No. 14416

Supreme Court of Illinois

Brown

vs.

Gafney

71641 7

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division

14416

No. 250

Brown
vs
Gafney

250

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. ~~307~~

Defendant

In the Supreme court.

Brown et al
vs
Gaffney et al } Upon Rehearing.

In addition to what I have already said in this matter I now desire to add further upon the mere modification of the decree as per suggestions.

1 Story Eq: Jur: S. 64.2. p. 76. "Another maxim of no small extent is that he who seeks equity must do equity".

In this case the Gaffneys seek at the hands of the court equity in reference to three distinct transactions.

1st To be allowed to redeem from the Gurner Hayden &c Mortgage

2d To be allowed to redeem from the Brown mortgage

3d To set aside the deed their ancestor gave J. S. Brown and for which Brown paid to him $425. in money - about $37 taxes - & personal property worth about $300.

The 2d & 3d items were not allowed by the court below.

Now apply the maxim above & calling the transaction of March 1850.

when Gaffney went to California a mortgage to secure Brown the advances which he made him at that time it is too palpable to need argument that he cannot get back the legal title or the equitable right he then vested in Brown without paying up those advances.

Upon the 3d a statement of the facts & a full understanding of the rights of the parties with ~~that~~ vendee that equally clear. Brown then held the fee of the east 20 feet. and had a mortgage upon the west 40 feet. A negotiation is had between them for a sale of the interest of Gaffney in this forty feet. I refer to the bill p 5 of record. 196 for this. and I take it that what is stated in the bill as a fact concludes the pf however the proof may be. Brown agrees to pay $500. cash & some property. Gaffney accepts the proposition and sends out a deed for the whole tract. Brown pays Richardson the agent $425. and the property and Gaffney gets the money and directs Richardson to keep the property for him.

Now what is equitable here:- what should a man of even common honesty do who wants to secure a bargain? What

did Gaffney do: why the proof shows he offered to return the money & property and it is so charged in the bill. Why did the court when the party without compelling him to do what the dictates of his own conscience tells him he ought to do. that is pay back what he got upon he could be entitled to the cancellation of his deed. The court returned his deed to him without requiring that to be done and directs us to another lawsuit to get what is our clear right by the Pltf own admissions in the bill. Equity grants complete and adequate relief (putting an end to further litigation) and yet right here upon the face of the case is another lawsuit after which the court could have adjusted fully upon the mere statements of the bill undisputed & undisputable.

The next matter is the costs of the ejectment suit.

In 23 Ills. p 33. Vansant vs Allmon. this court said "that a creditor by note & mortgage has several remedies either and all of which he may pursue until his debt is satisfied. He may bring his action upon the note, or put himself

in possession of the rents & profits by an ejectment after condition broken" or proceed by scire facias or petition in equity.

Brown commenced his action of ejectment for the premises and under that decision he had a right to do it.

And now shall I tell my clients in cases of this character (considering this to be a mortgage) that then you have a right to bring an ejectment, but when the other party comes to redeem they will make you pay the costs.

Again these costs of this ejectment suit tried three times, are not costs of this suit within the discretion of the court. If allowed at all they are the subject matter of distinct affirmative relief.

A right to sue, is inconsistent with the right to compel ~~you~~ a party to pay his own costs ~~to~~ get what by law he is entitled to. or rather in enforcing that right.

The most material objectionable is in the order allowing taxes. It is not broad enough at least the master so construed it. Brown is not allowed

any thing for his time & trouble looking after this property, and paying the taxes. His residence was in the country, and year after year he came in him for that purpose. Even up to the date of no dream he pays them on the whole property. Gaffney tells would come back from California poorer than he went pays no rent pays no taxes. At equity and law at defiance and now Brown cannot even be remunerated for his time spent & money paid in expenses looking after the property.

Is there any equity in that. would any honest man upon to pay ~~it~~, such charges under such circumstances.

Of the costs in this case in the court below I will only say that three ejectment trials we had two bills in chancery filed upon this one of them & the original bill in this case sworn to and in no single case was it ever suggested supposed or intimated by any one that the transaction between Gaffney & Brown when Gaffney went to California was a mortgage ~~after the~~

That I am right in this sweeping charge I refer to the original bill in this cause Brown was Gaffney's agent as the wife and heirs swear nor a mortgage after the testimony in this case was in on the part of the complainants. Richards son's testimony consistent with either theory if it amounted to anything and yet swearing to an impression that ~~Brown~~ it was a security. The complainants change their whole case. and for the first time the charge that it was a mortgage is made. and yet coming to redeem. & amending the bill reaching an entirely new case in the face of a sworn bill without any shid of excuse for it and amending with an unsworn bill in an equitable pay the costs in a case where we have deceived the complainants as it stood.

Caprice would award costs equity never would.

I wish the court would look over the matters upon at the end of the transcript as to taxes paid expenses.

I also ask the court to make the

sale absolute without redemption - this parties have had their money & Brown ought to have his money - He cannot get it upon a sale with redemption -

I cannot close this my last effort in this case without once more respectfully and with all due deference asking this court to reverse the decree of the court below and dismiss this bill. My pertinacity in this matter may offend the court. I hope not. But my client whom I know to be much injured in his feelings & in his reputation by this decree has me to ask for it.

Brown had the legal title for

1st he had an assignment of Gaffney's contract from Gurney 1846. endorsed upon it

2d. he had the title that Gaffney made to Gurney 1846 by a deed from G. & G. 1840.

3d he had the canal commissioners deed or the Patent

and yet in the face of all this

in the face of a sworn bill in this case that Brown has Gaffney's agent - and of the oath of Brown that he purchased Gaffney's interest and sold - The Court sets aside the ~~testimony~~ legal title upon the unsupported testimony of ~~facts~~ by acts done of the Richardsons - the impressions of Judge -

If this case is fully reported it will do more to unsettle legal titles than any case that has ever been reported before -

W. W. Boyce

250

Supreme Court

Brown Ira
vs
Gaffney Ira

Agt on
Warrant

Filed May 22 1863
L Solano
Cl

Dismd for Def

In the Supreme Court
of the State of Illinois April Term 1863.

Brown et al
vs
Jeffrey et al

Error to Superior
Court of Chicago

S. N. F. Leiden Esq
The Court having
granted the prayer of the petition filed
in this cause at this term. I shall
on the [illegible] or as soon thereafter
as may be fit my argument in
the case, and move for a disposition
of the same
May 20. 1863

Yours &c
W. Y. Bryce
for Pltff

(W. G. Burpp)

I left a copy of this notice at the Office of N. F. Luiden Esq. in the hands of Ballard for him May 20/63 - I also informed Luiden personally a day or two before that the court had allowed the petition

(W. G. Burpp)

Boston Mass
vs
Geoffrey Mac
Notice

Filed May 22, 1863
S. Leland
Clk

250

IN THE SUPREME COURT.

JAMES P. BROWN, AND
JEREMIAH L. BROWN,
vs.
ESTHER E. GAFFNEY, ET. AL.

Appeal from Superior Court of Chicago.

W. T. BURGESS, *for Appellant.*

In September, 1848, B. Gaffney purchased from the Canal Trustees, Sub-lots Four and Five, in Lot Two, Block Forty-eight, Chicago, S. W. corner of Washington and Desplaines streets, on the usual terms, one-fourth down, and balance in one, two and three years, with interest, annually, in advance; and received a certificate of purchase. About this time he erected a dwelling house on it, but its value is not shown, in which, he or his family have resided. He was indebted to Gurnee, Hayden & Co., and to secure them, February 25, 1849, he made an assignment to them of the Canal certificate, (p. 109) and afterwards, in March, 1850, a quit-claim deed of the premises, (p. 65) and took back a contract of same date, by which they agreed to re-convey to him the property (85) on being paid $164.30, September 1, 1850; $198.72, March 13, 1851, and $577.49 September 1, 1850, in all, $940.51. About this time Gaffney concluded to go to Califorina and applied to J. L. Brown to assist him with means to go with. He did so to the amount of about $235 and takes two notes, each of that amount, and assigned the contract he had with G., H. & Co., to him. (186) Gaffney returned in 1856. While he was absent Brown pays up

what was due to G., H. & Co. on the lots and assigns it to his son, J. P. Brown, who obtains a patent to the land. G., H. & Co. paid the two notes last due to the Canal Trustees, and the amount was included in the contract. After Gaffney's return, about 10th March, 1857, a settlement between him and the Brown took place, and J. P. Brown deeded to Gaffney the whole of the lots, and Gaffney deeded back east twenty feet of lot Four, and gave his three notes for $603.16 each, payable one, two and three years, and a mortgage with power of sale upon the residue, the west forty feet, and Brown surrendered the notes of $235 each, the first of these notes secured by the mortgage not being paid when due. Brown proceeded to advertise the forty feet for sale, and then, in May, 1858, offered to pay (196) $500, a span of horses and wagon, for the right of redemption of Gaffney in this west forty feet. Gaffney drew up a deed for the whole sixty feet, or the two lots, and sent it out by G. W. Richardson to be delivered on payment of money and delivery of property to R. Richardson, on the 22d May, 1858, delivered this deed to Brown, at Genoa, in DeKalb Co., receiving all the property, but only $425 of the money, Brown holding back $75 to pay taxes then unpaid. The next day G. (154) went to Genoa and got the money and returned to Chicago, from which place he wrote, on the 25th, the letter (B., p. 145) in which he tells Richardson to get the horses and wagon into his possession. The property had been left with Brown for temporary uses at the time it was delivered. Gaffney put the money on deposit, and in the fall he withdraws it, and Richardson informs the Browns that he has the money and property to pay them, if they will take it and surrender the deed. In October, 1858, an action of ejectment is brought, which, in November, 1860, results in a verdict and judgment for J. P. Brown. Whilst this suit was pending, Gaffney, on the 23d May, 1859, died, leaving Esther E., his widow, and the other complainants, minors, his children and leaving a will by which he devised his real estate to his widow, during her life, remainder over to his children in fee. On the 24th February, 1860, the widow and children file their bill in Chancery, sworn to by the widow, in which the assignment from Gaffney to Brown of the G., H. & Co. contract is not stated, but it is charged that he obtained the title from them to his son, James P. Brown, by false and fraudulent statements. (5.) And it is nowhere charged that Gaffney made a transfer of any kind to him of the property in mortgage

for any debt. On the 5th March, 1861, amendments to this are filed, which do not change the aspect of the bill, and are sworn to by Mrs. Gaffney. On the 15th June, 1861, an entirely new case is made by an amended bill, which sets up that Gaffney assigned the G., H. & Co. contract to Brown, as a security for advances to redeem the property from G., H. & Co., and for what he had advanced to Gaffney to help him off to California. This bill is not even signed by the complainants, but was undoubtedly got up by some of those good Samaritans, reference to whom is made in it.

I have so far, I think, stated such facts as are and cannot be disputed from the record. The first bill set up that Brown fraudulently, by false representations, while he was acting as the agent for Gaffney, obtained from G., H. & Co. the title to the land in his absence in California. In January, 1861, after taking all their proofs as to these transactions, (except witnesses sworn in open court at the hearing, November, 1861,) they abandon this case, and charge that Gaffney mortgaged the property to Brown, to secure him for advances made to enable G. to go to California, and to redeem the property from G., H. & Co.

The answers set up that the assignment by Gaffney to Brown, when G. went to California, was an absolute one, and not given as a mortgage or security for any sum of money whatever.

The proof upon this point consists, on the part of the defendants, of the deposition of J. L. Brown, (253) and his statement as proved by Mayo (234) and as proved by Richardson, (p. 131) of what he swore to, on the trial of the ejectment suit. This is a clear flat contradiction under oath, by the party who should know of any such arrangement. To oppose this, we have the deposition of G. W. Richardson, (15 Int., 123.) "I have got the impression, from talk that I have had with parties, that Brown held this property as security." (P. L. Yoe, Int. 16, p. 56,) "I can't say that there was any understanding between Gaffney and Brown in regard to the manner in which Brown was to hold this certificate. If there was I had no knowledge of it. I think I understood from Brown himself, or got the impression some time after the original transaction, that these securities were assigned to Brown, as a security for the money he had advanced for Gaffney." And Wm. M. Richardson: (p. 171) I had a conversation with J. L. Brown, while Gaffney was absent in California. Brown stated that he had seen Mr. Yoe, and that he had purchased a part or all the demands of Mr. Gurnee

against Gaffney, and that he had done a good thing in doing it. Yoe intended to keep it from Gaffney. In another conversation I learned that he held the property of B. Gaffney in trust, and if Mr. G. done well in California, and would pay him, (B.) when he returned, what Brown had paid on the place, with interest, Gaffney was to have it. To the direct question whether Brown claimed any interest in the property, other than as a security for money loaned, he said he did not. This is all the evidence on the subject, and the Court below, in delivering his opinion, said that the complainants had failed to make out their case so far as the charge was concerned of a loan of money by Brown to Gaffney, and his taking this property as security.

That being so, this Court will naturally ask how came the Cour below to decree a redemption. Because it held that the assignment of the G., H. & Co. contract by Gaffney to Brown was merely a *verbal* one and not *in writing*; that therefore Brown merely stepped into the shoes of G., H. & Co., having no legal assignment from Gaffney of his interest in the land, and as the transactions between G., H. & Co. and Gaffney, were in the nature of a mortgage, they could not give him, Brown, any better title than they had. Thus making a third entirely new case for the complainants, and one which, by the statements of the bill filed June 15, 1861, is expressly contradicted. (See p. 186.) They expressly state that Gaffney assigned his contract to Brown, and directed G., H. & Co. to convey to him. Now if there was any defect in this assignment the complainants should have set it up, and then we could have met it. But the whole scope of their second bill is, that Brown got a transfer of Gaffney's interest in this property, as a security for his advances, not that the transfer was defective, and Brown only got the same title that Gurnee, Hayden & Co. had. But our proof any way shows it. (See p. 252 Int. 10.) The rule is clear, that if a party insists that any transaction is void by reason of the Statute of Frauds and Perjuries, he must set that up in his pleadings and rely upon it.

To show I am not erring in what I say, the Court below held, I refer to the decree which recites no facts found by the Court, and I may say here, that it is the first time in the practice of the Courts of this State, that I have seen a decree upon a special case assign no fact found, no reason or ground for it. The Court in its decree, refuses the value of the property and money advanced

by Brown to Gaffney when Gaffney went to California. Why was this done? Because Brown says that these had nothing to do with each other. One was not intended as a security for the other.

Upon this point then, the very basis and foundation of the decree, the Court below erred.

But not resting here, let us proceed further in the facts. Gaffney returns from California. Brown has paid up Gurnee, Hayden & Co., and his son, J. P. Brown, has a deed from the trustees for the property. Gaffney's family have, during his absence, occupied the premises, but have paid no taxes. They have not only done this, but in view of the relationship between the families, Brown has otherwise contributed to their support. Gaffney sets up that he is entitled to the premises and insists upon a division. His friend Yoe intercedes for him. Finally, the Browns and Gaffney leave it out to him to settle their matters, and he makes a settlement. The deed of the whole from J. P. B. to G., and from G. to J. P. Brown, of the east 20 feet, and the three notes of $603.16, secured by the mortgage on the west 40 feet, are filled up by an attorney, by his directions, and the parties execute them, and they are recorded. These papers are entirely the creation of his will, assented to and carried into effect by the parties because he had so willed them. On this point Yoe's deposition, (p. 66,) is clear. (18.) The parties, Brown and Gaffney, after Gaffney's return from California, agreed to leave the matter out to me in difference between them, touching the property in controversy in this suit. (19.) I settled it for them by directing the execution of the deeds and mortgage and notes I have testified about. (20.) C. B. Hosmer filled up the blanks in the printed forms that we used for the deeds, mortgage and notes. (21.) I directed him how to fill them up. (22.) And then the parties executed them, and left them with me for record. (25.) So is also J. L. Brown's deposition. (p. 253.) To avoid the effect of Yoe's evidence, the counsel will, probably, say the questions were leading. Well, if they were, does he mean to accuse his own witness of swearing falsely in reply to them. (See also Int. 47.) where they frame a question upon this very hypothesis

Then the submission and award, its acceptance and execution by the parties are proved, as set up in the answer.

We come back to the Bill. How do the complainants seek to

avoid this? By charging the Browns with taking advantage of Gaffney's weak state of mind and body, and forcing or frightening him to a settlement made directly between them. Ignoring entirely the fact that the parties submitted this matter to Yoe's arbitrament. They do not charge the fact of the award and then seek to set it aside for reasons assigned by them, such as that he was ignorant of the rights of the parties, or disregarded them, or acted corruptly. If the award is proved it is conclusive and a bar against them unless it can be opened for the reasons, if there were any, which they should and have not assigned in the bill. But they also might assign as a reason to avoid the effect of the award, that the parties by consent opened this award and dealt with each other as though it had never taken place—and that brings us to the transaction of May, 1858. In the bill they say, (p. 196,) that while the sale, advertised under the mortgage of March 10, 1857, was pending, J. P. Brown, proposed through J. L. Brown, to Gaffney, that if he and his wife would relinquish his right to redeem and give him an absolute deed of the forty feet mortgaged, he would pay them $500, and give him two horses and a wagon and harness. In response to this offer Gaffney sends out a deed of the whole premises, to be delivered when the money and property were paid over.

Now, this statement is not put in the bill for the purpose of showing that the parties abandoned the award of Yoe, and it clearly, upon its face, shows that Brown had no such intention. He proposed for the forty feet, G. sends him a deed for the whole sixty feet. The only evidence is that of G. W. Richardson.

In answer to the 22d Int. he says: *It* would be sold beyond redemption in a few days. Now that *it* could only mean the forty feet mortgaged. Again, his answer to the 50th Int., (148,) shows the same thing, and his answer to the 20th Int., (p. 120,) concludes with an "I suppose." The bill stating the proposition to have been made for the forty feet, and such being really the fact, the counsel for the defence did not deem it necessary to call the witnesses' attention to this ambiguity in his testimony, and in fact the point was not made until the Court below said, in giving his decision, that the parties had given up the award in dealing about the property a second time.

But in order to this, the parties should object to and refuse to execute the award, and in express terms throw themselves back

upon their rights, and that by some act conclusive and concluded. (23 Ills. 415.) But here the agreement as claimed by the complainant, never was consumated and concluded, it was a mere proposition, not acceded to by Brown, as the complainant would have us believe. The consideration was the money and property: but this they say they never have received. Is it allowable for them to blow hot and cold, this way?

But, conceding now that there was no award, how about this deed of May, 1858? Was that paper delivered? Richardson takes it to Brown, states to him that Gaffney insists upon having all of the $500. Brown says, I will give you $425, retaining $75 for taxes. [Note—it is a warrantee deed, and which if there were any taxes unpaid, would make him responsible for them.] They talk the matter over, and finally Richardson lets Brown keep the deed and $75 of the money and takes the property and $425 of the money. The next day Gaffney comes out and takes the $425, knowing that Brown kept back the $75. He goes back to Chicago, and there writes the letter B, (145,) and a few days afterwards writes the letter A, (140,) in each of which he distinctly ratifies the transaction by telling him to get the property and all he could from Brown. Is not this a ratification of the act of his agent in delivering the deed—knowing all the facts? And can he now recall that ratification?

[By reference to the Almanac for 1858, it will be seen that the 25th of May is Tuesday. The deed was acknowledged the 22d May.]

But it is said "once a mortgage always a mortgage," and concluding that Brown's arrangement with Gaffney, when he left for California, constituted a mortgage, then no subsequent act done by the parties unless upon a full and fair and adequate consideration, can bind the parties, but they are at liberty to come in at any time and open the same. But we contend that just such an arrangement was made between these parties. The complainants charge their devisor with inability to transact the ordinary business of life—imbecility; and the first witness they put upon the stand, the Botanic Physician, Gaylord, swears that for six days before his death, his disease drew the nerves of the face and eyes clean around, and one eye was perfectly set wide open. He died the 23d May, 1859, (6.) and his will, under which these parties claim title was made on the 19th May, just four days before he

died, so that, according to this witness, he had a succession of apoplectic fits, in consequence of which one of his eyes were perfectly set wide open for two days before he made his will. Now if in that condition he was able to make his will, I think it is no violent presumption to conclude that two years before that time, when these apoplectic fits were just commencing, and he was able to call on his friend, Peter L. Yoe, to assist him in settling this matter, that Yoe's testimony as to the condition of his mind outweighs all the rest of the loose, random swearing of such men as this Dr. and Sutton, and the Richardsons. I shall therefore, and think the Court will agree with Mr. Yoe, when he says, "I considered him as competent to transact business then as he ever had been." The complainants say he was then poor. If so, he could only pay for what was going to Brown by a sale of this property, or some part of it. It is palpable then that a division of it was necessary. Supposing now that we put that property up to a forced sale for cash, what evidence is there in the record, of the margin that would have been left. Now the parties call in Yoe to assist in this settlement, it is clear that is not by Brown. Gaffney had confidence in Yoe, and it is as his friend that Yoe acts. He is familiar with the parties and their dealings and the equities between them, and makes an arrangement with which Gaffney is entirely satisfied, but Brown is not, (59 and 60) but finally accedes to it. Now in this transaction there is not the least evidence of any advantage being taken of Gaffney. His own friend settles the terms to which Brown accedes. This is done by both parties to avoid a law suit, for the sake of an amicable settlement between men who had married sisters. There is about it those circumstances for holding this settlement binding upon the parties that Courts always respect, and that should not be lightly be overlooked. Here was property when Gaffney left for California not worth the incumbrances on it. It is saved by the advances made by Brown. He pays all the taxes. (See Master's report.) He also advances to a man unable to give him any securety $235 in money and property. If he goes to California and does well, he can pay him well, if he does not, all is lost. He goes and comes back penniless. In the mean time this property has increased largely in value. All the taxes have been paid by Brown, and, by the way, have been paid up to this day by him. (See Master's report, 294.) It is evident that Gaffney felt or ought to feel that he was under more obligations to Brown than to

any mere money lender. That there were other things to be taken with the account than mere legal interest upon the advances. He was therefore willing to divide the property, and says so to his friend Yoe. The case is entirely wanting in those circumstances of hardship, oppression and sharp dealing on the part of Brown, which the counsel for the complainants has in his oratorical flourishes in the bill, indulged himself in.

The Court will also notice that the notes of $235 each, (p. 111) are produced by Gaffney, his name erased, and the words "settled in full," written on the face of one of them.

I come now to the terms upon which the Court allowed this redemption. I have already explained how the item of the notes of $235 each or the value of the property and money advanced came to be rejected by the Court.

The item of the money and property paid Richardson, and which Gaffney received into his possession. Now, conceding that the deed of May, 1858, was open to the same infirmity as that of March, 1857, and "once a mortgage always a mortgage," will extend to a second settlement and open that—upon what principle are we turned over to a law suit with a third person to get back what we advanced to the mortgagor upon the faith of the security? To call Richardson our agent is simply to assert what is not in evidence. Richardson was Brown's agent to carry a proposition to Gaffney and bring back his reply, and then his acts as such agent ceased. Gaffney made him his agent when he gave him the deed and told him to get the money and property. When he got that he got it as Gaffney's agent and not Brown's, and even if, as modifying the agency, Brown authorized him to pay the $425 to Gaffney, when he did so and Gaffney took it. Gaffney could not afterwards re-habilitate him with an agency for Brown, by paying the money back to him, especially after the letters introduced in evidence, and after suit brought. Thus Gaffney received our money advanced by us on the faith of his deed of May, 1858. Can he be allowed to keep that money—deposit it—get the property—use that—after the lapse of three or four months offer to return it and the property, and then when he comes in to redeem, cooly tell us, your money is in the hands of Richardson, go and get it without interest or compensation for it or the deterioration of the property in value. But this is of a piece with the rest of the equity in this very jug-handled decree.

The costs and expenses of the ejectment suit. The general rule is. that the mortgagor coming to redeem must pay all costs both of the suit in Chancery and at Law. It is clear we had the legal title, and were entitled to possession. Then we were only insisting upon our legal rights, (7 Paige, 168); next the party redeeming files a bill, not charging us as mortgagee, but as obtaining the title in fraud. Under that, two-thirds of the costs of this suit are made, when they paid that that case cannot be sustained, then they substitute an entirely new case, and charge us as mortgagee upon the dealings between Gaffney and Brown. The Court says no, that is not so, but a still third case exists. Brown is the Assignee of Gurnee, Hayden & Co., who were the mortgagees of Gaffney, upon that I will grant you relief, and then, when at the end of four years litigation, he grants them relief upon a case which is not made out by proof, or charged in the bill, he makes the defendant pay all the costs, and this in a case too, where before the party can pay an account must be taken; because the complainants claim that all that was due G., H. & Co. was $621, (pp. 4 and 181,) which turns out to be untrue. And not content with this, the Browns are made to pay for taking the account itself under the decree directing it. When they are at fault in claiming less to be due than really was due.

I have not so far distinguished between the Browns, Gaffney being in possession of the property, James P. Brown stands charged in the notice of all his equities, and it is not of the slightest consequence whether he paid value or not to his father. But when we come to the question of costs, there was no reason whatever for making J. L. Brown a party to the bill; at the time the suit was brought they had no interest in the lands or the mortgage, and claimed none, and the complainants knew it. It was therefore erroneous to decree costs against him.

The Points made by the appellants are:

1st. The decree is erroneous in not reciting the facts upon which it is founded, and which the Court below considered as proved.

(2 Danl., Chy. Pract. 1211. Cases cited in note.)

2d. That the transactions between Gaffney and Brown in March, 1850, did not constitute Brown the mortgagee of Gaffney, of the property in controversy.

3d. That the parties submitted their matters of difference touching these premises, to Peter L. Yoe, who made his award thereon, and the parties accepted and executed the same, and the award thus made and executed is a bar to the complainants in the present suit.

4th. That if Yoe so acted in making that award, as to be guilty of fraud or corruption, yet the bill not charging that, or seeking to set aside the award, the Court cannot go behind it.

5th. That if there was in fact no award, yet the settlement then made was a fair one under all the circumstances, and the Court will not disturb it.

6th. That if the parties did agree to forego the award and open the whole case, that charge is not in the bill, and the Court could grant no relief upon it even if proved.

7th. That the deed of May, 1858, having been found in the possession of its grantee, the onus is on the complainants to show it invalid.

8th. That though placed in Richardson's hands as an escrow, yet, if Gaffney accepted and took into his possession, knowing all the facts, the money paid by Brown to Richardson, it was a ratification of its delivery—and being once ratified Gaffney could not recall it without Brown's consent.

9th. That a second settlement having thus been effected between the parties, touching a portion of the property in controversy, and by the terms of the deed covering the whole, and from the facts attending it outside of the deed, recognizing the first as valid. The Court will not interfere to open the first settlement, even of these equities that might otherwise have induced them to do so.

10th. If redemption allowed, yet the party coming to redeem must pay all costs.

11th. If redemption allowed, it can only be upon the terms and case made by the bill, and so the notes of March 10, 1850, for $235, or the value of the property should have been allowed.

12th. If redemption allowed, yet the complainants must pay all

money advanced upon the faith of the security, and so the money, etc., paid to Richardson, and by him paid over to Gaffney, they should be charged with in the account.

13th. That a sale of the premises should not have been directed. (2 Daniel, 1205; 7 Paige, 168.)

14th. That the amended bill should have been filed only on payment of costs,

(1 Daniel, 466.)

W. T. BURGESS,
For Appellants.

This rule thus settled in England N. York & Virginia is entirely disregarded in this case and it operates unjustly upon Brown for notwithstanding the Counsel has induced the court to believe this property worth $800 it will not sell for enough to pay the charges that Brown has against it - Why should Brown pay $50 to $100 to get this property sold when if the defendants mean to redeem they can do it just as well without a sale as without

The bill and answer in this case showing that the assignment from Gaffney to Brown of the bond that Gaffney held from James Hayden &c was in writing and was an absolute one the whole burthen of the proof is at once changed - and I claim that there is not to be found in the books a case where the legal title has been converted into an equitable one upon such doubtful testimony as in this case and in the face of the evidence of one of the parties to the transaction denying under oath that it was other than an absolute sale

At the time of the arrangement between Brown & Gaffney the only title that Gaffney had was the contract he held from

Turner Hayden & Co. call that a mortgage if you will the evidence in the case (p 237 - dust to Jul. 18) - shows that it was not worth more than the incumbrance then (and this is the only evidence in the whole record on the subject) and when this court say can we suppose that Brown would demand or that Gaffney in addition to these notes would surrender the right of redemption to the home of his family and all he possessed for the sum of less than three hundred dollars. I say he certainly would for he would have got $300. more than it was worth. but the ~~fact~~ asking the question shows that the fact of the valuelessness of the home had entirely escaped the notice of the court.

This case is very much involved in its facts. and in the unavoidable press of business on the court. I fear that the details did not receive the consideration they needed for a full understanding of the case - and particularly when the written opinion of the court below was furnished to this court taking the same position substantially ~~upon which~~ that this court does upon the main question that this assignment from Gaffney to Brown was a verbal & not a written one - and the court throughout its opinion treat ~~Brown~~

J. L. Brown as the assignee of Turner Hole whereas he did not obtain any title from them until he had paid up the amount due them from Gaffney - I so I can only understand the third paragraph of the opinion of the court in that sense -

With these views I respectfully ask for a rehearing of the case

W. G. Bugg

I would say here in regard to the written opinion of the court below that I could not obtain it from the court or commissioner and so whatever effect it might have had upon this court I could not not had not know that this court had it until after the case was decided by it and I have never seen it since though I have applied to the Clerk of this court for it he could not find it

154 250

Sup Court

Thomas et al

vs.

Gaffney et al

Pet^n for

Rehearing

Filed April 27th 1863

L. Leland

Clk

Dismiss for want

Brown et al
vs
Gaffney et al

Supreme court

The foregoing petition was drawn with the expectation of obtaining a hearing upon it in vacation. Mistaken in that respect I now present it to the court with some additional suggestions - and request the attention of the court upon one of the points in this case to a well settled rule of courts of chancery as laid down in 2 Daniels Chan: Prac. p. 1206 referring to 17 Vesy 417 - and substantially the same language is used by chancellor Kent in 4 J. Chy. Rep. 76. Brickenhoff vs Lansing "The Plaintiffs who are the owners of the equity of redemption are no doubt entitled to redeem but they are not entitled to any delay. A motion to enlarge time for payment upon a bill to redeem is new and such a motion was refused by Lord Eldon in Novosielski vs Wakefield (17 Ves. 417) - when he observed that in a bill to redeem the plaintiff proposes that his money is ready He comes into court saying "Here is the money: give me my estate" If then the bill in the present case be viewed as a bill to redeem the plaintiff must redeem forthwith" - see also B Mumford 66. Turner vs Turner -

In the Supreme Court,

APRIL TERM, 1862.

JAMES P. BROWN *et al.*
v.
ESTHER E. GAFFNEY *et al.*

OPINION BY WALKER, J.

In this case the complainants claim as the widow and heirs of Barnard Gaffney, deceased. He, on the 1st day of September, 1848, purchased the property, in litigation, of the commissioners of the Illinois and Michigan Canal, for the sum of six hundred and twenty dollars. He, at the time of the purchase, paid one-fourth of the sum, and the interest in advance on the remainder for one year. He also gave his notes for the balance, in equal portions, payable in one, two and three years, with interest from date, and received a certificate of purchase, stating the facts, and that he would be entitled to a deed on the payment of the notes. On the 13th day of March, 1850, being indebted to Gurnee, Hayden & Co., Gaffney assigned this certificate to them, and, at the same time, gave them a quit-claim deed to the premises in question, and received from them an obligation that upon his paying to them the sum of $940.51, they would reconvey the premises to him.

Afterwards, on the 17th day of March, 1851, Jeremiah L. Brown became the assignee of the certificate of purchase from Gurnee, Hayden & Co., and took from them a quit-claim deed of their interest in the premises. The evidence shows that the assignment was made at the request of Gaffney.

By the arrangement between Gaffney and Gurnee, Hayden & Co., there can be no doubt, that Gaffney became a mortgagor of his interest to them. This is too well settled to be controverted. And by the assignment of the certificate of purchase, by Gurnee, Hayden & Co. to Brown, he assumed to the transaction the same attitude and acquired the same rights held by Gurnee, Hayden & Co., and nothing more, so far as the evidence in the record discloses. But it is insisted that Brown acquired Gaffney's interest in the premises, divested of the right of redemption. That by a parol agreement between them, when the assignment was made to Brown, the right of redemption by Gaffney was extinguished, and that Brown acquired not the right of a mortgagee but the absolute

title, as a purchaser. The only evidence in the case tending to prove that such an arrangement was made, is that of Brown, who having assigned his interest to his son, became a witness in the cause. He states, that it was in consideration of his furnishing to Gaffney the means of going to California. We are disposed to consider his evidence as though he was free from interest in this suit, and as a competent witness. But owing to the attitude he bears to the case, and the relationship he bears to the other plaintiff in error, we must receive his evidence with great caution. He is the assignee of Gurnee, Hayden & Co., and the assignor and father of the defendant below, now claiming title to the lands as his assignee; and in every stage of this controversy, whether in or out of court, he has taken an active, if not an interested part.

He testifies, that Gaffney relinquished his right of redemption in the premises, in consideration of the means furnished to enable him to go to California. The language employed by Gaffney is not given, but simply his conclusions of the legal effect of the transaction. It appears from this evidence, that the money and property advanced by him to Gaffney did not exceed in value three hundred dollars. That he received from Gaffney his notes for four hundred and seventy dollars. This would seem to be a loan by Brown to Gaffney. If a purchase, it may be asked, why take these notes? or can we suppose that Brown would demand, or that Gaffney in addition to these notes would surrender the right of redemption to the home of his family, and all he possessed, for the sum of less than three hundred dollars? This would seem to be improbable, and that he should manifest such generosity to a man of wealth is still more improbable. But other witnesses testify that the witness Brown stated to them, that he held the property subject to redemption. This is the substance of the testimony of Yoe, Geo. W. & Wm. M. Richardson. The evidence of these witnesses is irreconcileable with Brown's testimony. They, so far as the record discloses, are disinterested, and their evidence overcomes, by a decided preponderance, that of Brown.

The conduct of Gaffney during the whole transaction, was such as clearly indicated that he regarded Brown as a mortgagee and not the owner, nor can Brown's conduct and declarations be reconciled with any other supposition. And when the equity rule—"once a mortgage always a mortgage"—is applied, nothing but clear and highly satisfactory evidence should take the case out of its operation. The evidence in this case is not of that character. We are, therefore, of the opinion that by the assignment to Brown by Gurnee, Hayden & Co., the relation of mortgagor and mortgagee was not disturbed, but still subsisted unimpaired.

Whilst that relation still subsisted, Brown assigned his interest in the premises to his son, James P. Brown, who claims the title, divested of the right of redemption, by virtue of a deed from the canal commissioners, by surrendering the original certificate to Gaffney. If James P. Brown

Ephraim Hall

Sworn to and subscribed
before me this 26th day of
August A.D. 1861

C W Brown, Clerk
By Jesse C. Kellogg Deputy.

Edward L Mayo, a Witness produced
sworn and examined on the part of the
Defendants testified as follows to wit,

First Int. What is your name age residence
and occupation?

Ans. Edward L. Mayo, age 54. residence
Sycamore DeKalb County & State of Illinois
An Attorny at Law by occupation.

Second Int. Did you know Bernard Goffney
in his lifetime?

Ans. I did very well —

Third Int. When did you first become
acquainted with him?

took the assignment, with notice of Gaffney's right to redeem from his father, he acquired no more than his father's rights. He thereby received the rights, and occupies the position of his father in every respect. That he either had notice of the condition of the title at the time he purchased, or had such notice as put him upon inquiry and charged him with notice, is true, as Gaffney was in the open, visible possession of the premises. This is held, by numerous decisions of this Court, to be amply sufficient to charge a purchaser with notice of all legal and equitable claims of the occupant. He then received the assignment, subject to redemption, and did not in the least change that right by procuring a deed from the canal commissioners.

