading of which instrument the defendant objected. The Court overruled the objection, and the defendant excepted. The plaintiff next of-

fered in evidence the will of John Logan, and read the same to the jury, to the reading of which the defendant objected, the Court overruled the objection, the defendant excepted. The sixth clause of said will contains a devise as as follows: "I give and devise to my daughter Dorthula Angeline Logan all the land down in the S. W. qr. of sec. 4, in T. 9 S., R. 2 W., lying south of the town of Murphysboro in said Jackson county, and between the road leading from Murphysboro to the ferry on Muddy, above and near the coal bank on the same and the east line of the land heretofore deeded by myself and wife to John A. and Thomas M. Logan, being a part of the same qr. sec., also town lots No. One (1) Seven (7) and Eight (8) in Block Twelve (12) in the
pp 32 aforesaid town of Murphysboro, in addition to what I have heretofore given
to 36]. to them in this my last will and testament as otherwise.

The plaintiff next proved marriage of plaintiff Israel Blanchard, to Dorthu-
pp 39 la Angeline Logan, and that the said Dorthula is the same person named in
40] the said will of John Logan deceased.

The plaintiff offered no more testimony, and here rested their case.

The defendant then introduced as a witness in his behalf, James P. Watson, who swore, I am Clerk of the Circuit Court of Jackson County, Illinois, and have the custody of the records of said Court. The book in my hand is one of the books of the records of said Court. I find the following entry of a proceeding in said Court on the 19th April 1848, being of the April term 1848 of said Circuit Court.

Brush & Hanson, vs. John Logan. } Appeal.

This day came the plaintiffs by their atty. Allen, and came also the defendant in person, and by his atty. Marshall. The atty for the defendant filed an affidavit for continuance in this case, and on his motion founded on said affidavit the case is continued to the next term of Court, at the cost of the defendant, whereupon it is considered that the plaintiffs do recover from the said defendant their costs and charges herein to be taxed, &c. To the reading of
p 41.] which record the plaintiffs objected, but the Court overruled the objection and permitted said record to be read. The defendant then offered to read in evidence the following Fee Bill, with the several endorsements thereon, to wit:

Jackson Circuit Court, April term, 1848. Brush & Hanson vs. John Logan.

Bill of costs of the term, for which judgment went against the defendant.

Clerk's	Swearing deft. to affidavit 12½ filing afft. 6¼	18¾
	Issuing 3 subpoenas 1.50 filing them 18¾	1.68¾
	Swearing 4 to affts 50c. filing affidavits 25	75
	Entering judgment for costs 25 entering satis	25
	faction of same 25 docketing same 12½	37½
	Making copy of fee bill 25 certificate & seal on same 50	75
		$4.00
Sheriff,	Redfield on 3 subpoenas, milage $3.06¼	
	Serving on 10 $2.50 returning on 3 37½	5.93¾
Witness	B. J. Holliday 2 d 1$ A. Harris 2 d 1$	2.00
	R Dudding 2 d 1$ Jos Mosly 2 d 1$	2.00
		13.93¾

State of Illinois, Jackson County. } ss. The People of the State of Illnois, to the Sheriff of Jackson County, Greeting:

I, Daniel H. Brush, Clerk of the Jackson Circuit Court, do hereby certify the above to be a correct bill of the costs of said term in said case for which judgment was rendered against the said defendant. We therefore command

you, that of the goods and chattels, lands and tenements of the said John Logan in your county, you cause to be made the said sum of thirteen dollars and ninety-three and cents, the amt. of said bill, together with your costs, and make due return thereof to the Clk's office of said Court within ninety days from the date hereof. Witness my hand and seal official at Murphysboro

[SEAL.] this 22nd day of April 1848. D. H. Brush, Clk.

Came to hand on the 25th April at 9 o'clock a. m. John Redfield, Sheriff.

I have levied this Fee bill on lots No. one, two, seven and eight, in block No twelve in Murphysboro, and advertized the same for sale on the 24th day of June 1848.

June 24th 1848. I sold said lots to Brush & Hanson the plaintiffs here-
p 43.] in as follows, viz: Lot No. one for four dollars, lot No. two for four dollars, lot No. seven for four dollars, and lot No. eight for four dollars and seven cents, amounting in all to sixteen dollars and seven cents, which satisfied this fee bill in full. John Redfield, Sheriff.

