

11872

No.

Supreme Court of Illinois

Butterfield.

vs.

Smith.

71641  7

N^o 9.
Justin Butterfield
vs
George W. Smith

1850

Prepared
Co

11872

State of Illinois }
County of Cook }k

Release before the Honorable Hugh
T. Slicker Judge of the Cook County Court of the
County of Cook and State of Illinois at a term
thereof began and held at the Court House
in the City of Chicago in the County and
State aforesaid on the first Monday being the
seventh day of February in the year of our Lord
One thousand eight hundred and forty eight and of
the Independence of the United States the seventy
second

Present the Hon Hugh T. Slicker
Patrick Dallingall
Isaac Cook
James Curly

Judge
State Attorney
Sheriff
Clerk

attest

Be it Remembered that hereto-
fore to wit on the ninth day of February in
the year of our Lord One thousand eight hun-
dred and forty eight being one of the days of
the February Term of the Cook County Court afo-
said before the court then sitting came Justin
Butterfield in his own proper person and filed
his declaration with the Clerk of the said
Court against George W. Smith defendant in
a plea of ejectment which said declaration
is in the words and figures following to wit:

Cook County Court, of the February Term in the year one thou-
sand eight hundred and forty seven. State of Illinois Cook
County of Justin Butterfield plaintiff in this suit com-
plains of George W. Smith defendant in this suit of a plea of
trespass and ejectment. Now that whereas the said plaintiff
to wit on the first day of December in the year of our Lord

2

One thousand eight hundred and forty seven in the County & State aforesaid was possessed of a certain piece or parcel of land lying & being in the County & State aforesaid and being part & parcel of the West half of the South East quarter of section 5 mo in Township Thirty nine North of Range Twelve East of the third principal meridian and known and described as follows Beginning at the North East corner of said tract and running thence West eighty rods more or less to the north west corner of said tract thence south seventy rods thence east eighty rods more or less to the east line of said tract thence north seventy rods to the place beginning containing thirty five acres of land which said premises the said plaintiff claims in fee. And being so possessed thereof the said defendant afterwards to wit on the second day of December in the year aforesaid entered into the said premises and ejected him the said plaintiff therefrom and unlawfully withholds from the said plaintiff the possession thereof to the damage of the said plaintiff of five hundred dollars and therefore he brings suit (signed) W. Bitterfield in pro persona

And also attached to the said declaration and filed therewith was a notice to the said George W. Smith the defendant herein which said notice is in the words and figures following to wit

To Mr. George W. Smith Defendant. Sir You will please take notice that a declaration in ejectment of which the foregoing is a copy will be filed on the first day of the next term of the Cook County Court to be holden in the said County of Cook on the first Monday of February next with the Clerk of the said Court and upon ^{the} filing of the same a rule will then and there be entered by the said Court requiring you to appear and plead to the said declaration within twenty days after the entry of the said rule and that if you neglect to appear and plead to the said declaration a judgment by default will be entered against you and the said plaintiff will recover the possession of the premises in the said declaration mentioned. Dated this 21st day of December 1847. W. Bitterfield Plaintiff

And also attached to the said declaration and

3

filed therewith was an affidavit of the service of a copy of the same and of the notice annexed upon the said defendant George M. Smith which said affidavit is in the words and figures following to wit:-

State of Illinois Cook County vs Justin Butterfield vs being duly sworn does depose say that he served a true copy of the foregoing declaration in Ejectment and of the notice thereto annexed upon George M. Smith the above named defendant personally on the eighteenth day of January A.D. 1848. J. Butterfield do. Sworn to before me this 5th day of February 1848 H. B. Becker Notary Public

And thereupon on the same day to wit upon the ninth day of February in the year of our Lord One thousand eight hundred and forty eight before the said Court then sitting the following among other proceedings were had to wit.

323

Justin Butterfield vs George M. Smith Ejectment. On filing the declaration in ejectment in this cause and the notice in writing subjoined thereto directed to the said defendant and on reading and filing the affidavit of due service of a copy of said declaration and of the said notice thereto annexed and on motion of said plaintiff it is Ordered that the defendant appear and plead within twenty days from this day or that his default may be entered.

And afterwards to wit on the twenty ninth day of February in the year aforesaid into the said Cook County Court comes the said defendant George M. Smith by J. Dallinall and M. D. Roy his Attorneys and files his plea to the said plaintiffs declaration herein which said plea is in the words and figures following to wit

Geo. M. Smith vs Justin Butterfield Ejectment. Cook Co. Court Feb 29. 1848. And the said defendant comes and defends &c and says that he is not guilty of the unlawfully withholding the premises in the said declaration mentioned and described as in the said declaration alleged and of this he puts himself upon the country &c &c J. Dallinall M. D. Roy for deft

And afterwards to wit on the fifth day of May in the year of our Lord One thousand eight hundred and forty eight it being one of the days of the May Term of the Cook County Court

4
aforesaid in the year aforesaid before the said Court then sitting the following among other proceedings were had to wit
Justin Butterfield vs George W Smith Cjement

This day came the said Plaintiff in his own proper person and the said defendant by Ballingall & M'Elroy his attorneys also came and issue being joined herein let a jury come and thereupon came the jurors of a jury of good and lawful men to wit John Dempsey M. Butterland Virgil H. Coakus Henry Mayes W. McKenny W. Moore John Spence Joseph Catman A. Perry Levi Chipman H. Luckas & Thomas Hozan who were duly elected tried and sworn well and truly to try the issue joined as aforesaid and after hearing a part of the evidence ~~advised~~ the hour of ~~trial~~ adjournment having arrived it is ordered that the further consideration of this cause be postponed until tomorrow morning and that the jury they having received the usual charge from the Court be permitted to separate and meet the Court at nine o'clock tomorrow morning