But it is insisted that the relation of the parties to this property was changed by the arbitration of Yoe, and a court of equity will not interfere, however inequitable the transaction might be. After a careful examination of the record, we are unable to perceive any evidence showing that there was an arbitration of this controversy. Yoe states, that Gaffney requested him to make a proposition to Brown, to divide the property, which he did, and it was accepted, and when they came to consummate the agreement, it was found to be inconvenient to make an equal division, when a new agreement was made. By it a portion of the property was deeded to Brown, and a mortgage was given to him upon the balance, to secure Gaffney's notes for $1,800. There is in this nothing that has the slightest semblance to an arbitration, but it was simply a contract made by the agency of a third person. If this was held to be an arbitration, we are at a loss to perceive what description of agreement, made through an agent, would not be an arbitration. But even if it was what it is claimed, still the parties abandoned it, and entered into a new and different agreement, by which it was agreed that Gaffney was to deed the whole property to Brown upon his paying to Gaffney $500 in money, and delivering him a pair of horses, wagon and harness, worth about three hundred dollars.

Much stress is placed upon this feature of the case, especially as the money was paid to Richardson, and by him to Gaffney, and the horses, wagon and harness were delivered to Richardson, who was authorized to deliver the deed and receive the money and property. He was only authorized to deliver the deed, upon a full compliance with the terms of the agreement. Yet James P. Brown would only pay $425, claiming that he should retain the $75 to pay taxes on the property. Gaffney insisted that Richardson had done wrong in receiving less than the full amount, and took the money to Chicago and deposited it in a bank, and gave the certificate to Richardson to hold until the matter was settled, or to let Brown have it and the property if he would receive them. It was offered to him, but he refused to receive it and give up the deed.

It appears that when this arrangement was made, Brown, through Richardson, made the offer, and said that Gaffney might do worse. Gaffney at first declined the offer, but afterwards concluded he could do nothing else, as the property would be sold in a few days without redemption, and accepted the proposition. We perceive from this evidence that Brown intended to coerce Gaffney into this arrangement, as the statement "he might do worse," could have been designed for no other purpose. And Gaffney evidently so understood it, as he said "he could do nothing else, as the property would be sold in a few days without redemption." When it is remembered that this property was worth seven or eight thousand dollars, and all of the incumbrances held against Gaffney, by Brown, did not exceed three thousand dollars, it seems perfectly apparent that Brown was using the power that a creditor possesses over his debtor, to coerce him into a relinquishment of his right of redemption. This, we think, was oppressive and unconscionable, and calls for the interposition of a court of equity to afford relief. The fact that the only title held before this transaction occurred, by plaintiff in error, was a mortgage to secure the payment of money, no injustice can result to him by compelling him to receive his money with interest, and satisfying his mortgage; on the other hand, if a redemption were not allowed, the complainants would sustain a loss of perhaps not less than five thousand dollars.

The decree of the Court below is affirmed.

In asking the Court to modify the decree, of which I give above a copy, I shall content myself with merely calling upon the Court to carry out the plain equities of this case as developed by the Court in that opinion.

Setting out with the proposition that it matters not what the proofs are, the complainant can only have relief upon the case stated in his bill, and sustained by his proofs, as asserted by this Court in the following cases:

Hovey et al. v. *Holcomb et al.*, 11 Ill. 664. "The bill shows that that transaction was for honest and praiseworthy purposes, and without any design to hinder and delay any of the creditors of Bates improperly. While the complainants thus characterize the transaction in their bill, they cannot give it a different character in their proof, nor ask for a decree based upon a different state of case."

Morgan v. *Smith*, 11 Ill. 200. "It is a well settled principle, that the allegations and proofs must correspond, and that a party will not be entitled to relief, although the evidence may establish a clear case in his favor, unless there are averments in the bill to support the case made by the evidence."

Adams v. *Payson*, 11 Ill. 27. "No claim for that fee was set up in the bill, and the defendant had no opportunity of defending that claim."

McKay v. *Bissett*, 5 Gil. 505. "If the complainant intended to rely on the fact that the defendant was not a purchaser for a valuable consideration, he should have distinctly so stated and charged in this bill. The defendant could then have shaped his case accordingly. As it is, he was not called upon to explain and controvert such an allegation."

The complainants come to redeem, and they claim that: 1st, the transaction between Gurnee, Hayden & Co., and Gaffney, was a mortgage to secure the amount specified in their agreement with him to recovey, $940.51. And, 2nd, That the transaction between J. L. Brown and Gaffney, was a mortgage to secure advances, upon payment of which they ask to be allowed to redeem. And that there be no misconception on this point, I will give the exact language of the bill—184 to 187 of Record:

"And your complainants would further show unto your honors, that on or about the same time, but subsequent to the said transaction with Gurnee, Hayden & Co., one Jeremiah L. Brown, who they pray may be made a party defendant to this bill, who being aware of the said transaction between said Bernard Gaffney and the said Gurnee, Hayden & Co., and knowing also, that said Gaffney, besides being improvident and unfortunate in the way of acquiring property, or in keeping it when acquired—and was also but poorly provided with money or means to defray his expenses to California, they being brothers-in-law, having married sisters; he, the said defendant, being full handed and having money to loan, and having, as your complainants verily believe, and so charge the fact to be, coveted the ownership of the aforesaid sub-lots, they being eligibly situated in the growing city of Chicago, on the corner of Desplaines and Washington streets, near the West Market and the Chicago river, offered to advance by the way of loan to said Gaffney, money for that purpose, to wit, for the purpose of enabling him to prosecute his contemplated adventure to California, and also to pay off the notes to Gurnee, Hayden & Co., and entirely remove the encumbrances upon said sub-lots, and thereby save the same from forfeiture, to which said Gaffney readily agreed. And it was agreed between them that the said Brown should advance a sum of money to said Gaffney, the precise amount these complainants are unable to state, let said Gaffney have a couple of horses, or

some other personal property, which was, with the money, valued or considered as two hundred and thirty-five dollars, for which the said Gaffney executed two notes for two hundred and thirty-five dollars each, one payable on demand, and the other being due one day after date, the entire sum of one of these notes being usurious. And for the purpose of securing said real estate from forfeiture and falling into the hands of strangers, it was agreed between said defendant and said Gaffney, that the said Gaffney should *assign* to said defendant said agreement between him, said Gaffney, and Gurnee, Hayden & Co., and *order* the said Gurnee, Hayden & Co. to convey the same, or all their right, title and interest therein, by quit-claim deed to said Brown. And also requested or directed them to assign the said certificate of purchase for the said sub-lots to the said Brown, which he was to hold for the purpose aforesaid, and as a mortgage or security for the money and property loaned and advanced to said Gaffney, and that he might thereafterwards advance, for the purpose of securing to himself the legal title to said lots or pieces of ground. And for the aforesaid purpose, and no other whatever, the said Gaffney executed the two several notes aforesaid to said Brown, *assigned* the said obligation or defeasance of Gurnee, Hayden & Co. to the said Brown, and *directed* the said Gurnee, Hayden & Co. to convey their said interest to him as aforesaid, with the belief that in so doing, whilst he would be making his brother-in-law amply secure in the sums advanced, and to be advanced by him, as well to the said Gurnee, Hayden & Co., as to said canal trustees, or whoever might hold the evidences of said Gaffney's indebtedness for said lots or real estate, he would at the same time be placing it in secure and safe hands, that whatever might happen to him, said Gaffney, there would be no danger of his wife or children being wronged or defrauded of their rights by so near a kinsman as the said defendant."

"*These complainants expressly charge that the* ASSIGNMENT *of the contract or defeasance of Gurnee, Hayden & Co., and the* DIRECTION *to them to convey absolutely their title to said lots to said Brown, and assign the aforesaid certificate of the canal trustees to him, were all done for the purpose and with the understanding between said Brown and said Gaffney, that he, the said Brown, should thereby acquire the legal title thereto,* AND HOLD *the same as a* SECURITY OR MORTGAGE *for all advances made by him;* in pursuance of which said arrangement and agreement, the said Brown, by means of the assignment of said obligation or defeasance, obtained from said Gurnee, Hayden & Co., the transfer of the said certificate of purchase by the assignment of the same indorsed thereon, and also a quit-claim deed from Gurnee, Hayden & Co., for all their title or interest, legal and equitable."

On page "These complainants expressly charge that defendant" (James P. Brown), "was fully acquainted with and knew all about the nature of the transactions and dealings between his said father and co-defendant, Jeremiah L. Brown and said Gaffney; *he knew that the same was held by his father as a security for money advanced.*"

On page "These complainants distinctly charge and allege, that the whole transaction between said Gaffney and the defendant, Jeremiah L. Brown, *was a loaning of money and property on the one side, and the giving of security upon the other in the* NATURE OF A MORTGAGE; that such was the transaction also with Gurnee, Hayden & Company."

In the prayer:

"That the said several deeds and WRITINGS between said Brown and Gaffney," (not a word about a parol assignment), "be taken and deemed as one transaction and considered as a mortgage," "and that said complainants be allowed a day in court to redeem, upon such terms and time as the court may deem reasonable."

I now quote the language of this Court in their opinion on the case:

"By the arrangement between Gaffney and Gurnee, Hayden & Co., there can be no doubt that Gaffney became a mortgagor of his interest to them. This is too well settled to be controverted, and by the assignment of the certificate of purchase by Gurnee, Hayden & Co. to Brown, he assumed to the transaction the same attitude, and acquired the same rights held by Gurnee, Hayden & Co., *and nothing more*, so far as the evidence in the record discloses."

But the difficulty is, that that is not the case made by the bill. By the statements in the bill he did acquire more than the mere interest of Gurnee, Hayden & Co.; he acquired a mortgage to secure his advances to Gaffney, of money and property, and so I think this Court holds in the end, but a confusion has crept into the case from the blending of the two mortgages together, which in the hypothesis of the bill that Brown and Gaffney's trade was a mere mortgage, occurred when they made that transaction. We never denied the nature of the Gurnee, Hayden & Co.'s claim that it was a mere mortgage. The controversy in this case is not on the Gurnee, Hayden & Co. mortgage, but was Brown a mortgagee of Gaffney, not a mere assignee of Gurnee, Hayden & Co. That is not charged in the bill, but it is charged that he is *nothing more* than a mortgagee in his own right, subject to the claim of Gurnee, Hayden & Co.

I think the fair inference from the whole opinion of the Court is, that J. L. Brown did not purchase Gaffney's interest, but that he loaned him money and took this way to secure himself for its repayment.

Under that view of the opinion, I ask the Court to modify the decree. For if this is the opinion of the Court, Brown should be paid these notes, dated March 15, 1850.

Conceding now that in 1858, Gaffney held the equity of redemption, he and Brown enter into a negotiation for the sale of that equity for $500, and property worth $300. Brown pays him $425 and the property, but does not pay him the $75, and inasmuch as he did not do so, and for other reasons, the Court says that Gaffney was at liberty to repudiate the transaction—refuse to go on, and what else? Keep the property and money he had received? What then? To offer to return them, which he did. But Brown would not accept them. Well, what then shall Gaffney do? throw the money into the street and turn the property loose? That is absurd. He in equity should have it ready to pay back. He asks equity—he must be prepared to do equity. Then before his deed of May, 1858, should be cancelled, he should put Brown in as good condition as he was before, so that these items are a charge upon the property and should be allowed.

Arriving at the conclusion as both the complainants in their bill and this court in its opinion, on the whole, do, that the transaction of March, 1848, was a mortgage as between Brown and Gaffney, (a conclusion I do not now controvert,) yet I insist that between this money lender on the one hand, and this woman and her children on the other, at least equal and exact justice shall be done. That while he, on the one hand, shall not get $8,000 worth of property for $3,000—that she and they, on the other hand, shall pay him his $3,000 advanced upon the faith of the security before they get the property.

Now, will the Court go over with me the items that I asked the Court below to allow?

1. The notes made by Bernard Gaffney.

2. The money and property which Gaffney got from the Browns and placed in the hands of Richardson.

3. The taxed costs and expenses in the ejectment suit.

Is there any one of these that is not just? The notes the counsel concedes in his printed argument should have been paid.

I do not think this Court looked at the details of this decree, satisfied probably with the general conclusion they had arrived at, that Brown should have his advances and the other party the property; they over-

looked those details, and, in that respect, I ask for a modification of the decree so as to comport more nearly to even handed justice, upon the principles settled by this court in its opinion.

This matter, if not allowed by the Court, can only result in further litigation. Brown has not been paid for his advances to Gaffney when he left for California—and he is entitled to his money and property, and he will now turn round and sue the estate. This Court would not hold this decree to be a bar, for it says nothing about it; consequently this very property would have to go through the probate court and be sold to satisfy those claims. Why not settle it all in one suit?

I do not present this as a petition for a re-hearing. If we can get our advances we will be satisfied.

W. T. BURGESS,
For Plaintiff.

IN THE SUPREME COURT OF THE STATE OF ILLINOIS.

OF APRIL TERM, 1862.

JAMES. P. BROWN, and JEREMIAH L. BROWN, Defendants below, Appellants, *vs.* ESTHER E. GAFFNEY, JAMES B. GAFFNEY, JUDITH ANN GAFFNEY, MARY ELIZABETH GAFFNEY, ESTHER ELIZA GAFFNEY, and DELIA M. GAFFNEY, Complainants below, Appellees.	*Appeal from Superior Court of Chicago.*

PAGE OF RECORD.

1 W. T. BURGESS, *for Appellants.*

U. F. LINDER, *for Appellees.*

2 BILL filed February 24, 1860, by the Appellees, sets forth :—

3 That one Bernard Gaffney, on the 1st September, 1848, at a sale of Canal Lands, purchased sub-lots 4 and 5, in Lot 2, in Block 48, original Town of Chicago, Cook county, Illinois, for $620; of which he paid a part, and received a certificate, that on payment of the remainder, $525,
4 in installments, the last on the 1st of September, 1851, he should have a deed therefor.

B. That about the 13th of March, 1850, Gaffney, being about to remove temporarily to California, and being in need of money for that purpose, borrowed of Gurnee, Hayden & Co. some money, for which he gave them his note for $621.21, and to secure its payment, assigned to them his said certificate of purchase. About the same time, he borrowed of Jeremiah L. Brown certain articles of personal property, in value about $200. That Gaffney and J. L. Brown were then on friendly
5 terms and connected by marriage, and by reason thereof, said Gaffney, relying upon the honesty and fidelity of J. L. Brown, entered into an arrangement and agreement with him, that he was to have the supervision of Gaffney's affairs, and charge of, and attend to his business during Gaffney's absence in California, and to act generally as his confidential agent. That Gaffney, relying upon the honesty of Brown, went to California, and remained there until July 19, 1856. That while he was absent, Brown, falsely and with the intent to cheat and defraud him, (Gaffney,) represented to Gurnee, Hayden & Co., among other things, that Gaffney would never return to Illinois; and made other false and fraudulent statements, unknown to the complainants, by means of which, he induced Gurnee, Hayden & Co. to assign to him the

Judge Walker

said Canal certificate. And they, deceived thereby, did on the 21st day of February, 1849, so assign it to him. That Jeremiah L. Brown,
6 with intent to cheat and defraud Gaffney, did, on 8th June, 1855, procure a patent from the Board of Trustees of Illinois and Michigan Canal of said lots to James P. Brown, his son, on the surrender of the canal certificate, and for the consideration therein named, $620. That James P. Brown had no equitable right or interest in the certificate, that if he ever had the legal title thereto, he acquired it with a full knowledge of all the matters and things above charged, and it was made to him for the purpose of aiding J. L. Brown in his attempt to defraud Gaffney, and he paid no consideration whatever for it. That Gaffney, from the time of his return to Illinois up to the time of his death, May 23, 1859, was feeble and diseased in mind and body, and incapable of
7 managing his affairs. That taking advantage of such, his condition, J. L. Brown induced Gaffney to make a settlement of their business affairs sometime in March, 1857. That in pursuance thereof, James conveyed all of said real estate to Gaffney, and Gaffney thereupon re-conveyed to him the east 20 feet of lot 4, gave him three notes for $603, payable in one, two and three years, and to secure them gave a mortgage with power of sale of the remainder of said real estate. That said twenty feet at time of conveyance was worth $2,000. That James P. Brown gave
8 no consideration whatever, either for said notes or said twenty feet. That said notes and deed were contrived by J. P. B. and J. L. B. to cheat and defraud Gaffney. That James afterwards assigned said notes to Jeremiah for no consideration. That the said twenty feet, worth $2,000 and said notes $1,809, Jeremiah L. Brown thus received or secured to himself. That the money which Gaffney borrowed of Jeremiah L. Brown, in property, amounted, with legal interest, in March, 1857, to $290, and the money paid by him to G. H. & Co., for Gaffney, then amounted, with interest, to about $1,000, which two sums was the entire amount, which in justice and equity was due by Gaffney to J. L. Brown, with the exception of a reasonable sum to be paid him for his services as agent. That about the 13th May, 1858, Jeremiah L. Brown, fraudulently taking advantage of Gaffney's debilitated condition, induced him to make another compromise or settlement of their affairs, and in pursuance thereof, Gaffney made a deed of sale of said real estate to
9 James P. Brown, which was left in the hands of a third person, Washington Richardson, to be delivered to James P. Brown on the following condition, to wit: first, that he or J. L. B. should deliver to Richardson a pair of horses, wagon and harness, and $500 in money, and second, to deliver him to be cancelled, the said notes and mortgage. That the Browns obtained possession of said deed from Richardson, without complying with any of said conditions, and without the consent or knowledge of Gaffney. That they have not complied with said conditions but wholly refuse so to do. That James P. Brown commenced an action of ejectment against Gaffney in the Superior Court of Chicago, in September, 1858, claiming title under said deed; that a trial was had in February, 1859, but no verdict was rendered by the jury. That about the 23d May,
10 1859, Gaffney departed this life testate, leaving a will by which he devised to Esther E., his widow, a life estate in his real estate, with remainder over to the other complainants, his children. They aver they are ready and willing to pay what is equitably due to Brown, upon receiving conveyance and under order of Court.

PRAYER.

11 Answer, under oath, waived for account of what in equity and good conscience, is due and owing from estate of Bernard Gaffney to

J. P. Brown decreed to reconvey all of said premises so as to vest the same in the estate of B. Gaffney, and that J. L. and J. P. Brown be directed to surrender the three notes and release of record the mortgage, and in default, a commissioner be appointed so to convey and release,
12 and that the deed from B. Gaffney to James P. Brown be declared null and void and for further or other relief.

Bill sworn to by Esther E. Gaffney.

AMENDMENTS TO ORIGINAL BILL FILED MARCH 5, 1861.

15 That on 1st September, 1849, Gaffney paid Canal Trustees the first note, $155, and interest, $18.60, leaving the other two notes unpaid, and due September 1, 1850 and September 1, 1851, and which being paid, Gaffney was entitled to a deed in fee simple. (A.)

That after Gaffney returned he requested J. L. Brown to account with him, offering to pay him all that should be found due upon J. L. Brown's
17 causing the said land to be conveyed to him, which Brown refused to do. That taking advantage of Gaffney's condition, Brown induced him to make a settlement of their affairs in March, 1857, in pursuance of the terms imposed upon Gaffney by coercion and persuasion, J. P. Brown
19 conveyed all of said lands to Gaffney and Gaffney re-conveyed to him the east twenty feet of lot 4, which conveyance was made without any consideration. And Gaffney also gave J. P. Brown his three notes for $603 each, at one, two and three years, and to secure them gave a mortgage to J. P. Brown, with power of sale, of all the remainder thereof, which real estate was worth at that time from $8,000 to $9,000. That immediately after his purchase, he erected on the lots a house worth $1,200 which he afterwards occupied as a homestead until his death, and
21 complainants now occupy the same as their homestead, and that the deed, notes and mortgage were not given for the purchase money or the improvements thereon. They claim the benefit of the homestead exemption law of 1851. That J. L. Brown on 10th March 1857, claimed to be due him $3,800, but how he arrived at it they don't know, but to make
23 it up, at least $2,500 of usurious interest must have been added to the amount actually due him.

This amendment is sworn to by the Widow Gaffney, and in the affidavit she says the new facts in it were brought to light by the trial in the ejectment suit and the answers of the defendants.

ANSWER OF JAMES P. BROWN.

25 States the making of the deeds notes and mortgage of the 10th March,
26 1857. That the same were given upon a full and fair settlement of all matters touching said premises, and in pursuance of the award thereinafter set out, when Gaffney was in the full possession of all his faculties of mind and capable of transacting business, without any fraud, deception, deceit done or practiced upon said Gaffney, and denies that any of the facts, matters or things charged in the bill to the contrary are true.
27 Sets out the making of the deed of May, 1858, and relies upon it as an estoppel and bar to the claim of the complainants. That the complainants have not made or stated such a case as entitles them to relief in a court of chancery, and prays same benefit from this exception as though he had demurred to bill. That on or about the tenth day of March, 1857, this defendant, Jeremiah L. Brown and Bernard Gaffney did submit all matters in difference between them, touching the title and ownership of said lands, the payment of said notes of 13th March, 1850 and
28 all other matters in difference either between this defendant and the said Gaffney, or between J. L. Brown and the said Gaffney, or both this defendant and J. L. Brown of the one part, and Gaffney of the other,

to the award, order, arbitrament and final determination of Peter L. Yoe, who took upon himself the burthen of said submission and did thereupon award, order and determine, among other things and to the effect, that the
29 said Jeremiah L. Brown should surrender up to the said Gaffney, to be cancelled, the said two notes dated March 13th, 1850, each for $235, in said bill mentioned. That this defendant should make to the said Gaffney a deed, conveying to him all of said lands, and that said Gaffney should made a deed to this defendant, conveying to him the east twenty feet thereof, and also three notes, each for the sum of $603 or thereabouts, payable one, two and three years after date respectively with interest, and also a mortgage upon the west forty feet of said lands to secure the payment thereof, and prepared said deed, notes and mortgage for execution by the parties accordingly. That this defendant, J. L. Brown and Gaffney accepted of said award, and in pursuance thereof and in obedience thereunto, did surrender the notes dated March 10, 1850 to said Gaffney, and did respectively execute the notes, mortgage and deed so prepared by said Yoe, and which are the same notes, mortgage and deed of date of March 13, 1857, mentioned in said bill which were duly delivered and recorded by the parties. And he insists and relies upon said submission and said award so made by said Yoe in pursuance of said submission, and the acts done thereunder as aforesaid, and the said deeds, notes and mortgage as a bar to the discovery and
30 relief prayed for in and by said bill touching said lands and premises, and prays that he may have the benefit of such bar, the same as though he had pleaded the same in bar of and to that part of said bill, setting up the several and various matters that happened touching said premises between the parties, prior to said submission and award. Denies all other matters and things and all fraud and combination charged in the bill.

ANSWER OF JEREMIAH L. BROWN.

31 Admits the purchase by Gaffney of the lands in controversy from the canal trustees, that he paid one-fourth down and gave his notes for bal-
32 ance, and received a certificate of purchase. That prior to the 13th of March, 1850, Gaffney was indebted to Gurnee, Hayden & Co., and to secure it assigned to them said certificate, and that afterwards, Gaffney
33 failing to pay as he had agreed to, they made a new contract with him touching said land; and, in pursuance thereof, Gaffney and wife quitclaimed the said lands to G., H. & Co. on the 13th March, 1850, and they gave him a contract for the conveyance of said lands to him on payment of $164 30 on the 1st September, 1850, $198 72 March 13, 1851, and $577 47 Sept. 1st, 1851, of which contracts duplicates were executed, one of which G., H. & Co. kept, and the other Gaffney kept;
34 that shortly before Gaffney went to California defendant sold him a span of horses and let him have about sixty dollars in money, for which Gaffney gave defendant his two notes, for about $235 each, and payable within a year, as he thinks, not having the notes to refer to, they having
35 been surrendered to Gaffney as hereafter stated. That he and Gaffney were then connected by marriage, having married sisters. That a short time before Gaffney left for California he proposed to defendant that if he would assist him (G.) with the means to go with, he would not only pay him well for what he should let him have, but would also absolutely sell and assign to him the contract of purchase he then held from G.,
36 H. & Co., subject to the payments then due thereon, and to pay the same up or not as he saw fit. That there was no understanding or agreement then made that the same was received as security for the payment of said notes, or that this defendant was to hold the same for his (said Ber-

nard's) use; but, on the contrary, the assignment was an absolute one, and had no connection with the payment of said notes, nor did the defendant's right to the same depend upon the fact whether the said notes to him from said Gaffney were ever paid or not. That he did not consider the said land worth anything more than the incumbrance thereon, and though he then took an assignment from said B. Gaffney of said contract from G., H. & Co., he did not consider it of any value, and in fact hesitated very much about making the payments and saving the land from forfeiture to them; that Gaffney went to California through the means furnished by defendant and remained there until July, 1856; that
37 in the meantime defendant paid G., H. & Co. all that was due them under said contract, and that they paid the notes of Gaffney to the canal trustees, and when he had thus paid them they assigned to him the said certificate, and on surrendering it to the canal board, they issued a patent to James P. Brown for the land on the 8th June, 1855; denies that he made any false or fraudulent statements to G., H. & Co., but claimed to be entitled to a deed from them as the assignee of said Gaffney; that when he made the payment to G., H. & Co. he delivered to them the duplicate contract which Gaffney had assigned to the defendant by endorsement thereon, with the endorsement of such assignment thereon, they have since retained or destroyed the same; that he has recently endeavored to find the same, but did not succeed in so doing. That G., H. & Co., at time of surrender of contract to them, made to him a quitclaim deed of the premises. That afterwards, but the precise date he cannot say, for a full and valuable consideration, he assigned, transferred
39 and conveyed to said James P. Brown the certificate of purchase and the lands therein described; the transfer of the certificate was endorsed upon it and surrendered with the certificate to the canal trustees. That the said James P. Brown is the son of the defendant, and by said assignment acquired the legal and equitable right to obtain said patent, and he denies that he acquired said title with knowledge of any of the matters charged in the bill in that behalf; that soon after Gaffney's return to California he applied to defendant for a conveyance to him of said lands; that this defendant denied that there was any obligation to convey the
40 same to him, or that he had any equity therein; that finally a settlement was fully and fairly agreed upon and made between them. Gaffney then and at no time afterwards being incapable of managing his affairs, or feeble or diseased in mind, though at times laboring under disease of body, yet not so as to affect his mind or rendering him incapable of managing his affairs; and he denies that he took any advantage whatever in the settlement then made; so far from that being the case the terms of the settlement were in fact arranged by Peter L. Yoe, a mutual friend of the parties, and to whom and whose award and arbitrament in the premises both the said Gaffney and James P. Brown and this defendant submitted their matters, and whose award thereupon they afterwards acceded to and carried into effect, and refers to this answer of his co-defendant on this point. That by the settlement thus effected upon and
41 in pursuance of said award, he surrendered up the note he held against Gaffney for said horses and money, and James P. Brown released said lots to Gaffney, and Gaffney re-conveyed to J. P. Brown the east twenty feet of lot four, and made his three notes each for $603, payable to J. P. Brown, at one, two and three years after date respectively, and also executed a mortgage upon west ten feet of lot four and all of lot five, to secure the payment thereof, with power to sell, which notes and mort-
42 gage were at commencement of suit owned by James P. Brown, and this defendant has no interest in said lands, notes or mortgages. The

consideration for said notes and deed was the conveyance of said land to said Gaffney, in pursuance of said award, and to which he had no title whatever, and denies that they were designed to cheat or defraud said Gaffney; that when the note due the 10th of May, 1858, fell due, Gaffney did not pay it, and the land described in said mortgage was advertised for sale, under its provisions. That afterwards James P. Brown and Gaffney made an agreement touching said notes and mortgage, in and by which Gaffney agreed to release his equity of redemption, and
43 to pay the taxes then unpaid on the lands therein described; and, in consideration thereof, J. P. Brown agreed to pay Gaffney $500, and deliver him a span of horses, a wagon, harness, whiffle trees and neck yoke; that in pursuance thereof, Gaffney and his wife executed a deed of the premises to J. P. Brown, dated in May, 1858, and J. P. Brown paid to G. W. Richardson, for Gaffney, $425, retaining $75 to pay any
44 taxes then unpaid, and Richardson paid said money over to Gaffney, and also delivered Richardson, for Gaffney, the said horses, etc., who took charge of them at the request of Gaffney. That the taxes on said mortgaged premises amounted to about $30, and the balance of the said $75
45 he paid said Richardson for Gaffney, who was authorized by him to receive it; that the complainants are estopped by said deed from setting up any right or title to said premises. Denies all other matters and things, and fraud and combination charged in the bill.

DEPOSITIONS.

48 *Pierce Gaylord.*—Sworn March 18th, 1861, by complainants. I am
50 a botanic Physician. Attended upon Bernard Gaffney from 1856, till the time of his death. Several times in conversation with him during that time. I thought him very childish in his ways. His principal disease was in the head. The first attack of it was a catarrh in the head. It never changed from that until it became a local disease. The disease
51 of the head affects the whole nervous system. His disease drew the nerves of the face and eyes clean around. One eye was perfectly set wide open for six days before he died. It was apoplexy that killed him. I don't think he during all or any part of the time was capable of doing business. I never saw him do any business, or try to do any business while I was there. His wife always did the business. He had a previous attack of his disease before the one that caused his death,
52 several slight ones which grew worse and worse.

Peter L. Yoe.—Sworn March 18, 1861, by complainants.

53 (4.) In December, 1849, I was clerk for the firm of Gurnee, Hayden & Co. (5.) Bernard Gaffney was at that time indebted to that firm in the sum of $621. (6.) To secure the payment of it he gave an assignment of a Trustees' Illinois & Michigan Canal certificate of purchase for the premises in controversy, of which the first payment had been made, with which he gave two notes, one for $198.27 and the other for $422.49.
54 (7.) Gaffney did not pay any portion of that indebtedness. (8.) It was paid by J. L. Brown. (9.) The second note was paid by J. L. Brown. (10.) There was a discount made of one of the notes, it being paid
55 before maturity, for interest, $23.49. (15.) When Brown should pay Gurnee, Hayden & Co., they were directed by Gaffney to assign to Brown the canal trustees' certificate. That was assigned by the members of the firm individually some time after Brown had paid the amount, to him either by ~~hand~~ deed or on the certificate. (16.) I can't say that there
56 was any understanding between Gaffney and Brown in regard to the manner in which Brown was to hold this certificate. If there was I had

no knowledge of it. (17.) I think I understood from Brown himself, or got the impression some time after the original transaction, that these securities were assigned to Brown as a security for the money so advanced by Brown to G., H. & Co. for Gaffney. (18.) I know of B. Gaffney going to California. He was gone between 6 and 7 years.
57 (21.) I do not know of Brown's claiming an assignment of that certificate as a security for the money he had advanced for Gaffney. (22.) It was after the assignment to Brown that I got the impression he held it as security. (23.) I know nothing of B. Gaffney's health after his return from California to attract any particular attention different from what I had always known of him. (24.) Do you know of a settlement or an attempted settlement between B. Gaffney and J. L. Brown in regard to the money advanced by said Jeremiah L. Brown, before and after B. Gaffney went to California? A. I know of a settlement. (25.) Was
58 you present at that settlement? A. I made the settlement. (26.) J. L. Brown did not put into my hands any evidence of indebtedness. Upon reflection he may have done so, but I cannot fix it with any certainty, if he did they were given to Gaffney. (27.) That settlement was made by me on the basis of the propositions made by Gaffney. (28.) I do not know the amount of Gaffney's indebtedness to Brown at that time. (29.) I do not know what Brown then claimed to be due him from Gaffney. (30.) State then what that settlement was and how it
59 was carried out? A. According to the best of my knowledge it was as follows: Gaffney called on me at my place of business, and requested my aid in the settlement as between himself and J. L. Brown, authorizing me to make a proposition to Brown. Gaffney stated that he was willing in order to bring about an amicable settlement, to give Brown a sum of money equivalent to one half the value of the property in question, and I think he named he would be willing to give him five thousand dollars. I think that is the amount he named. I stated to Gaffney at that time I thought he placed too great a value upon the property, and convinced him in consideration of the times, that it was too high. I stated to him that I thought his proposition to give him half the property, according to my understanding of it, was fair, and thought Brown ought to accept of it. The question then came up how the property could be equally divided, as Gaffney had a dwelling which was not included in the proposition, situated upon the lot. It was then proposed to value the property per foot front on the street running east and west, which was Washington street, and to deed to Brown the east one-third of said lots, and to give a mortgage upon the other two-thirds to Brown, to secure three notes dated March 10, 1857, at one, two and three years, for $603.19 each, the interest to the maturity of the notes at ten per cent. per annum, enclosed in the face of the notes. Brown was induced after some considerable time to accept of the proposition. The proposition is this: Brown caused to be executed a deed conveying the entire property to Gaffney; Gaffney to execute a deed to James P. Brown, of DeKalb county, of the east one-third of the entire lots and a mortgage upon the west two-thirds of the entire lots to secure the notes above mentioned, said deeds and mortgages to be placed in my hands when all were execu-
60 ted, and by me to be placed upon record in the regular order. This to be a final and full settlement of all indebtedness as between the said Gaffney and J. L. Brown, all of which has been done, and at the time to the entire satisfaction of the parties interested, as they so stated to me. (31.) J. L. Brown did not deliver to me evidences of indebtedness used against Gaffney. I have no recollection of it at present. I was not requested to ask for anything that I recollect of. (32.) I never had any

conversation with J. P. Brown, to my recollection. J. L. Brown, I think once previous to the settlement, but I can't state the time, said that he or his son did claim to hold the legal and equitable title to the premises. (33) I do not know whether the proposition made by Gaffney was
61 brought about by this claim of the Browns. (34) I am unable to state the cash value of the premises at that time. (36) What consideration was then given to Gaffney for the three notes of $603 each, spoken of by you? A. The consideration was in the first place, a deed to the west 40 feet of the two lots, and to release Gaffney from the payment of any notes or demands held by J. L. Brown as against Gaffney up to the date of the deed, or in other words, full satisfaction of all demands of every description as against Gaffney. In order to be correctly understood, the consideration was, that Brown should deed to Gaffney the entire property, Gaffney re-deeding to Brown the east twenty feet, and executing a mortgage to Brown to secure the payment of the three notes above mentioned, said mortgage to be on the west forty feet of the lots, and for the other considerations above named in the answer. (37) To the best of my recollection the consideration mentioned in the deed from Gaffney to J. P. Brown of the east twenty feet is the price agreed upon by the parties.