	$13.93¾
Sw. & Ret.	62½
Adv. Sale	25
Certificate of sale	50
Commission	76
	$16.07½

Returned satisfied by levying on four town lots which were sold to plffs.

John Redfield, Sheriff.

Filed June 26th 1848. D. H. Brush, Clk.

To the reading of which the plaintiff objected, and the Court sustained the objection, and refused to allow the same to be read until defendant should first produce the fee book from which said fee bill purported to be copied, to which ruling of the Court the defendant by his counsel then and there excepted. The defendant then re-called the said Clerk, James P. Watson, who stated.
p 44.] tho book in my hands is the fee book of said Court, the following is the entry and record in said fee book in case of Brush & Hanson vs. John Logan on page 187, being the bill of costs in said cause, to wit:

Defendant then offered to read to the jury, Sheriff's Deed from John Elmore, Sheriff of said county, for said Lots One, Two, Seven, and Eight, Block 12 to Brush and Hanson, based on said sheriff's sale, which deed and acknowledgment will be found on pages 47 and 48 of record. To the reading of which deed the plaintiffs objected, and the Court sustaining the objection, refused to
p 49.] allow the said instrument to go in evidence to the jury, which ruling of the Court the defendant excepted to.

Defendant then offered to read deed from Brush and wife to himself for the undivided half of said lots 1, 2, 7, and 8, in block 12, which deed and acknowledgment will be found on pages 49, 50, and 51, of the record. To the reading of which the plaintiff objected. The Court sustained the objection, and refused to allow the same to go to the jury, to which ruling of the Court the defendant then and there excepted.

The defendant here rested his case, and no more evidence was offered by
p 52.] either party. Cause was submitted to the jury, who retired to consider, and returned into open Court with a verdict for the plaintiffs.

The defendant moved for a new trial for the following reasons: First—The Court erred in admitting the deed of French to Logan without proof of the execution, the acknowledgment being informal, and not in accordance with the provisions of the statute. Second—The Court erred in excluding the fee bill upon which the land in controversy was sold, on account of the alleged variance between the fee Book and fee Bill. Third—The Court erred in exclud-
p 53.] ing the fee bill, on the ground that the fee book had not been introduced as a foundation, &c.

But the Court refused to grant a new trial in said cause, and overruled the motion and rendered judgment for the plaintiffs on the verdict of the jury, to which ruling of the Court in refusing a new trial and rendering judgment on the verdict the defendant then and there excepted.

The defendant brings the cause into this Court, and makes the following

ASSIGNMENT OF ERRORS.

1. The Court erred in admitting the deed from French to Logan.

2. The Court erred in admitting the deed from the County Commissioners to Logan.

3. The Court erred in admitting the will of John Logan.

4. The Court erred in excluding the Fee Bill.

5. The Court erred in excluding the deed from Sheriff to Brush & Hanson, based on the sale under the Fee bill.

6. The Court erred in excluding deed from Brush & wife to defendant.

7. The Court erred in refusing a new trial.

8. The Court erred in rendering judgment for plaintiff.

9. The Court erred in not rendering judgment for defendant.

For these and divers other errors apparent on the Record, defendant asks that the judgment may be reversed, &c.

J. H. MULKEY,
GEO. W. WALL,
For Plaintiff in Error.

[8429-47]

× × 18

Neal
Blanchard

Abs.

Argued Nov. 12

Filed Nov. 10. 1863.
N. Johnston Cl

BRUSH & HANSON vs. JOHN LOGAN.

Bill of Costs of term for which judgment agst. Defendant.

Clerk's swearing Deft. to afft. 12½ filing afft. 6′	18¾
Issuing 3 subpoenas 1.50 filing same 18¾	1.63¾
Swearing 4 to affts 50c. filing affts 25	75
Docketing judgment	12½
Entering jugt. for costs entering satisfaction of same 25c	25
Copy of fee bill 25c ctft & seal 50c	
Shff. John Redfield on 3 subpoenas milage 3.06′ Serving on ten 2.50 returning 3 spa. 37½	5.93¾
Witness B. J. Holiday 2 da $1. A. Harris 2 da $1.	2.00
R. Dudding 2 D $1. Jas. Woosley 2 D $1.	2.00

APRIL TERM 1848.

1848 June 24.	Fee bill returned satisfied by sale of Lots to Plffs.
	Shrff. costs Cr. to Redfield on B. & H.'s Books.
	Witness fees Cr. to them on B. & H.'s Books.