And afterwards to wit on the sixth day of May in the year aforesaid being one of the days of the May Term of the Cook County Court aforesaid in the year aforesaid before the said Court then sitting the following among other proceedings were had to wit
Justin Butterfield vs George W Smith Cjement. This day again came the parties by their Attorneys and the jury empanelled herein on yesterday also came and after hearing the remainder of the evidence argument of Counsel and instructions of the Court retired under charge of ~~a man~~ an officer of the Court to consider of their verdict and the hour of adjournment having arrived by agreement of parties it is ordered that when the jury shall have agreed upon a verdict they may seal the same deliver it to the Clerk and thereafter be permitted to separate and meet the Court on nine o'clock on Monday morning

And afterwards to wit on the eighth day of May in the year of our Lord One thousand eight hundred and forty eight being one of the days of the said May Term of the Cook County Court in the year aforesaid before the said Court then sitting the following among other proceedings were had to wit
Justin Butterfield vs George W Smith Cjement. This day again

came the said parties by their Attorneys and the Jury empanelled
herein on Friday also again come and say Me the Jury find the
5 defendant not guilty and thereupon the said plaintiff enters
his motion for a new trial herein

And thereupon to wit upon the twenty seventh
day of May in the year aforesaid being one of the days of the said
May term of the Cook County Court in the year One thousand eight
hundred and forty eight before the said Court then sitting the
following among other proceedings were had to wit
Austin Butterfield vs George M Smith Ejectment. This day again
comes the said Plaintiff in his own proper person and the said Defen-
dant by his Attorneys also again comes and the Court being now
fully advised as to the said Plaintiffs motion for a new trial here-
in it is ordered that the said motion be overruled to which
judgment and ruling of the Court the said Plaintiff enters
his exception Therefore it is considered that the said defendant
do have and recover of the said plaintiff his costs and charges by
him about his defence in this behalf expended and that exe-
cution issue therefor

And afterwards to wit on the Thirtieth day of May in the year of
our Lord One thousand eight hundred and forty eight it being
one of the days of the said May Term of the Cook County
Court in the year aforesaid before the said Court then sit-
ting the following among other proceedings were had to wit
Austin Butterfield vs George M Smith. Eject-
ment. This day again comes the said Plaintiff in his own proper person
and the said defendant by his Attorney also comes and by their agreement
it is ordered that the order heretofore entered in this cause overruling
the said Plaintiffs motion for a new trial be recalled and set aside and
thereupon the said plaintiff withdraws his motion for a new trial
and prays an appeal herein which is granted upon his entering
into bond conditioned according to the statute in the sum of Three
Hundred dollars with N. B. Budd as security within sixty days
from this date

And thereupon to wit on the day and year last aforesaid in
to the said Court comes the said Plaintiff Austin Butterfield

6

in his own proper person and fills his Bill of Exceptions here
in signed by the Judge of the said Court - which said Bill
of Exceptions is in the words and figures following to wit

7
Cook County Court

Justin Butterfield

vs

George W Smith

This was an action of Ejectment for the recovery of the land described in the declaration, and came on to be tried at the May Term of the Cook County Court held by the Hon Hugh S Dickey Judge of said Court on the 5th day of May 1848 said cause was tried by a jury the plaintiff to maintain the issue on his part gave in evidence

1st A Patent from the United States to Charles Decaut dated October 1839 for the West half of the South East quarter of Section 2. of 39. N. R. 12. E. embracing the land in question -

2^d A Deed from Charles Decaut to Mark Noble for the said half quarter section dated June 13th 1835 Recorded in the Recorder's office of Cook County on the 8th day of July 1835.

3^d A Deed from Mark Noble wife to George E Walker for the same half quarter section, dated Nov. 7th 1835 and recorded March 9th 1836.

4th A Deed from George E Walker and wife to George Smith dated January 1st 1844 and Recorded January 20th 1844 in the Recorder's office of Cook County, of which deed a copy is hereto annexed marked A.

5th A Deed from George Smith to William P Egaw of the half quarter section of land in question dated 26th day of March 1845 and Recorded on the 26th day of July 1845, of which deed a copy is hereto annexed marked (B)

6th A Deed from William P Egaw and wife to Justin Butterfield dated on the 8th day of May 1845 acknowledged on the 15th of April and Recorded on the 18th of April 1845 in the Recorder's office of Cook County of which said deed a copy is hereto annexed marked (C)

7th The record in the recorder's office of Cook County of a warrantee deed from William B Egan to Reuben Whapples, bearing date August 18th 1845 by which deed the said Egan (in consideration of \$130 acknowledged by said deed to have been received by said Egan) conveyed to said Whapples the one undivided half of the said half quarter section of land which said deed was acknowledged and recorded in said Recorder's office of Cook County on the 4th day of August 1845 -

8th The Record in the recorder's office of Cook County of a warrantee deed from Reuben Whapples to Ira Gates for one undivided half of said half quarter section dated 13th of April 1846, acknowledged on the same day and recorded on the 21st May 1846, in the Recorder's office of Cook County, consideration expressed in the deed, and acknowledged hereby to have been received \$130.

Previous to the reading of the record of the last two deeds the plaintiff, Arthur Butterfield was sworn, and stated that the two last mentioned deeds were not in his possession and that it was and is not in his power to produce the same to be used as evidence on this trial - On cross-examination he stated that he did not know where the said Reuben Whapples resided or was to be found, and that the said Ira Gates resided as he believed in the County of Cook, and that he had not been subpoenaed to attend this trial - The defendants counsel objected to the reading of the records of the last two deeds in evidence, the Court overruled the objection and the defendants counsel excepted to the decision of the Court.

9th A Deed of partition of the said half quarter section of land made by and between the said plaintiff and the said Ira Gates bearing date the 9th day of July 1846, by which said deed there was allotted and conveyed to the said plaintiff the thirty five acres portion of the said

9

half quarter section mentioned and described in the said declaration. The said deed was duly acknowledged and recorded in the recorder's office of Cook County on the 18th of April 1846.