Cross-Examination.—(1.) Exhibit No. 1, is executed by Gurnee, Hay-
63 den & Co. and Gaffney. (2.) It was given 13th March, 1850. (3.) That paper was delivered by Gaffney to Gurnee, Hayden & Co. (4.) I can't recollect whether there was another of the same tenor executed at same time. (5.) The writing across the face of the instrument, "Received, Chicago, March 17, 1851, one dollar in full satisfaction of this agreement, Gurnee, Hayden & Co." I signed myself, being authorized to use the name of the firm. (6.) I think that was placed there at the time Brown paid the indebtedness of Gaffney to Gurnee, Hayden & Co. (7.) The several sums of money mentioned in that contract were paid, the first endorsement of $164 30, I think Brown paid; also, the second of $198 22; they are both in my hand-writing. The remainder, if paid, was paid by
64 Brown. (8.) Exhibits 2, 3 and 4, are executed by B. Gaffney. (9.) The note marked Exhibit 2, was paid by Gurnee, Hayden & Co., and was charged in account to Gaffney, his account settled by note, and that note paid by
65 Brown. (It is admitted by counsel that a deed was executed by Gaffney and wife to G., H. & Co., of the premises, which has been lost, and a copy may be used in its place). (15.) Exhibit No. 5, is one of the deeds alluded to by me, on direct examination. (16.) Exhibit No. 6, is the mortgage from Gaffney to J. P. Brown, alluded to in my direct examin-
66 ation. (17.) Exhibits Nos. 7, 8, 9, are notes for $603 16, each made by Gaffney, secured by mortgage, Exhibit 6, and referred to in my previous examination. (18.) The parties Brown and Gaffney, after Gaffney's return from California, agreed to leave the matter out to me in difference between them, touching the property in controversy in this suit. (19.) I settled it for them by directing the execution of the deeds and mortgage and notes I have testified about. (20) C. B. Hosmer filled up the blanks in the printed forms that we used for the deeds, mortgage and notes. (21.) I directed him how to fill them up. (22.) And then the parties
67 executed them, and left them with me for record. (25.) I did not notice any imbecility of mind on the part of Gaffney at time of this settlement, incapacitating him from attending to business. *I considered him as competent to transact business then as he ever had been.*

Direct-Examination resumed.—(42.) The assignment of the certificate
68 and the quit-claim deed by Gaffney to G., H. & Co., were given as security for what he owed them, (44.) and they never to my knowledge

had any other right in the property, than as security for money. (45.) They never conveyed any other right, title, or interest in said premises, except as a mortgage security. (47.) I don't know any other way to
69 answer by what mode I arrived at the difference between Gaffney and Brown at the time I acted as their referee as I have spoken of, but in this manner Gaffney stated to me he would be willing to give Brown I think $5,000 to settle the matter, having previously stated to me that he was indebted to Brown in various amounts but which he did not specify, stating that the property was worth an amount which I now can't recollect, but at the time stated to him, I thought it to high a valuation for the times. I can only answer this question by repeating what I have
70 before stated in answer to the 30th Interrogaotry. (50.) I can't say that Gaffney was wild in regard to the value of the property, at the same time he put a higher valuation than I thought the times would warrant.

Cross-Examination resumed.—(26.) At the time the endorsement was made upon the face of Exhibit No. 1, Brown had paid up to Gurnee, Hayden & Co., all that was due upon that contract and was entitled to receive deed according to its terms. G., H. & Co. were directed by Gaffney to assign to Jeremiah L. Brown and convey all the right, title and interest which they had to the premises referred to, assigned and conveyed
71 to them by Gaffney. (27.) When Gurnee, Hayden & Co., was all paid up what was due under this contract they no longer held the property as a mortgage.

Ephriam H. Cummings, sworn for complainants March 18th, 1861.—I
72 know the property in controversy. (3.) In March, 1857, as near as I can recollect, I stated at that time the property was held at one hundred and fifty dollars a foot, being corner lots, inside lots not worth so much, in consideration of the improvements on it, I never said it could be sold for that for cash. (4.) I am of opinion that I placed the cash value of it at that time at $6,000, I think it was worth $6,000 at that time. (5.) The east 20 feet was not worth over $80 a foot in cash.

Cross-Examination.—I do not know of any property in that vicinity being sold for cash.

73 Abner Sutton, sworn for complaints March 19th, 1861. I knew Bernard Gaffney. Became acquainted with him shortly after his return from California. (3.) I saw him very frequently up to the time of his death. (4.) He was sick—he appeared to be a man, debilitated in body, and mind—decayed. He seemed to be a man when I met him, his head laying on the fence, he seemed to be worn out. If I would speak to him he would more act like a man idiotic than any other way, that is all I know of him. (5.) I never saw him to do any business and should not have thought him a safe man to have done business of the smallest kind.

75 *Cross-Examination.*—I never did any business with him but I have with his wife. He was sick pretty much all the time from the time he came back from California. (4.) It was said that he was a man that drank a great deal. I never saw him drink.

EXHIBITS REFERRED TO IN YOE'S DEPOSITION.

No. 1. Contract between Gurnee, Hayden & Co. of the first, and
85 Bernard Gaffney of the second part, and dated March 13, 1850, for the interest of G., H. & Co. in and to sub-lots 4 and 5, in lot 2, block 48, O. T. of Chicago, for $940 51, payable $164 30 September 1, 1850, $198 72 March 13, 1851, and $577 49 Sept. 1, 1851, and in meantime to pay taxes and assessments since the year 1848, and all other taxes, and keep buildings insured for $400, with covenants of special warranty only, en-
89 dorsed payments of $164 30, Sept. 13, 1850, and $198 15 Dec. 28, 1850,

85 and across the face "Received, Chicago, March 17, 1851, one dollar in full satisfaction of this agreement. Gurnee, Hayden & Co."

No. 2. Bernard Gaffney's note to the trustees of Illinois and Michigan canal for $155, dated Sept. 1, 1848, payable one year after date, with interest annually in advance, endorsed paid by G., H. & Co.

No. 3. Note by the same to the same, of same date, for $155, payable two years after date, with interest annually in advance.

92 No. 4. Note by same to same, of same date, for $155, payable three years after date, interest annually in advance.

95 No. 5. Deed, March 10, 1857, from Bernard Gaffney and wife to James P. Brown, consideration $2,200, conveys with warranty the east 20 feet of sub-lot 4, of lot 2, block 48, O. T. of Chicago. Acknowledged and recorded.

99 No. 6. Mortgage, date March 10, 1857, from B. Gaffney and wife to James P. Brown, recites the making of three notes by B. Gaffney to Brown, each for $603 16, payable in one, two and three years from date, and to secure the payment, conveys lot 5, and west 10 feet of lot 4 in lot 2, block 48, O. T. of Chicago. If any of notes are not paid when due then all are to be due, and power of sale in case of default in payment, acknowledged and recorded April 4, 1857. Endorsed an assignment from J. P. Brown to J. L. Brown March 5, 1858, consideration $1,800, and a re-assignment August 15, 1858, by J. L. B. to J. P. B.

105 Nos. 7, 8 and 9 are the notes described in the exhibit No. 6.

No. 10. Canal trustees certificate of purchase, dated Sept. 1, 1848, to Bernard Gaffney, purchase of sub lots 4 and 5, in lot 2, block 48, O. T. Chicago, for $6 20: that he has paid $155 on the principal, and $27 90 interest on residue in advance for one year, and given his three notes for balance, each $155, at one, two and three years, on payment of which and all taxes and assessments he would be entitled to a deed; as-
109 signments endorsed on it. 1. Gurnee, Hayden & Co., date March 17, 1851, to J. L. Brown for $1. 2. J. L. Brown to E. S. Gregory, date Aug. 11, 1851, for $1. 3. E. S. Gregory to J. L. Brown, date March 6, 1854, for $1. 4. J. L. Brown to J. P. Brown, date March 5, 1855, for $1. 5. B. Gaffney to G. H & Co. Feby 21, 1849 for 1.00

111 Under stipulation, two notes are introduced as those testified to by Richardson, each dated March 13, 1850, for $235, made by Bernard Gaffney to J. L. Brown, one on demand and the other one day after date.

93 Deed from James P. Brown to Bernard Gaffney, date March 10, 1857, consideration $4 000, conveys lots 4 and 5, in lot 2, in block 48, O. T. Chicago. Acknowledged and recorded.

113 Deed from Bernard Gaffney and wife to J. P. Brown, date May, 1858, consideration $1,500, conveys with warranty, lots 4 and 5, in lot 2, in in block 48, in O. T. Chicago. Acknowledged and recorded May 24, 1862.

116 Last will and testament of Bernard Gaffney, dated May 19, 1859, directs: 1st. That all his debts be paid. 2d. "I will and bequeath unto my beloved wife, Esther Eliza Gaffney, in case of my death, my said wife surviving, all the real estate to which I may be entitled to or shall die seized of whatever name, nature or description, during her natural life, and after her death to my children, James Gaffney, Judith Anne Gaffney, Mary Elizabeth Gaffney, Delia Marie Gaffney and Esther Eliza Gaffney, and their heirs and assigns, in fee simple forever." 3d. Devises all his personal property to his wife, and makes her his executrix.

Admitted to probate June 18, 1859.

119 *George W. Richardson.*—Deposition taken by the complainants, April 8th, 1861. (3) Was present at a trial in Chicago, between James P.

120 Brown, plaintiff, and Esther E. Gaffney, defendant, about the 23rd Nov., 1860. (4) Heard J. L. Brown sworn as a witness on the trial of that cause. (5) I think I heard his evidence. (6) Heard a question propounded to him as to the amount he had advanced to Gurnee Hayden & Co., from B. Gaffney. (7) I could not recollect exactly how much he
121 said, but think it was $650. (8) I heard a question propounded to him as to the whole amount of Gaffney's indebtedness to J. L. Brown on Gaffney's return from California. I understood him to say it was $950. (9) I was acquainted with the pecuniary circumstances of James P. Brown from 1855 to 1858. He was worth $2,000. My means of know-
122 ing was, that I lived close by him during that time. (10) His property consisted of eighty acres of land that he got from his father, J. L. Brown (12) I don't know the consideration that he paid for it. (13) He was about 21 or 22 years old when he got this land. Int. 15. "Do you
123 know from conversation with Jeremiah L. Brown or of your own knowledge what securities he held to secure the money you spoke of in the eighth interrogatory, if so state fully and your means of knowledge? Objected to by defendant. A. I have got the impression from talk that I have heard with both parties that he held this property in Chicago
124 as security." (16.) I know the property in controversy. (20.) I was instructed by J. L. Brown to make Gaffney an offer of $500, a pair of horses and a wagon for his right in this property I suppose. (22.) Brown at the time stated he might do worse, or something to that effect. (23.) I stated Brown's proposition to Gaffney. He at first said he would do nothing of the kind, but before I left Chicago concluded he could do nothing else as he said, for it would be sold in a few days beyond
125 redemption, so he made out a deed and signed it, with the instructions that I should deliver it up on receiving $500, a pair of horses and a wagon, and not till I received them. (24.) This paper writing is the deed. It is dated May 20, 1858, executed by B. Gaffney and wife, acknowledged before C. D. Fitch. The description of the land is Sublots 4 and 5, in Lot 2, in Block 48, Original Town of Chicago. (25.) I
126 stated to Gaffney the words Brown stated to me about his not accepting the proposition. (26.) The conditions upon which I was to deliver the deed were not exactly complied with. I received $425 in money and horses and wagon. (27.) I don't think I made known to J. L. or J. P. Brown the conditions upon which I was authorized to deliver the deed before they got possession of it. I think I made them known to them on the 22d or 23d of May, 1858. (28.) I did deliver the deed. (29.) I made the delivery of the deed to them before they performed on their part, because Brown stated that there were taxes which should be paid, for
127 which the $75 was kept back. (30.) I think Brown said something about the taxes in his proposition to Gaffney, but don't recollect what it was. (31.) I spoke to Gaffney about these taxes, but he said he would not pay them, and if I delivered up the deed I must get the $500, horses and wagon and as much more as I could. (32). I made known to the Browns the entire conditions upon which I was authorized to
128 deliver up the deed. (33.) They never fully complied with these conditions. (34.) The circumstances under which I delivered the deed were as follows: I met J. L. Brown a short distance east of J. P. Brown's residence. I told him I had got the deed. He took the deed and looked at it. We then passed down about half a mile west and met J. P. Brown. J. L. Brown then took the money out of his pocket and both counted it, J. P. Brown handed me $425. I told him Gaffney requested me not to give up the deed till I received $500, horses and wagon. Well, there was something said about the amount

of taxes due on the lots. This $75 kept to pay them, as I understood it. I think Brown said he would not keep that unless I agreed to it, or something to that amount. (35.) I let Brown take the deed into his
129 possession to look at it, I suppose. (36.) At the time I let them take it I did not expect them to hold it unless they complied with said Gaffney's instructions. (37) About a year ago, this last fall, I received a letter from Chicago stating to me to deliver up the property and money to Brown if he would return the deed. I went down to Brown's and told them that the property and money was ready for them if they would deliver up the deed. I think they stated to me they could not tell, but that one of them would come and see me, I think the next day if they
130 concluded to do it. (38) Gaffney said I did wrong in delivering up the deed until I received the full $500. (42) I knew the condition of the health of Gaffney during the years 1857 and 1858. I suppose he had the consumption. He appeared to me to be weak in body and mind. (43) Well, I should hardly think that he was, during all or some
131 part of that time capable of doing business. (44) At the time the deed was made, I believe property about there was valued at $100 per foot.

Cross-Examination.—(1.) J. L. Brown during his examination on the 23d of Nov., 1860, swore positively that he did not originally receive the premises in controversy in this suit in mortgage or to secure him for certain indebtedness due him from B. Gaffney, and said that Bernard Gaffney sold his interest in said premises to said Brown absolutely, in consideration that Brown would furnish him, Gaffney, the means on credit to go
132 to California with. This offer from Brown to Gaffney was made in May, 1857. (3.) Mrs. Gaffney had been out a few days before. (4.) And I carried some word from Mrs. G. to Brown about this property. (5.) I think it was a description of some land, she said was offered for it, Brown
133 then made the proposal, requested me to take it in. (7.) I don't recollect that Mrs. Gaffney sent any word, but I think I told Brown Mrs. Gaffney said they would pay up that note that was then due if they would let the others run the length of time they were to run in the first place. (17.)
136 The complainant is a sister of mine. (19.) I paid the $425 I got from Brown, to Gaffney last of May or first of June, 1858, at my house in
137 Genoa. (20.) Gaffney took it away with him. (21.) I told Gaffney at the time I paid it to him that Brown had only paid me $425. I had kept the $75 to pay taxes with. (22.) received horses, wagon and also an old harness, neck yoke, and whiffletrees. (23.) I informed Gaffney at
138 the time I paid him the money what property I got from Brown for him. (25.) The balance of the $75, after paying taxes, was to be paid to me for Gaffney. I informed Gaffney of that arrangement when I paid him the money. (28.) Of this $75, Brown, in the summer of 1858, paid me
139 $43.21. (29.) "Exhibit A" is in Gaffney's hand-writing, signed by him, written to me and received some time in the summer of 1858. My impression is, after I paid him the money. (31.) The part of the letter
140 which is cut off from the exhibit as produced, had nothing to do with the matter that is contained in it, as it now is some private matters in that part. The letter or exhibit in the condition it now is, is as follows:

"Now about those notes and mortgages that Brown holds against me, I want you to get them if you can, and keep the horses and wagon until you hear from me again. We are all well but a little disappointed to find the deed you gave Brown is here in the recorder's office.

"B. GAFFNEY."

143 (42.) The paper marked exhibit B, is in B. Gaffney's hand writing.—(43.) It was written to me and sent by mail, I received it, I can't state the month, left in blank, but think it is May or June.

145 EXHIBIT B.

"TUESDAY 25, Chicago, 1858.

"FRIEND WASHINGTON:—

I put a letter in the post office for you on Sunday, and it was to satisfy Mr. Stafford—it is of no account, burn it up. About getting money here, I spoke to Stafford this day again so you would not go to any trouble until I was better satisfied that you can get it, and he tells me this day that you can have the money by getting a true transcript of the property, and certified to by the County Clerk. It is hard to get money here on real estate out of the city or county, but you complying with the above you can have it, he promises me. About this affair between Brown and me, you take them horses and wagon into your possession and all the rest you can get. There is one thing more that I forgotten when I was to your house, I was so confused I could not think of anything, and that is, about them notes he holds against me, together with
146 the mortgage; now he knew well them ought to be given up as soon as you handed him the deed, but he is so full of low mean trickery he always wants the advantage. Now if there is any way you can get these notes and mortgage without trouble, I wish you would get them and send them to me as soon as possible. All things between you and me must be confidential—you will hear from me often and I want to hear from you as soon as possible.

B. GAFFNEY."

147 *Direct examination resumed.*—(45.) During the trial in November, 1860, two notes were produced which Brown stated were given for money and a pair of horses at the time Gaffney went to California. (46.) The amount of money and value of horses Brown stated would not exceed $300. (48.) The notes Mrs. Gaffney said they would pay up, if Brown would let the others run, was one of three notes which were given on
148 a compromise betwixt Gaffney and Brown about this property. (49.) Brown, in reply to this, said he would not receive the money and let the others run. (50.) A man, whose name I forgot, offered Gaffney 80 acres of land for the property in controversy; he stated it was worth $2,000, some money also offered for the property in controversy in this suit, but I forgot the amount. The money and land offered was in neighborhood
149 of $4,000; but I think this was to be whole forty feet. (54.) The value of the property received from Brown by me was between $200 and $300.
151 60. In a conversation I had with J. L. Brown and E. L. Mayo, in Mayo's office. Mayo took down in writing my statement in regard to the transaction between Brown and Gaffney, and after he had taken it down he read it over to me. There was at that time no litigation between the parties that I know of. I knew their object in taking this down, from what passed between us at the time; Mayo the counsel for the
153 defense, here present, is the person who took it down. (69.) The deed was filed for record two or three days after Brown got it. (70.) It was recorded before I got the letters marked A and B. (71.) I did not receive either of those letters until after Gaffney had been at my house
154 and got the money. (72.) I think Gaffney got the money before Brown placed the deed upon record. (73.) This deed was executed about 12 or 1 o'clock at Fitch's office, in Chicago. (74.) Brown then resided at Genoa. I went from Chicago to De Kalb county the day the deed was executed. (75.) Some time the next day the Brown's got the deed.
155 (76.) and the next day after that, Gaffney was at my house, and got the $425. (81.) Gaffney did not sanction the arrangement that I had made; he said at the time he got the money that I did wrong in giving up the deed until I received the $500 in money. (82.) He took the money into

Chicago and deposited it in a bank, and brought me back the certificates
156 of deposit, and told me to keep them until the matter was settled, or let Brown have them if they would take them. I made known to the Browns soon after what Gaffney had said about the transaction. (84.) and I offered to return the money and property to the Browns; I think
157 they refused to accept it. 87.) The property and money has been with me, and I have kept it in readiness to be paid over to the Browns on reasonable notice. (88.) At the time I offered to deliver the money to the Browns, there was no objection made by them as to its kind or quality.

Cross examination resumed.—I did not return to Chicago with Gaffney at time I paid him the $425. (56.) I saw him soon afterwards, but cannot state how soon; but after I received the letters A. and B. (59.) I have not got the certificates of deposits Gaffney let me have. The
159 money was drawn on it in Chicago by Gaffney. (63.) I did not show the Browns any money when I offered to return the property and money to them. (64.) I kept the certificate about four or five months, when the money was drawn in August or September, 1858.

Direct resumed.—(90.) Gaffney drew the money and gave it to me,
160 with instructions to keep it till the thing was settled, unless Brown would take it; I think I was with him when he drew the money; I think I offered that money to the Browns.

161 *Lionel W. Richardson.*—Deposition taken April 10, 1861, for complainants.—I reside in Roscoe, Winnebago county; know the property in controversy. B. Gaffney was a householder, had a family, and resided on it in 1856. I know of his going to California, and his return from
163 there in 1856. (11.) He was very weak and feeble during all the time from his return from California, to his death. (12.) I should not consider that he was during all or any portion of that time, a man capable of doing or transacting his ordinary business affairs as a prudent and
164 careful man ought to do. (13.) I do not know that I can state the cause of his incapability, but suppose it to be from a constitution broken down and worn out by disease. I base my opinion upon his general appearance and conversation at different times; he would sometimes appear very flighty in his conversation, sometimes building one castle, at other times others; at sometimes would be very gay, or almost silly, at other times dejected. (14.) I have talked with him at different times in relation to his property in controversy, and in relation to business, when in
165 my opinion, he was very much lacking in judgment. (15.) In those conversations, I think he had wild and flighty ideas in regard to the value of property. (16.) I have heard him talk of going into the grocery business on a large scale at one time; and at another, of going into the post office at Chicago, as one of the head clerks, which I considered at the time as being rather flighty. (17.) At times he appeared to use his faculties without much exertion, at other times would appear dull and stupid; I have lived at Roscoe since 1854.

167 *William M. Richardson*, deposition taken for complainants, April 10, 1861.—I reside at Roscoe. Knew Bernard Gaffney and the property in controversy. Mrs. Gaffney is my sister. (11.) I saw Gaffney after his return from California at my house in Roscoe. (12.) His health was very poor in body and mind. (13). His mind at that time would not compare well with many other men. He could not talk very well at that time, on account of his lungs. Talking would put him out of breath—his lungs were affected. (14.) I don't think he was then capable of doing business. (15.) Int.—Was his mind at that time, in such condition that a designing man could not have taken the advantage of him

easily, or otherwise, and if otherwise, how otherwise? Ans.—Ithink they could. (16.) I had a conversation with J. L. Brown, while Gaffney was absent in California. Brown stated that he had seen Mr. Yoe, and that
171 he had purchased a part, or all of the demands of Mr. Gurney, against Gaffney, and that he had done a good thing in purchasing it. Mr. Yoe intended to keep it from Mr. Gaffney. (18.) I think I did have other conversations with J. L. Brown. "I learned that he held the property of B. Gaffney in trust, and if Mr. G. done well in California, and would pay him, (Brown,) when he returned, what Brown had paid on the place, with the interest, Gaffney was to have it. He asked me if I thought Gaffney would ever make enough to pay it, or would ever come back; that he hoped he would do well, while he was there, or something to that effect." (19.) Int.—Did Brown claim to you that he had any title in the property, except as a security for the money he had advanced for Gaffney? Ans.—He did not. June 15, 1861, order of court giving leave to amend bill to which debts excepted.

179 Second amended bill, filed June 15, 1861,—

Strikes out all the original bill except those paragraphs to the letter B,
181 in the abstract of the original and to the letter A of the amendments to it, and then proceeds to state: that on or about the 13th March, 1850, B. G. being about to go to California, borrowed of Gurnee, Hayden & Co., some money, for which he executed to them his notes for $621. But whether they let him have that amount, or assumed the payment of the amount he owed the canal trustees, and let him have the residue in money, they do not know, but charge the latter to be the case, and that G., H. & Co., on that occasion only loaned to him in fact, $250, and assumed the payment of Gaffney's notes to the canal trustees for the residue; and for the purpose of securing the payment of said notes, Gaffney transferred to
182 them said certificate by assignment thereon, by way of mortgage. And also for same purpose on same day, gave them a quit-claim deed of his interest in said lots. That by way of defeasance of said deed, Gurnee, Hayden & Co., entered into an article of agreement, dated same day for the conveyance of said lots, to said Gaffney, on the payment of a certain
183 sum of money, on a certain day, therein specified, which assignment, quit-claim deed and contract, formed part of one transaction and was in its nature a mortgage, and not a conditional sale. That Jeremiah L. Brown, knowing of these transactions between Gurnee, Hayden & Co. and Gaff-
184 ney—being a brother-in-law of Gaffney's, they having married sisters—offered to advance, by way of loaned money, to Gaffney, to enable him to go to California and to pay off the encumbrance to Gurnee, Hayden & Co. And it was agreed between them, that the said J. L. Brown, should advance a sum of money to Gaffney, the precise amount the complainants cannot state, let Gaffney have a couple of horses, or other personal property, which, with the money, was valued at $235, for which Gaffney executed two notes of $235 each, one payable on demand, and the other one day after date, the entire sum of one of these notes being usurious, and to secure said real estate from forfeiture, Gaffney should execute to Brown an assignment of said contract and direct Gurnee, Hayden & Co. to assign the said certificate to Brown, who was to hold it for the purposes aforesaid, and for the money he might advance, to secure the legal title to
186 himself; "*for the aforesaid purpose and no other, the said Gaffney executed the two several notes aforesaid, to said Brown, assigned the obligation or defeasance of Gurnee, Hayden & Co. to said Brown, and directed the said Gurnee, Hayden & Co., to convey their said interest to him, as aforesaid.*" That this assignment to Brown and direction to Gurnee, Hayden & Co., to convey to him, was in the nature of a mortgage, and

187 to secure him, for his advance made under said agreement. That by
means of the assignment, of said obligation, Brown obtained from Gurnee,
Hayden & Co., the transfer of the said certificate, and a quit-claim deed
of the said lots. That Brown, with the intent to defraud Gaffney, with-
out any consideration, on the 11th of August, 1851, assigned said certifi-
188 cate to Gregory, a relative of his, who on the 6th of March, 1854, re-as-
signed the same to J. L. Brown, by an endorsement thereon. That in
the beginning of the year, 1855, with the same fraudulent intent, the said
J. L. Brown, assigned said canal certificate, without any consideration,
to his son J. P. Brown, by endorsement thereon, dated March 5th,
1855, and made in the absence of said James P. Brown. That on the
8th June, 1855, J. L. Brown, to carry out his fraudulent design, presented
said certificate, so endorsed and assigned, to the Board of Trustees, of the
Illinois & Michgan canal, and obtained a deed from them, of the lots to
190 his said son, J. P. Brown. That said James P., was then under age,
and an inmate of his father's house. That during all this time, Gaffney
and his family resided on the premises, before he went to California,
having built a house, and made some improvements thereon, and con-
tinued in the possession thereof, to the time of his death, in 1859, exercis-
ing an absolute ownership over the same, with the knowledge of said
Browns. That J. P. Brown knew his father held the same, as security
for advances made by him. That Gaffney, in the latter part of 1856,
returned from California, perfectly broken down in health, and his intel-
192 lect so shattered and decayed, from sickness, misfortune and pecuniary
embarrassment, so that he was reduced intellectually to perfect imbecility,
and finding that Brown had procured the title of the lots, to be taken in
his son's name, and being threatened with an action of ejectment, he
proposed to the Browns, that if they would state the account of the
money and property advanced by J. L. Brown, to G., H. & Co., to
the canal Trustees, to Gaffney, and for taxes, and any other sum or sums
of money advanced on account of said sub-lots, with legal interest thereon,
he offered to pay the same, or let the property be sold to satisfy
the same. But they refused so to do. That Gaffney, being
193 reduced by their power over him, to the lowest state of abject
humility and despair, so that he sometimes offered them one-half of
the property, then worth from $8,000 to $10,000, and again offering
through Yoe to pay them $5,000, at last yielded to the terms dictated to
him by said Brown, which was that J. P. Brown should convey to Gaffney
the whole of the lots, that Gaffney should at the same time reconvey to
J. P. Brown the east 20 feet and give his three notes for $603.16 each
payable in one, two and three years, and a mortgage on the remaining forty
feet, to secure their payment, with a provision if any of said notes fell due
194 and remain unpaid, then they should all be due with power of sale, which
deeds, notes and mortgage were executed, dated the 10th of March, 1857.
That this was a hard and unconscionable bargain that they made with
him by taking advantage of his necessities. The 20 feet deeded back by
Gaffney to Brown was valued by them at $2,200. That afterwards J. P.
195 Brown assigned to J. L. Brown the said notes and mortgage, without
any consideration, and afterwards J. L. Brown reassigned them to J. P.
Brown without any consideration. That J. L. Brown was and still is the
real party in interest, that J. P. Brown has no real interest but has been
the tool of his father in carrying out his design of cheating Gaffney.—
That when the said first note fell due, Brown threatened to sell under his
196 mortgage the forty feet of ground and proceeded to advertise the same
for sale under the power in said mortgage, that while this was pending J.
P. Brown proposed through J. L. Brown to Gaffney that if *he and his*

wife would relinquish his right to redeem and give an absolute deed of the forty feet mortgage he would pay them $500 *and give him two* horses, a wagon and harness. That this offer was made for the purpose of getting rid of the liabilities they were under in consequence of the hard and unconscionable bargain they had made with him in obtaining said mortgage and Gaffney in pecuniary difficulty and embarrased having no means to extricate himself, agreed orally that if J. P. Brown would deposit with G. W. Richardson $500 to be delivered to Gaffney, and said horses and wagon, that then a deed of conveyance that had been prepared, execu-
198 ted and acknowledged by Gaffney and wife and left with Richardson as an escrow to be delivered upon said terms. But said deed got into the hands of said Brown surreptitiously and contrary to the terms upon which Gaffney authorized Richardson to deliver the same to Brown. That true it is they did leave the sum of $425 with Richardson, but Richardson only let him have the deed for a temporary purpose and with a promise to return. That they placed the same upon record and insist that by virtue thereof they are now the owners of said property. That Gaffney never did receive the money as a compliance with said proposition, that the same was in due time tendered back to the Browns which they refused to receive. That Gaffney or Richardson deposited the money and kept it upon deposit for the purpose of its being returned to Browns. That it was finally withdrawn from deposit and placed with Richardson to be tendered to the Browns, but they have both refused to receive it,
199 where it remains for their benefit and can be had by calling for the same. That Gaffney never did receive any portion of the personal property, and if Richardson gave up said deed to the Browns, it was done without authority. That said agreement to take $500 was a parole executory agreement never executed. That said deed was obtained by the fraud of the defendants, and the said agreement was made with Gaffney when he was in embarrassed circumstances, in weak, feeble and imbecile state of mind, and in the power of the said Browns. That at September term of District Court of 1858, J. P. Brown commenced an action of ejectment against Gaffney, and after his death the complainants being
200 made parties defendant at the November term, 1860, he recovered judgment against them and has sued out a writ of possession and is about to turn them out of possession. That Esther E. Gaffney, as the widow of Bernard Gaffney, is entitled to a homestead in said premises, they being one close, and occupied by said Gaffney, in his lifetime, and by her and
201 her children since as such, and that she has never waived or released it, and that none of said instruments given to the said Browns, were given for the purchase money of said premises, or any improvement thereon.—That Bernard Gaffney died on the 3d May, 1859, having made a will leaving all his property real and personal to said Esther E., during her life with remainder over to his children, the other complainants in this bill. That the Browns have fraudulently attempted to change what was intended by Gaffney as a mortgage into an absolute sale. Prayer.—Answer
205 under oath waived, for injunction to restrain execution of writ of possession, for an account of all moneys advanced by Brown to Gaffney. That the said deeds and writings between said Brown and Gaffney, be taken and deemed as one transaction and considered as a mortgage. That J. P. Brown be deemed charged with notice of complainants equities, and that they be allowed a day in Court to redeem upon such terms and time, as the Court shall deem reasonable. That upon payment of redemption money then the deed from G., H. & Co., to J. L. Brown, and from canal trustees to J. P. Brown, and from Gaffney to J. P. Brown for the east 20 feet, and the mortgage to J. P. Brown for the west 40 feet, and the deed left

with Richardson as an escrow, all be taken and held as void in law and equity, and that said injunction be perpetual and for further *general* relief.

210 This is not signed by the complainants, or sworn to.

Benjamin P. Brown.—Examined by defendants, August 26, 1861. I reside at Genoa, DeKalb county, Illinois. Am a brother of J. L. Brown. Knew Bernard Gaffney from about 1846; before he went to California and after his return. Was well acquainted with him. After his return from California, his mind was good as it ever was so far as I know. Had two conversations with him in DeKalb county, one in corn-planting time, 1858, and the other on the 31st July, 1858. Talked with him one time about ten minutes and the other an hour. Did not see anything in his conversation denoting weakness of mind.

212 On cross-examination the witness gives more at length the substance of his conversations with Gaffney.

216 *Jared Preston.*—Examined by defendants, August 26, 1861. I reside at Genoa, in DeKalb county. Knew Bernard Gaffney in his lifetime. Knew of his going to California, and was well acquainted with him. Had conversation with him after his return, but no business. The state of his mind was good, so far as I observed. Bodily health was not very good. I thought him more capable of doing business after his return than before. He was keener. I lived in 1858, about twelve rods from G. W. Richardson's house. I saw Gaffney there from two to four weeks in July, 1858, almost every day. I was intimate in the family of Richardson, and never heard anything about Gaffney's being weak minded.

222 *Ephraim Hall.*—Examined August 26, 1861. I reside at Genoa. I knew Gaffney twelve or fifteen years, saw him from six to a dozen times a year; have stayed several times at his house. I saw him a few times after his return from California. I went to his house in June, 1858. J. L. Brown said J. P. Brown wanted me to go there to see when he could have possession of the house he lived in. He told me he would let me know next morning; that he wanted to see his lawyer. The next morning he said if Brown wanted to know anything, to put his questions in writing and he would answer in writing. Talked with him about other matters. His conversation showed that he was perfectly sane on all subjects that I conversed with him about. His bodily health was poor. Not so but what he walked about erect as he did before he went to California.

231 *Edward L. Mayo.*—Examined by Defendants, August 26, 1861. I had a number of conversations with Gaffney after his return from California; was present at the first trial of the ejectment suit. Gaffney was also present. Never saw anything that led me to think he had not sufficient capacity of mind to transact ordinary business. His bodily health was poor. I regarded him as a pretty middling sharp Irishman. I was present at the trial of the ejectment suits about the property in controversy. J. L. Brown was sworn as a witness at all three of the
234 trials in the ejectment suit. I recollect J. L. Brown's attention being called to the payment of money by him to Gurnee, Hayden, & Co., on a contract touching the land in controversy in this suit, particularly upon the last trial. My recollection is that he then stated that he paid several hundred dollars to G., H. & Co., or perhaps to P. L. Yoe for them, on a contract formerly held by B. Gaffney, given to him by the Canal Trustees, assigned by Gaffney to G., H. & Co., and that he paid it on his own account. J. L. Brown's attention at that time was called to

a contract between Gaffney and Gurnee, Hayden & Co., and he said he paid the whole of what was due them on that contract, unless perhaps a small deduction was made in consideration of payment before it
237 was due. (15.) I recollect his attention being called directly then, as to for whom he had paid this money. (16.) He said in reply that he paid it on his own account. He said when Gaffney wanted to go to California, Gaffney wanted him (Brown) to fit him out, and he told him that if he would do so, that he would give him his contract which he held from Gurnee, Hayden & Co. That he did furnish him with some means to go with, and took from Gaffney an assignment of the contract. (17.) He also stated that Gaffney owed him the whole amount of the outfit when he returned from California. That he was to have the premises in controversy by paying for them. That these matters had all been settled up in Feb. or March, 1857. (18.) That he,(Brown) was to have the premises in question by paying what was due upon them. That he did not consider at the time he made the contract with Gaffney, that the premises were worth the amount of money he would have to pay out to get them. When Gaffney returned from California he claimed the premises were his. That the sum he let Gaffney have to fit him out for California was by their contract actually his due. That that sum and the sum or sums he paid G., H. & Co., had nothing to do with each other in reality.

Cross-Examined.—I have acted as attorney for both the defendants in
241 this cause. (2.) I think at the examination above alluded to, J. L. Brown stated that he let Gaffney have, when he went to California, a span of horses and some other property, and perhaps, some money, and in the
242 whole, not exceeding $300 in value. (3.) His attention was also called to the notes given for the property, which together, amounted to a good deal more than the value of the property and money as stated by him to be. (5.)
243 My recollection is, that I understood him there to say, that the consideration for the transfer of the contract from G., H. & Co., to Gaffney was, that he was to pay to the canal trustees the balance due on the purchase money, and what he, Gaffney, owed G., H. & Co., and should furnish him, Gaffney, on credit, with an outfit to California. I understood him to say on the last trial, that Gaffney, when he returned from California, owed him nothing but the two notes given for the outfit.

246 *Daniel H. Kelly*—Examined Aug. 27, 1861, by defendants.—I reside in the town of Genoa. Knew Bernard Gaffney; met him at the house of G. W. Richardson, in 1858; saw him then several times in the course of two weeks, so as to have become well acquainted with him; had several conversations; (gives one that lasted half a day). I saw nothing in the course of my intercourse with him showing in him any weakness of mind, or incapacity to do the ordinary business of life.