Justus Butterfield, Junior, was sworn as a witness on the part of the plaintiff, and testified that he went over the premises in question shortly before the commencement of this suit, that the said premises were timber land and were unenclosed and unoccupied

That when he went to serve the declaration in this case, the defendant George W. Smith told the witness that he claimed title to the said premises.

Garnham was sworn as a witness on the part of the P^lffs and testified that he was over across the said premises shortly after the commencement of the said suit, that it was timber land unenclosed and unoccupied, and there was no appearance of any person ever having occupied or resided upon the same.

The Plaintiff here rested; and the Def^t gave in evidence a deed from Hugh Alexander, George E. Walker and ^{to Edmund D. Taylor and others} others, a copy of which is hereto annexed marked (D)

This was all the evidence in the case on the other side. The Plaintiff requested the Court to give the following instructions to the jury.

Instructions

The Court were requested on the part of the plaintiff to instruct the jury, that the deed from Alexander & Walker to ~~Edmund~~^{Edmund} D. Taylor & others bearing date the 13th May 1837, in consequence of not being recorded is void, as against the Plaintiff in this cause if the jury shall believe the Plaintiff to be a bona fide subsequent purchaser without notice

2^d. If the jury shall believe from the evidence that the said deed has not been recorded, that then the same

is void as against the Plaintiffs title as derived under the conveyances given in evidence by him and under what he claims.

3rd - If the jury believe that there is no evidence that the notes given by the grantees mentioned in said deed from Alexander and Walker to Edmund Taylor & others have ever been paid or any part thereof, that then no title has vested in the said grantees or either of them

4th If the jury shall believe that there is no evidence that the condition upon which said last mentioned deed was given, having been performed that no title vested by said deed in the parties therein

5th That if the jury shall believe from the evidence, that there is no evidence of the payment of the consideration mentioned in the deed according to its terms, that then the said deed is null void by the condition and of no effect and no title or estate passes under it.

6th That if the jury shall believe from an inspection of the said deed ~~that~~ material parts have been written or erased which are unexplained that then the jury have a right to consider said deed as void

The Court refused to give the said instructions, or either of them. But gave ^{to} the jury the following instructions.

That the deed from George & Walker to George Smith offered in evidence by the plaintiffs counsel, only conveys by its terms and description, the right, title and interest of Walker in such land as he Walker had not previously conveyed to anyone else, and as it appears in evidence that there had been a previous conveyance by Walker of one of the tracts of land

mentioned and included in his subsequent deed to George Smith, the title to that tract of land, which includes the tract in question in this suit, was not conveyed to George Smith by the deed from Walker to him: and that from the construction which the Court gives to the deed from Walker to George Smith it was ^{not} necessary that the previous deed from Walker should have been recorded in order to have defeated the operation of the subsequent deed to George Smith & the deed to Egan & from Egan to the plaintiff as to the tract in question -

That the question of erasure in the deed is not before the jury nor is the question as to the purchase money mentioned in the deed from Walker to E. D. Taylor & others, was paid before the jury.

The plaintiff excepted to the decision of the Court in refusing to give the said instructions asked by the said plaintiff as aforesaid: and also excepted to the said instructions which the Court did give to the jury as aforesaid. The jury returned a verdict for the defendants.

The plaintiff thereupon tendered to the said Judge of the said Court this Bill of Exceptions and requested him to sign and seal the same according to the Statute in such case made & provided, which is done this 30th day of May in the said May Term of the said Court 1848.

Hugh S. McKee. *LS*
Judge &c.

(A)

This indenture made the first day of January in the year of our Lord one thousand eight hundred and forty four -
 Between George E. Walker, and his wife of La Salle County, State of Illinois of the first part and George Smith of Cook County and State aforesaid of the second part, Witnessed, that the said party of the first part for and in consideration of the sum of the sum of One dollar to the said party of the ~~first~~ ^{second} part the receipt whereof is hereby confessed and acknowledged has remised, released, sold, and conveyed and quit claimed and by these presents do remise, release, sell, convey and quit claim unto the said party of the second part their heirs and assigns forever all the right, title, interest, claim and demand which the said party of the first part have in and to the following described lots or parcels of land situate, lying, being in the County of Cook and State of Illinois viz:

Undivided N.E. $\frac{1}{4}$ Sec. 36. Town 37 N R 13 E.	400 acres
S W $\frac{1}{4}$ " 31 " 37 "	14 about 75 blocks in area
S $\frac{1}{2}$ of W $\frac{1}{2}$ of E $\frac{1}{4}$ " 12 " 39 "	13 - 40 acres
W $\frac{1}{2}$ S.E. $\frac{1}{4}$ " 2 " 39 "	12 - 80 "
E $\frac{1}{2}$ N.E. $\frac{1}{4}$ " 23 " 36 "	14 - 80 "
W part of W $\frac{1}{4}$ " 31 " 37 "	15 }
N " S W $\frac{1}{4}$ " 31 " 37 "	15 }
S.E. $\frac{1}{4}$ " 4 " 38 "	12 - 160 "
E $\frac{1}{2}$ S.E. $\frac{1}{4}$ " 11 " 37 "	13 - 80 "
W $\frac{1}{2}$ N W $\frac{1}{4}$ " 24 " 37 "	13 - 80 "
E $\frac{1}{2}$ S.E. $\frac{1}{4}$ " 15 " 37 "	13 - 80 "
Und $\frac{1}{4}$ E $\frac{1}{2}$ N W $\frac{1}{4}$ " 6 " 36 "	14 - 40 "
" 13 W $\frac{1}{2}$ " 14 " 32 " 39 "	14 - 26 "
S $\frac{1}{2}$ of W $\frac{1}{2}$ of N W $\frac{1}{4}$ " 12 " 37 "	11 - 40 "
E $\frac{1}{2}$ S.E. $\frac{1}{4}$ " 26 " 40 "	13 - 80 "