Jeremiah L. Brown—Examined by defendants August 27, 1861.—
249 Exhibits 1 and 2. Mutual releases between Jeremiah L. Brown and James P. Brown—proved by witness. (4.) I knew Bernard Gaffney before he went to California. I let him have property for his outfit; I then knew of his holding a contract in writing between him and Gurnee, Hayden & Co., for the sale by them to him of the lands in controversy
251 in this suit. (8.) This contract was assigned to me on condition that I would help him off—in the year 1850. (9.) He assigned it to me, all his right and interest in the bond, upon my furnishing him means to go to
252 California with, upon credit. (10.) I furnished him means, horses and money. The money did not exceed $100. He secured the payment for them by his notes. I took an assignment of the bond, which was endorsed upon it. (14.) I let Peter L. Yoe have it when I took up the

notes alluded to in the bond. I paid the amounts to be paid G., H. &
253 Co., under that paper. (16.) When I paid them up, they assigned to me a certificate of sale given by the canal trustees to B. Gaffney, and by him assigned to them, they made me or James a deed of the premises in question, and gave me a bond like the one I give up to them, but there was no assignment on the bond I received back like the one they took of me. (18.) After Gaffney's return from California, papers passed between him and James P. Brown, touching these premises. Barney Gaffney and J. P. Brown, by mutual agreement, selected Peter L. Yoe, of Chicago, to settle all matters of difference between them, and he done so, by having James give to Gaffney a deed of the whole of the premises in question, and by Gaffney's deeding back to James the east 20 feet, and mortgaging to James the west 40 feet, for between $1800 and $1900.
254 That was to settle up every thing up to that time. (19.) I at that time surrendered the notes Gaffney gave to me when he went to California; and I think all the notes that I paid up spoken of in the bond to Peter L. Yoe, at the time of the completion of the settlement. (20.) He was to give them up to Gaffney. 21. This was to be a settlement of everything between Gaffney on the one side, and James P. Brown and myself on the other. The papers and documents I allude to were produced,
255 and verified by Peter L. Yoe on his examination, before the master in Chicago.

Cross-Examination.—I furnished Gaffney two horses in his outfit. We valued them at $160 to $180, and I let him have not quite $100 in money. He owed me a little besides. The horses and money were the means I furnished him for his outfit. I took two notes from him, something over $200 each, think $235 each—one payable on demand, and the other one day after date. He gave me an assignment of the deed, if I would fit him out for California, and wait upon him. I did so. The notes were taken for the property and
258 money. (12.) The full amount I paid Gurnee, Hayden & Co., was about $940, including Gaffney's notes to them, about $600, and the notes to the canal Trustees. I think Gurnee, Hayden & Co., took the money and paid them, and took up the first note, and they sent me to take up the other.

260 *Direct resumed.*—The notes Gaffney gave to me, were produced on the last trial of the ejectment suit, and identified by me. I was sworn at all three of the trials, at the instance of the Gaffneys. Peter L. Yoe, was also examined by them, at the last trial.

262 EXHIBIT NO. 1.

Alluded to by J. L. Brown, is a release from him to J. P. Brown, and
264 No. 2., is a release from J. P. Brown, to J. L. Brown, both dated Aug. 26, 1861.

Philo Carpenter.—Sworn for complainants in open court at the hearing of the cause, November 18, 1861. (8.) I should say after B. Gaffney returned from California, he appeared to be in very feeble health, both of body and mind, from conversation I had with him at different times. I saw him at his house, and saw him frequently on the street, and noticed a marked change between what he was before he went, and after
267 his return, up to the time of his death. (9.) I do not know that I could separate the weakness of his mind, as it appeared to me, from the weakness of his body. I did intend on one occasion, to ask him for a small sum of money, which I had loaned his family during his absence in California, but after conversing with him, and finding him so feeble, as I should judge, in body and mind, that I concluded not to ask him for it. (10.) I was in the habit of riding frequently past his resi-

dence, and saw him a good many times on the street. I do not know that I can answer more definite than that, as to how often I saw and conversed with him, from the time he came back, to his death—I have previously stated, that I had called on him at least once at his own house. (11.) I noticed a change in him, from the time I first discovered the feebleness I speak of—I discovered it more particularly in his body, as I saw him walking in the street. (12.) The change, I should say, was a continued
268 decline in bodily strength. (13.) For some time previous to his death, I had no conversation with him, and could not judge, as to any change in his mind. (14.) After Gaffney went to California, his family were in rather embarrassed circumstances. (15.) I know of no other property he had, besides this little homestead.

Cross-Examination.—1 Int.—Read this letter marked "B," in the deposition of G. W. Richardson in this cause, and state whether at the time of the conversation, you here mentioned you thought him capable of writ-
269 ing such a letter. Ans.—Well, I should say he might or might not have been. That is a point that had not occurred to me, to judge of his capacity to write a communication.

Henry Whitbeck, sworn for complainants in open Court.—(1.) I
270 was acquainted with Gaffney. After his return from California he was in feeble health. I don't know as to his mind whether it was impaired any in consequence of his health or not. I don't know about that. (4.) I had no means of knowing his capacity for doing business. (5.) I had some knowledge of his circumstances through an intimacy with his family—understood it to be rather limited. While he was gone to California his family were assisted by me and my family. He remained in embarrassed circumstances till his death.

273 *John M. Carey*—Sworn for complainants in open court, Nov. 19, 1861. —I knew Bernard Gaffney after his return from California. (3.) He was very feeble for a year or two before his death. (4.) I would say he was
274 very feeble physically, so much so that it was almost impossible for him to walk. He passed most of the time in the house sitting in his chair. He sometimes went out of the gate into the street, and sometimes went as far as the post office; but he had to walk exceeding slow, tottering. I was first impressed with his physical weakness, by walking over to town with him, about six months before he died; when he was so weak and tottered so, that I was afraid he would fall down. Although I was in the house with him every day, for about three years before he died, I was never so aware of his weakness, because I seldom stepped out of the house with him. He was very singular in his actions and daily conduct; at times he was morose, uncommunicative,—would set in his chair for days, without hardly raising his eyes when I came in to meals; at other times he seemed to be different, communicative as soon as I came
276 into the house, and would ask what the news was, and on very slight provocation, he would curse. I regarded him as entirely incapable of
275 transacting business which required judgment. (5.) I should say, I had seen him when he seemed to have been taking beer or spirituous liquors, he seemed more communicative and free. On one occasion, I remarked that he had been down town about a year before he died, he went to see a man with whom he had been talking of trading his property, for a place in the country. When he returned, I asked him how he made out, and he came near me, so I could hear his voice, and he smelt very strong, as though he had been drinking; he was very communicative. (6.) He was sad and dejected in his appearance. (7.) Was that sadness and dejection when he was free from drinking, or when he drank? That was constantly. He varied at times in his feelings, I should judge

from his general debility and weakness, and the situation of his circumstances; sometimes he supposed that he would be able to overcome the disease which affected him; he seemed anxious to recover; at other times when his case seemed more hopeless, he appeared dejected and sullen, and would sleep for hours in his chair. (8.) I only know of his drinking from the smell of his breath.

276 *By the Court.* (1.) He died two years ago last May. His conversations took place within a year and a half or two years before he died. I was in the house with him as a boarder from the time he returned from California most of the time. I was absent three months. (2.) The feebleness affected his voice very much (3.) through physical weakness—want of power to exercise it. I was deaf at that time as now. He could converse with others in a low tone, but it exhausted him to talk with me. I had to go close to him.

277 *Charles H. Reed.*—Sworn by defendants in open Court. I am an attorney-at-law. Assisted for the Gaffneys in the trial of the ejectment suit in November, 1860. J. L. Brown was sworn by the Gaffneys.

SUPERIOR COURT OF CHICAGO.

ESTHER E. GAFFNEY, *et. al.*,

vs. } *In Chancery.*

279

JAMES P. BROWN, and
JEREMIAH L. BROWN.

This cause coming on to be heard upon the bill and amended bill of complaint, answers of defendants, James P. Brown, and Jeremiah L. Brown, the depositions, exhibits and other proofs on file in the cause, and documentary proofs referred to in bill and amended bill and answers, and considered and taken by the parties as on file it being agreed and stipulated by the solicitors on both sides, that all deeds and instruments of writing or documentary evidence on file or of record in the Recorder's office of Cook county, or any of the Courts of said county, referred to as proofs or exhibits, but not on file as proofs in the cause, should be considered as though they were on file as part of the proofs in the cause, as well those referred to in the bill and amended bill as in the answers of the defendants, and that the Court might refer to the same. And the Court
280 being now sufficiently advised of and concerning the same, after the arguments of counsel, and deliberation being had thereupon, it is ordered

and judged and decreed, that the defendant, James P. Brown, be and he is held, deemed and regarded as mortgagee of the said Bernard Gaffney, deceased, of the premises in controversy, as described in the complainant's bill and amended bill, and that the complainants be and they are allowed to redeem by paying said James P. Brown all moneys advanced upon the faith of that security and mortgage, with interest thereon at the rate of six per cent. per annum, from the times the some were respectively advanced, and that an account thereof be taken, the Court allowing in such account the following items :—

First, the amount paid under the contract between Gurnee, Hayden & Co., and Bernard Gaffney, (the defendants conceding that the same includes the payments made to the canal trustees under the certificate of purchase, both in evidence in the cause.)

Second, the taxes and assessments on said premises.

Third, all unnecessary expenses paid or incurred by either of said defendants in about procuring the title of said premises from said canal trustees. The Court refusing to allow in such account the following items, namely :

First, the two notes made by Bernard Gaffney for $235 each, to Jeremiah L. Brown.

Second, the money and property left with G. W. Richardson, as the consideration of the deed, dated May, 1858.

Third, the taxed costs and expenses in the ejectment suit mentioned in the bill of complaint and in evidence.

281 Fourth, the expenses of advertising the property for sale under the mortgage of date of March 13, 1857, in evidence.

Fifth, the actual money and property advanced by Jeremiah L. Brown to Barnard Gaffney, as the consideration of the two notes of $235 each.

And it is further ordered that it be refused to Ira Scott, Esq., one of the masters in chancery to take and state said account giving to the solicitors five days' notice, in writing, of the time and place, and if necessary, or either of the parties or their solicitors require it, he shall cause the parties to come before him and severally be sworn touching said account and that either of the parties or their solicitors shall be permitted to fill such written interrogations as they may deem expedient, and the opposite party shall be required to answer the same, the said master noting all objections, and preserving and reporting all the proofs taken before him, together with such exceptions as may be taken by either party, to the manner of his proceeding, and said master shall cause to come before him all necessary witnesses that either of said parties or their solicitors may require, and hear all the proofs, and require either or any of the parties to produce all necessary deeds, tax receipts, or other vouchers, going to show the real state of the accounts between the parties, and report the same to this Court, and make his report to the next term of this Court.

And it is further ordered, adjudged and decreed that upon the confirmation of said Report, said complainants do pay to the said defendant, James P. Brown, the amount which shall be certified to be due to him for principal and interest, within thirty days after the order of confirmation, and thereupon the said James P. Brown do convey all his right, title, and interest, either in law or equity, to the premises in controversy, by a proper deed to be settled by said master. But in default of said complainants paying to the said defendant, James P. Brown, the amount so reported due, with interest thereon, as aforesaid, it is ordered, adjudged, and decreed, that said master sell the said property, or so much thereof as shall be sufficient to pay the same, and for

that purpose, he shall advertise the same for sale, describing it as in the bill, and amended bill, in some daily newspaper published in the city of Chicago for twenty days, previous to the time of said sale; fixing the time of said sale, and also the place, which shall be at the north door of the Court House, in said city of Chicago, and he shall sel the same, or so much thereof as will be sufficient to pay said principal and interest, to the highest and best bids for cash in hand, giving to the purchaser or purchasers a certificate of purchase, which shall certify the said sale; and that said purchaser or purchasers will be entitled to a deed of conveyance within fifteen months from the date thereof, unless before that time the same shall be redeemed according to the statute in such case made and provided. And it is further ordered, adjudged and decreed, that the said defendant, James P. Brown, be enjoined and restrained perpetually from enforcing his said judgment at law, in ejectment against said complainants, and that he be, and is hereby perpetually enjoined from proceeding at law, upon any of the deeds or mortgages from Bernard Gaffney to him, against said complainants. And that all said deeds be held and considered as mere mortgages to secure the principal and interest aforesaid. And it is further ordered, adjudged and decreed, that said complainants recover of said defendants their costs and charges by them expended in and about the prosecution of this suit; and that the same be taxed, including the costs and charges of said master's report; and that they have execution therefor, and it is further ordered that said costs when collected be paid to complainants solicitor, U. F. Linder, and defendants, except to the said decree, and pray an appeal therefrom to the Supreme Court of this State, and it is allowed to them on their filing bond in fifteen days from this date, their bond in the penalty of five hundred dollars, with Edward L. Mayo as their surety, conditioned as required by law.

Appeal bond filed.

ERRORS ASSIGNED.

1st. That the appellees after iss[illegible] ned [illegible]re allowed to amend by stating an entirely new case, and a[illegible]e [illegible] required to pay costs.

2d. That the court found th[illegible] be mortgagees, and the appellees in right of the[illegible] Ba[illegible]affney to be mortgagors, and entitled to redeem the property in controversy.

3d. That the facts, grounds, or reasons upon which the court based its opinion, and finding and rendered its decree are not set out or recited in the decree.

4th. That the appellees were not required to redeem upon the terms offered in their bill, in stating their case for relief.

5th. That the court below found the appellants to have acquired by verbal transfer merely the rights of B. Gaffney, under his contract with Gurnee, Hayden & Co., to the property, when the bill states an assignment, and the statute of frauds and perjuries is not set up in the bill to avoid such assignment, whatever it might be.

6. That the court refused to allow the items specified as refused, respectively as to each item so refused.

7th. That the court did not direct under the account under the decree, the appellees to pay the costs, charges and expenses of looking after the property, and paying the taxes.

8th. That the appellees, in order to redeem, were not required to pay the costs of that suit, and the ejectment suit, the notes made by Bernard Gaffney of $235 each, and the money and value of the property paid Richardson for the deed of May, 1858.

9th. That the defendant, J[illegible] L. Brown, is required to pay the costs of this suit.

10th. That the property was directed to be sold in case of failure to pay the amount found due, and redemption allowed from that sale.

11th. That the court enjoined the proceedings at law without requiring the amount that should be found due to be brought into court.

12th. That the court directed the costs to be paid to U. F. Linder, he being no party to the suit.

13th. That the court did not render a decree for the appellants dismissing the bill at cost of appellees.

In all which matters, etc.

W. T. BURGESS, *for Appellees.*

Tribune Print, 51, Clark street.

154

3 0 7 at Appl.
Jun. 1862

250 at Appl. 2. 1863

filed April 28. 1862
L. Leland Cl

In the Supreme Court,

APRIL TERM, 1862.

JAMES P. BROWN *et al.*
v.
ESTHER E. GAFFNEY *et al.*

OPINION BY WALKER, J.

In this case the complainants claim as the widow and heirs of Barnard Gaffney, deceased. He, on the 1st day of September, 1848, purchased the property, in litigation, of the commissioners of the Illinois and Michigan Canal, for the sum of six hundred and twenty dollars. He, at the time of the purchase, paid one-fourth of the sum, and the interest in advance on the remainder for one year. He also gave his notes for the balance, in equal portions, payable in one, two and three years, with interest from date, and received a certificate of purchase, stating the facts, and that he would be entitled to a deed on the payment of the notes. On the 13th day of March, 1850, being indebted to Gurnee, Hayden & Co., Gaffney assigned this certificate to them, and, at the same time, gave them a quit-claim deed to the premises in question, and received from them an obligation that upon his paying to them the sum of $940.51, they would reconvey the premises to him.

Afterwards, on the 17th day of March, 1851, Jeremiah L. Brown became the assignee of the certificate of purchase from Gurnee, Hayden & Co., and took from them a quit-claim deed of their interest in the premises. The evidence shows that the assignment was made at the request of Gaffney.

By the arrangement between Gaffney and Gurnee, Hayden & Co., there can be no doubt, that Gaffney became a mortgagor of his interest to them. This is too well settled to be controverted. And by the assignment of the certificate of purchase, by Gurnee, Hayden & Co. to Brown, he assumed to the transaction the same attitude and acquired the same rights held by Gurnee, Hayden & Co., and nothing more, so far as the evidence in the record discloses. But it is insisted that Brown acquired Gaffney's interest in the premises, divested of the right of redemption. That by a parol agreement between them, when the assignment was made to Brown, the right of redemption by Gaffney was extinguished, and that Brown acquired not the right of a mortgagee but the absolute

title, as a purchaser. The only evidence in the case tending to prove that such an arrangement was made, is that of Brown, who having assigned his interest to his son, became a witness in the cause. He states, that it was in consideration of his furnishing to Gaffney the means of going to California. We are disposed to consider his evidence as though he was free from interest in this suit, and as a competent witness. But owing to the attitude he bears to the case, and the relationship he bears to the other plaintiff in error, we must receive his evidence with great caution. He is the assignee of Gurnee, Hayden & Co., and the assignor and father of the defendant below, now claiming title to the lands as his assignee; and in every stage of this controversy, whether in or out of court, he has taken an active, if not an interested part.

He testifies, that Gaffney relinquished his right of redemption in the premises, in consideration of the means furnished to enable him to go to California. The language employed by Gaffney is not given, but simply his conclusions of the legal effect of the transaction. It appears from this evidence, that the money and property advanced by him to Gaffney did not exceed in value three hundred dollars. That he received from Gaffney his notes for four hundred and seventy dollars. This would seem to be a loan by Brown to Gaffney. If a purchase, it may be asked, why take these notes? or can we suppose that Brown would demand, or that Gaffney in addition to these notes would surrender the right of redemption to the home of his family, and all he possessed, for the sum of less than three hundred dollars? This would seem to be improbable, and that he should manifest such generosity to a man of wealth is still more improbable. But other witnesses testify that the witness Brown stated to them, that he held the property subject to redemption. This is the substance of the testimony of Yoe, Geo. W. & Wm. M. Richardson. The evidence of these witnesses is irreconcileable with Brown's testimony. They, so far as the record discloses, are disinterested, and their evidence overcomes, by a decided preponderance, that of Brown.

The conduct of Gaffney during the whole transaction, was such as clearly indicated that he regarded Brown as a mortgagee and not the owner, nor can Brown's conduct and declarations be reconciled with any other supposition. And when the equity rule—"once a mortgage always a mortgage"—is applied, nothing but clear and highly satisfactory evidence should take the case out of its operation. The evidence in this case is not of that character. We are, therefore, of the opinion that by the assignment to Brown by Gurnee, Hayden & Co., the relation of mortgagor and mortgagee was not disturbed, but still subsisted unimpaired.

Whilst that relation still subsisted, Brown assigned his interest in the premises to his son, James P. Brown, who claims the title, divested of the right of redemption, by virtue of a deed from the canal commissioners, by surrendering the original certificate to Gaffney. If James P. Brown

took the assignment, with notice of Gaffney's right to redeem from his father, he acquired no more than his father's rights. He thereby received the rights, and occupies the position of his father in every respect. That he either had notice of the condition of the title at the time he purchased, or had such notice as put him upon inquiry and charged him with notice, is true, as Gaffney was in the open, visible possession of the premises. This is held, by numerous decisions of this Court, to be amply sufficient to charge a purchaser with notice of all legal and equitable claims of the occupant. He then received the assignment, subject to redemption, and did not in the least change that right by procuring a deed from the canal commissioners.

But it is insisted that the relation of the parties to this property was changed by the arbitration of Yoe, and a court of equity will not interfere, however inequitable the transaction might be. After a careful examination of the record, we are unable to perceive any evidence showing that there was an arbitration of this controversy. Yoe states, that Gaffney requested him to make a proposition to Brown, to divide the property, which he did, and it was accepted, and when they came to consummate the agreement, it was found to be inconvenient to make an equal division, when a new agreement was made. By it a portion of the property was deeded to Brown, and a mortgage was given to him upon the balance, to secure Gaffney's notes for $1,800. There is in this nothing that has the slightest semblance to an arbitration, but it was simply a contract made by the agency of a third person. If this was held to be an arbitration, we are at a loss to perceive what description of agreement, made through an agent, would not be an arbitration. But even if it was what it is claimed, still the parties abandoned it, and entered into a new and different agreement, by which it was agreed that Gaffney was to deed the whole property to Brown upon his paying to Gaffney $500 in money, and delivering him a pair of horses, wagon and harness, worth about three hundred dollars.

Much stress is placed upon this feature of the case, especially as the money was paid to Richardson, and by him to Gaffney, and the horses, wagon and harness were delivered to Richardson, who was authorized to deliver the deed and receive the money and property. He was only authorized to deliver the deed, upon a full compliance with the terms of the agreement. Yet James P. Brown would only pay $425, claiming that he should retain the $75 to pay taxes on the property. Gaffney insisted that Richardson had done wrong in receiving less than the full amount, and took the money to Chicago and deposited it in a bank, and gave the certificate to Richardson to hold until the matter was settled, or to let Brown have it and the property if he would receive them. It was offered to him, but he refused to receive it and give up the deed.

It appears that when this arrangement was made, Brown, through Richardson, made the offer, and said that Gaffney might do worse. Gaffney at first declined the offer, but afterwards concluded he could do nothing else, as the property would be sold in a few days without redemption, and accepted the proposition. We perceive from this evidence that Brown intended to coerce Gaffney into this arrangement, as the statement "he might do worse," could have been designed for no other purpose. And Gaffney evidently so understood it, as he said "he could do nothing else, as the property would be sold in a few days without redemption." When it is remembered that this property was worth seven or eight thousand dollars, and all of the incumbrances held against Gaffney, by Brown, did not exceed three thousand dollars, it seems perfectly apparent that Brown was using the power that a creditor possesses over his debtor, to coerce him into a relinquishment of his right of redemption. This, we think, was oppressive and unconscionable, and calls for the interposition of a court of equity to afford relief. The fact that the only title held before this transaction occurred, by plaintiff in error, was a mortgage to secure the payment of money, no injustice can result to him by compelling him to receive his money with interest, and satisfying his mortgage; on the other hand, if a redemption were not allowed, the complainants would sustain a loss of perhaps not less than five thousand dollars.

The decree of the Court below is affirmed.

In asking the Court to modify the decree, of which I give above a copy, I shall content myself with merely calling upon the Court to carry out the plain equities of this case as developed by the Court in that opinion.

Setting out with the proposition that it matters not what the proofs are, the complainant can only have relief upon the case stated in his bill, and sustained by his proofs, as asserted by this Court in the following cases:

Hovey et al. v. *Holcomb et al.*, 11 Ill. 664. "The bill shows that that transaction was for honest and praiseworthy purposes, and without any design to hinder and delay any of the creditors of Bates improperly. While the complainants thus characterize the transaction in their bill, they cannot give it a different character in their proof, nor ask for a decree based upon a different state of case."

Morgan v. *Smith*, 11 Ill. 200. "It is a well settled principle, that the allegations and proofs must correspond, and that a party will not be entitled to relief, although the evidence may establish a clear case in his favor, unless there are averments in the bill to support the case made by the evidence."

Adams v. *Payson*, 11 Ill. 27. "No claim for that fee was set up in the bill, and the defendant had no opportunity of defending that claim."

McKay v. *Bissett*, 5 Gil. 505. "If the complainant intended to rely on the fact that the defendant was not a purchaser for a valuable consideration, he should have distinctly so stated and charged in this bill. The defendant could then have shaped his case accordingly. As it is, he was not called upon to explain and controvert such an allegation."

The complainants come to redeem, and they claim that: 1st, the transaction between Gurnee, Hayden & Co., and Gaffney, was a mortgage to secure the amount specified in their agreement with him to recovey, $940.51. And, 2nd, That the transaction between J. L. Brown and Gaffney, was a mortgage to secure advances, upon payment of which they ask to be allowed to redeem. And that there be no misconception on this point, I will give the exact language of the bill—184 to 187 of Record:

"And your complainants would further show unto your honors, that on or about the same time, but subsequent to the said transaction with Gurnee, Hayden & Co., one Jeremiah L. Brown, who they pray may be made a party defendant to this bill, who being aware of the said transaction between said Bernard Gaffney and the said Gurnee, Hayden & Co., and knowing also, that said Gaffney, besides being improvident and unfortunate in the way of acquiring property, or in keeping it when acquired—and was also but poorly provided with money or means to defray his expenses to California, they being brothers-in-law, having married sisters; he, the said defendant, being full handed and having money to loan, and having, as your complainants verily believe, and so charge the fact to be, coveted the ownership of the aforesaid sub-lots, they being eligibly situated in the growing city of Chicago, on the corner of Desplaines and Washington streets, near the West Market and the Chicago river, offered to advance by the way of loan to said Gaffney, money for that purpose, to wit, for the purpose of enabling him to prosecute his contemplated adventure to California, and also to pay off the notes to Gurnee, Hayden & Co., and entirely remove the encumbrances upon said sub-lots, and thereby save the same from forfeiture, to which said Gaffney readily agreed. And it was agreed between them that the said Brown should advance a sum of money to said Gaffney, the precise amount these complainants are unable to state, let said Gaffney have a couple of horses, or

some other personal property, which was, with the money, valued or considered as two hundred and thirty-five dollars, for which the said Gaffney executed two notes for two hundred and thirty-five dollars each, one payable on demand, and the other being due one day after date, the entire sum of one of these notes being usurious. And for the purpose of securing said real estate from forfeiture and falling into the hands of strangers, it was agreed between said defendant and said Gaffney, that the said Gaffney should *assign* to said defendant said agreement between him, said Gaffney, and Gurnee, Hayden & Co., and *order* the said Gurnee, Hayden & Co. to convey the same, or all their right, title and interest therein, by quit-claim deed to said Brown. And also requested or directed them to assign the said certificate of purchase for the said sub-lots to the said Brown, which he was to hold for the purpose aforesaid, and as a mortgage or security for the money and property loaned and advanced to said Gaffney, and that he might thereafterwards advance, for the purpose of securing to himself the legal title to said lots or pieces of ground. And for the aforesaid purpose, and no other whatever, the said Gaffney executed the two several notes aforesaid to said Brown, *assigned* the said obligation or defeasance of Gurnee, Hayden & Co. to the said Brown, and *directed* the said Gurnee, Hayden & Co. to convey their said interest to him as aforesaid, with the belief that in so doing, whilst he would be making his brother-in-law amply secure in the sums advanced, and to be advanced by him, as well to the said Gurnee, Hayden & Co., as to said canal trustees, or whoever might hold the evidences of said Gaffney's indebtedness for said lots or real estate, he would at the same time be placing it in secure and safe hands, that whatever might happen to him, said Gaffney, there would be no danger of his wife or children being wronged or defrauded of their rights by so near a kinsman as the said defendant."

"*These complainants expressly charge that the* ASSIGNMENT *of the contract or defeasance of Gurnee, Hayden & Co., and the* DIRECTION *to them to convey absolutely their title to said lots to said Brown, and assign the aforesaid certificate of the canal trustees to him, were all done for the purpose and with the understanding between said Brown and said Gaffney, that he, the said Brown, should thereby acquire the legal title thereto,* AND HOLD *the same as a* SECURITY OR MORTGAGE *for all advances made by him;* in pursuance of which said arrangement and agreement, the said Brown, by means of the assignment of said obligation or defeasance, obtained from said Gurnee, Hayden & Co., the transfer of the said certificate of purchase by the assignment of the same indorsed thereon, and also a quit-claim deed from Gurnee, Hayden & Co., for all their title or interest, legal and equitable."

On page "These complainants expressly charge that defendant" (James P. Brown), "was fully acquainted with and knew all about the nature of the transactions and dealings between his said father and co-defendant, Jeremiah L. Brown and said Gaffney; *he knew that the same was held by his father as a security for money advanced.*"

On page "These complainants distinctly charge and allege, that the whole transaction between said Gaffney and the defendant, Jeremiah L. Brown, *was a loaning of money and property on the one side, and the giving of security upon the other in the* NATURE OF A MORTGAGE; that such was the transaction also with Gurnee, Hayden & Company."

In the prayer:

"That the said several deeds and WRITINGS between said Brown and Gaffney," (not a word about a parol assignment), "be taken and deemed as one transaction and considered as a mortgage," "and that said complainants be allowed a day in court to redeem, upon such terms and time as the court may deem reasonable."

I now quote the language of this Court in their opinion on the case:

"By the arrangement between Gaffney and Gurnee, Hayden & Co., there can be no doubt that Gaffney became a mortgagor of his interest to them. This is too well settled to be controverted, and by the assignment of the certificate of purchase by Gurnee, Hayden & Co. to Brown, he assumed to the transaction the same attitude, and acquired the same rights held by Gurnee, Hayden & Co., *and nothing more*, so far as the evidence in the record discloses."

But the difficulty is, that that is not the case made by the bill. By the statements in the bill he did acquire more than the mere interest of Gurnee, Hayden & Co.; he acquired a mortgage to secure his advances to Gaffney, of money and property, and so I think this Court holds in the end, but a confusion has crept into the case from the blending of the two mortgages together, which in the hypothesis of the bill that Brown and Gaffney's trade was a mere mortgage, occurred when they made that transaction. We never denied the nature of the Gurnee, Hayden & Co.'s claim that it was a mere mortgage. The controversy in this case is not on the Gurnee, Hayden & Co. mortgage, but was Brown a mortgagee of Gaffney, not a mere assignee of Gurnee, Hayden & Co. That is not charged in the bill, but it is charged that he is *nothing more* than a mortgagee in his own right, subject to the claim of Gurnee, Hayden & Co.

I think the fair inference from the whole opinion of the Court is, that J. L. Brown did not purchase Gaffney's interest, but that he loaned him money and took this way to secure himself for its repayment.

Under that view of the opinion, I ask the Court to modify the decree. For if this is the opinion of the Court, Brown should be paid these notes, dated March 15, 1850.

Conceding now that in 1858, Gaffney held the equity of redemption, he and Brown enter into a negotiation for the sale of that equity for $500, and property worth $300. Brown pays him $425 and the property, but does not pay him the $75, and inasmuch as he did not do so, and for other reasons, the Court says that Gaffney was at liberty to repudiate the transaction—refuse to go on, and what else? Keep the property and money he had received? What then? To offer to return them, which he did. But Brown would not accept them. Well, what then shall Gaffney do? throw the money into the street and turn the property loose? That is absurd. He in equity should have it ready to pay back. He asks equity—he must be prepared to do equity. Then before his deed of May, 1858, should be cancelled, he should put Brown in as good condition as he was before, so that these items are a charge upon the property and should be allowed.

Arriving at the conclusion as both the complainants in their bill and this court in its opinion, on the whole, do, that the transaction of March, 1848, was a mortgage as between Brown and Gaffney, (a conclusion I do not now controvert,) yet I insist that between this money lender on the one hand, and this woman and her children on the other, at least equal and exact justice shall be done. That while he, on the one hand, shall not get $8,000 worth of property for $3,000—that she and they, on the other hand, shall pay him his $3,000 advanced upon the faith of the security before they get the property.

Now, will the Court go over with me the items that I asked the Court below to allow?

1. The notes made by Bernard Gaffney.

2. The money and property which Gaffney got from the Browns and placed in the hands of Richardson.

3. The taxed costs and expenses in the ejectment suit.

Is there any one of these that is not just? The notes the counsel concedes in his printed argument should have been paid.

I do not think this Court looked at the details of this decree, satisfied probably with the general conclusion they had arrived at, that Brown should have his advances and the other party the property; they over-

looked those details, and, in that respect, I ask for a modification of the decree so as to comport more nearly to even handed justice, upon the principles settled by this court in its opinion.

This matter, if not allowed by the Court, can only result in further litigation. Brown has not been paid for his advances to Gaffney when he left for California—and he is entitled to his money and property, and he will now turn round and sue the estate. This Court would not hold this decree to be a bar, for it says nothing about it; consequently this very property would have to go through the probate court and be sold to satisfy those claims. Why not settle it all in one suit?

I do not present this as a petition for a re-hearing. If we can get our advances we will be satisfied.

W. T. BURGESS,
For Plaintiff.

154 250

Brown
vs
Gaffney

Filed Apl. 27. 1863.
L. Leland
Clk.

fol 1.

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the Third day of March in the year of our Lord One Thousand Eight Hundred and Sixty two and of the Independence of the United States of America the Eighty Sixth

Present, The Honorable John M Wilson Chief Justice of the Superior Court of Chicago.

Van H. Higgins, Grant Goodrich } Judges.

Carlos Haven Prosecuting Attorney.

Anthony S. Hesing Sheriff of Cook County.

Attest, Thomas B. Carter Clerk.

Be it remembered that on the twenty fourth day of February in the year of our Lord One thousand eight hundred and sixty there was filed in the Office of the Superior Court of Chicago a certain Bill of Complaint on the Chancery side thereof wherein Esther E. Gaffney & others were Complainants and James D. Brown & others were Defendants; Which said Bill of Complaint is in the words and figures following to wit.

State of Illinois }
Cook County } ss.

In the Superior Court of Chicago
March Term 1860

Esther E Gaffney in her own right
and James P Gaffney, Judith Ann
Gaffney, Mary Elizabeth Gaffney
Esther Eliza Gaffney and Delia
M Gaffney by Esther E Gaffney
their next friend

vs.

James T Brown and
Jeremiah L Brown

To the Honorable Judge of
the Superior Court of Chicago in Chancery sitting

Humbly complaining showeth unto your
honors, your oratrix Esther E Gaffney in her
own right and James P Gaffney, Judith Ann
Gaffney, Mary Eliza Beth Gaffney and Delia M Gaffney
minors by Esther E Gaffney their next friend

That on the first day of September A.D. 1842
at a sale made by the Commissioners of Illinois
and Michigan Canal, one Bernard Gaffney
became and was the purchaser of certain real Estate
situate in the City of Chicago in said County of
Cook and State of Illinois described as follows,
to wit Sub lots number (4) four and (5) five in lot
Number (2) two in Block Number (48) forty eight
in the Board of Trustees of the Illinois and Michigan
Canal subdivision of said lot number (2) two in
Block (48) forty eight, in the original town
of Chicago.

That at said sale said Gaffney
bid off said property at the sum of six hundred

Amended from 9th line of this page.

and twenty dollars; and that thereupon or at all
thereafter, as required he paid a part of said purchase
money and received from said Commissioners a
Certificate of purchase; by the terms of which he
was to receive a deed for said property on the
payment by him of the remainder of the purchase
money to wit. of the sum of five hundred thirty
five dollars on the first day of September AD 1851

That on or about the thirteenth day of
March AD 1850. the said Gaffney having deter=
=mined to remove temporarily to the State then
Territory of California; and being in need of
money for the purpose of his journey, borrowed of
a certain person then doing business in said City of
Chicago. under the name of Hance Hayden
and Company, a certain amount of money
for which he executed to them his Note for the sum
of Six hundred and twenty one 21/100 dollars,
all and to secure the repayment of the same to
them he assigned to and deposited with them
his said certificate of purchase of said real estate.

That on or about the same time the
said Gaffney borrowed also certain articles of
personal property amounting in value to about
the sum of Two hundred dollars of one Jeremiah
L Brown

That the said Gaffney and the said
Jeremiah L Brown were then on friendly terms,
and were connected with each other by marriage
in their respective families

That by reason of such friendship and
connection, the said Gaffney relying on the
honesty and fidelity of the said Jeremiah L
Brown. entered into an agreement and arrangement

all this stricken out.

with him by the terms of which the said Brown was to have the supervision of the affairs of said Gaffney and should have charge of and attend to his interests, during his the said Gaffney's absence in California; and in pursuance of such agreement, the said Brown was to act generally as the confidential agent of the said Gaffney during his absence in California.

6. That relying upon the honesty of the said Brown, the said Gaffney left Illinois and went to California, remained there for a long time; and finally returned to Illinois on the 19th day of July AD 1856.