Intending to convey such only as are now owned by said Walker and not any that may have been conveyed

to anyone else. To them and to hold the same together with all and singular the appurtenances and privileges thereto belonging or in anywise appertaining and all the estate, right, title, interest and claim whatsoever of the said party of the first part either in law or equity to the only proper use benefit and behoof of the said party of the second part his heirs and assigns forever

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

Sealed and delivered
in presence of
J. B. Russell

G. E. Melker Seal
Margaret Melker Seal

This indenture made this twenty sixth day of March in the year of our Lord one thousand eight hundred and eighty four and forty five Between George Smith of Chicago, County of Cook and State of Illinois of the first part and William Regan of the same place of the second part. Witnesseth that the said party of the first part for and in consideration of one dollar in hand paid by the said party of the second part, (the receipt whereof is hereby acknowledged) has granted, bargained, sold, re-leased, released, aliened, confirmed and quit claimed: and by these presents does grant, bargain, sell, release, release, alien, confirm and quit claim unto the said party of the second part, and to his heirs and assigns forever all the following described lot, piece or parcel of land, to wit,

- and $\frac{1}{4}$ N $\frac{1}{4}$ Sec. 36. T. 37. N. R. 13. E. 40 acres.
- (S $\frac{1}{4}$ of S. E. $\frac{1}{4}$ " 31. " 37 " 14 " about 35 Blks in town of ^{Portland}
- S $\frac{1}{2}$ of W $\frac{1}{2}$ of S. E. $\frac{1}{4}$ " 12 " 39 " 13 " 40.0 acres.
- W $\frac{1}{2}$ S. E. $\frac{1}{4}$ " 2 " 39 " 12 " 80 "
- E $\frac{1}{2}$ N. E. $\frac{1}{4}$ " 23 " 36 " 14 " 80 "
- W part of W $\frac{1}{4}$ " 31 " 37 " 15 }
- N part of W $\frac{1}{4}$ " 31 " 37 " 15 }
- E $\frac{1}{2}$ S. E. $\frac{1}{4}$ " 11 " 37 " 13 - 80 "
- W $\frac{1}{2}$ N. W $\frac{1}{4}$ " 24 " 37 " 13 - 80 "
- E $\frac{1}{2}$ S. E. $\frac{1}{4}$ " 15 " 37 " 13 - 80 "
- and $\frac{1}{4}$ N. W $\frac{1}{4}$ " 6 " 36 " 14 - 40 "
- N $\frac{1}{2}$ of W $\frac{1}{2}$ of S. W $\frac{1}{4}$ " 12 " 37 " 11 - 40 "

Intending to convey such lands only as were conveyed by George E. Walker by Quit claim deed dated 1st January 1844 to the party of the first part and not

any that may have been conveyed by him (the said Smith) previous to this date.

Together with all and singular the hereditaments and appurtenances therunto belonging, or in anywise appertaining, and the reversion and reversions, remainders and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim or demand whatsoever of the said party of the first part either in law or equity of, in to the above bargained premises with the hereditaments and appurtenances to have and to hold the said premises above bargained and described with the appurtenances unto the said party of the second part his heirs and assigns forever.

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

Geo Smith



(6.)

This Indenture made this eighth day of April in the year of our Lord one thousand eight hundred and forty five between William B. Egan and Emeline his wife party of the first part of the city of Chicago and Gustav Butterfield of the same place party of the second part Witnesseth that the said party of the first part for and in consideration of Ten dollars (the receipt whereof is hereby acknowledged) have granted, bargained, sold, remised, released, aliened, confirmed, and quit claimed: and by these presents do grant, bargain, sell, remise, release, alien, confirm and quit claim unto the said party of the second part and to his heirs and assigns forever all the following described lot, piece, or parcel of land ^{to wit, all that certain piece or parcel of land} lying and being in the County of Cook, and State of Illinois and known and described as follows to wit, The undivided half of the West Half of the South East quarter of section number two (2) in Township number thirty nine (39) N. in Range number twelve (12) East of the Third principal meridian - containing forty acres of land.

Together with all and singular the hereditaments and appurtenances thereto belonging or in anywise appertaining: and the reversion and reversions, remainders and remainders, rents, issues and profits thereof: and all the estate, right, title interest, claim or demand whatsoever of the said party of the first part either in law or equity, of, in and to the above bargained premises with the hereditaments and appurtenances: To have and to hold the said premises above bargained and described with the appurtenances unto the said party of the second part his

17

his assigns forever - and the said party of the first part for himself his heirs, executors and administrators does covenant, grant, bargain and agree to and with the said party of the second part his heirs and assigns that the above bargained premises in the quiet and peaceable possession of the said party of the second part his heirs and assigns, against all and every person or persons, lawfully claiming, or to claim the whole or any part thereof, by, through, or under him and none others, the said party of the first part shall and will warrant and forever defend.

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

sealed and delivered in presence of
C. B. Fenwick.

}

Wm B Egan
Emeline Egan

Seal
Seal

18 (2)

This Indenture made the thirteenth day of May one thousand eight hundred and thirty seven Between Hugh Alexander & Cynthia his wife & George E Walker & Margaret his wife of the State of Illinois of the first part. & Edmund D Taylor, George Smith, Josiah G Goodhue, Ebenezer Pock, James A Collicis, Theophilus W Smith, Ashbel Steele, James Kenzie & Josiah G Gross of the second part Witnesseth, That the said party of the first part & in consideration of the sum of Sixteen Thousand Dollars lawful money of the United States to them in hand paid by the said parties of the second part at or before the executing & delivery of these presents, the receipt whereof is hereby acknowledged & the said parties of the second part their heirs, executors & administrators forever released and discharged from the same by these presents have granted, bargained, sold, aliened, renused, released conveyed and confirmed & by these presents do grant, bargain, sell, alien, renuse, release, convey & confirm unto the said parties of the second part & to their heirs & assigns forever - All those two certain tracts of land in the State of Illinois & County of Cook & known & distinguished as the North East quarter section of Section No Eleven (11) in Township No. thirty nine (39) North of Range No. ~~Twelve~~ (12) East of the Third principal Meridian: Also, the South East Quarter section of Section No two (2) in the same Township & Range with the buildings, Mills, Houses, Sheds, Shops, Works, Machinery, implements, chains, fixtures & appurtenances thereto belonging & now in use in and about said Mills & premises excepting a Lath machine, also two yoke of oxen & about fifty cords of wood on, in & about.

said premises, together with all singular the tenements
 hereditaments & appurtenances therunto belonging or in
 anywise appertaining & the reversion reversions remainders
 & remainders, rents, issues, & profits thereof: and also
 all the estate, right, title, interest, doer or property,
 possession, claim, & demand whatsoever as well in law
 as in equity of the said parties of the first part of in & to the
 same & every part & parcel thereof with the appurtenances

To have and to hold the above granted, bargained & described
 premises with the appurtenances, unto the said parties of
 the second part their heirs & assigns to their own proper
 use benefit & behoof forever - And the said Hugh Alex-
 -ander & George E. Walker for themselves & their heirs, executors
 & administrators do covenant, grant & agree to with
 the said parties of the second part their heirs & assigns

that the said Alexander & Walker at the time of the sealing
 & delivery of these presents are lawfully seized in their own
 right of a good, absolute & indefeasible estate, of
 inheritance in fee simple of & in all & singular the above
 granted & described premises, with the appurtenances &
 have good right, full power, & lawful authority to
 grant, bargain, sell & convey the same in manner afore-
 -said: and that the said parties of the second part their
 heirs & assigns shall & may at all times hereafter, peaceably
 & quietly have, hold, use, occupy, possess & enjoy
 the above granted premises & every part & parcel
 thereof ^{with the appurtenances} without any disturbance
 of the said parties of the first part, their heirs or assigns, or
 of any other person or persons lawfully claiming or to claim
 the same and that the same are now free, clear, dis-
 -charged & unincumbered of & from all former & other
 grants, titles, charges, estates, judgments, taxes, assess-
 -ments and encumbrances of what nature, or kind

soever - and also that the said parties of the first part & their heirs, all & every person or persons whatsoever lawfully or equitably deriving any estate, right, title or interest of, in, or to the hereinbefore granted premises by, from, under, or in trust for them, shall and at any time or times hereafter, upon the reasonable request & at the proper costs & charges in the law of the said parties of the second part, their heirs & assigns, make do & execute, or cause to be made, done & executed all & every such further & other lawful & reasonable acts, conveyances, & assurances in the law, for the better & more effectually vesting & confirming the premises hereby granted or so intended to be in & to the said parties of the second part, their heirs & assigns forever as by the said parties of the second part, their heirs or assigns or their counsel learned in the law shall be reasonably advised or required: and the said Alexander & Walker their heirs the above described & hereby granted & released premises, & every part & parcel thereof with the appurtenances unto the said parties of the second part their heirs & assigns against the said parties of the first part & their heirs & against all & every person or persons whatsoever lawfully claiming or to claim the same shall & will warrant & by these presents forever defend -


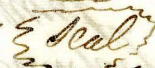


and it is further declared that Edmund P Taylor George Smith, Ebenezer Peck, Josiah C Goodhue James W Collins, Theophilus W Smith & Josiah Prese seven of the parties of the second part to this deed of conveyance having among other considerations for the sale, purchase, & conveyance of the foregoing land executed on the delivery of this deed their joint notes of hand for three thousand five hundred dollars each payable at the Branch of the State Bank of Union

at Chicago to the said Hugh Alexander & George E Walker parties of the first part in Eighteen & thirty six months after date & each of the seven above named parties of the second part, being thereby bound to pay the whole as well as his just proportion thereof which is one seventh part. Now it is expressly declared & this conveyance is subject always to this condition, that if it shall so happen that anyone or more of the seven foregoing parties to wit Edmund D Taylor, George Smith, Ebenezer Peck, Josiah C Goodhue, James H Collins, Joseph W Smith, & Josiah S Press shall fail, refuse, neglect or by reason of any casualty whatever omit to pay his proportion of each of said notes on the day & at the place in which & at which each shall respectively become due & payable that anyone or the remainder of those who shall be compelled to pay or satisfy the deficient payment or amount of the one or more of the said last recited parties who shall be in default in either of the payments above specified in manner aforesaid to be made that then the estate, passed by this deed of conveyance to such party or parties who shall fail to make said payments or payment at the time or times and place aforesaid shall cease, determine, & become null void & of no effect & no estate shall be taken under it by the said party or parties in default in such payment or payments his heirs, executors, or assigns, but such estate as he would otherwise acquire shall on the happening of such contingency pass to & revert fully & entirely unto the parties or party making the full payment of the party or parties in default, his or their heirs executors & assigns forever & a full & entire estate both in law & equity shall thereupon become vested in fee simple absolutely in the said party or parties as tenants in common their heirs, executors and assigns forever, who shall make

the payment or payments for the other or others as though no estate had ever been conveyed to such defaulting party by this conveyance & the estate of such party had been directly conveyed to the party or parties making such payment or payments. The defaulting party or parties shall not by reason of anything herein contained be released or in any manner acquitted or discharged from his liability on the said joint notes.

In testimony whereof the said parties of the first part have hereto set their hands & seals the day & year first ~~wherein~~ before written.

Sealed & delivered in presence of.