7. That while the said Gaffney was thus absent from this State the said Brown falsely and with the intent to cheat and defraud the said ~~the said~~ Gaffney, represented to the said Gurney Hayden & Co. among other things that he the said Gaffney would never return to Illinois, and made to them certain other false and fraudulent statements, the precise character of which is to your orator unknown; by means of all which, the said Brown induced the said Gurney Hayden & Co. to assign to him the said Brown the said Certificate of purchase of the said real estate.

all that page stricken out

8. And the said Gurney Hayden and company being deceived by the said false representations, did on or about the twenty first day of February AD 18 assign the said certificate of purchase to the said Jeremiah L Brown

And the said Jeremiah L Brown with intent and design to cheat and defraud the said Gaffney, did afterwards, to wit on the 8th day

6 of June A.D. 1850. procure and obtain from the President and Secretary of the Board of Trustees of the Illinois and Michigan Canal, under authority of the act of the Legislature passed February 21st 1843. a Deed of Conveyance of the said Real Estate, from the said Trustees to one James P Brown, the son of the said Jeremiah L Brown; which said deed was by the said Board of Trustees executed and delivered on the surrender to them of the said Certificate of purchase and was for the consideration therein named, to wit the sum of Six hundred and twenty dollars

9 And your orators aver and charge that the said James P Brown had no equitable right or interest in the said certificate; and that if he ever had the legal title to the same he acquired such legal title with a full knowledge of all the matters and things in this Bill herein above related; and that the said deed was made to and received by him for the sole purpose of aiding the said Jeremiah L Brown in his said attempt to cheat and defraud the said Gaffney And that the said James paid no consideration whatever for said deed.

10 That from and after the time of the said Gaffneys return to Illinois as aforesaid, on the said 19th day of July 1858 up to the time of his death, which occured on the Twenty third day of May A.D. 1859. the said Gaffney was feeble and diseased in mind and body; and incapable of managing his affairs

All the charges throughout

That taking advantage of his said Condition the said Jeremiah L Brown induced the said Gaffney to make a settlement of their business affairs sometime in the month of March, & about the 10th day thereof A.D. 1859

that in pursuance of the terms thereof, the said James conveyed all of the said real Estate to the said Gaffney; and the said Gaffney thereupon reconveyed to him the said James a certain part thereof, being a parcel of land twenty feet wide taken off the East side of said lot Number (4) four - which said conveyance your orator charges was made without any actual consideration whatsoever - and the said Gaffney thereupon also executed and delivered to the said James three promissory notes each for the sum of Six hundred and three dollars payable in one, two and three years from the date; being in all for the sum of $1809. for the purpose of securing the payment of which said notes the said Gaffney was induced and persuaded to and did execute to the said James a Mortgage deed with power of sale, conveying to him all the remainder of said real estate.

13 And your Orator avers and charges to be true that the value of the said twenty feet taken at the time of said conveyance was the sum of two thousand dollars;

That for the said three notes, the said James gave to the said Gaffney no consideration whatever.

14 That the taking of said notes by the said James, and the executing of said deed to him, were contrived by the said James and the said Jeremiah for the purpose of cheating and defrauding the said Gaffney. and that the said James afterwards assigned said notes and Mortgage to the said Jeremiah receiving for said assignment no consideration whatever for the same

all this hereof Martin out.

15 That the value of the said Twenty feet was at that time the sum of two thousand dollars which with the amount of the said notes for Eight hundred and nine dollars which the said Jeremiah L Brown then and there thus received or secured to himself or to his said son James, for himself

16 That the sum of money which the said Gaffney borrowed of the said Jeremiah in property as aforesaid amounted on the said day of March 1857 with legal interest thereon to the sum of about two hundred and ninety dollars, and that the money paid by the said Jeremiah to Gurnee Hay dent & Co. for the said Gaffney, amounted on said day with legal interest thereon to the sum of about one thousand dollars, which two sums making in all the sum of about thirteen hundred dollars. was the entire amount which in justice and equity was due by the said Gaffney to the said Jeremiah with the exception of a reasonable sum to be paid to the said Jeremiah for his services as agent for the said Gaffney, in that behalf.

17. That on or about the thirteenth day of May AD 1858 further taking advantage of the weak and debilitated condition of the said Gaffney and not being satisfied with the aforesaid fraudulent advantages that he had obtained as aforesaid, the said Jeremiah L Brown fraudulently induced said Gaffney to make another compromise or settlement of their affairs, that in pursuance of the terms thereof the said Gaffney made a deed of all the aforesaid real estate, purporting to convey the same to the said James L Brown

all this page stricken out.

18 That the said deed was left in the hands of a third person by the name of Washington Richardson, on the following Condition to wit: 1st that the said James P Brown. to be delivered to the said James P Brown, or Jeremiah L Brown, or one or both of them, and deliver to the said Richardson a Pair of Horses, Wagon and Harness, and five hundred dollars in money, and second to deliver to him to be canceled the aforesaid promissory notes and the Mortgage deed that was given to secure them, and then and not before the said Richardson was to let them have the said deed

19. That the said Jeremiah L Brown or James P Brown or one, or both of them wrongfully obtained the possession of said deed from the said Richardson without complying with any of the aforesaid conditions, and without the consent or knowledge of the said Gaffney. And that the said Jeremiah L Brown nor the said James P Brown, nor either of them have since complied with the aforesaid conditions, but wholly refused so to do

20 That the said James P Brown commenced an action of Ejectment, against the said Bernard Gaffney, to recover the possession of the aforesaid sub lots of Land, and the tenements thereon in the Superior Court of Chicago sometime in the Month of September AD 1858. Claiming title thereto by virtue of the conveyance by said deed so fraudulently obtained by him, and that a trial was had in said cause sometime in the Month of February AD 1859. but no verdict was rendered by the jury in said cause.

21 That on or about the 23rd day of May AD 1859 the said Bernard Gaffney departed this life testate leaving a Will by which he devised to your oratrix

see two pages attached

Esther & his Widow a life estate in all the real estate to him belonging with remainder over to his children James B. Judith Ann; Mary Elizabeth; Esther Eliza; and Delia

22. That your Complainants had well hoped that the said Jeremiah L Brown and the said James P Brown would have surrendered and conveyed to them the title so as aforesaid wrongfully obtained from the said Bernard Gaffney to the said twenty feet of Ground, and would have surrendered to them the said three notes for eighteen hundred & nine dollars and would have cancelled and released the said Mortgage deed executed to secure the payment of said three notes; and all the aforesaid last mentioned deed be given up or reconveyance made on the payment by your Complainants of the sum of money which equitably was due and payable from and by the said Bernard Gaffney to the said Jeremiah L Brown, together with the legal interest thereon; which said sum with said interest your Complainants are and have been ready and willing to pay; and do hereby offer to pay as this Honorable Court may direct

all this page stricken out.

But now so it is that the said Jeremiah and the said James utterly refuse so to do, and they do threaten to sell said premises described in said Mortgage deed and the said James has advertised to sell the same at the door of the Court house in Chicago on the Fifteenth day of February AD 1860.

All which actings and doings are contrary to equity and good conscience and tend

to manifest wrong and injury of these Complainants

Inasmuch as they are remideless in law and by the strict rule of the Common law, and can only have adequate and sufficient relief in a Court of Equity where matters of this sort are only properly cognisable and relievable, May it please your Honors to grant unto your Orator a Summons Commanding the said Jeremiah L Brown and James P Brown who your Orator prays may be made parties defendants to this bill (and their confederates when discovered, and made by apt words also defendants herein) personally to be and appear before this Honorable Court. on the first day of the next term thereof, then and there full, true direct and perfect answer to make to all and singular the allegations of this Bill; and that as fully as if the same were here repeated; and they and each of them distinctly interrogated thereto / the oath of each of the said defendants to their and each of their said answers being however hereby expressly waived.

And may it please your Honors to order and decree that an account be taken by which to ascertain the amount of money which in equity and good Conscience is due and owing from the estate of the said Bernard Gaffney to the said Jeremiah L Brown; and that on the payment by your Orator of the said sum within a reasonable time to be by this Honorable Court fixed; the said James P. Brown be Ordered and decreed to reconvey all the aforesaid premises in such manner as to vest the title thereto in the estate of the said Gaffney;

all these words & letters rub

and that the said Jeremiah, and the said James be ordered and decreed to surrender and cancel the said three notes made by the said Gaffney to the said James and to release of record the said Mortgage made to secure the payment of the said note; and that in default of any thereof that a Commissioner be appointed to make such reconveyance and to release said Mortgage; And that by order of this Honorable Court the said Deed from the said Gaffney to the said James for all the said real Estate be declared null and void; and that your Orators and Orator may have such other and further relief as in Equity they may be entitled to

And they will ever pray &c

Esther E Gaffney

James B Gaffney. Juliette A Gaffney
Mary E Gaffney. Delia M Gaffney
& Esther E Gaffney minors by
Esther E Gaffney.

James LeRoy &
Knox Eustace & Reid
Solicitors for Compts.

State of Illinois }
Cook County } ss.

Esther E Gaffney being duly sworn on oath saith that the matters and things set forth in the foregoing bill signed by her are true to the the best of her knowledge information and belief.

Esther E Gaffney

Subscribed and sworn to
before me this 24th day of
February A.D. 1860 W Windes J.P.

Thereupon on the thirteenth day of March in the year last aforesaid there issued out of the Office of the Clerk of said Court Duplicate Writ of Summons in said cause: Which Summons with Sheriffs return thereon indorsed is in words and figures as follows to wit

"State of Illinois
County of Cook } ss

The People of the State of Illinois
To the Sheriff of DeKalb County Greeting.

We Command you that you ~~[illegible]~~ Again Summon James P. Brown and Veranicah L. Brown if they shall be found in your County personally to be and appear before the Superior Court of Chicago of said County of Cook on the first day of the next term thereof to be holden at the Court House in the City of Chicago in said County on the first Monday of April next to answer unto Esther C. Gaffney in her own right, James B. Gaffney, Sarah Ann Gaffney, Mary Elizabeth Gaffney, Esther Eliza Gaffney and Delia M. Gaffney by Esther C. Gaffney their next friend in their certain Bill of Complaint filed in the said Court in the Chancery side thereof

And have you then and there this Writ with an Indorsement thereon in what manner you shall have executed the same.

Witness Walter Kimball Clerk of our said Court - and the Seal thereof at the City of Chicago aforesaid this 13th day of March A.D. 1860

Seal

Walter Kimball Clerk."

(Sheriffs return) "Served by reading to the within named Jeremiah L. Brown this 27th day of March A.D. 1860 and at the same time left with him a copy of the same.

Henry Saffora - Sheriff
By E. Saffora - Deputy."

And thereafter on the twenty fourth day of February in the year A.D. eighteen hundred and sixty the said complainant Esther E. Gaffney next friend, filed in the Office of the Clerk of said Court her certain Bill: Which Bill is in the words and figures as follows, to wit:

"Esther E. Gaffney et al
vs
James F. Brown and Jeremiah L. Brown } In the Superior Court of Chicago.

Esther E. Gaffney next friend to the minor heirs of Barnard Gaffney, complainants in the above entitled cause acknowledge myself bound for all costs that may accrue and legally devolve upon such minors either to the opposite party or to the officers of this Court in pursuance of the laws of this State.

Given under my hand and seal this 23d day of February A.D. 1861.

Signed sealed and delivered in the presents of } Esther E. Gaffney (Seal)
James Leary."

And thereafter on the 5th day of March A.D. 1861 said complainant filed in said Court Amendments to said Bill viz:

Geron

Esther C Gaffney et al.
vs.
Jeremiah Le Boeuf
& James P Boeuf

In the Superior Court of Chicago of the term of March 1861

Amendment to the original bill filed in this cause by leave of the court

Commencing after the second section of said original bill as follows.

That on the first day of September AD 1849 the said Barnard Gaffney paid the said Board of Trustees the farther sum of one hundred and fifty five dollars, that being the amount of the first aforesaid promissary note and also the sum of Eighteen dollars and eighty cents one years interest on the balance of the said notes one year in advance leaving the sum of three hundred and ten dollars due the said board of Trustees of the principle to be paid as follows, one hundred and fifty five dollars on the first day of September AD 1850 and also the sum of nine dollars and twenty cents interest in advance, and one hundred and fifty five dollars on the first day of September AD 1851 and that when the last aforesaid sum should be paid then the said Barnard Gaffney would have been entitled to a good and sufficient conveyance in fee simple

The eleventh section stricken out and the following to be inserted

amendment from 2d. hand of this page.

That after the said Barnard Gaffney returned to the state of Illinois he requested the said Jeremiah L Brown to account with him and that he the said Barnard Gaffney would pay him the said Jeremiah L Brown all that should be found to be legally due him on such accounting on the said Jeremiah L Brown conveying or cause to be conveyed to him said real estate the legal title to which the said Jeremiah L Brown had so as aforesaid fraudulently obtained for his said son James P Brown

That the said Jermiah L Brown intending to cheat and defraud the said Gaffney refused to account with him the said Barnard Gaffney and receive the amount that should be found to be legally due him from the said Barnard Gaffney to him and convey or cause to be conveyed the said real estate to the said Gaffney, but pretended that he and his said son James P Brown had got both the legal and equitable title thereto.

That afterwards taking advantage of the condition of the said Gaffney the said Jeremiah L Brown induced the said Gaffney to make a settlement of their affairs sometime in the month of March A.D. 1857 and about the tenth day thereof in pursuance of the terms imposed upon the said Gaffney by coersion and persuasion, the said James P Brown conveyed all of the said real estate to the said Gaffney and the said

all this page should be read

Gaffney thereupon reconveyed to him the said James P Brown a certain part thereof being a paralel of land twenty feet wide taken off the east side of said lot No (4) for which said conveyance this complainant charges was made without any actual consideration whatsoever and that the said Gaffney thereupon also executed and delivered to the said James P Brown three promissory notes each for the sum of six hundred and three dollars payable in one two and three years ~~years~~ from that date being in all for the sum of 1809 dollars and for the purpose of securing the payment of said notes the said Gaffney was induced and persuaded to and did execute to the said James P Brown a mortgage deed with power of sale conveying to him all the remainder of said real estate and that said real estate at the time of making said deed notes and mortgage was worth from eight to nine thousand dollars.

All this page stricken out.

Immediately after section 21 of the original bill amended as follows.

That immediately after the said Barnard Gaffney had purchased the said real estate at the land sale as aforesaid he erected upon the same a dwelling house at an expense of about twelve hundred dollars for the use of himself and family as their home stead and that at the time he said Barnard Gaffney went to California as foresaid the said real estate was the home stead of the said Barnard Gaffney

and of this complainant and their family whereon they they then resided and that it was the homestead of the said Barnard Gaffney and his family up to the time of his death and still is the homestead of these complainants and family whereon they reside and that they have no other and that said deeds notes or mortgage was not given for the purchase money or the improvements thereon of said premises.

And this complainants further state that by an act of the general assembly of the state of Illinois entitled an act to exempt homestead from sale or execution approved February AD 1851 it was among other things enacted that no release or waiver of such exemption shall be valid unless the same be in writing subscribed by such hous holder and acknowledged in the same manner as conveyances of real estate and by law required to be acknowledged and that this complainant insists the provisions and benefits of such act

And this complainant further insists that the amount that the said Jeremiah L. Brown unjustly claimed to be due him on the tenth day of march AD. 1857 was the sum of three thousand eight hundred and nine dollars but by what mode of computation he arrived at that sum this complainant is unable to state but insists that thirteen hundred dollars or thereabouts was all that was legally or equitably due to the said Jeremiah L Brown or to the said James P Brown on that day and

All thus large strikeout

that in making the sum so claimed there must have been two thousand and five hundred dollars of insurance and unlawful interest added to the amount actually due to the said Jeremiah L Brown or to the said James P Brown.

And these complainant pray this honorable court this may be allowed as part of the original bill of complaint and added thereto and in such parts respectively as above marked and they will ever pray.

L. C. Ray & Fairfield
Complainants
Solicitors

Esther C Gaffney in her own right & as next friend of infant heirs of Barnard Gaffney deceased a described in original bill

State of Illinois
County of Cook. } ss.

Esther C Gaffney personally appeared before me and being duly sworn says that she has read the foregoing amendment to the original bill in the above entitled cause signed by her and that the the facts therein she believes to be substantially true and that the new matter set up therein has been brought to light by the trial in an ejectment suit wherein the same property mentioned in the bill of complaint is in controversy and between the parties thereto and by the answers of the defendants herein except the homestead clause.

Subscribed and sworn to before me this 5th day of March A D 1861

A D Shurtevant (Seal)
Justice of the peace

All this page stricken out

And thereafter to wit on the fifth day of March A. D. Eighteen hundred and Sixty there was filed in the Office of the Clerk of said Court the answer of the defendant James P. Brown to said Bill of Complaint: Which said answer is in words and figures as follows to wit—

Answer

1

In the Superior Court
of Chicago

Esther A Gaffney et al
vs
Brown & Brown

Bill

The Answer of James P Brown
to the Bill of Complaint in this Cause

This Defendant now and at all times hereafter saving to himself all just exception to said Bill of Complaint for answer thereto to so much and such part thereof as he is advised is or are material or necessary for him to make answer unto, he answering says that he admits that on or about the tenth day of March A D 1854 by deed of that date made and executed by them said Bernard Gaffney and the said Complainant they conveyed to this defendant all that part of sub-lot four (4) in the Illinois and Michigan Canal Trustees subdivision of Lot Two (2) in Block forty eight (48) in the original Town of Chicago bounded and described as follows, Commencing at the North East Corner of said sublot, thence West on the North line of said sublot twenty (20) feet, thence South on a line parallel with the East line of said sublot to the South line of said sublot, thence along said South line twenty (20) feet to the East line of said sublot, thence North along the said East line to the place of beginning. Which deed is recorded in the recorders office of said County in Book 134 of deeds on page 469 & to which for greater certainty as to its contents this defendant prays him to refer. And this defendant further answering says that on or about the tenth day of March A D

Eighteen hundred and fifty seven, the said Bernard Gaffney & the said complainant Esther E Gaffney did convey to this defendant in Mortgage by deed of that date the sublot Five (5) in the Canal Trustees subdivision of lot two (2) in Block forty eight (48) in the original Town of Chicago also the West ten (10) feet off from sublot four (4) in the same subdivision of said lot two (2) as therein above described to secure the payment of three Ontario promissory notes of even date therewith for the sum of Six hundred and three dollars and Eighteen Cents each made by said Bernard Gaffney to this defendant and payable respectively in one, two, & three years from date thereof, with power of sale in case of failure & pay said notes or either of them, and also at the same time executed the said three notes therein described. which mortgage is recorded in the Recorders office of said County & to which & notes now in this defendants possession he prays reference may be had when produced for greater certainty

And this defendant further answering says that the said notes & mortgage & deed were given & made for a good and valuable consideration upon a full & fair settlement of all matters touching said premises & in pursuance of the agreement hereinafter set out when the said Bernard Gaffney was in the full possession of all his faculties of mind & capable of transacting business without any fraud deception deceit done or practiced to the knowledge or belief of this defendant upon said Bernard Gaffney.

And this defendant denies that any of the facts matters and things charged in said Bill to the contrary thereof are true

And this defendant further answering says that on or about the twentieth day of May

in the Year of our Lord one thousand eight hundred and forty eight the said Bernard Gaffney and Esther E Gaffney his wife did make execute and deliver unto this defendant a certain deed dated in that month & year by which and it was duly witnessed that the said Bernard Gaffney did thereby in consideration of Fifteen hundred dollars therein expressed to have been paid to them by this defendant, grant bargain, sell, remise, release, alien, and confirm unto this defendant and to his heirs and assigns forever all the following described piece of land situated in the County of Cook and State of Illinois described as follows to wit, "Sublot Nos four (4) and five (5) in lot two (2) in Block forty eight (48) in the Board of Trustees of the Illinois and Michigan Canal Subdivision of said lot two (2) in said Block forty eight in the Original Town of Chicago with the appurtenances, and did thereby covenant to and with this defendant that the above bargained premises in the quiet and peaceable possession of this defendant against all persons lawfully claiming or to claim the whole or any part thereof the said Bernard Gaffney would warrant and forever defend, which said deed now in the possession of this defendant ready to be produced and proved as this court may direct reference being thereto had will more fully & at large appear

And this defendant further answering says that the said Bernard Gaffney & the said Esther E Gaffney did thereby for a good & valuable consideration to them paid convey to this defendant the lands and premises described in said bill of complaint with covenants of warranty and this

defendant avers that the said deed was freely fairly & voluntarily given and executed by the said Bernard Gaffney & Esther & his wife on or about the twentieth day of May 1858 and long before the decease of said Bernard Gaffney and that the said Bernard Gaffney & his wife one of the Complainants in this Cause well knew the nature and effect thereof perfectly by giving and executing the same

Therefore this defendant insists upon the said deed as a bar to the whole relief prayed for by the said Complainants in their said bill of Complaint & that they are estopped thereby, and he prays the same benefit from this exception as though he had pleaded the same in bar of the said Complainant's said bill of Complaint, and upon this point he prays the judgment of this Court and that said bill be dismissed with Costs &c

And this defendant further Answering says, that as he is advised and verily believes the said Complainant had not in & by their said bill made or stated such a Case as doth or ought to entitle them to any discovery or relief in a Court of Chancery, and he prays to have the same benefit from this exception, as though he had demurred to said bill for that reason

And this defendant further Answering says that on or about the tenth day of March A.D 1859 this defendant the said Jeremiah L Brown and the said Bernard Gaffney did submit all matters in difference between them touching the title & ownership of said Lands the payment of said note of 13th March 1858 & all other matters in difference either between this defendant & the said

Answer

Gaffney on the said Jeremiah L Brown & the said Gaffney on both the defendant & the said Jeremiah L Brown, of the one part & the said Gaffney of the other to the award order Arbitrament & final determination of Peter L Goe who took upon himself the burden of said Submission & did thereupon award order & determine among other things & to the effect that the said Jeremiah L Brown should surrender up to the said Gaffney to be Cancelled the said two notes dated March 13th 1850 each for $235 in said bill mentioned, that this defendant should make to the said Bernard Gaffney a deed Conveying to him Gaffney all of said lands and that said Gaffney should make a deed to this defendant Conveying to him the last twenty feet thereof and also three notes each for the sum of $603 (or thereabouts) payable one, two, & three years after date respectively with interest at the rate of and also a mortgage upon the west forty feet of said lands to secure the payment thereof and performance said deeds. Notes and mortgage for executing by the parties accordingly: that this defendant and Jeremiah L Brown & Bernard Gaffney accepted said award and in pursuance thereof & in obedience thereto did surrender the notes dated March 10, 1850 to said Gaffney and did respectively execute the notes mortgage & deeds so prepared by said Goe & which are the same notes mortgage & deeds of date of March 13 1850 mentioned in said bill which were respectively duly delivered & received by the parties — And this defendant further Answering insists & relies upon said Submission and said award so made by said Goe in pursuance of said Submission and the acts done thereunder as aforesaid, and the said deeds, notes & mortgage as a bar to the discovery & relief prayed for in & by said bill touching the

said Lands and premises, and prays that he may have the benefit of such bar the same as though he had pleaded the same in bar of & to that part of said bill setting up the several & various matters that happened touching said premises between the parties prior to said subdivision & award, to said bill for that matter

And this defendant further Answering denies all other matters & things & all fraud and unlawful Combination with which he stands charged in said bill & prays hence to be dismissed with his Costs & Charges &c

James P. Brown

W. T. Barges
Solr

And thereafter also on the said fifth day of March A. D. eighteen hundred and sixty there was filed in the Office of the Clerk of said Court the Answer of defendant Jeremiah L. Brown to said Bill of Complaint: Which said Answer is in words and figures as follows to wit

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In the Superior Court of Chicago.
In Chancery.

Esther E. Gaffney et als
vs
James P. Brown and
Jeremiah L. Brown.

The Separate answer of Jeremiah L. Brown one of the Defendants to the Bill of Complaint in this Cause.

This Defendant now and at all times hereafter saving and reserving to himself all just exceptions to said Bill for the many errors uncertainties and other imperfections therein contained for answer nevertheless thereunto or unto so much and such parts thereof as he is advised is or are material or necessary for him to make answer unto, he answering says that he admits that on the first day of September in the year of our Lord One Thousand Eight Hundred and forty eight at a Sale made by the Trustees of the Illinois & Michigan Canal Bernard Gaffney became the purchaser of the Real Estate described in said Bill of Complaint and known as Sublots Numbers four (4) and five (5) in Lot No two (2) in Block No forty eight (48) in the original Town of Chicago for the Sum of Six hundred and twenty dollars.

And this Defendant further answering says upon his information and belief that the said Gaffney thereupon paid the one fourth part of said purchase money of 155

45 fox.

and received from the Board of Trustees of the Niagara & Hudson Canal a Certificate of such purchase & that he would be entitled to a conveyance thereof upon the prompt payment of his three notes on that occasion executed to said Board of Trustees each for $155 – being the remainder of said purchase money with interest payable in advance at one two & three years thereafter and dated Sept 1. 1848.

And this Defendant further answering says upon his information and belief that prior to the thirteenth day of March A.D. 1850. the said Bernard Gaffney had become and was indebted to Walter S. Gurney, Peter Hayden and Thomas S. Hayden partners in business, under the name of "Gurney Hayden & Co." in a large amount of money but the precise amount this Defendant has no means of stating and to secure the said indebtedness some time prior to said 13th March 1850 but at what precise time this Defendant cannot state, the said Bernard Gaffney assigned to them his said Certificate of purchase and interest thereunder in and to said lots of land – which Certificate and assignment thereof was deposited in the Canal Office at Lockport as hereinafter stated.

And this Defendant further answering says upon his information and belief that after the said Assignment was made and the said Bernard Gaffney had failed to make the payments as required

by the terms of the agreement between him and said Gurnee Hayden & Co and the same had become and was forfeited to them at Law, they said Gurnee Hayden & Co and the said Bernard Gaffney made a new Contract & conveyance touching said Land in and by which the said Bernard Gaffney agreed to sell and convey to them the said lands & premises by Quit claim Deed and they agreed to convey the same to him upon the payment of the following sums of money Viz. One hundred and sixty four dollars and thirty Cents on the first day of September then next, One hundred and Ninety eight dollars & seventy two Cents twelve months from the date thereof And five hundred and seventy seven dollars and forty nine Cents on the first day of September Eighteen hundred and fifty one –

That accordingly on or about the 13th day of March 1850 by deed of that date said Bernard Gaffney & said Complainant Esther E Gaffney did execute to the said Gurnee Hayden & Co a deed remising and releasing to them the said Lots of Land, and they thereupon entered into a Contract in writing with said Bernard Gaffney of which a Copy is attached to this answer and made part hereof and of which duplicates were made one of which the said Gurnee Hayden & Co kept & the other the said Bernard Gaffney kept –

And this Defendant further answering

says that on or about the thirteenth day of March A.D. 1850. the said Barnard Gaffney had determined to go to the State of California for the purpose of bettering his condition in life, but whether or not being in need of money for the purposes of his journey, he borrowed money of said George Hayden & Company for which he executed his notes for the sum of Six hundred and twenty one dollars and twenty one Cents and to secure the repayment of the same to them, he assigned to and deposited with them his Certificate of purchase of said Real Estate this Defendant has no knowledge and can neither admit or deny, but believe the facts to be of the transfer of the title to said George Hayden & Co to be as this deft has above herein stated.

And this defendant further answering denies that on or about the second 3rd day of March 1850. the said Gaffney borrowed certain articles of personal property amounting in value to about the sum of two hundred dollars of this Defendant, but on the contrary this Defendant says he this Defendant shortly before said Bernard Gaffney went to California sold him a pair of horses and let him have some money to about sixty dollars, for which said Gaffney executed to this defendant his two certain promissory Notes each for two hundred & thirty five dollars or thereabouts but the precise amount of them this Defendant cannot

State nor the time when payable but think within a Year after date.

That said Notes are not now in his possession having been surrendered up to said Bernard Gaffney as hereinafter stated And this Defendant further says that he admits that he and the said Bernard Gaffney were then on friendly terms and were connected with each other by marriage, each having married Sisters—

And this Defendant further answering denies that he and the said Bernard did enter into an agreement and arrangement by the terms of which this Defendant was to have the supervision of the affairs of said Gaffney and should have charge of and attend to his interests during his the said Gaffneys absence in California or that he this Defendant was to act generally as the confidential Agent of said Gaffney during his absence in California or any thing of that sort or that he this Defendant ever assumed or took upon himself any such Obligations towards the said Gaffney or that when he left this State for California he left relying upon any such obligations having been assumed by this Defendant.

And this Defendant further answering says that the said Gaffney proposed to this Defendant a short time before he left for California that if he this Defendant would assist him with the means to go with, he would not only pay him

well for what he should let him Gaffney have, but would also absolutely sell and assign to him the Contract of purchase he then had from said Gurney Hayden & Co to be taken by this Defendant subject to the payments then due thereon and to pay the same up or not as he saw fit - that there was no understanding or agreement then made that the same was received as security for the payment of said Notes. or that this Defendant was to hold the same for his said Bernard Gaffney's use - but on the Contrary the assignment was an absolute one - and had no connection with the payment of said Notes nor did this defendants right to the same depend upon the fact whether said Notes to him from said Bernard Gaffney were all paid or not.

And this Defendant further answering says that he did not Consider the said Lots of Land then worth anything more than the incumbrance thereon - and though he then took an assignment from said Bernard Gaffney of said Contract from said Gurney Hayden & Co he did not consider it of any value and in fact hesitated very much afterwards about making the payments and saving the land from forfeiture to said Gurney Hayden & Co.

And this Defendant further answering says, that the said Bernard Gaffney went to California through the means and assistance furnished to him by this Defendant and that he remained there

until the month of July 1856. when he returned to this State. That in the meantime this Defendant had paid to said Gurnee Hayden & Co all that was due to them under said Contract. that said Gurnee Hayden & Co paid the Notes of said Bernard Gaffney falling due at the Canal office and when this Defendant had thus paid up said Contract they said Gurnee Hayden & C. assigned to this Defendant the said Certificate of purchase issued to said Bernard Gaffney and on surrendering the same to said Board of Trustees the patent for said Lots of land was issued to said James P Brown on the Eighth day of June 1855.

And this Defendant further answering denies that he falsely or with the intent to cheat or defraud the said Gaffney, represented to the said Gurnee Hayden & Co that he the said Bernard Gaffney would never return to the State of Illinois or made to them any false or fraudulent statements whatever touching the said Bernard Gaffney or the assignment of said Contract to him or his this Defendants rights thereunder — and he further denies that by means of any such false or fraudulent statements or any other fraud or wrongdoing whatever he induced them to assign to him the said Certificate of purchase and he denies that they in assigning said Certificate of purchase to him were deceived by any such false

representations but he claimed to them to be entitled to receive from them a deed of said Lands according to this contract as assignee of said Gaffney.

And this defendant further answering says that after the making of said payments due under said Contract to said Gurnee Hayden & Co this defendant delivered up to them the duplicate Contract between them and said Bernard Gaffney which said Bernard Gaffney had assigned to this Defendant by endorsement thereon and the indorsement of such assignment thereon made —

And they have since retained or destroyed the same, that this defendant has recently endeavoured to find the said duplicate but has been unable to do so. That at the same time said Gurnee Hayden & Co surrendered to this Defendant their duplicate of said Contract cancelled and executed to him a Quit claim deed releasing to him said Lots of Land dated the 21° day of March A.D. 1851. and duly recorded —

And this Defendant further answering says that afterwards but the precise date he cannot now state he assigned transferred and conveyed to the said James P. Brown for a full and valuable consideration the said Certificate of purchase issued to

the said Bernard Gaffney and the lands therein described which transfer was indorsed upon the back of the said Certificate or else delivered with the said Certificate to the said board of Trustees and the time of surrendering the same and obtaining the Patent for the lands therein described and is now as Defendant believes in said Canal Office and to which for greater Certainty he prays leave to refer.

And this Defendant further answering says that the said James P. Brown is the Son of this Defendant and that by said Assignment he acquired the legal and equitable ~~xxxx~~ right to obtain said Patent and to receive the legal title to said lands therein described and this Defendant denies that he acquired said title with knowledge of any of the matters and things in said Bill recited and charged in that behalf - to this Defendants knowledge or belief, and this Defendant denies that the said James P. Brown acquired said title for the sole purpose of aiding this Defendant in any attempt to cheat or defraud the said Bernard Gaffney

And this Defendant further answering says, that soon after the said Bernard Gaffney's return from California he applied to this Defendant for a Conveyance to him of said Lands, that this Defendant denied that there was any obligation whatever to convey the same to him, asserting that he had absolutely

transferred the said Contract of Jesse Hayden &Co. to him this Defendant and that the said James P Brown then held the legal title to said Lands and that said Bernard Gaffney had no equity therein - That finally a settlement was fully and finally agreed upon and made later on then the said Bernard Gaffney then and at no time afterwards up to his decease to the knowledge of this Defendant being incapable of managing his affairs or feeble or deceased in mind though at times labouring under decease of body, yet not so as to effect his mind rendering him incapable of managing his affairs and this defendant denies that he took any advantage whatever in the settlement then made, so far from that being the case the terms of the settlement were in fact arranged by Peter L. Yoe a mutual friend of the parties and to whom or whose award and arbitrament in the premises both the said Gaffney and said James P Brown and this Defendant submitted their matters and whose award thereupon they afterwards acceded to and carried into effect as is more fully stated in the answer of his Co Defendant to said bill and to which he refers as part of this his answer to said Bill.

And this Defendant further answering says that by the settlement thus effected upon and in pursuance of said award this Defendant surrendered up the Note in hand against the said Bernard

Gaffney made to him for said Hordes and Morey and the said James P. Brown released the said Lots to said Bernard Gaffney and the said Gaffney conveyed to said James P. Brown the East ~~xxx~~ twenty feet of said Lot four and made his three certain promissory notes each for the sum of Six hundred and three dollars payable to said James P. Brown at one two and three years after date respectively, and also executed a Mortgage upon the West ten feet of said Lot four and all of said Lot five to secure the payment thereof, with power of Sale and other provisions and conditions therein, to which for greater certainty as to their contents this Defendant prays leave to refer, which Mortgage is now in the possession of said James P. Brown or his Solicitor and it and ~~the~~ the notes thereby secured are now and were at the commencement of this Suit owned by said James P. Brown and this Defendant has not now and had not then any interest therein whatever.

And this Defendant further answering says that what the said twenty feet at the time of making said Deed thereof was worth in cash he cannot state with certainty owing to the great inflation of the prices of real Estate at that time - but it was not worth two thousand dollars or any such sum of money -

And this Defendant further answering denies that there was no consideration whatever given for the said Notes and Deed, but on the contrary thereof there was a consideration

therefor in the conveyance by said James P. Brown to the said Bernard Gaffney of said Lots of Land in which he had no title as this Defendant is advised and believes and the surrender of said Notes - upon a fair settlement made by said Yoe in and by his said Award of the claims of the several parties in this premises - And he denies that the taking of said Notes by the said James and the execution of said Deed to him were contrived by the said James and this Defendant for the purpose of cheating or defrauding said Gaffney.

And this Defendant further answering says that this Defendant has now no interest whatever in said lands notes or Mortgage.

And this Defendant further answering says that when said Note due the 10th day of May 1858, fell due the said Bernard Gaffney did not pay the same and that thereupon according to the conditions of said Mortgage the principal of the other two Notes became due and payable and the said Mortgage forfeited and the lands therein described liable to be sold therunder - That accordingly the said lands were advertised for sale under said power - that afterwards the said James P. Brown and the said Bernard Gaffney made an Agreement touching the said Notes and Mortgage in which the said Bernard ~~[illegible]~~ agreed to and with the said James P. Brown to convey the Equity of redemption therein and to pay

all taxes that were then unpaid on said premises or for the nonpayment of which the premises described in said Mortgage had been sold, and then remained unredeemed - And the said James P. Brown in consideration thereof agreed to pay the said Bernard Gaffney five hundred dollars to deliver to him a certain span of Horses; that is he was to have his choice of two horses out of three Horses then owned by this Defendant and a wagon, harness, whipple-trees and neck yoke, to be delivered to said Gaffney at the residence of this Defendant.