- | | | | |
|--|----------|---------------------|--|
| | (signed) | Hugh Alexander. |  |
| Levi Jenkins as to the names of | 1 | " Cynthia Alexander |  |
| ^{& Cynthia}
Hugh Alexander | 1 | " G. E. Walker |  |
| H. C. Merriman as to the name of Hugh Alexander. | 1 | " Margaret Walker |  |
- Samuel Ogle as to the names of George E. & Margaret Walker.
William B. Davis.

Acknowledged by George E. Walker & Margaret Walker before John May Clerk of the Circuit Court of St. Clair County the 23rd day of May A. D. 1837.

Acknowledged by Hugh Alexander & Cynthia Alexander before Levi Jenkins Clerk of the Circuit Court for Will County Illinois the 3rd day of June. A. D. 1837.

23

And afterwards to wit on the Twenty fourth day of July in the year of our Lord One thousand eight hundred and forty eight into the said Cook County Court came the said Plaintiff Justin Butterfield and files with the Clerk of the said Court his Appeal Bond herein which said Bond is in the words and figures following to wit

Know all men by these presents that we Justin Butterfield and Norman B. Shedd of the City of Chicago in the State of Illinois are held and firmly bound unto George Smith in the penal sum of Three Hundred Dollars for which Payment well and truly to be made we bind ourselves our heirs executors and administrators ~~jointly~~ ^{jointly} severally firmly by these presents. Sealed with our seals and dated this twenty fourth day of July Ad One thousand eight hundred and forty eight Whereas at the last May Term of the Cook County Court held in the City of Chicago County of Cook State of Illinois in a certain action of Ejectment in which the said Justin Butterfield is plaintiff and the said George Smith is defendant the said defendant obtained a judgment against the said plaintiff for costs of suit and the said Plaintiff has prayed an appeal to the Supreme Court of the State of Illinois. Now therefore the condition of this obligation is such that if the said plaintiff shall pay the judgment cost and interest and damages in case the said judgment shall be affirmed and shall duly prosecute his said appeal then this obligation to be void otherwise to remain in full force & effect

J Butterfield
N B Shedd



State of Illinois }
County of Cook }p

I Walter Kimball Clerk of the Cook
County Court in and for the County and State aforesaid
do hereby certify that the foregoing are a true and correct
transcript of the Record and papers in a case in which
Justin Butterfield is Plaintiff and George M. Smith is
Defendant and of the whole of such Record and papers
as appears from the originals now on file in my office
In testimony whereof I have herewith affixed
my hand and the seal of said Court at Chi-
cago in said County this 9th day of June 1849
Walter Kimball Clerk



31

Cook County Court

Justin Butterfield

George M. Smith

Franklin

Filed June 12. 1849.
W. H. Adams Clk.

Filed June 11. 1849

Justin Butterfield, Appellant }
vs }
George W. Smith } Appellee } Appeal from Cook

And now comes the said Appellant by his Attorney and says that in the records and proceedings and in the rendition of the Judgment in this cause there is manifest error in this to wit

1st The Court below erred in refusing the instructions asked by the Plaintiff

2nd. The said Court erred in giving the instructions which were given by the Court to the Jury.

3rd That the said Judgment of the said Court and the proceedings in said cause are in other respects informal and erroneous

Wherefore he prays that the said Judgment of the Cook County Court may be reversed annulled set aside & wholly for nothing esteemed

J. C. Crapo
Atty for Appellant

[Faint handwritten text, possibly a signature or name]

61
17
447
61
10370

Filed June 14, 1849.
Richard C. C.

[Faint handwritten text, possibly a signature or name]

[Faint handwritten text, possibly a signature or name]

Justin Butterfield

Appellant

vs

George W Smith

Appellee

Justin Butterfield
in propria persona

Appeal from Cook County
Court.

Abstract.

This was an action of Ejectment for the recovery of land described in the declaration and came on to be tried at the May Term of the Cook County Court in the year 1848 before the Hon Hugh T. Dicksey Judge of said Court and a jury.

The declaration in Ejectment was for 35 acres of the $W\frac{1}{2}$ of $S.E.\frac{1}{4}$ of Sec 2 in Town 39 N. R. 12 set forth in the declaration by Metes & bounds. Plea Not guilty.

Upon the trial several exceptions were taken and there was a verdict for the deft. A Bill of Exceptions was taken setting forth all the evidence.

The Bill of Exceptions states that the Plaintiff to establish his title introduced,

1st A Patent from the U. S. to Shalow Deaub dated Oct 1839 for the $W\frac{1}{2}$ of $S.E.\frac{1}{4}$ of Sec 2, Town 39, N. R. 12 East, embracing the land in question.

2^d A deed from Shalow Deaub to Mark Noble dated June 13, 1835 and recorded in the Recording office of Cook County on the 8th day of July 1835 for the land last above mentioned,

3^d A deed from Mark Noble and wife to Geo. E. Walker for said land dated Nov 7, 1835 and recorded March 9, 1836.

4th A deed from Geo. E. Walker & wife to Geo. Smith dated Jan 1, 1844 & recorded Jan 20, 1844, a copy of which deed is annexed to the Bill of Exceptions (Marked A)

5th A deed from Geo. Smith to Wm B. Egan of said land dated Mch 26, 1845 a copy of which is annexed to the Bill of Exceptions (Marked B)

6th A deed from Wm B. Egan & wife to Austin Butterfield ^{of the undivided 1/2 of said land} dated 8th May 1845 acknowledged on the 15th April & recorded on the 16th April 1845 a copy of which is annexed to said Bill of Exceptions (Marked C)

7th The record in the Recorder's office of Cook County of a Warranty deed from Wm B. Egan to Reuben Whapples dated 10th Aug 1845 by which said Egan (in consideration of \$130) conveyed to Whapples one undivided 1/2 of said land, which deed was acknowledged & recorded on the 4th of August 1845.

8th The record in said Recorder's office of a Warranty deed from Reuben Whapples to Ira Gates of the land above conveyed to him dated 13th April 1846, acknowledged the same day & recorded on the 31st May 1846.

Before reading the records of the last two deeds the plff was sworn & stated that these two deeds were not in his possession & that it was not in his power to produce them to be used as evidence

on this trial.

On Cross Examination stated, that he did not know where Whapples resided or was to be found, that Gates resided in the County of Cook but had not been subpoenaed to attend this trial, Defts Counsel objected to reading the records of the last two deeds, Court overruled objection & Counsel accepted.

9th A deed of partition of the said 1/2 quarter Section of land made by and between plff and said Gates, dated 9th July 1846, by which said deed there was conveyed to plff the 35 acres of said 1/2 quarter Section mentioned and described in said declaration said deed being duly acknowledged & recorded on the 18th April 1846.

Justin Butterfield I being sworn said that he went over the premises in question shortly before the commencement of this suit & they were timber land and were unenclosed and unoccupied, that when he went to serve the declaration in this case Deft told witness he claimed title to the said premises.

Barnham being sworn said that he was on & across said premises shortly after the commencement of this suit, that it was uninclosed timber unoccupied & there was no appearance of any person ever having occupied the same.

The plff here rested & Deft gave in evidence a deed from Hugh Alexander Geo. E. Walker & others to Edmund D. Taylor and others a copy of which is annexed

to Said Bill of Exceptions (Marked D)
This was all the evidence in the
Case. The plffs requested the Court to give
the following instructions to the jury

1st That the deed from Alexander and
Walker to Edmund, D. Taylor and others
bearing date the 13th May 1837, in consequence
of not being recorded is void as against
the plff in this cause if the jury shall believe
the plff to be a bona fide subsequent pur-
chaser without notice.

2^d If the jury shall believe from the
evidence that the said deed has not been
recorded that then the same is void
as against the plff's title as derived
under the conveyances given in evi-
dence by him & under which he claims.

3^d If the jury believe that there is
no evidence that the notes that the notes
given by the grantees mentioned in said
deed from Alexander and Walker to
Edmund Taylor & others have ever been
paid or any part thereof that then no title
has vested in the said grantees or either
of them.

4th If the jury shall believe that there
is no evidence that the conditions upon
which said last mentioned deed was given
having been performed that no title vested
by said deed in the parties therein.

5th That if the jury shall believe from
the evidence that there is no evidence of the
payment of the consideration mentioned
in the deed according to its terms that
then the said deed is null and void

by the Condition and of no effect and no title or estate passed under it.

6th That if the jury shall believe from an inspection of the said deed that material parts have been written on creases which are unexplained that then the jury have a right to consider said deed as void.

The Court refused to give the said instructions or either of them, but gave to the jury the following instructions,


That the Deed from Geo E. Walker ~~and wife~~ to Geo Smith offered in evidence by the plff's Counsel only conveys by its terms and description the right, title, and interest of Walker in such land as Walker had not previously conveyed to any one else and as it appears in evidence that there had been a previous conveyance by Walker of one of the tracts of land mentioned and included in his subsequent deed to Geo Smith, the title to that tract of land which includes the tract in question in this Suit was not conveyed to Geo Smith by the deed from Walker to him and that from the construction which the Court gives to the deed from Walker to Geo Smith it was not necessary that the previous deed from Walker should have been recorded in order to have defeated the operation of the subsequent deed to Geo Smith & the deed to Egan & from Egan to the plff as to the tract in question.

That the question of release in the deed is not before the jury nor is the question as to the purchase money mentioned in the deed from Walker to E. S. Taylor & others was paid before the jury.

The plff excepted to the decision of the Court in refusing to give the said instructions asked by said plff as aforesaid, and also excepted to the said instructions which the Court did give to the jury as aforesaid.

The jury returned a verdict for the def.
The plff thereupon tendered to the Judge of said Court his Bill of Exceptions and requested him to sign and Seal the same according to the Statute in such case made and provided, which is done this 6th day of May, in the said May Term of the said Court 1848.

(Signed)

Hugh J. Dickins 
Judge of the

June term 1849
Kreme Court
of Illinois
vs
John Butterfield
Appellant
vs
Geo. W. Smith
Appellee

Abstract

to June 12, 1849.
Leland Clk.

J. Butterfield
in pro pres

State of Missouri } Supreme Court of the
Jan Term 1849

George W. Smith app^{or}

vs

Justin Bellmull app^{te}

Appeal

And now comes the
appeal of George W. Smith by John M. Wilson
his attorney & says that there is no error in
the judgment & proceedings aforesaid nor
in the instructions given & required as in
the assignment of errors in this cause
is alleged & prays the Court find to pro-
ceed & examine the record & proceedings afo-
resaid as well as the matters aforesaid for
errors assigned herein for errors & that the
Judgment aforesaid in manner & form
aforesaid stand & may be in all things
affirmed

John M. Wilson
Atty for Appellant

George W. Smith
- ad - appes

Dustin B. Pettigold
appes

James in Euro

Filed June 19. 1849.
S. Island @ Mr

Justin Butterfield
Appellant
vs
George W. Smith
Appellee

Justin Butterfield
in propria persona

Appeal from Cook County
Court
Abstract

This was an action of Ejectment for the recovery of land described in the declaration & came on to be tried at the May Term of the Cook County Court in the Year 1848 before the Hon. Hugh T. Dickery Judge of said Court and a jury. The declaration in Ejectment was for 35 acres of the $W\frac{1}{2}$ S. E $\frac{1}{4}$ of Sec 2, in Town 39, N. R. 12. set forth in the declaration by metes and bounds. Plea Not guilty.