And this Defendant further answering says that the said Bernard Gaffney and the said Esther E. his wife in pursuance of said agreement made and delivered to said James P Brown their certain Deed dated in May 1858. and thereby it was and is witnessed that the said Gaffney and wife, parties of the first part thereto, in consideration of the sum of fifteen hundred dollars to them thereby expressed to be paid did thereby grant, bargain, sell, remise alien release and confirm unto the said James P. Brown his heirs and Assigns said sublots four (4) and five (5) in said Block forty eight (48) in the original town of Chicago with the appurtenances - And the said Bernard Gaffney did thereby Covenant to and with the said James P. Brown his heirs and Assigns that the said premises in the quiet and peaceable possession of the said James P Brown his heirs and Assigns against all persons lawfully claiming or to

claim the whole or any part thereof he would warrant and forever defend as by said Deed duly recorded now in the possession of said James P. Brown will more fully and at large appear.

And the said James P Brown paid to one George W. Richardson for the said Bernard Gaffney the sum of four hundred and twenty five dollars, retaining the sum of Seventy five dollars to pay and discharge any taxes assessed and remaining unpaid on said mortgaged premises, and the said Richardson paid said Money over to the said Gaffney who received the same as this Defendant is informed and believes and also delivered to the said Richardson for said Gaffney the said horses wagon and harness and whiffle trees according to the request of said Bernard Gaffney to deliver the same to said Richardson - And this Defendant further says that said Richardson has stated under Oath as a witness on the stand that he paid the said Money to said Gaffney and that he Richardson took charge of and received said personal property at the request of said Gaffney at the residence of this Defendant and that said Statement is true -

And this Defendant further says that the taxes and assessments then due on said Lot covered by said Mortgage including sums paid to redeem from tax sales amounting to about thirty one dollars and the balance of the Seventy five dollars retained for that purpose as aforesaid he afterwards paid to said Richardson for said Gaffney. he said Richardson

saying he was authorised to receive it, and this defendant believed and believes such statement to be true —

And this Defendant further answering says that the said Complainants are by the said Deed of the said Bernard Gaffney so executed upon a good and valuable consideration as aforesaid estopped and barred from setting up or insisting upon any right title estate or interest in and to said Land and premises or any part thereof therein described — which Deed was duly acknowledged by both the said Bernard Gaffney and the said Esther E. his Wife and placed upon record —

And this Defendant further answering says that the said Bernard Gaffney shortly before his decease expressed himself dissatisfied with this last settlement the said James P Brown offered shortly after his decease to the said Complainants that if she would repay the Money and return the property so paid and delivered upon said last mentioned settlement as aforesaid he would surrender the said last mentioned Deed to be cancelled but this Defendant is informed and believes that the said Complainant Esther E Gaffney has failed to accept of said proposition and comply therewith.

And this Defendant further answering denies all other matters and things, all fraud and unlawful Combination which he stands charged in said Bill and prays hence to be dismissed with his Costs and Charges &c

W T Burgess
Solr

J. L. Brown

And thereafter to wit on the Eighteenth day of March A. D. Eighteen hundred and sixty one there was filed in the Office of the Clerk of said Court a certain Stipulation in said Cause, in words and figures as follows to wit.

"Esther E. Gaffney et al
vs
James P. Brown and
Henry L. Brown . . } In the Superior Court of Chicago - In Chancery

In this Cause Complainants may file their proposed Amendments to the Bill on payment of Costs of the Cause up to this date, unless the Court orders otherwise - Defendants answers to be refiled & Replication filed and cause set for hearing on the 15th day of April next.

W. F. Bunyes for Defts
Mar 5/61. Lehry & Fairfield
for Compts."

And thereafter to wit on the Sixteenth day of May A. D. Eighteen hundred and Sixty one, there was filed in the Office of the Clerk of said Court a certain Stipulation in said cause; which said Stipulation is in words and figures as follows, to wit.

"Esther E. Gaffney et al
vs
James P. Brown et al } In Chancery.

It is stipulated that the Depositions of witnesses in this Cause may be taken before Ira Scott Esq. Master in Chancery in and

for Cook County in said Court at his Office in Chicago Commencing on Monday the 18th inst. at 10 A.M.

W. T. Burgess
for Defts.

March 4. 1861.

And afterwards to wit on the Sixteenth day of May A.D. Eighteen hundred and sixty one, there was filed in the Office of the Clerk of said Court Certain Depositions on the part of the said Complainant which said Depositions are in the words and figures as follows to wit.

State of Illinois } ss. Superior Court of
County of Cook } Chicago In Chancery.

Esther E. Gaffney
Etal
vs.
James P. Brown
Etal

Depositions of witnesses produced sworn and examined, before me Ira Scott, one of the masters in Chancery of the Superior Court of Chicago, for and on the part of the complainants in the above entitled cause, and taken pursuant to agreement and stipulation of the solicitors of the respective parties, in said cause.

The said Parties appearing by their respective solicitors this 18th day of March A.D. 1861, at the office of said master in the city of Chicago at which time the following proceedings are had,

Pierce Gaylord a witness produced - sworn and examined on the part of the complainant deposes and says -

1st What is your age and occupation - where do you reside

Answ am forty four years of age - reside in Chicago - my name Pierce Gaylord, reside in Chicago - am a Botanic Physician -

2nd Are you acquainted with the Parties to this suit, or with complainants and Respondents, and if so, how long have you been acquainted with them respectively?

answ. I know the complainants, have known them since the fall of 1856 - I dont know the Defendants -

3d Do you know Barnard Gaffney and the state of his health, in the spring of 1857, if so state fully all you know and your means of knowledge?

answ. I attended on him from the fall of 1856, up to the spring of 1857. I told him when I first saw him that his disease was such that it was impossible for him to recover -

4. What was his disease at that time?

answ. His principal disease was in the head -

5. Cant you tell us what his disease was called, the name of the disease?

answ. The first attack of it was a catarrh in the head - it run from that until it become a local disease.

6. How long did you attend on him as his Physician in all?

answ. From the fall of 1856. until his death.

7. What was the condition of his mind during all that time?

(above question objected to by Defendants Solicitor)

answ. sometimes his mind was more settled than others, he had spells of very severe pains in his head - I thought several times in conversation with him that he was very childish in his ways.

8. State what effect the disease had upon his head?

answ. The disease of the head effects the whole nervous system his disease drew the nerves of the face and eyes clean around - one eye was perfectly set wide open - for six days before he died - It was apoplexy that killed him -

9. Was he a man during all or any part of that time capable of doing business?

Objected to -

answ. I dont think he was, I never seen him do any business or try to do any business - whilst I was there - his wife always done the business -

10. Did it or not cause Gaffney great exertion to exert his mental faculties?

Objected to.

answ. It did.

11. Was or not his mind in such condition during all or some part of that time, that he would rather yield his interests, than to contest them -

Objected to -

answ. I should think it was - for after the least excitement from a

week or so - he was not able to sit up.

12. Had he ever had a previous attack of his disease before the one that caused his death.

answ. Yes, several slight ones, which grew worse and worse.

Subscribed and sworn to before me this 18th day of March A.D. 1861.
Ira Scott.
Master in Chancery of the Superior Court of Chicago.

Piree Gaylord.

Peter L. Yoe a witness produced, sworn and examined on the part of the complainant deposes and says.

1st State your name, age, residence and occupation, and do you know the parties to this suit, and for how long,

answ. My name is Peter L. Yoe - residence Chicago - am forty five years of age - have retired from business - I know Mrs Esther E. Gaffney - The other complainants I don't know - I know Jeremiah L. Brown - have known Mrs Gaffney from twelve to sixteen years, and Mr Brown for I should think ten to twelve years - perhaps longer -

2nd Were you acquainted with Barnard Gaffney in his life time?

answ. Yes.

3d Do you know the premises in controversy in this cause?

answ. yes.

4th Were you or not in some way connected in December 1849. with the firm of Gurney - Hayden & Co of the city of Chicago and if you were, in what capacity?

answ. Yes. I was connected with that firm at that time - I was clerk at that time -

5. Do you know whether Barnard Gaffney was at that time indebted to the firm of Gurney - Hayden & Co and if so, what was the amount of such indebtedness & state fully all you know about it,

answ. He was indebted to the firm of Gurney - Hayden & Co and as by the Books - he was indebted to the firm six hundred and twenty one dollars -

6. What securities did Gaffney give if any to secure the payment of that indebtedness?

answ. An assignment of a Trustees Illinois and Michigan Canal Certificate of purchase - of which one payment - that is the first payment had been made, with which he gave two notes - one for one hundred ninety Eight dollars and twenty seven cents - the other for Four hundred and twenty two dollars and forty nine cents -

7. Did Barnard Gaffney pay that indebtedness or any part of it and if so, what portion, and at what time?

answ. He paid no portion of it himself.

8 By whom was the first note that you speak of paid?

answ. It was paid by J. L. Brown and before maturity I am not positive as to its being paid before maturity –

9 How much interest was there due on that note and was then interest paid –

answ. The note was drawn without interest, I give that from my recollection.

10. By whom was the second note paid? and what was the amount of that note exclusive of interest and what amount of interest was there due at that time and was that interest all paid and if not, what part of it was paid – and by whom was it paid?

answ. J. L. Brown – the amount of the note was for four hundred and twenty two dollars and forty nine cents and without interest –

11. Was there any deduction made on the payment of the last note – if so how much?

answ. The full amount was paid – no deduction –

12. Was there any deduction on either of the notes spoken of by you –

answ. There was on the first note – referred to then – the deduction was simply the interest from the time of the payment up to the maturity of the note – upon further reflection I am

satisfied that the discount was made on the last note there was no other deduction made.

13. What amount was deducted from the last note?

answ. Twenty three dollars and forty nine cents.

14. What amount of money in all was paid to Gurney-Hayden & Co By Brown for Gaffney?

answ. Five hundred ninety four dollars - fifty one cents - or Five Hundred Ninety Eight 27/00 dollars as near as may be.

15. Do you know of any arrangement between Barnard Gaffney and Jeseniah L. Brown by which Brown was to pay the indebtedness of Gaffney to Gurney-Hayden & Co and if so state fully what that arrangement was?

answ. When Mr Brown should pay Gurney-Hayden & Co then they were directed by Gaffney to assign to Brown the Canal Trustees certificate before referred to - that was assigned by the members of the firm individually sometime after Mr Brown had paid the amount upon reflection I distinctly recollect there was an instrument assigned or executed by the members of the firm individually to Brown but am not positive if it be the certificate referred to or a quit claim deed

16. Was or not there an understanding between Gaffney and Brown in regard to the manner in which Brown was to hold the certificate so assigned by Gurney-Hayden & Co - and if so what was that?

answ. I cant say that there was any ~~misu~~ understanding - if there was I had no knowledge of it.

17. Was or not those securities assigned to Brown, as a security for the payment of the money so advanced by Brown to Gurney - Heydon & Co for Gaffney?
(Objected to)

answ. I think I so understood from Mr Brown himself - at least that was my impression - that is - sometime after the Original transaction -

18. Do you know of Barnard Gaffney going to California

answ. Yes sir - he told me he was going and after his return he told me he had been -

19. How long was Barnard Gaffney absent to California?

answ. Between six and seven years -

20. Was that certificate of purchase you speak of - for the premises in question?
(Objected to)

answ. Yes.

21. Do you know of Jeremiah L. Brown's claiming an assignment of the Illinois and Michigan canal certificate of purchase of the premises in question to Barnard Gaffney and assigned by the said Barnard Gaffney to Gurney - Heydon & Co to secure the aforesaid indebtedness,

to them on his (Brown's) payment to said Gurney-Haydon & Co the last aforesaid note as security for the money he had so advanced for Barnard Gaffney?

(Objected to)

Answ. No -

22. Was it upon or after the assignment of the certificate spoken of by you, to Jeremiah L. Brown by Gurney-Haydon & Co that you understood from Jeremiah L Brown that he was to hold them as security for the money advanced by him for Barnard Gaffney?

(Objected to)

answ. It was after the assignment that I got the impression as stated in my answer to to interrogatory number seventeen -

23. What was the condition of Barnard Gaffney as to the state of his health on his return from California?

answ. I know nothing in regard to his health - to attract any particular attention at the time - different from what I had always known of him -

24. Do you know of a settlement or an attempted settlement between Barnard Gaffney and Jeremiah L. Brown in regard to the money advanced by the said Jeremiah L. Brown before and after Barnard Gaffney went to California?

(Objected to)

answ. I know of a settlement -

25. Was you present at that settlement?

answ. I made the settlement.

26. Did Jeremiah L. Brown put into your hands the evidences of indebtedness and if so, what did they consist of - at the time or before you made this settlement?

answ. No sir upon reflection will say Brown may have put into my hands the evidences of indebtedness, but cannot fix it in my mind with any degree of certainty if he did they were given to Gaffney

27. Upon what basis was that settlement made by you?

answ. On the basis of the proposition made by Barnard Gaffney.

28. Do you know the amount of Barnard Gaffney's indebtedness to Jeremiah L. Brown at that time?

answ. No.

29. Do you know what amount of money Jeremiah L. Brown then claimed to be due him from Barnard Gaffney?
(Objected to as leading)

answ. No -

30. State then what that settlement was and how it was carried out?

answ. according to the best of my knowledge, it was as follows, Mr Gaffney called upon me at my place of business, and requested my aid in the settlement as between himself and Mr Jeremiah L. Brown, authorizing me to make a proposition to Mr Brown - Mr Gaffney stated that he was willing in order to bring about an amicable settlement, to give Mr Brown a sum of money equivalent to one half of the value of the property in question and I think he named he would be willing to give him five thousand dollars - I think that is the amount he named - I stated to Mr Gaffney at that time I thought he placed too great a value upon the property and convinced him in consideration of the times - that it was too high - I stated to him that I thought that his proposition to give him one half of the property according to my understanding of it was fair and thought Mr Brown ought to accept of it - the question then came up, how the property could be equally divided, as Gaffney had a dwelling which was not included in the proposition, situated upon the lot - It was then proposed to value the property per foot front on the street running East and West which was Washington street - and to deed to Mr Brown - the East one third of said Lots and to give a mortgage upon the west two thirds to Mr Brown to secure three notes dated March 10th 1857. at one two and three years, for six hundred and three dollars and nineteen cents each - the interest to the maturity of the notes - at ten per cent per annum included in the face of the notes - Mr Brown after some considerable time was induced to accept of the proposition - The proposition is, that Mr Brown caused to be executed a deed conveying the entire property to Barnard Gaffney - Barnard Gaffney to execute a deed to James P. Brown of De Kalb county of the East one third of the entire Lots - and a mortgage upon the west two thirds of the entire

Lots - to secure the notes above mentioned - said deed and mortgage to be placed in my hands when all were executed and by me placed upon record in the regular order - this to be a final and full settlement of all indebtedness as between the said Gaffney and Jeremiah L. Brown - all of which has been done and at the time to the entire satisfaction of the parties interested as they so stated to me -

31. Did Jeremiah L. Brown deliver up to you the evidences of indebtedness against Barnard Gaffney at that time or any time since?

answ. No sir - I have no recollection at present - I was not requested to ask for any thing that I recollect of -

32. Did you or do you know of Jeremiah L. Brown's claiming that he or his son James P. Brown held both the legal and equitable title of the premises in question before that settlement?

answ. James P. Brown - I never held any conversation with, to my recollection - Jeremiah L. Brown I think once did state to me that either he or his son did claim to hold legal and equitable title, But at what time I cant state. But it was previous to the settlement.

33 Was or not the proposition made by Gaffney in whole or in part brought about by such claim on the part of the Browns?

(Objected to)

answ. I do not know -

34. What was the value of the east twenty feet that you speak of being deeded to James P. Brown, worth at that time?

answ. I am unable to state the cash value –

35. What was the value of the whole premises at that time?

answ. I am unable to state the cash value –

36. What consideration was there given to Barnard Gaffney for the three notes of six hundred and three dollars and sixteen cents each – spoken of by you?

answ. The consideration was in the first place a deed to the west forty feet of the two lots – and to release Mr Gaffney from payment of any notes or demands held by J. L. Brown as against Gaffney up to the date of the deed – or in other words a full satisfaction of all demands of every description as against Barnard Gaffney – In order to be correctly understood – the consideration was – that Brown should deed to Gaffney the entire property – Gaffney redeeding to Brown the east twenty feet and executing a mortgage to Brown to secure the payment of the three notes above mentioned said mortgage to be on the west forty feet of the lots – and for the other considerations above named in this answer.

37. Is the consideration mentioned in the deed from Gaffney to James P. Brown of the east twenty feet – the price agreed upon by the parties?

(Objected to)

answ. To the best of my recollection it is.

38. Do you know whether Barnard Gaffney had a wife in 1857?

answ. I have not seen Mrs Gaffney to my knowledge since 1850. consequently I cant state of my own knowledge whether she was living or not –

39. Where did Barnard Gaffney reside in March 1857?

answ. He told me he occupied the house on the premises referred to – I never have been in his house.

40. Do you know whether the premises in question was occupied by Barnard Gaffney and his family in 1850?

answ. I only know it by hearsay –

41. Do you know who built the house on the premises in question? and when it was built?

answ. I dont know when it was built – Mr Gaffney informed me that he built it –

(Cross Examination)

1st cross Int. Look at the paper writing now shown to you marked Exhibit 1 – and state by whom it is executed?

answ. Gurnee Hayden & Co and Barnard Gaffney.

2d When was that paper given?

answ. March 12th 1850.

3d. Was that paper delivered to Barnard Gaffney by Gurnee - Heydon & Co or by him to them?

answ. By him to them -

4. Was there any other of the same tenor executed at the same time?

answ. I cannot recollect -

5. Look at the writing across the face of the instrument, "Rec'd Chicago March 17. 1857. one dollar, in full satisfaction of this agreement" (signed) "Gurnee - Haydon & Co" and state by whom the same was executed?

answ. I signed it myself - being authorized to use the name of the firm -

6 Will you state on what occasion and how that came to be placed there?

answ I think at the time Mr Brown paid the indebtedness of Barnard Gaffney to the firm of Gurnee - Heydon & Co

7. Who paid the several sums of money mentioned in that contract - if they were paid?

answ. The first endorsement of one hundred sixty four dollars and thirty cents - I think Mr Brown paid and also the second one $198.$\frac{72}{100}$. The endorsements are both in my hand - writing - The remainder if paid were paid by J. L. Brown, this is my recollection -

8. Look at the paper writings now shown to you marked

Exhibits numbers 2-3 and 4 and state if you know by whom they were executed?

answ. I should say by Barnard Gaffney-

9. Were any of those notes paid by Gurnee-Hayden & Co if so, which?

answ. Yes- the one marked exhibit No. 2-

10. Were they ever repaid and if so by whom-?

answ. The note paid by Gurnee-Hayden & Co was charged to Barnard Gaffney- his account settled- by note and said note paid by Jeremiah L. Brown.

11. How much of the first payment made by Gaffney to the Canal Trustees was paid by Gurnee-Hayden & Co and included in his account?

(Objected to)

answ. From recollection say from thirty to fifty dollars- was handed to Gaffney to enable him to make the first payment, and repaid to Gurnee-Hayden & Co by Gaffney-

12. Did Gaffney and his wife or he alone execute to Gurnee Hayden & Co any deed or assignment of this property- if so, what has become of it-?

answ. He assigned to them a certificate of the Illinois & Michigan Canal Trustees- My impression is that his assignment was upon the certificate and by them at Gaffney's request assigned to Jeremiah L. Brown or to James P. Brown-

13. Was there or not a quit claim Deed of this property made by Bernard Gaffney and wife or either of them to Gunke - Hayden & Co ?

(Objected to)

answ. I believe there was - but at the present I cant state positively -

(Answer Objected to)

14. If there was any such deed executed do you know where it is now ? and what became of it ?

answ. No -

(It is here admitted by the complainants solicitor that above deed is lost - and a certified copy thereof may be used.)

15. Look at the paper writing now shown you marked Exhibit number 5 - and state whether that is one of the deeds alluded to by you in your direct examination - ?

answ. Yes, it is

16. Look at the paper writing marked Exhibit No 6 - and state what that is ?

answ. It is a mortgage given by Barnard Gaffney and wife to James P. Brown being the same mortgage referred to in my direct Examination -

17. Look at the paper writings marked Exhibits Nos 7. 8 and 9. and state what they are and by whom executed ?

Answ. They are three notes for $203.10 each, made by Bernard Gaffney - being the same notes secured by the Mortgage marked Exhibit 6. and referred to in my previous examination -

18. Did not the parties Brown and Gaffney after Gaffney's return from California agree to leave the matter out to you in difference between them, touching the property in controversy in this suit?

Answ. They did -

19. Did you not settle it for them by directing the execution of the deeds and Mortgage and notes you have testified about?

Answ. I did -

20. Who filled up the blanks in the printed forms, that were used for said deeds - and Mortgage, and notes?
(Objected to)

Answ. Mr C. B. Kramer.

21. Did you direct him what to put in each deed, and how to fill them up

Answ. I did.

22. And then the parties executed them and left them with you for record, did they not?
(Objected to)

answ. They did.

23. Is not the consideration money expressed in the deed from James P. Brown to Gaffney, what you directed to be put in?

(Objected to)

Answ. To the best of my recollection it is –

24. Did you at any time after Gaffney's return from California and whilst any of this business was going on notice Mr Gaffney's face, so as to say whether or not the nerves were "pulled clean round"?

(Objected to)

Answ. I noticed his face and I saw nothing unusual about his face from what it appeared before he left for California – except it was not quite so full – there certainly was no distortion of his face –

25. Did you notice any imbecility of mind upon the part of Bernard Gaffney at the time of this settlement – incapacitating him from attending to business?

Answ. I did not – I considered him as competent to transact business then as he ever had been –

(Direct Examination resumed)

42. Was the assignment you spoke of, of the certificate of the Canal Trustees to Gunnee – Hayden & Co made as security for money due them by Gaffney?

(Objected to)

Answ. yes –

43 Was or not the quit Claim deed you spoke of also made for the purpose of more fully securing the money you have above spoken of?

Answ. I presume it was.

44. Did Gunnee - Hayden & Co ever have any other right or interest in said real Estate - except as a mortgage estate to secure the payment of money loaned?
(Objected to)

Answ. Not to my knowledge –

45. Did Gunnee - Hayden & Co ever convey any other right title or interest in said premises, except as a mortgage estate for the security of money?
(Objected to)

Answ. No.

46. Was or not the note marked Exhibit 2, that you say was paid by Gunnee - Hayden & Co - charged over to Bernard Gaffney on their books - and reckoned into the amount for which the two first notes spoken of in your direct examination was given?

answ. That's my recollection of it - I wish to be understood as saying it was charged to Gaffney and included in the amount for which the two notes spoken of in my direct examination were given –

47. By what mode did you arrive at the difference between Bernard Gaffney and Jeremiah L. Brown at the time

you acted as their Referee spoken of by you?
(Objected to)

Answ. I dont know any other way to answer that, but in this manner - Mr Gaffney stated to me that he would be willing to give Mr Brown I think five thousand dollars to settle the matter - having previously stated to me that he was indebted to Mr Brown in various amounts - but which he did not specify stating that the property was worth an amount, which I now cant recollect - But at the time stated to him that I thought it so high a valuation - for the times - I can only answer this question by repeating what I have before answered in answer to the thirtieth direct interrogatory -

48. Had or not the notes marked here as Exhibits 2. 3 and 4. and also the Exhibit marked Exhibit No 1. with the two notes you first spoke of in your direct examination - ought to have been delivered up to Bernard Gaffney in accordance with the agreement you speak of to be cancelled on the delivery of the deeds -

Answ. I am not prepared to say, whether these canal notes should have been given up - and I have no recollection as I have stated in a former answer whether they were or were not given up -

49 Would a man of ordinary foresight and prudence, have allowed the deed and Mortgage and notes spoken of by you and marked as Exhibits 5 - 6 - 7 and 8. and 9 - to be delivered before the Evidences of indebtedness that Brown held against him - were delivered up to be cancelled?

Answ. No - But I do not consider the Exhibits marked 2 and 3

and 4. as being evidence of debt as against Bernard Gaffney — I consider Brown to be the proper person to hold possession of the Exhibits last named —

50. Did not Bernard Gaffney often express wild and exaggerated ideas in regard to the value of that property?

(Objected to)

answ. no I cant say that he was wild — at the same time, he put a higher valuation upon it, than I thought the times would warrant.

51. Do you know from your own knowledge or from conversation with Jeremiah L. Brown, or from Jeremiah L. Brown and Gaffney together — the amount of indebtedness from Gaffney to Brown at the time of the settlement?

answ. No sir —

(Cross Examination resumed)

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26 At the time the endorsement was made of, the receipt on the face of the contract Exhibit No 1. Brown had paid up to Gurnee - Hayden & Co - all that was due upon that contract — and was entitled to receive a deed according to its terms?

(Objected to)

answ. Yes — Gurnee - Hayden & Co were directed by Bernard Gaffney to assign to Jeremiah L. Brown and convey all the right title and interest which they had to premises referred to, assigned and conveyed to them

by the said Gaffney—

27. When Gurnee - Hayden & Co were all paid up for what was due under this contract, did they hold the property any longer as a mortgage?
(Objected to)

Answ. No.

Subscribed and sworn to before me this 19th day of March A.D. 1861.
Ira Scott
Master in Chancery of the Superior Court of Chicago

Peter L. Roe.

Ephraim N. Cummings a witness produced sworn and examined on the part of the complainant deposes and says,

1st State your name - age - residence - and occupation and do you know the parties to this suit - if so for how long - ?

Answ Ephraim N. Cummings, am thirty two years of age - reside in Chicago - am money and real estate Broker - I know Mrs Gaffney and her Children - have known them since 1852. dont know the Defendants.

2d Are you acquainted with sub Lot number four and five, in Lot number two in Block number forty eight in the Board of Trustees of the Illinois and Michigan canal subdivision of said Lot number two in Block

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number forty eight in the original town of Chicago, if so state where it is and how long you have known it?

Answ. I am – It is at the corner of Washington and Desplaines streets, the two lots front north on Washington street – I have known the property since the fall of 1848 – cant say when it was subdivided –

3d. What was those lots worth in March 1857?

Answ. As near as I can recollect I stated at that time the property was held at one hundred and fifty dollars a foot – being corner lots – inside lots not worth as much – in consideration of the improvements on it – I never said it could be sold for that for cash;

4. State what its cash value was at that time?

Answ. I am of the opinion that I placed it at six thousand dollars – I think it was worth six thousand dollars at that time –

5. What was the value of the East twenty feet at that time?

Answ. It was not worth over Eighty dollars – no buildings on it no improvements – not cash – I mean to be understood that that's all its worth in cash –

*

(Cross Examination)

1st Cross. Do you know of any property in that vicinity being sold for cash all paid down at or about that time?

Answ No sir

(Direct Examination resumed)

6. Do you know of any property near there being sold about that time - and if so, what was the price and what kind of pay and what were the terms

Answ. I know of property being sold then - but I dont know the price only by heasay -

Subscribed and sworn to before me this 18th day of March A.D. 1861.
Ira Scott
Master in Chancery of the Superior Court of Chicago

E. N. Cummings.

1861. March 19. Parties met pursuant to adjournment.

Abner Sutton a witness produced - sworn and examined on the part of the complainants deposes and says,

1st. Int. State your name - age - residence and occupation - do you know the Parties to this suit - if so - for how long have you known them?

Answ. Abner Sutton - my age is about fifty - I reside in Chicago - am acting as Bailiff at the Court House I know Mrs Gaffney and some of her children - dont know the Defendants have known Mrs Gaffney nine years -

2d Did you know Bernard Gaffney during his life time and if so, what time did you become acquainted with him - and

how long did you know him?

answ. I did know him, I cant remember the time I became acquainted with him - it was shortly after he returned from California - I knew him up to the time I heard of his death -

2d How often did you see Bernard Guffney during all that time?

Answ. I saw him very frequently, sometimes every day - for a few days at a time - then I would not see him again.

3. Do you know the state of Bernard Guffney's health both as to mind and body during that time? if so state fully all you know about it?

answ. I think I do - he was sick - he appeared to be a man debilitated in body and mind - decayed - he seemed to be a man when I met him with his head laying on the fence - he seemed to be worn out - if I would speak to him he would act more like a man idiotic than any other way - thats all I know of him -

5. What was his business capacities at that time?

answ I never saw him do any and should not have thought him a safe man to have done business - if I had it to do - I should not of the smallest kind of business - of any kind -

X (Cross Examination)

1st Cross Int- You never did any business with him yourself did you?

Answ. I have with his wife - but not with him -

2d Do you know when he died?

Answ. I know, but I cant remember the date -

3d How long was he sick before he died?

Answ. He was sick pretty much all the time - from the time he came back from California.

4. What was the matter with him?

Answ. It was said that he was a man that drank a great deal in his life time, I dont know that he had drank any -

5. How long before his death was the first time, you noticed this imbecility of his?

Answ. It was right from the time he came home from California - soon after.

6. How often did you notice him hanging on the fence as you have stated?

Answ. When he first came home, I see him oftner - sometime twice a day sometimes twice a week, at the last part I did not see him so often at all - for the last -

7. If you never did any business with him - how do you know that he was not able to do business?

Answ. He appeared to have no intellect nor no ambition about

him.

8 You judged then of his mental capacity from his external appearance?

answ. No. by asking him questions –

9. What questions did you ask him?

answ. I would ask him – how he was – and he would answer me vague –

10. What was his answer to that question?

answ. I could not tell you – not exactly the identical words.

11. Give us the substance of them?

answ. I dont see how I can do it – I spoke to him so many times.

12. Did he always answer you the same way, using the same language?

answ. He did not.

13. Did he ever make any to you – but what you call a vague answer?

answ. I think he has –

14. How often did he do that?

answ. I do not know.

15. Was it as often as every other time?

answ. Could not say -

16. He then sometimes made sensible replies about his health, did he?

answ. sometimes I thought he did.

17. What other questions did you ask him excepting about his health?

answ. I asked him about California - what kind of country it was?

18. What replies did he make to you?

answ. I cannot tell now.

19. What other questions did you ask him?

answ. I dont recollect -

20. Did you ever see him in his house?

answ. I have.

21. How often?

answ. I could not say how often - a good many times -

22. Do you know of any other reason for thinking his mind unsound - except what you have now stated in answer to the Defendants interrogatories?

answ. I don't think of any now –

23. Do you know the fact that he was in court attending to the trial of a cause – being an action of ejectment against him ? a short time before he died –

answ. I do not know it –

24. Did you see him about the time of the trial of that cause ?

answ. I think I did.

25. Were his actings about that time the same as you have testified in answer to the direct interrogatories ?

answ. At all times when I saw him I saw but very little difference in him –

Question repeated to the witness.

answ. At all times when I saw him and spoke to him, it was about the same –

26. You never saw him then when you thought him in a right mind ?

answ. When I asked him how he was and he said he was sick – then I thought he was in his right mind –

Question repeated to witness.

answ. I never did –

27. Did you not say just now in reply to the last interrogatory - after using the words "I never did" - the words "have it that way if you're a mind to" - ?
(Objected to)

answ. I do not know whether I did or not -

28. Do you mean to say that you have forgotten whether you used them or not ?

answ. I do not know that I ever did -

29. You have said that in reply to your questions when he has ~~he has~~ said that he was very sick you thought he was in his right mind, how often did he say so to you?

answ. I could not say -

30. Did he say so oftner at the beginning than at the end of his sickness ?

answ. I did not see him at the end of his sickness -

31. Did he say so oftner when you first knew him than he did shortly before his death ?

answ. I think when I first knew him -

32. There were times then when you first knew him - when you thought him of sound mind ?

answ. I never did think him of sound mind, only by the answer he made me that he was sick.

33. You have said that he made those answers to you oftner at the first of his sickness, than towards the end of it, have you not?

answ. I do not know whether I have or not, I did see him oftner in first of sickness than towards the last-

34. When he made those answers to you - you thought he was rational did you not?

answ. I have said a good many times that I never thought he was very rational -

35. Not even when he was sick and told you so?

answ. I never thought him very rational -

36. When he was sick and told you he was sick - did you consider him rational or not?

(Objected to)

answ. I never thought him rational put it down once more -

37. Why did you not think he was rational?

answ. Because he acted idiotic -

38. What idiotic acts did he do?

answ. I dont know how to answer -

39. Are you sure you understand the word "idiotic"?

answ. I am not a medical man or an Expert -

40. What profession or business were you in before you was a Bailiff?

Answ. I carried on the Pork packing and smoked meat business –

41. What business did you carry on before that?

Answ. I am a Tanner and Currier by trade –

42. You understand that kind of business do you not?

Answ. Not as well as some others – I can make a raw hide into a piece of leather –

43. How did he act idiotic?

Answ. He acted stupid –

44. That is when you spoke to him he did not seem to care to reply to you?

Answ. Sometimes he would and sometimes he would not –

45. Was he stupid when he replied to you or when he did not?

Answ. More often when he did, I should think.

46. There were sometimes then when he spoke to you where he did not seem stupid, were there not?

Answ. When he said he was very sick I knew it was so –

47. How else did he act idiotic?

Answ. I do not know any more about it –

(Direct Examination resumed)
(Defendants Solicitor objects to any further Direct examination of this witness)

6. When you had the conversation with Gaffney about California did he converse rationally or otherwise?
(Objected to)

Answ. I never thought him to converse like a rational very sensible man.

7. How did he converse in those conversations?
(Objected to)

Answ. I cannot say how – But as I thought he wasen't sound in mind –

Subscribed and sworn to before me this 19th day of March A.D. 1861.
Ira Scott.
Master in Chancery of the Superior Court of Chicago

Abner Sutton.

1861. May 16th. Parties appeared by their solicitors -

The complainant introduced in evidence a certified copy of certificate of Purchase on file in the office of the secretary of the Board of Trustees of the Illinois & Michigan canal dated September 12th. 1[illegible] Executed by said Board of Trustees to Barnard Gaffney - for the sale and purchase of Lot 2. Block 48 in the original Town of Chicago - with assignments thereof thereon endorsed, to wit. From Bernard Gaffney to Gurnee - Hayden & Co dated February 21st. 1849. and from Gurnee - Hayden & Co to Jeremiah L. Brown, dated March 17. 1851. and from J. L. Brown to Ezra S. Gregory, dated August 11th 1851 and from E. S. Gregory to J. L. Brown dated March 6th 1854. and from Jeremiah L. Brown to James P. Brown dated March 5th. 1855. Which said certified copy is herewith returned Marked Exhibit 10.

(The Solicitor for Defendants consents that the above certified copy - be received with the same effect as if the original had been introduced.)

Superior Court of Chicago
In Chancery
Esther C. Gaffney etal
vs.
James P. Brown etal

State of Illinois
County of Cook } ss.

I Ira Scott one of the masters in Chancery of the Superior Court of Chicago, do hereby certify that the foregoing depositions were taken before me, at my office in the city of Chicago, pursuant

to an agreement and stipulation of the solicitors of said Parties, on the part and behalf of the complainants in said cause - That previous to the examination of said witnesses whose names are subscribed to the foregoing depositions they were each by me duly sworn according to law and their said depositions were subscribed and sworn to by said witnesses respectively at the times above stated and that the foregoing with the Exhibits herewith returned are all the proof taken before me on the part of the complainants in said cause -

Dated May 16th 1861.

Isa Scott.
Master in Chancery of the Superior Court of Chicago.

Masters fee $10. paid by Solicitors for Complts

And thereafter to wit on the fifteenth day of June A.D. Eighteen hundred and sixty one, there was filed in the Office of the Clerk of said Court a certain Motion on the part of said Complainant, which said Motion is in words and figures as follows, to wit.

"Estlen E. Gaffney et al
vs
Jeremiah L. Brown and James P. Brown ...

Superior Court of Chicago
June term 1861.
In Chancery.

The Complainants move to amend their Original and Amended Bill by striking out all after the words and figures in the Ninth line and second page of the Original Bill to wit "September A.D. 1851.", leaving the first, second and third paragraphs of said bill, and inserting the first paragraph of the Amended Bill filed March 5th 1861, commencing with the first words in the first paragraph "That"

(Exhibit No 1.)

Articles of Agreement made and concluded the thirteenth day of March in the year One Thousand Eight Hundred and fifty, Between Gurnee Hayden & Co parties of the first part, and Barnard Gaffney party of the second part. Witnesseth that the party of the first part, at the request of the party of the second part, and in consideration of the money to be paid and the covenants as herein expressed to be performed by the party of the second part (the prompt performance of which payments and covenants being a condition precedent and time being the essence of said Condition) hereby agree to sell to the said party of the second part, all those certain lot and parcel of land situate in Chicago, County of Cook and State of Illinois, known and distinguished as Sub lots four and five in Lot number Two in Block number forty eight in the original town of Chicago as subdivided by the Board of Trustees of the Illinois & Michigan Canal, with the privileges and appurtenances thereunto belonging

Recd Chicago March 17. 1851 of Barnard Gaffney One Dollar in full satisfaction of this agreement. Hayden & Co

And the said party of the second part, in consideration of the premises, hereby agrees to pay to the said party of the first part his or their Executors, administrators or assigns at their Store in the City of Chicago the sum of nine hundred and forty dollars and fifty one cents, as follows, Viz: One hundred and sixty four dollars and thirty cents on the first day of September next — One hundred and ninety eight and seventy two cents twelve months from the date hereof

and five hundred and seventy seven dollars and forty nine cents on the first day of September Eighteen hundred and fifty one - And also that he will well and faithfully, in due season, pay or cause to be paid all ordinary taxes assessed for revenue purposes upon said premises or any part thereof subsequent to the year 1848. And also all other assessments which now are or may be hereafter charged or assessed upon or against said premises or any part thereof and keep the buildings on said premises insured for four hundred dollars - But in case the said party of the second part fail to pay any or all such taxes or assessments upon said premises or appurtenances, or any part thereof and all premiums of Insurance whenever and as soon as the same shall become due ~~and~~ or payable; and the party of the first part shall pay from time to time or at any time any or all such taxes or assessments and premiums for Insurance, or cause the same to be paid, the amount of any and all such payments so made by the party of the first part shall immediately thereupon become an additional consideration, and payment to be made by the party of the second part hereto, for the premises herein agreed to be conveyed.

And the said party of the first part, further covenants and agrees with the said party of the second part, that upon the faithful performance by the said party of the second part of the undertaking in his behalf, and of the payment of principal and interest of the sum above mentioned in the manner specified, he, the said party of the first part, shall and will, without delay, well

and faithfully execute acknowledge and deliver in person or by Attorney duly authorised to the party of the second part, his heirs or assigns a deed or conveyance of all the right title and interest of the party of the first part of in and to the above described premises with the appurtenances, with covenants of warranty against any act or thing done or suffered by the party of the first part.

And it is mutually covenanted and agreed, by and between the parties hereto, that in case default shall be made in any of the payments of principal or ~~and~~ interest, at the time or any of the times above specified for the payment thereof and for Five days thereafter, this agreement and all the preceding provisions hereof shall be null and void, and no longer binding, at the option of the said party of the first part their representatives or Assigns; and all the payments which shall then have been made hereon or in pursuance thereof, absolutely and forever forfeited to the said party of the first part or at the election of the said party of the first part their representatives and assigns, the covenants and liability of said party of the second part shall continue and remain obligatory upon the said party of the second part and may be enforced and the said Consideration money and every part thereof with the annual interest as above specified be collected by proper proceedings in law or equity, from the said party of the second part his heirs, executors, administrators or assigns.

And it is further mutually covenanted and agreed by and between the parties hereto,

that in case of default in the payments stipulated to be made by the said party of the second part or any part thereof, and the election of the party of the first part their representatives or assigns to consider the foregoing Contract of sale at an end, and prior payments forfeited, the said party of the second part, his heirs representatives or assigns, who may have possession, or the right of possession of said premises at the time of such default, or at any time thereafter, shall be considered and are hereby agreed and declared to be in law and equity, the tenant and tenants at will of said party of the first part his representatives and assigns, on a rent equal to an interest of ten per cent per annum on the whole amount of the purchase money above specified, payable quarterly, from the day of such default in payment of principal or interest. And after such default in payment and election to consider the above contract of sale as void, the said party of the first part their representatives and assigns, shall and may have and exercise all the powers rights and remedies provided by Law or equity, to collect such rent, or to remove such tenant or tenants, the same as if the relation of landlord and tenant, hereby declared, were created by an original absolute lease, for that purpose on a specified rent, payable quarterly, on a tenure at will. And that in such case the said tenant or tenants shall and will pay or cause to be paid, all taxes, assessments, ordinary and extraordinary, which may be laid or assessed on such premises, or any part thereof,

16.2-

during the continuance of such tenancy; and will not commit or suffer any waste or damage to said premises or the appurtenances, but will keep and deliver up, on the termination of such tenancy the said premises and appurtenances in as good order and repair (ordinary wear and decay and unavoidable injury by the elements excepted) as they were in at the commencement of such tenancy.

In Witness whereof the party of the first part and the party of the second part in own proper person have hereunto respectively set their hands on the day and year first above written—

Sealed and Delivered in presence of N.B. Judd.

~~Gurnee Hayden & Co~~ L.S.

~~Barnard Gaffney~~ L.S.

(Endorsed)

Gurnee Hayden & Co
with
Barnard Gaffney.
Contract.

Rec Sept 13/50 on the within Contract One Hundred Sixty four 30/100 Dolls.

G H & Co—

Rec Dec 28/50 $198 15/100 Dolls on the within Bond—

G H & Co

(Exhibit No. 2.)

#155- Illinois and Michigan Canal Office
Chicago Sept 1 A.D. 1848

One year after date, for value received I promise to pay to the Board of Trustees of the Illinois and Michigan Canal at the office of said Board in the City of Chicago, the sum of One hundred and fifty five dollars and — cents with interest at the rate of six per cent per annum payable annually in advance (the first year's interest having been advanced hereon)

Bernard Gaffney -

Endorsed - Note #155 -
Int on 310. 18.60
Back Int. ,49
174.09

Chicago 19 Sept 1849
Rec^d the above amt. of One hundred seventy four 9/100 Dollars of Gurney Hayden & Co.

Geo Smith & Co
P L Sheriffs -

Exhibit No. 3.

Illinois and Michigan Canal Office
Chicago Sept 1st A.D. 1848.

Two years after date for value received I promise to pay to the Board of Trustees of the Illinois and Michigan Canal at the Office of said Board

in the City of Chicago, the sum of One hundred and fifty five dollars and — cents with interest at the rate of six per cent per annum payable annually in advance (the first year's interest having been advanced hereon,

Bernard Gaffney.

Endorsed. Int on the within paid to 1 Sep 1850 —

(Exhibit No 4.)

Illinois and Michigan Canal Office
Chicago Sept 1. A.D. 1848.

Three years after date for value received, I promise to pay to the Board of Trustees of the Illinois and Michigan Canal, at the Office of said Board in the City of Chicago the sum of One hundred and fifty five dollars and — cents with interest at the rate of six per cent per annum payable annually in advance (the first year's interest having been advanced hereon.

Bernard Gaffney.

Endorsed — Int on the within paid to 1 Sep 1850
Interest paid to Sept 1. 1851.

She examined, separate and apart and out of the hearing of her husband and the contents and meaning of the said Deed having been by me made known and fully explained to her, acknowledged that she had freely and voluntarily executed the same and relinquished her dower to the lands and tenements therein mentioned without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and seal this Twenty third day of March in the year of our Lord one thousand eight hundred and fifty seven.

Jeremiah L. Brown (Seal)
Justice of the Peace

"State of Illinois }
DeKalb County } ss

I Wm H Bearas, Clerk of the County Court in and for said County Do certify That Jeremiah L. Brown whose name is subscribed to the annexed certificate of acknowledgement was at the time of executing the same an acting Justice of the Peace in and for said County duly commissioned sworn and authorized to take the same; and full faith and credit is due to all his official acts and that the signature is genuine and the said instrument is executed in conformity with the Laws of this State

In testimony whereof I have hereunto set my hand and affixed the Official Seal of the said County Court this Twenty seventh day of March A.D. 1857.

Wm H. Bearas Clerk of the County Court

Which Deed was duly filed for record in said County the 10th day of April 1857 and duly recorded in Book 154 of Deeds page 147.

This Indenture made this tenth day of March in the year of our Lord one thousand eight hundred and fifty seven Between James P. Brown and Susan M. his wife of DeKalb County in the State of Illinois parties of the first part and Barnard Gaffney of Cook County in the State aforesaid party of the second part.

Witnesseth, that the said parties of the first part for and in consideration of the sum of Five thousand dollars lawful money of the United States of America to them in hand paid by the said party of the second part at or before the ensealing & delivery of these Presents, the receipt whereof is hereby acknowledged has aliened remised released conveyed and confirmed and by these presents do alien remise release convey and confirm unto the said party of the second part and his heirs & assigns forever All the following described lots pieces or parcels of land situate in the City of Chicago, County of Cook and State of Illinois known and described as Sublots Nos four (4) and five (5) in Lot (2) two, in Block Forty eight (48) in the Board of Trustees of the Illinois & Michigan Canal Subdivision of said Lot two (2) in said Block Forty eight (48) in the Original Town of Chicago

Together with all and singular the tenements hereditaments and appurtenances thereto belonging or anywise appertaining and the reversion & reversions remainder and remainders rents issues and profits thereof And also all the Estate right title and interest property possession claim and demand whatsoever as well in law as in Equity of the said parties of the first part of in or to the above described premises and

every part and parcel thereof with the appurtenances. To have and to hold all and singular the above mentioned and described premises together with the appurtenances unto the said party of the second part his heirs and assigns forever And the said James P. Brown for himself & for his heirs executors and administrators does hereby covenant promise and agree to & with the said party of the second part his heirs and assigns that he has not made done committed executed or suffered any act or acts thing or things whatsoever, whereby or by means whereof the above mentioned and described premises or any part or parcel thereof now are or at any time hereafter shall or may be impeached charged or incumbered in any manner or way whatever.

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

Signed sealed and delivered in presence of . . . . . } James P. Brown (Seal)
Susan M. Brown (Seal)"

"State of Illinois }
De Kalb County } ss

I Jeremiah G. Brown Justice of the Peace in and for said County in the State aforesaid Do hereby certify That James P. Brown and Susan M. Brown, who are personally known to me as the same persons whose names are subscribed to the above Deed as having executed the same appeared before me this day in person and acknowledged that they signed sealed and delivered the said instrument of writing as their free and voluntary act for the uses and purposes therein set forth.

And the said Susan M. Brown having been by

Illinois and Michigan Canal.

Know all men by these presents That the Board of Trustees of the Illinois and Michigan Canal under the authority vested in said Board, by the Act of the Legislature of the State of Illinois of February 21. 1843. entitled "An Act to provide for the completion of the Illinois and Michigan Canal, and for the payment of the Canal debt", has sold to James P Brown the following described Lots of Land, to wit; Sub Lots four (4) and Five (5) in Lot Two (2) in Block forty eight (48) in the same Trustees Sub division of said Lot Two (2) in said Block Forty eight (48) in the original Town of Chicago — said Lots being a portion of the land granted by the United States by the Act of March 21, 1827, and the 29th August 1842. to the State of Illinois, to aid said State in opening a Canal to connect the waters of the Illinois River with those of Lake Michigan, and by said State granted to the said Board of Trustees of the Illinois and Michigan Canal for the purposes set forth in the said Act of said State of Feb 21, 1843 —

Know ye also, that the said James P. Brown paid to the Treasurer of the said Board of Trustees the sum of Six hundred and twenty dollars (620) and — cents being in full payment of the purchase money for said land, and made according to the conditions set forth in the act of January 9, 1836. entitled "An Act for the construction of the Illinois and Michigan Canal —"

In consideration thereof, and the premises the said Board of Trustees of the Illinois and Michigan Canal has granted bargained and sold and by these presents does grant bargain and sell unto the said James P. Brown the said Lots of Land above designated and described –

To Have and To Hold the same together with all the rights, privileges immunities appurtenances thereunto belonging unto the said James P. Brown his heirs and Assigns forever –

In Witness Whereof the said Board of Trustees of the Illinois and Michigan Canal, has caused the corporate Seal of said Board to be affixed hereunto and the names of the President and the Secretary of said Board to be hereunto subscribed this Eighth day of June in the year of our Lord Eighteen Hundred and fifty five –

L. S.

W. H. Swift, President

Wm Gooding Secretary

Endorsed. Trustees of I & M. Canal
To
James P. Brown.
– Deed –

No 67.692.

State of Illinois
Cook County Ss.

Filed for record Feb 22/56.
and Recorded in Book 2 of C. D. page 309.

L. D Hound – Clk

(Exhibit No 5.)

This Indenture made the Tenth day of March in the year of our Lord One Thousand Eight Hundred and fifty seven Between Barnard Gaffney and Esther E. his Wife of the City of Chicago in the State of Illinois parties of the first part and James P. Brown of DeKalb County in the State aforesaid party of the second part - Witnesseth That the said parties of the first part for and in consideration of the sum of Twenty two hundred dollars lawful Money of the United States of America to them in hand paid by the said party of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have aliened, remised, released, conveyed and confirmed and by these presents do alieue, remise, release, convey and confirm, unto the said party of the second part and his heirs and assigns forever, All that part of Sub lot Four (4) in the Illinois and Michigan Canal Trustees Subdivision of Lot Two (2) in Block forty eight (48) in the original Town of Chicago bounded and described as follows, Viz; Commencing at the North East Corner of said Sub lot thence West on the North line of said Sub lot Twenty (20) feet thence South on a line parallel with the East line of said Sub lot to the South line of said Sub lot, thence East along said South line twenty (20) feet to the East line of said Sub lot, thence North along said East line to the place of beginning" - Together with all and singular

the tenements hereditaments and appurtenances thereunto belonging or in any wise appertaining and the reversion and reversions remainder and remainders rents, issues and profits thereof; and also all the Estate right title and interest property possession claim and demand whatsoever as well in Law as in Equity of the said parties of the first part of in or to the above described premises and every part and parcel thereof with the appurtenances; To Have and To Hold all and singular the above mentioned and described premises together with the appurtenances unto the said party of the second part, his heirs and assigns forever.

And the said Bernard Gaffney for himself and for his heirs Executors and Administrators does hereby covenant promise and agree to and with the said party of the second part his heirs and assigns that he has not made done committed executed or suffered any act or acts thing or things whatsoever whereby or by means whereof, the above mentioned and described premises or any part or parcel thereof now are or at any time hereafter, shall or may be impeached, charged or encumbered in any manner or way whatsoever.

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

Signed Sealed and Delivered in presence of Michael Grant.

B. Gaffney (L.S.)

E E Gaffney (L.S.)

State of Illinois
Cook County } S.s.

I Michael Grants a Justice of the Peace in and for said County in the State aforesaid do hereby Certify That B Gaffney & E E Gaffney who are personally known to me as the same persons whose name are subscribed to the foregoing Deed, as having executed the same, appeared before me this day in person and acknowledged that they signed sealed and delivered the said instrument of writing as their free and voluntary act for the uses and purposes therein set forth.

And the said E E Gaffney wife of the said B Gaffney having been by me examined separate and apart and out of the hearing of her husband and the Contents and meaning of the said Deed having been by me made known and fully explained to her, acknowledged that she had freely and voluntarily executed the same and relinquished her dower to the lands and tenements therein mentioned without compulsion of her said husband and that she does not wish to retract the same –

Given under my hand this twentieth day of March in the year of our Lord One thousand eight hundred and fifty seven –

Michael Grants
Justice of the Peace –

State of Illinois
County of Cook.

83831

This Instrument was filed for Record on the fourth day of April at the hour of Oclock 1857. and duly recorded in Book 134 of Deeds page 149

Wm L Church clerk

(Exhibit 6.)

This Indenture made this tenth day of March in the year of our Lord One Thousand Eight hundred and fifty seven. Between Barnard Gaffney and Esther E. his Wife, of the City of Chicago in the State of Illinois, party of the first part and James P. Brown of DeKalb County in the State aforesaid, party of the second part, Witnesseth That whereas the said party of the first part is justly indebted to the said party of the second part in the sum of Eighteen hundred and nine and $\frac{48}{100}$ Dollars, secured to be paid by three certain promissory notes of even date herewith for the sum of Six hundred & three & $\frac{16}{100}$ Dollars each, executed by the said Barnard Gaffney and payable to the said second party or order respectively in one, two & three years from date

Now therefore this Indenture Witnesseth That the said party of the first part, for the better securing the payment of the money aforesaid with interest thereon according to the tenor and effect of the said premissory notes above mentioned and also, in consideration of the further sum of One dollar to him in hand paid by the said party of the second part at the delivery of these presents the receipt whereof is hereby acknowledged, have granted bargained sold and conveyed and by these presents do grant bargain sell and convey unto the said party of the second part his heirs and assigns forever all those certain lots pieces or parcels of land situate in the City of Chicago and State

of Illinois known and described as Sub lot Five (5) in the Canal Trustees subdivision of Lot two (2) in Block forty eight (48) in the original Town of Chicago. Also the West ten, (10) feet off from Sub lot Four (4) in the same subdivision of said Lot Two (2) as above described — To Have and To Hold the same Together with all and singular the Tenements Hereditaments Privileges and Appurtenances thereunto belonging, or in any wise appertaining; And also, all the estate interest and claim whatsoever in law as well as in equity which the party of the first part have in and to the premises hereby conveyed unto the said party of the second part, his heirs and assigns and to their only proper use benefit and behoof.

Provided always and these presents are upon this express condition that if the said party of the first part his Heirs Executors, or truly pay or cause to be paid to the said party of the second part his Heirs Executors Administrators or assigns, Administrators, shall will and the aforesaid sum of money with such interest thereon at the time and in the manner specified in the above mentioned promissory notes according to the true intent and meaning thereof — then and in that case these presents and every thing herein expressed shall be absolutely null and void — But it is further expressly provided and agreed that if default be made in the payment of the said promissory notes or either of them on the day or days, whereon the same shall become due and payable, the whole of said principal, secured by the said three promissory notes in this Mortgage mentioned shall thereupon become immediately due and payable; and this Mortgage may be immediately foreclosed to pay the same, by said party of the second part,

his Heirs Executors Administrators or Assigns, or the said party of the second part his Heirs Executors Administrators or Assigns, after publishing a notice in a newspaper printed in the City of Chicago Sixty (60) days before the day of such Sale, may sell the said premises and all right and equity of redemption of the said Barnard Gaffney & Esther E. his wife, party of the first part their Heirs and assigns then and there and public auction at the Court House door in said City of Chicago, to the highest bidder for Cash, at the time mentioned in such notice - And the said party of the first part hereby specially covenants and agrees to and with said party of the second part, to waive his right of equity of redemption; and further agrees that he will neither assert or claim any such right on a Sale, of the property mentioned herein by virtue of this mortgage -

And the said party of the second part to make execute and deliver to the purchaser or purchasers thereof a deed or deeds for the premises so sold - and out of the proceeds of such Sale to pay all Costs and expenses incurred in advertising and selling said premises, also the principal and interest due on said three promissory notes Anything herein or in said promissory notes contained, to the contrary notwithstanding -

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

Sealed and Delivered
in presence of } B. Gaffney L.S.
Michael Grants } E. E. Gaffney L.S.

State of Illinois
County of Cook } ss. I Michael Grants a Justice of the Peace in and

the said County in the State aforesaid
Do hereby Certify that B. Gaffney and E. E.
Gaffney his wife personally known to
me as the persons whose name are sub-
scribed to the foregoing Mortgage, appeared
before me, this day in person and acknow-
ledged that they signed sealed and
delivered the said instrument in writing
as free and voluntary act for the uses
and purposes therein set forth - And
the said E. E. Gaffney wife of the said
B Gaffney having been by me examined
separate and apart and out of hearing
of her husband, and the contents and
meaning of the said instrument in writing
having been by me made known and
fully explained to her, acknowledged
that she had freely and voluntarily
executed the same and relinquished
her dower to the lands and tenements
therein mentioned without compulsion
from her said husband and that she
does not wish to retract the same -
Given under my hand this 20th
day of March A.D. 1857.

Michael Grants
Justice of the peace.

Endorsed.

Know all men by these presents that I. James P.
Brown of Genoa in the County of Dekalb and
State of Illinois, for and in Consideration of

20-6.

the sum of Eighteen hundred dollars to me in hand paid by J. L. Brown of Genoa in the County of DeKalb and state aforesaid, do hereby sell assign and transfer to the said J. L. Brown and to his heirs & assigns all my right title and interest in and to the within Mortgage, the lands and premises therein described and to the Notes therein mentioned

Witness my hand and seal this fifth day of March A.D. 1858.

James P. Brown [L.S.]

For value received I hereby assign back to the above named Assignor James P. Brown all my right title and interest in out to the within Mortgage and the lands and premises therein described and mentioned.

Witness my hand and seal this fifteenth day of August A.D. 1858. —

J. L. Brown [L.S.]

Endorsed.
Mortgage
B Gaffney & Wife
To
J. P. Brown. No 83.832

State of Illinois }
Cook County }
Filed for Record 4th April 1857, and recorded in Book 30 of Mortgages Page 461.
Wm L. Church.
Clerk.

(Exhibit No 7.)

$603 $\frac{16}{100}$. Chicago March 10. 1857.

One year after date I the subscriber of Chicago, County of Cook State of Illinois promise to pay to James P. Brown or order at Six Hundred & three & $\frac{16}{100}$ Dollars for value received If unpaid when due I agree to pay interest thereon at the rate of ten per Cent per annum until paid

B. Gaffney

Endorsed James P Brown
J L. Brown

(Exhibit No 8)

$603 $\frac{16}{100}$. Chicago March 10th. 1857.

Two years after date I the subscriber of Chicago County of Cook State of Illinois promise to pay to James P. Brown or order at Six Hundred & three & $\frac{16}{100}$ dollars for value received. If unpaid when due I agree to pay interest thereon at the rate of ten per Cent per annum until paid.

B. Gaffney

Endorsed. James P. Brown
J. L. Brown

106

(Exhibit No 9.)

$603 $\frac{16}{100}$ Chicago March 10. 1857.

Three years after date I the Subscriber of Chicago, County of Cook State of Illinois promise to pay to James P. Brown or order at Six Hundred & Three & $\frac{16}{100}$ Dollars for value received - If unpaid when due I agree to pay interest thereon at the rate of ten per Cent per annum until paid -

B Gaffney.

Endorsed - James P Brown
J. L. Brown -

(Exhibit № 10.)

Ordinary Certificate for Lot.

№ 11. Illinois & Michigan Canal Office
Chicago Sept. 1 AD. 1848.

This Certifies

That Barnard Gaffney has this day purchased of the Board of Trustees of the Illinois and Michigan Canal Sub Lots 4 + 5 in Lot № 2 in Block № 48 in the said Trustees Subdivision of said Lot 2 in said Block 48 in the original Town of Chicago for the sum of Six hundred & twenty dollars and — cents; that he has paid towards the same the sum of One Hundred and fifty five dollars and — cents; being one quarter of said purchase money and also twenty seven dollars and 90 cents, being one year's interest in advance, on the residue of the said purchase money; the said Board has also received from said purchaser his three sevral promissory notes for one hundred & fifty five dollars and — cents each, due in one two and three years respectively, for the residue of said purchase money, said Notes bearing interest at six per cent per annum, payable quarterly in advance And that upon the full payment of the said promissory notes and the interest thereon promptly according to their tenor and effect, and also upon the payment of all taxes and all assessments of any description whatever made or imposed by any city, town, or other authority then and in that case the said purchaser

will be entitled to receive from said Board a good and sufficient Deed of Conveyance of said Lot; but in case of a failure on the part of said purchaser to pay such interest, or the residue of such principal within twenty days after the same or any installment thereof becomes due, he shall forfeit said lot and all claim thereto and all payments made on account thereof. —

In Witness whereof the said Board of Trustees have caused the Corporate Seal of said Board to be hereunto affixed and the name of the Treasurer of said Board to be hereunto subscribed the day and year first above written —

Seal

signed D Leavitt Treasurer.

Received June 8th 1855 a Deed for the property described in above Certf.

signed Jeremiah L. Brown
for James L Brown.

Note — When a Deed is required, the above Receipt may be signed by the legal owner and this paper returned to the Office of the Secretary of the Board, in Lockport, Illinois.

City Clerk's Office, Chicago, October 22 1851.

I H W Zimmerman Clerk of the City of Chicago do hereby Certify that I have examined the records of the City of Chicago in relation to the matter and find no special assessments against the premises described in the foregoing Certificate remaining unpaid to this date —

signed H. W. Zimmerman
City Clerk.

I hereby certify the annexed Copy of Certf of purchase No 11. is a true and correct Copy of the original now on file in my Office & the assignments thereon —

Witness my hand & the seal of the Board of Trustees of the Ill & Mich Canal this 31st day of January A.D 1860 —

L. S.

Wm Gooding — Secretary.

Endorsed —

In consideration of the sum of one Dollar to him in hand paid the receipt of which is hereby acknowledged I do hereby assign and transfer unto Gurnee Hayden & Co. their assigns all my right title and interest to the within Certificate as Witness my hand and seal this twenty first day of February A.D. 1849.

In presence of (signed) Bernard Gaffney. L.S.

(signd) P. L. Goe.

In consideration of the sum of one dollar to us in hand paid the receipt of which is hereby acknowledged we do hereby assign and transfer unto Jeremiah L. Brown his assigns all our right title and interest to the within Certificate as Witness our signature this seventeenth day of March A.D. 1851.

(signed) Gurnee Hayden & Co

In presence of

(signed) N. A. Jones —

In consideration of the sum of one dollar to me in hand paid the receipt of which is hereby acknowledged I do hereby assign and transfer unto Ezra S. Gregory his assigns all my right title and interest to the within Certificate —

as witness my hand and seal this Eleventh day of August A.D. 1851.

In presence of (signed) I. L. Brown (seal)

(signed) Mary Jane Gregory

In consideration of one Dollar to me in hand paid the receipt whereof is hereby acknowledged I do hereby assign and transfer unto I. L. Brown his Assigns all my right title and interest to the within Certificate as witness my hand and seal this sixth day of March A.D. 1854.

In presence of (signed) E. L. Gregory (Seal)

(signed) James P Brown

In consideration of one dollar to me in hand paid the receipt whereof is hereby acknowledged I do hereby transfer unto James P Brown his assigns all my right title and interest to the within Certificate as witness my hand & seal this fifth day of March A.D. 1855 –

In presents of (signed) Jeremiah L Brown (seal)

(signed) W Fordham

State of Illinois
Kane Kane County } ss.
Town of Sycamore

I William Fordham a Notary Public of Sycamore in said County do hereby Certify that Jeremiah L. Brown whom personally known to me as the real person whose name is subscribed the above instrument of writing appeared before me this day in person and acknowledged that he executed and delivered the said Instrument as his free and voluntary act for the purposes therein set forth. Given under my hand and seal of Office at Sycamore in said County this seventh day of March A.D. – 1855.

(L.S.)

(signed) William Fordham
Notary public.

24. 10.

And thereafter to wit on the 22nd day of May A.D. 1861 there was filed herein a certain Stipulation, in words and figures as follows to wit,

In the Superior Court of Chicago

In Chancery.

Esther E Gaffney
et al
vs
James P Brown et al.

It is stipulated that subject to all legal exceptions the papers hereto attached are the notes alluded to by Washington Richardson in his deposition in this Cause when he testifies to what Jeremiah L Brown testified to on the trial of the ejectment suit in this Court, and may be read as if identified by him in such depositions as part thereof - not hereby conceding the admissibility of that portion of said deposition and saving all exception thereto.

W. T. Burgess.
for Deft.

#235 -

One day from date I promise to pay J. L. Brown or bearer two hundred and thirty five dollars for value received - March 13th A.D. 1850 -

Settled in full ~~Barnard Gaffney~~.

#235

On demand I promise to pay J L Brown or bearer two hundred and thirty five dollars for value received Chicago March 13th A.D. 1850 -

~~Barnard Gaffney~~

Warranty Deed.

This Indenture made this day of May in the year of our Lord One Thousand Eight Hundred and fifty eight (A.D. 1858.) Between Barnard Gaffney and Esther E. his wife of Cook County in the State of Illinois parties of the first part and James P Brown of DeKalb County in the State of Illinois party of the second part. Witnesseth that the said party of the first part in consideration of Fifteen Hundred Dollars ($1500) in hand paid by the said part of the second part, the receipt whereof is hereby acknowledged by these presents do grant bargain sell release alien and confirm unto the said part of the second part and to his heirs and assigns forever. All the following described piece of land situated in the County of Cook and State of Illinois described as follows to wit; All the following described lots or parcels of land situate in the City of Chicago, County of Cook and State of Illinois known and described as Sublots Nos Four (4) and Five (5) in Lot Two (2) in block forty eight (48) in the Board of Trustees of the Illinois and Michigan Canal Subdivision of said Lot Two (2) in said Block Forty eight in the original Town of Chicago- Together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate and interest whatsoever of the said party of the first part, either in law or equity in and to the above bargained premises, To Have and to Hold the said premises

above described with the appurtenances Unto the said party of the second part, his heirs and assigns forever —

And the said Barnard Gaffney for himself and for his heirs executors and Administrators does covenant 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 part of the second part, his heirs and assigns against all persons lawfully claiming or to claim the whole or any part thereof, the said Barnard Gaffney of the first part shall and will Warrant and forever defend —

In testimony whereof the said parties of the first part hereunto set their hand and seal the day and year first above written

Signed Sealed and delivered
in presence of } Barnard Gaffney {L.S.}
Esther E. Gaffney {L.S.}

State of Illinois }
Cook County }

I Caleb D. Fitts a Justice of the Peace in and for said County and the State aforesaid Do hereby Certify that Barnard Gaffney and Esther E. his Wife who are personaly known to me as the real persons whose names are subscribed to the within Deed appeared before me this day in person and acknowledged that

they executed and delivered the said Deed as their free and voluntary act for the uses and purposes therein set forth.
And the said Esther E Gaffney wife of the said Bernard Gaffney having been by me examined separate and apart and out of the hearing of her husband and the Contents and meaning of the said Deed having been by me made known and fully explained to her, acknowledged that she had fully and voluntarily executed the same and relinquished her dower to the lands and tenements therein mentioned, without compulsion of her said husband And that she does not wish to retract the same.
Given under my hand and Official Seal this twentieth day of May in the year of our Lord One thousand Eight Hundred and fifty eight (A.D. 1858.)

Caleb Fitts (Seal)
Justice of the peace

(Endorsed)
Warranty Deed
Barnard Gaffney
to

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James P. Brown.

State of Illinois
County of Cook. } 1.813-

This instrument was filed for Record 24th day of May at the hour of o'Clock, 1858. and duly Recorded in Book 151. of Deeds, Page 462.

Wm. L. Church
Clk

"In the Name of God Amen I Barnard Gaffney of Chicago Cook County and State of Illinois being of sound mind and memory do make publish and declare this my last Will and Testament in the manner following, that is to say,

First - That all debts and demands against me legally (if any) shall be justly & fairly paid as soon as possible.

Second. I will and bequeath unto my beloved wife Esther Eliza Gaffney in case of my death my said wife surviving, all the real Estate to which I may be entitled to or shall die seized of whatever name nature or description during her natural life and after her death to my children James Gaffney Sarah Ann Gaffney, Mary Elizabeth Gaffney, Delia Maria Gaffney & Esther Eliza Gaffney and their heirs and assigns in fee simple forever.

Third - That there may be no doubt as to my wishes, although I am aware that a portion of my personal property and the of a certain portion of my real Estate becomes that of my wife

by operation of law, yet I further will all my personal estate of every name and nature to belong to my said wife Esther Eliza Gaffney after the payment of my just debts and funeral expenses.

Item - I do hereby constitute and appoint my said Wife Esther Eliza Gaffney executrix of this my last Will & Testament and request that no security be required of her for the execution of the provisions of this Will and Testament

In testimony whereof I have hereunto set my hand and seal this Twelfth day of May A.D. One thousand eight hundred & fifty nine.

This my Mark
Bernard X Gaffney (Seal)

The above or within instrument was at the date thereof signed sealed published & declared by the said Bernard Gaffney as and for his last Will and Testament in presence of us who at his request and in his presence and in presence of each other have subscribed our names as witnesses thereto this Twelfth day of May A.D. 1859.

Alanson Dwight
John M. Cary
Patrick X Hanrahan
his mark.

(Endorsed)

State of Illinois }
County of Cook } ss.

In the County Court of Cook County

Proven and admitted to record June 18. 1859.
C. B. Farwell - Clk"

Recorded. Doc. Rec. Book 14 page 280.

And thereafter to wit on the fifteenth day of June A. D. Eighteen hundred and sixty one, there was filed in the office of the Clerk of said Court a certain Motion on the part of said Complainant; Which said Motion is in words and figures as follows to wit,

"Esther S. Gaffney et al
vs
Jeremiah L. Brown and
James P. Brown

Superior Court of Chicago
June Term 1861.
In Chancery.

The Complainants move to amend their original and amended Bill by striking out all after the words and figures in the Ninth line and second page of the Original Bill to wit, "September A. D. 1851", leaving the first premis and three paragraphs of said Bill & inserting the first paragraph of the Amended Bill filed March 5th 1861, commencing with the first word in the first paragraph "That" and ending with the last word of said paragraph "fee simple" inclusive, and by striking out all in the said Amended Bill after the word "fee simple" in the first paragraph and fifteenth line and inserting the following in the proper entitled Amended Bill of the same term of the Superior Court of Chicago 1861, commencing with the words beginning the first paragraph, And these Complainants", and ending with the words concluding the last paragraph thereof "they will ever pray." included, filed herewith submitted to the Court.

In the Superior Court of Chicago.

Esther E. Gaffney et al
vs
James P. Brown &
Jeremiah L. Brown.
} In Chancery.

The above named Defendants and William T. Burgess Esq. their Solicitor will take notice that we will attend at the Office of Silas G. Tyler Esq, a Justice of the Peace in and for the County of Winnebago and State of Illinois, at his Office in the City of Rockford in said County, on Monday the eighth day of April A.D. 1861. at ten o'Clock A.M. of that day to take the depositions of William Richardson and Lionel Richardson and such other Witnesses as may then be called, to be read in evidence on the part of the Complainants in the above entitled Cause and to continue from day to day until they are fully taken.

And you will further take notice that we shall then and there require you to produce a certain deed of Conveyance purporting to convey the premises in controversy in the above entitled Cause to James P. Brown signed by Barnard Gaffney and Esther E Gaffney and dated on or about the twentieth day of May A.D. 1858. to be used in the taking of such depositions.

Chicago March 23d 1861.

LeRoy D Fairfield
Complainants Solicitors

105 fos.

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Admit Service the 23 March 1861.
Suppose the notice for 2d April 1861. is waived.

W. T. Burgess —

State of Illinois } ss.
Winnebago County }

In Justice Court before Silas G Tyler Jus. of the Peace

Esther E. Gaffney et al
vs.
James P. Brown &
Jeremiah L. Brown.

Rockford April 8. 1861.

In pursuance of a notice hereto attached on this 8th day of April A.D. 1861. appeared the parties above named by their Counsel LeRoy & Fairfield for Complainants, and Edward L. Mayo for Defendants George W. Richardson, present, was called as the first witness - being first duly sworn, testified as follows;

Interr. 1st What is your name, age, occupation and where do you reside?

Answer. My name is George W. Richardson, my age is thirty five, I am a farmer, I reside in Genoa DeKalb County -

2d Interr. Do you know the parties to this suit Complainants and Defendants, and if so state how long you have known them respectively?

Answer I know the parties - I have known the Complainants fifteen or twenty years, I have know the Defendants fifteen or twenty years.