Upon the trial several exceptions were taken & there was a verdict for the deft. A Bill of exceptions was taken setting forth all the evidence. The Bill of exceptions states that the plff to establish his title introduced,

1st A Patent from the U. S. to Charlow Drcant dated Oct 1839 for the $W\frac{1}{2}$ of the S. E $\frac{1}{4}$ of Sec 2, Town 39, N. R. 12 East embracing the land in question.

2^d A deed from Charlow Drcant to Mark Noble dated June 13. 1835 & recorded in the Recorder's Office of Cook County on the 8th of July 1835. for the land last above mentioned

3^a A deed from Mark Noble & wife to Geo. E. Walker for said land dated Nov 7th 1835 and recorded March 9, 1836.

4^a A deed from Geo. E. Walker & wife to Geo Smith dated Jan 1, 1844 and recorded Jan 30, 1844 a copy of which deed is annexed to the Bill of Exceptions. (Marked A).

5th A deed from Geo Smith to Wm B. Egan of said land dated March 26th 1845 a copy of which is annexed to the Bill of Exceptions (Marked B).

6th A deed from Wm B Egan & wife to Justin Butterfield dated 8th May 1845 acknowledged on the 15th April & recorded on the 16th April 1845 a copy of which is annexed to said Bill of Exceptions (Marked C).

7th The record in the Recorder's office of Cook County of a Warranty deed from Wm B Egan to Reuben Whapples dated 10th Aug 1845 by which said Egan (in consideration of \$130.) conveyed to ~~him~~ Whapples one undivided half of said land which said deed was acknowledged and recorded on the 4th of August 1845.

8th The record in said Recorder's office of a Warranty deed from Reuben Whapples to Ira Gates of the land above conveyed to him dated 13th April 1846 acknowledged the same day and recorded on the 2nd May 1846.

Before reading the records of the last two deeds the plff was sworn & stated

that these two deeds were not in his possession & that it was not in his power to produce them to be used as evidence on this trial. On Cross Examination he stated that he did not know where Whapples resided or was to be bound that Gates resided in the County of Cook but had not been subpoenaed to attend this trial. Defts Counsel objected to reading the records of the last two deeds. Court overruled objection & Counsel excepted.

9th A deed of partition of the said half $\frac{1}{4}$ section of land made by & between plff & said Gates, dated 9th July 1846, by which said deed there was conveyed to plff the 35 acres of said $\frac{1}{2}$ quarter section mentioned & described in said declaration, said deed being duly acknowledged & recorded on the 18th April 1846.

Justin Butterfield & being sworn said that he went over the premises in question shortly before the commencement of this suit & they were timber land and were unenclosed & unoccupied. That when he went to serve the declaration in this case deft told witness he claimed title to the said premises -

Barham being sworn said that he was on & across said premises shortly after the commencement of this suit, that it was unenclosed timber, unoccupied and there was no appearance of any person having occupied the same. The plff here rested & deft gave in evidence a deed from Hugh Alexander, Geo. E. Walker and others to Edmund D. Taylor and others a copy of which is

annexed to said Bill of Exceptions (Marked D), This was all the evidence in the case

The plff requested the Court to give the following instructions to the jury -

1st That the deed from Alexander and Walker to Edmund D. Taylor & others bearing date the 13th May 1837 in consequence of not being recorded is void as against the plff in this Cause if the jury shall believe the plff to be a bona fide subsequent Purchaser without notice.

2^d If the jury shall believe from the evidence that the said deed has not been recorded that then the same is void as against the plff's title as derived under the conveyances given in evidence by him and under which he claims.

3^d If the jury believe that there is no evidence that the notes given by the grantees mentioned in said deed from Alexander and Walker to Edmund Taylor and others have ever been paid or any part thereof that then no title has been vested in the said grantees or either of them.

4th If the jury shall believe that there is no evidence that the condition upon which said last mentioned deed was given having been performed that no title vested by the said deed in the parties therein

5th That if the jury shall believe from the evidence that there is no evidence of the payment of the consideration mentioned in the deed according to its terms that the said deed is null and void

by the Condition and of no effect & no title or estate passes under it.

6th That if the jury shall believe from an inspection of the said deed that material parts have been written on margins which are unexplained that then the jury have a right to consider said deed as void.

The Court refused to give the said instructions or either of them, but gave to the jury the following instructions.

That the deed from Geo. E. Walker to Geo. Smith offered in evidence by the plff's Counsel only conveys by its terms and description the right title & interest of Walker in such land as Walker had not previously conveyed to anyone else and as it appears in evidence that there had been a previous conveyance by Walker of one of the tracts of land mentioned and included in his subsequent deed to Geo. Smith the title to that tract of land which included the tract in question in this suit was not conveyed to Geo. Smith by the deed from Walker to him & that from the construction which the Court gives to the deed from Walker to Geo. Smith it was not necessary that the previous deed from Walker should have been recorded in order to have defeated the operation of the subsequent deed to Geo. Smith & the deed to Egan and from Egan to the plff as to the tract in question.

That the question of measure in the deed is not before the jury nor is the question as to the purchase money mentioned in the deed from Walker to E. D. Taylor and others was paid before the jury.

The plff excepted to the decision of the Court in refusing to give the said instructions asked by said plff as aforesaid and also excepted to the said instructions which the Court did give to the jury as aforesaid.

The Jury returned a verdict for the debt.

The plff thereupon tendered to the Judge of said Court his Bill of Exceptions and requested him to sign & seal the same according to the Statute in such case made & provided which is done this 6th day of May in the said May term of the said Court 1868

(Signed) Hugh J. Dickey (S.S.)
Judge etc

June term 1849.
Supreme Court
State of Illinois

Justin Butterfield
Appellant
vs
Geo. W. Smith
Appellee

Abstract

Filed June 13. 1849.
Shelton Clk.

J. Butterfield
in pro per