3d Interr. Was you present at a trial in the Superior

Court of Chicago wherein James P. Brown was Plaintiff and Esther E. Gaffney, Defendant, on or about 23d day of November 1860.

Answer I was present at said trial

4 Int'y Did you at such trial know of Jeremiah L. Brown's being sworn as a Witness in said Cause

Answer Yes, Sir –

5th Interg. Did you hear his evidence as it was given in by him –

Answer. I think I did –

6th Int'y. Did you hear a question propounded to Jeremiah. L. Brown as to the amount of money that he had advanced to a firm by the name of Gurney Hayden & Co for one Bernard Gaffney –

Answer I think I did –

7th Int'y. What answer did Mr Brown make to that Interrogatory? – State fully as near as you can.
Objected to by Deft.

Answer I cannot recollect exactly – my recollection is that it was about Six hundred and fifty dollars

8 Int'y. Did you hear another question propounded to Jeremiah L. Brown in regard to the whole

amount of money or indebtedness of Bernard Gaffney to him, Brown, on Gaffney's return from California, and if so state what his answer to that question was?

Objected to by Defendant.

Answer. I did hear a question with regard to the amount of money or indebtedness - I understood Mr. Brown to say that it was nine hundred and fifty dollars -

The Counsel for Complainants here changed interrogatory and puts it as follows:

Question 1st Did you hear a question propounded to Jeremiah L. Brown as to the amount of money due him from Bernard Gaffney on or about the time that said Gaffney returned from California -

Objected to by Defendant.

Answer. There was a question in regard to the amount.

Question 2d - What answer did Jeremiah L. Brown make to that Question.

Answer He said that it was about nine hundred and fifty dollars.

Q. 3rd Int'g. Were you acquainted with the pecuniary circumstances of James P. Brown from 1855 up to 1858? and if so state fully what they were during all this time and your means of knowledge --

Answer Yes Sir - he was worth Two Thousand dollars probably my means of knowledge

are that I lived close by him and knew him during that time –

10 Intg. What did his property consist of?

Answer The property consisted of Eighty Acres of Land –

11 Int Can you say of whom he got that land –

Answer. Of his Father J. L. Brown.

12 Int. Do you know what amount of Consideration was paid by him? and if so state and your means of knowledge –

Objected to by Defendant.

Answer I do not know of any Consideration – he was his Son and had worked for him previously –

13 Int. State the age of James P Brown at the time his Father Jeremiah L. Brown made him the title to that land?

Answer He was about twenty one years of age and might have been twenty two –

14 Int. Do you know of James P. Brown having any other property to any considerable Amount during that time, except that which was bestowed by his Father Jeremiah L Brown –

Answer No, Sir –

15 Int. Do you know from conversation with Jeremiah L. Brown or of your own knowledge what securities he held to secure the money you spoke of in your answer to the eighth interrogatory, if so, state fully and your means of knowledge –

Objected to by Defendant.

Answer I have got the impression from talk that I have had with both parties that he held this property in Chicago as security –

Answer objected to by Defdt.

16 Int. Do you know the property in controversy in this cause –

Objected to by Defdt.

Answer Yes Sir.

17 Int. State where it is situated and whether it is the property referred to in your answer to the 15th interrogatory –

Answer Yes Sir – it is on the corner of Washington and Desplaines Streets, Chicago.

18 Int. State whether you was requested by any person to go to Bernard Gaffney and make propositions to him for a conveyance of the premises in controversy.

Answer Yes Sir –

19 Int. By whom was that request made?

Answer Mr. J. L. Brown.

20 Intg. State what proposition you were instructed to make, and to whom you were instructed to make them?

Answer I was instructed to make Mr Gaffney an offer of five hundred dollars, a pair of horses and a wagon for his right in this property I suppose —

21st Intg Do you not know that it was the property in controversy?

Answer Yes Sir. I do —

22 Intg Did Mr Brown at the time of giving you those instructions make any threats to Gaffney through you as to what he would ~~be would~~ do or what would be done in case Gaffney refused to accept the offer that you were instructed to make him —

Objected to by Defendant.

Answer He stated that he might do worse or something to that amount, that was all the threats that I know of his making —

23 Int Did you make the proposition as you were instructed by Jeremiah L. Brown to Bernard Gaffney and if so what was said and done by Gaffney on your making the proposition?

Answer I did. He at first said that he would do nothing of the kind, but before I left Chicago

concluded that he could do nothing else as he said for it would be sold in a few days beyond redemption so he made out the deed and signed it with the instructions that I should deliver it up on receiving five hundred dollars a pair of horses and a wagon and not till I received them –

24 Int. Look at this paper writing and state whether it is the deed that was made by Bernard Gaffney at that time and if so state the date and by whom signed and before whom acknowledged and the description of the premises therein described and to whom was the Deed made?

Objected to by Defendant

Answer. It is the Deed – it is dated 20th day of May A.D. 1858. & executed by Bernard Gaffney and Esther E Gaffney his wife and acknowledged before Caleb D. Fitch – the description is as follows, the following described lots or parcels of land situated in the City of Chicago County of Cook and State of Illinois known and described as sub lot nos four and five in Lot two in Block forty eight in the board of Trustees of the Illinois & Michigan Canal Subdivision of said lot two in said Block forty eight in the original town of Chicago, and the Deed was running to James P. Brown –

Answer objected to by Defdt.

25 Int. Did you repeat to Bernard Gaffney the words that you stated that Jeremiah L. Brown stated to you in regard to his Gaffney's not accepting the proposition? Objected to by Defendt.

Answer I did –

26 Int'y Did Jeremiah L. Brown or James P. Brown comply with the conditions upon which Bernard Gaffney authorised you to deliver the Deed above spoken of by you –

Answer Not exactly in regard to the amount of money – I received four hundred and twenty five dollars, horses and wagon.

27 Int'y. Did you make known to them or either of them the conditions upon which you were authorised to deliver the Deed before they got possession of the Deed –

Answer I dont think I did – well I think I made known the instructions of said Gaffney to them the 22° or 23° day of May 1858 I think –

28 Int'y. Did you ever make a delivery of that Deed to Jeremiah L. Brown, if not how did they obtain possession thereof?

Answer I did deliver it.

29 Int'y. How came you to make the delivery of that Deed before they performed on their part contrary to your instructions if you did intend to deliver the same?

Answer Mr Brown stated that there were taxes on this property which should be paid for which the

seventy five dollars was kept back.

30th Int7. Did Jeremiah Brown say any thing to you about taxes or any other claim against the premises or make any reservations in the proposition which he made to Gaffney through you?

Answer I think he did there was something said about them what it was I could not state particularly what was said –

31st Int7 Did you say any thing to Bernard Gaffney at the time you was sent to him by Jeremiah L. Brown about the taxes mentioned by you in your answer to the 29th Interrogatory, and if so, what did he (Gaffney) say about them, and what instructions did he give you in regard to paying or not paying –

Answer I did – he said that he would not pay them and if I delivered up the deed I must get the five hundred dollars horses and Wagon and as much more as I could –

Answer objected to by Defdt.

32d Int7. Did you make known to Jeremiah L. Brown and James P. Brown or either of them and which of them the entire conditions upon which you was authorised to deliver the Deed?

Objected to by Defdt.

Answer I did, to both of them –

33 Int7. Did Jeremiah L. Brown or James P. Brown we comply with those conditions fully, and if

so, at what time?

Answer. No sir.

34 Int'y. You stated in answer to the 28th Interrogatory that you delivered the Deed, now state fully all the circumstances attending that transaction and the conversation at that time in regard to the Brown's obtaining possession of the Deed –

Answer I met Jeremiah L. Brown a short distance east of James P Brown's residence, I told him I had got the Deed he took the deed and looked at it we then passed down about a half mile west and met ~~Mr~~ James P. Brown Mr. J. L. Brown then took the money out of his pocket and both counted it James P. Brown handed me five hundred and twenty five dollars – I told them that Mr. Gaffney requested me not to give up the Deed till I received five hundred dollars horses and wagon well there was some-thing said about amount of taxes due on the lots, this Twenty five dollars kept to pay them as I understood it I think Mr Brown said that he would not keep that unless I agreed to it or something to that amount.

35th Int'y For what purpose did you allow Mr. Brown to take that Deed into his possession?

Answer Why to look at it I suppose –

36th Int'y Did you at the time you let him take that

Deed intend that he should hold it or did you intend that he should return the Deed after examining it into your possession to be held by you until they or one of them should perform the conditions fully in accordance with Gaffney's instructions to you?

Answer I did not expect they would hold it unless they complied with said Gaffney's instructions –

37th Intg. Did you at any time request them to deliver back to you the Deed and keep their property and money, if so when was it.

Answer I did about a year ago this last fall I received a letter from Chicago stating to me to deliver up this property and money to Mr. Brown, if he would return the Deed I went down to Mr Browns and told them that the property and money was ready for them if they would deliver up the Deed – I think they stated to me that they could not tell but that one of them would come and see me I think the next day if they concluded to do it –

38th Intg. Did Mr. Gaffney at any time recognise the transaction in regard to the receiving of the property by you and allowing the Browns or either of them to get possession of the Deed, if he recognised it in what way did he do it if he did not recognize it, in what way did he repudiate your acts?

Objected to by Deft.

Answer He said I did wrong in delivering up the

Deed until I received the full five hundred dollars -

39th Int'y State where did Bernard Gaffney reside in 1856. and from that time until the time of his death?

Answer. Well, I suppose he himself resided in California but his family resided on the corner of Washington and Desplaines Streets in Chicago on this property -

40th Int'y Had he or his family any other place of residence?

Answer No Sir.

41st Int'y What were the number of the persons in the family of Bernard Gaffney and what relation did they bear to him respectively?

Answer He had a Wife and five Children -

42d Int'y. Was you acquainted with the condition or do you know of the condition of Bernard Gaffney as to the state of his health during the years of 1857 and 1858? if so state fully his appearance -

Answer I do - Well, he had the Consumption I suppose he appeared to me to be weak in body and mind

43d Int'y. Was he or not a man during all or some part of that time capable of transacting the ordinary business affairs of life?

Answer. Well, I should hardly think that he was capable of doing business -

44th Int'y. Do you know or can you state what the value of the property mentioned in the Deed you speak of was at the time the deed was made

Answer I believe the property about there was valued at about one hundred dollars per foot.

45th Int'y. Cross examination by Defendant.

1st Cross Int'y. In testifying in chief in answer to some of the foregoing interrogatories above propounded to you, you have testified as to a part of what Jeremiah L. Brown testified to in the Superior Court in Chicago on or about the 23d day of November 1860. in a case wherein James P. Brown was Plaintiff and Esther E Gaffney was Defendant, now did not the said Jeremiah L. Brown while so testifying then and there swear positively that he did not originally receive the premises in controversy in this suit in mortgage or to secure him for certain indebtedness due him from said Bernard Gaffney, but said Bernard Gaffney sold his interest in same premises to said Brown absolutely in consideration that said Brown would furnish him said Gaffney the means on credit to go to California with?

Objected to by Complainant

Answer

He did so swear.

Answer objected to by Complainant.

2d Cross Interr. State when and where the conversation took place between you and the said Jeremiah L. Brown in which the said Brown requested you to go to Chicago and make certain propositions to the said Bernard Gaffney as testified to by you in your direct examination?

Answer My recollection is that it was sometime in May 1857 on the line between his farm and mine, the West line of my place –

3d Cross Int'y What led to the conversation –

Answer. I think Mr. Gaffney had been out I think a few days previous to this Conversation, I do not know as I can tell what led to this conversation, some talk about this property if there was anything –

4th Cross Int'y. Did you not carry some word to him from Mr. Gaffney –

Objected to by Complainant

Answer I think I did –

5th Cross Int'y. What was the word you so carried?

Objected to by Complainant

Answer. My recollection is that it was a description of a piece of property that a man proposed to trade for this property in Controversy –

6th Cross Int'y. State the whole conversation that

then and there took place between you and the said Brown not only in relation to the word carried him from Mr Gaffney, but also all the conversation having reference to the property in controversy? —

Objected to by Complainant.

Answer. There was something said in regard to the property that Mr Gaffney had description of could not word the conversation but at that time Mr Brown made me the proposal Mr Brown told me that Mr Gaffney could get five hundred dollars a pair of horses and wagon for his right in that property, he requested me to go in and make him the proposition — I asked him if writing would not do as well, he said he thought not — so I agreed to go in and make him the proposal and I done so —

Last clause objected to by Deft.

The Words "and I done so," were added when read over & when added objected to by Defendant.

7th Cross Inty. What word, if any, did Mr Gaffney send to Mr Brown with the description of the land which you say you were the bearer of? —

Objected to by Complts.

Answer

I dont recollect as she sent any word (but I think I told Mr Brown Mr Gaffney said that they would pay up that note that was then due if they would let the others run the length of time that they were to run in the first place as I understood it) the Counsel for

Defendant objected that part of the answer included in brackets as not being responsive to the question put by him.

8th Cross Intg. Did not both you and Jeremiah L. Brown think the offer made Gaffney by Brown better for Gaffney than the offer of the piece of land mentioned in the description which you carried to said Brown

Objected to by Complainant.

Answer I dont think I could tell what Mr Brown did think about it - but I thought the offer as made was better as I understood the one made of land and money than the one made by Mr Brown -

9th Cross Intg. Where was the land situated which had been offered to Mr. Gaffney and how much was there of it?

Objected to by Complainant.

Answer I think it was somewhere in Wisconsin and eighty acres.

10th Cross Intg. Have you ever seen it

Objected to

Answer I never saw it.

11th Cross Intg. Did you ever tell any one that you did not go into Chicago to inform Mr Gaffney of Mr Brown's offer at the request of Mr Brown but as a friend of Gaffney because you thought

it the best that Gaffney could do under the Circumstances to take Mr Brown up at his offer.

Objected to by Complainant

Answer I have no recollection of telling any one any such thing –

12th Cross Intg. Do you recollect of being in the Office of Mayo & Pullum in Sycamore in DeKalb County and in the back room of said Office sometime in the Summer of 1858 when the matter of the conveyance of the lands in controversy by said Gaffney and Wife to James P Brown was talked over. Objected to by Compt.

Answer I remember of being there, I could not state exactly. I should think probably not far from that time and the matter was talked over –

13th Cross Intg. Who were present and took a part then and there in the Conversation?

Answer Mr Mayo, Mr J. L. Brown and myself these are all I recollect now

14th Cross Intg. What Mr Mayo do you mean –

Answer. Edward L. Mayo.

15 Cross Intg. Did you not state in that conversation that you did not go into Chicago to carry the offer of Brown to Gaffney at Brown's request but as the friend of Gaffney?

Objected to by Complainant.

Answer I dont recollect of stating so. I might have stated something to that amount.

16th Cross Intg Did you not then and there make a statement in writing as to what you would testify to in relation to the matter of your going to Chicago with said offer from said Brown to Gaffney and if so was that statement correct.

Answer. Objected to by Compts

I think I made a statement there at Mr. Mayo's Office and I think that it was correct.

17th Cross Intg In what relation do you stand to the Complainants in this suit if any?

Answer. Mrs Gaffney is a sister of mine and the others are nephews and nieces –

18th Cross Intg. What did you do with the four hundred and twenty five dollars which you say you received from James P. Brown?

Answer I took it home and locked it up in my trunk –

19th Cross Intg. Did you ever pay it over to the said Bernard Gaffney and if so when and where?

Answer I did, at my house. I think it was on last of May or first of June 1858

20th Cross Intg. Did Mr Gaffney carry it away with him

Answer He did –

21st Cross Intg. Did you inform Gaffney at the time you paid him said Sum of Four Hundred and twenty five dollars that you had received of Brown only that sum in money, and that Brown had retained Seventy five dollars to pay the taxes on said premises with?

Answer I did –

22 Cross Intg. Did you receive of Brown for Gaffney at the time of the said delivery of said Deed any articles of property besides the horses and wagon, and if so what?

Objected to by Complainant

Answer At the time I left the Deed I think I received an old harness, at this time Wrippletrees and neck yoke I think that is correct.

23 Cross Intg. Did you inform Mr. Gaffney at the time you paid him said money what property you had received for him of Brown?

Objected to by Complainant

Answer I did –

24th Cross Intg. When Brown paid you said Sum of four hundred and twenty five dollars did either he or Jeremiah L. Brown give you your choice to either take the Sum of five hundred dollars and pay the back taxes or let Jeremiah L. Brown retain the Sum of Seventy five dollars and pay said taxes out of it?

Objected to by Complainant

Answer. There was considerable talk about the taxes but whether that proposal was made I could not state –

25th Cross Int7. What was to be done with the balance of said sum of seventy five dollars after the taxes were paid?

Objected to by Complainant.

Answer I think it was to be paid to me –

26th Cross Int7. For whom was it to be paid to you.

Objected to by Complainant

Answer For Mr Gaffney.

27th Cross Int7. Did you also inform Mr Gaffney of that arrangement before or at the time you paid over to him said sum of four hundred and twenty five dollars.

Objected to by Complainant

Answer I think I did –

28th Cross Int7. Did Mr Brown ever pay over to you for Gaffney any portion of said sum of seventy five dollars and if so when and how much?

Objected to by Complainant

Answer I think he did – sometime in the summer of 1858 – he paid me the sum of forty three dollars and twenty one cents.

29 Cross Int7. Look at the paper writing here exhibited and marked Exhibit "A" and state in whose hand writing it is by whom it is signed to whom it was written and sent

and when received?

On examination of the paper presented by the Counsel for the defense and it appearing to be a part of some kind of a writing which has been torn or cut in two, only a part of which is exhibited here in Court, objected to until the whole of said writing is given in evidence by the Counsel for Complainant

30th Cross Interrogt. I think it is in Mr Gaffney's hand writing, signed by Mr Gaffney, written to myself and received sometime in the Summer of 1858.

30th Cross Intg. State if you recollect whether it was so received before or after you paid said Gaffney the said sum of four hundred and twenty five dollars?

Objected to by Complainant

Answer My impression is that it was after.

Objected to by Complainant

31st Cross Intg. State whether there was ever any other writing on the paper a part of which is now shown you, and if so, state whether it had any relation to the matter contained in the writing as it now is and why the same was cut off?

Objected to by Complainant

Answer I think there was other writing, my recollection is that it had not - I think it was some private matter -

32 Cross Interog^y. What do you mean by the expression in your answer to the last foregoing Interrogatory, my recollection is that it had not, ?-

Objected to by Complainant.

Answer Well, as I understood the question that it had no relation what was in there -

33 Cross Int^y. Please now give the contents of the writing now before you and marked Exhibit A. verbatim -

Answer "Now about those notes and Mortgage that Brown holds against me I want you to get them if you can - and keep the horses and wagon until you hear from me again, we are all well but a little disappointed to find the deed you gave Brown is here in the Recorder's Office" -

Signd B. Gaffney."

Objected to by Complainant.

34 Cross Int^y. State whether or not you know the hand writing of Barnard Gaffney ?

Answer. I think I do -

35 Cross Int^y. State whether or not the signature to the paper writing before you and marked Exhibit A is his genuine signature -

Answer It is my opinion that it is -

The Counsel for the defense here presented the paper marked Exhibit A. and the same that was shown the Witness which is hereto attached and made part of the said George W. Richardson's deposition — Objected to by Complainant.

(Exhibit A.)

"now about these notes and "Mortgage that Brown holds against me, I "want you to get them if you can, and keep "the horses and waggon untill you hear "from me again — We are all well but a little "disapointed. I see the deed you gave Brown "is here in the recorder's Office" —

B Gaffney" —

36th Cross. Intg. You stated in your Answer to the 19th Cross Interrogatory that you paid the four hundred and twenty five dollars in money to Gaffney at your house will you now State the Town County and State your house is situated in.

Answer. Town of Genoa — DeKalb County and State of Illinois —

37th Cross Intg. Where were the horses Wagon and other property you received of Brown for Gaffney at the time you paid said Gaffney at your house said sum of four hundred and twenty five dollars

Answer They were in the possession of W Brown —

38th Cross Intg. Which Mr Brown.

Answer Mr. J. L. Brown I suppose -

39 Cross Intg. Why were they in the possession of Mr Brown

Answer Mr Brown wanted to keep them a few days and I consented to it. -

40th Cross Intg. State whether or not said property had been delivered to you before that time and at the same time you received said sum of four hundred and twenty five dollars in money -

Objected to by Complainant.

Answer Mr. J. L. Brown went down to the field with me and turned me out the property, horses wagon and harness whippletrees and neck yoke I suppose was included -

41st Cross Intg. State whether or not Mr. Gaffney after you had paid him said sum of money and after he had returned with it to Chicago, ever gave you any directions either verbal or written to take said property into your possession and keep it for him and if so about when did he do it.?

Objected to by the Complainant.

Answer He did I think in the Summer of 1858 -

42 Cross Intg. Look at the letter or paper writing here presented and marked Exhibit B. and

state whose hand writing it is in.

Answer It is in Mr. Gaffney's handwriting -

43 Cross Int'y Is the name of B Gaffney subscribed to said letter the genuine signature of Bernard Gaffney?

Answer I think it is.

44 Cross Int'y. To whom was said letter sent by Mr. Gaffney?

Answer To Myself -

45th Cross Int'y. How was it sent to you?

Answer By mail -

46th Cross Int'y. State whether or not you received it in due course of mail?

Answer I think I did -

47th Cross Int'y. Will you state the 25th of what month is intended by the 25th in the date of said letter judging from the time it was mailed at Chicago and received by you.

Objected to by Complainant.

Answer I could not tell the date of the letter in Chicago for that reason I could not tell whether it was the month of May or June -

48th Cross Int'y. State whether it was before or after

you paid said sum of four hundred and twenty five dollars to Gaffney.

Objected to by Complainant.

Answer I think it was after.

49 Cross Int7. In whose possession were said horses wagon and other property at the time you received said letter which is here marked Exhibit B.

Objected to by Complainant.

Answer I think they were in the hands of Mr. J. L. Brown.

50th Cross Int7. State whether or not after you received said letter from said Gaffney you in pursuance of the instructions therein given took said property into your possession.

Answer I think I did not just at that time Mr. Brown sent them up to my place soon after.

51st Cross Int7. Did you at any time receive said property in pursuance of the instructions given you in said letters.

Objected to by Complainant.

Answer The property was left with me. I dont know as I took the property any sooner for the word I received in that letter.

52d Cross Int7. Did you receive the property for Mr. Gaffney?

Answer I did.

53 Cross Inty. Was it after you received the letter from Gaffney which is here marked Exhibit 13?

Objected to by Complainant.

Answer I think it was.

The Counsel for the Defendants here presented the letter or paper writing marked Exhibit B, and which was referred to by the Witness as a letter or paper writing as Exhibit B and is the same which is hereto attached –

Exhibit B.

"Tusday 25th Chicago 1858.

"Friend Washington

"I put a letter in the post Office "for you on Sunday and it was to satisfy "Mr Stafford it is of no amount burn it up "about getting money here I spoke to Stafford "this day again so you would not go to any "trouble untill I was better satisfied that you can "get it and he tells me this day that you can "have the money by getting a true transcript "of the property and Sertified to by the County "Clerk it is hard to get money here on real "Estate out of the City or County but you comply-"ing with the above you can have it he promises me "about this affair between Brown and me "you take them horsis and Waggon into your "possession and all the rest you can get – there "is one thing more that I forgotten when I was to "your house I was so confused I could not think "of any thing and that is about them notes "he holds against me together with the Mor-"gage now he niew will them ought to be given

" up as soon as you handed him the deed,
" but he is so full of low mean trickery he always
" wants the advantage now if there is any way
" you can get these notes and Mortgage without
" trouble I wis you would get them and send
" them to me as soon as possible all things
" between you and me must be confidential
" you will hear from me often and I want to
" hear from you as soon as possible".

B Gaffney "

Direct examination resumed -

45-1st Int 7 During the trial of the cause in the Superior Court of Chicago Nov 23. 1860. wherein James P Brown was Plaintiff and Esther E Gaffney Defendant spoken of by you in answer to the third direct Interrogatory hear a question asked Jeremiah L. Brown in regard to two certain promissory notes given by Bernard Gaffney to Jeremiah L. Brown and then and there offered in evidence about the time that Bernard Gaffney left for Californ " and if you heard such question State what answer Jeremiah L. Brown made to such question?

Objected to by Defendant

Answer I did hear a couple of notes spoken of there at that trial there was a question asked I think Mr Brown stated that they were given for money and a pair of horses at the time Mr. Gaffney went to California -

46th Int'y. State the amount of money and the value of the horses as sworn to by Mr Brown for which those notes were given.

Objected to by defense

Answer Mr Brown stated that it would not exceed three hundred dollars.

47th Int'y. Look at those 2 paper writings marked Exhibit No 1 and No 2 and state what they are and the date of each and the amount that each calls for and whether they are the two notes then given in evidence which Mr J. L. Brown testified was given for the money and property spoken of by you in your answer to the 45th Interrogatory –

Objected to by Defendant

Answer They are two notes given by Bernard Gaffney to J. L. Brown both bearing date March 13. 1850. one payable one day after date amount of one is two hundred and thirty five dollars which is No 1. Another one No 2 two hundred and thirty five dollars on demand, I could not state whether they are the two notes for I never saw them before to my knowledge –

48 Int'y. In your answer to the Seventh Cross Interrogatory asked by the Counsel for the Defendants you stated that you told Mr. Brown that Mr Gaffney would pay up the note that was then due if they would let the others run the length of time they were to run in the first place, now state what

notes you had reference to?

Answer. They were three notes given on a compromise between Mr Gaffney and Mr Brown about this property in controversy –

49th Intg. Now state what reply Jeremiah L. Brown made to that communication to him from Mr Gaffney to him Brown made through you as above stated –

Objected to by Defense.

Answer. I think that Mr Brown stated he would not receive the money on that one and let the rest run.

50th Intg In your answer to the 8 Cross Interrogatory you speak of an offer of land and money to Bernard Gaffney – Now State by whom that offer was made and for what it was made?

Answer It was made by a young man then residing in Chicago for this property now in controversy I have forgotten his name –

51st Intg. How much land did he propose to give and where was it situated and how much was it worth?

Answer Eighty Acres somewhere in Wisconsin about twenty or thirty miles from Janesville I think he ~~said~~ stated he valued it at two thousand Dollars –

last sentence objected to because not responsive.

52° Int'y. How much money was offered in addition to this land for the property in controversy.

Answer I have forgotten the amount of money.

53 Int'y. State the full amount that was offered by this person referred to for the premises in question as near as you can.

Answer I think it was somewhere in the neighbourhood of four thousand dollars altogether but I think this was to be whole forty feet.

(on reading over the deposition by request of Witness the word Sixty is altered to forty as to the number feet in answer to 53 Interrogatory)

54th Int'y. What was the value of the property exclusive of the money that was offered by Jeremiah L. Brown for the property in controversy and for which the deed above spoken of by you was executed.

Answer Somewhere I should judge between two and three hundred dollars.

55 Int'y. Do you know, and if so state what was the cause of Gaffney's not perfecting the trade with this person referred to.

Answer I do not.

56th Intg. In your answer to the 12th Cross interrogatory put by the Defendant's Counsel you stated that you remembered of being in the Office and in the back room of the Office of Mayo and Sullum in Sycamore in the County of DeKalb sometime in the Summer of 1858, now State what business called you there or by whose request you was there –

Answer I went up there with Mr Brown and by his request – I had no business there of my own –

57th Intg In answer to the 13th Cross interrogatory put by the Counsel for the Defendant, you stated that there was present in the back room Mr Mayo Mr. J. L. Brown and yourself, State whether there was any other person or persons present there at that time?

Answer There was not.

58th Intg Was there a conversation between yourself and Mr. Mayo or yourself and Mr. Brown or yourself and both of them, if so state what that conversation was about.

Answer There was a Statement between me and Mr Mayo and both of them – it was in regard to the transaction between Mr Brown and Mr. Gaffney.

59 Intg Who commenced that conversation?

Answer. Mr. Brown or Mayo.

60th Int'y. Did they commence that conversation by putting questions or interrogatories to you or otherwise?

Answer They did by questioning me in regard to the transaction

61st Int'y. State whether Mr Mayo or Mr Brown or either of them took down in writing your answers to these interrogatories or questions propounded to you and if so which of them did so take down your answers?

Answer They did, and Mr Mayo my answer and whole conversation in regard to the transaction—

62d Int'y. Did they or either of them read to you the written answers of yours and if so which of them

Answer I think they did I think Mr Mayo read them but I will not be positive.

63 Int'y. Was there any litigation at that time pending between any of the parties to this suit or with Bernard Gaffney.

Answer There was not nor between any of the parties to my knowledge—

64 Int'y. Did Jeremiah L. Brown or Mr. Mayo

or either of them make known to you their object in requesting your presence in the back room of that office and then interrogating you and committing your answers to paper

Answer. I think I know their object from the conversation of both of them that is near as I can tell.

65th Int. State whether or not Mr Mayo the Counsel present here for defense is the person who was closeted with you and Jeremiah L. Brown at the time you speak of the taking of the ex parte evidence by you above spoken of

Answer He is.

66th Int. Has or not the Counsel for the defense present here at different times during the taking of your deposition spoken in a tantalizing and threatening manner of the written statements obtained from you while you were closeted with said Mayo & Jeremiah L. Brown in the back room of the Office before spoken of by you

Answer. I think he has.

67th Int. What relation ~~did~~ are the families of Jeremiah L. Brown and Bernard Gaffney to you if any?

Answer They both married Sisters of mine —

68 Intg. Did Bernard Gaffney use sanction in any way by his instructions to you or otherwise your allowing the Brown's to get possession of the deed of the premises in question?

Answer. I think not.

69 Intg. After Jeremiah L. Brown had obtained possession of the Deed how long was it before it was filed in the Recorder's Office?

Answer I think two or three days as near as I can recollect.

70th Intg Was or not that Deed on record before you received the letters testified to by you in your Cross examination and attached hereto marked as Exhibits A + B.?

Answer I think it was.

71st Intg. Did you receive those letters or either of them before Bernard Gaffney came out to your house at the time he got the Money.

Answer I did not

72c Intg. Had the Brown's placed that deed upon the files for record before Gaffney received the money -?

Answer. I think not if I recollect right.

73 Intg. What time of the day was that deed executed?

Answer. About twelve or one o'clock.

74 Intg. Where was that Deed executed

Answer. I think at Mr Fitch's Office in the City of Chicago.

75 Intg. Where did Mr Brown reside at that time?

Answer In DeKalb County town of Genoa.

76 Intg. Did you go from Chicago to DeKalb on the day of the execution of the Deed or on the day after the execution of the Deed?

Answer. I went the day the Deed was executed.

77 Intg. How long after the execution of the Deed before the Brown's obtained possession of it.

Answer Sometime next day after the Deed was executed.

78 Intg. How long after the Browns obtained the possession of that Deed before Gaffney was at your house and you gave him the four hundred and twenty five dollars?

Answer. I think it was some time the next day as near as I can recollect.

79 Int7. How long did you keep the horses wagon and harness in your possession before you let Jeremiah L. Brown have them again –

Answer. I didnt keep them any length of time –

80th Int7 Did you have the possession of that property at the time spoken of by you of the delivery of the property and if not why did you not have the possession thereof at that time?

Answer I did not take them into my possession they were turned out to me. I lent the horses to Mr Brown

81st Int7. You stated in answer to the 27th Cross Interrogatory put by the Defendants Counsel that you made known to Gaffney the arrangement at the time you handed him Gaffney the four hundred and twenty five dollars Now State whether Gaffney sanctioned that arrangement or otherwise and if he did not sanction that arrangement State what he said in regard to it?

Objected to by Defat.

Answer He did not sanction that arrangement he stated that I did wrong in giving up the deed until I received the five hundred dollars in money. –

82d Int7. State what Gaffney done with the four

hundred and twenty five dollars handed him by you?

Answer He took it into Chicago and deposited it in a Bank and brought me back the Certificates of deposit and told me to keep them until the matter was settled or let Mr. Brown have them if they would take them.

83rd Int'y Did you make known to the Mr Browns or either of them what Mr. Gaffney had said to you in regard to your transaction and if so, when?

Answer I did soon after.

84th Int'y Did you offer to return the money and property to the Mr Browns and if so what did they say or do about it at that time

Answer I did - I think there was not much if any reply made -

85th Int'y. At the time you so offered to return the property and money in accordance with Gaffney's instructions to you, did they refuse to accept it?

Answer I think they did -

86th Int'y What was the grounds of their objection?

Answer I dont know as they told me -

87th Intg. State where the property and money has been and whether you have kept it in readiness to be paid over or delivered up to Jeremiah L. or James P Brown or either of them upon your having reasonable notice on their part of their desire to accept the same –

Answer With me – Yes, sir –

88th Intg At the time that you offered to deliver up the money to Jeremiah L. Brown or James P. Brown or both of them did they or either of them make any objections to the money offered them by you as to its kind and quality?

Answer No Sir –

89 Intg. Was the property that you offered to them the identical property that you received from them?

Answer Yes Sir –

Cross examination resumed –

54th Cross Intg. What time have you reference to in your Answer to the Complainants 79th interrogatory where you say that you did not keep the property any length of time?

Answer. I mean at the first transaction –

55th Intg Did you return to Chicago with Mr. Gaffney at the time you paid him the said

sum of four hundred and twenty five dollars

Answer I did not.

56th Inty. How soon after you paid Gaffney said sum did you see him again?

Answer. Two or three months as near as I can recollect - on reflection I wish to correct my answer - he was at my house soon afterwards, I could not state the exact time -

57th Inty. State definitely as near as you can how long it was after you paid said sum of money to Gaffney before you saw him again about how long?

Answer My recollection is that it was not a great while after, I cant fix the time -

58th Inty. Was it before or after you received from him the two letters here exhibited and marked Exhibits A & B - ? -

Answer My recollection is that it was after -

59th Inty. Have you now the Certificate of deposit mentioned by you in your answer to Complainant's 82 interrogatory?

Objected to by Complainant

Answer I have not -

60th Inty. What has become of it? Objected to by Compt.

Answer The Money was drawn on it in Chicago -

61st Cross Int'y. By whom was the money drawn on said Certificate -

Objected to by Compl'ts

Answer Mr. Gaffney -

62 Cross Int'y. State if you can what Bank issued said Certificate?

Answer I could not tell -

63 Cross Int'y. At the time you say you offered to return the money and property to the Brown did you shew them any money?

Answer I think not.

64 Cross Int'y. How long did you keep said Certificate of deposit and about what time did you return it to Mr. Gaffney?

Objected to by Compl'ts

Answer I think about four or five months as near as I can recollect - (and about that time the money was drawn)

the words in brackets objected to by Defat

In August or September of 1858 as near as I can recollect. -

Direct examination resumed -

40 Int'y. In your answer to the 61st Cross interrogatory put by Defendants Counsel You stated that Gaffney drew the money

on the Certificate of deposit State for what purpose Gaffney drew that money and what he done with it.?

Objected to by Defendant.

Answer He drew it and gave it to me He gave me instruction to keep it till the thing was settled unless Mr. Brown would take it as near as I can recollect.

91st Int.y Was you present at the time that Gaffney drew out that money

Answer I was with him –

92d Int.y. Did you ever offer that money to Jeremiah L. Brown or James P Brown or either of them or both of them, if so which of them?

Objected to by Defdt.

Answer I think I did – to both of them I think –

Subscribed and sworn to this 10th day of April A.D. 1861.
Silas G Tyler
Justice of the Peace.

G. W. Richardson

Deposition of Lionel W. Richardson –

Lionel W. Richardson being duly sworn testifies as follows.

1st Interr. What is your name age and occupation and where do you reside?

Answer. My name is Lionel W. Richardson age thirty three occupation plow and wagon make I reside in the Town of Roscoe in Winnebago County, State of Illinois –

2d Intr. Are you acquainted with the parties to this suit Complainants and respondents and if so state how long you have known them respectively?

Answer. I am acquainted with all of them – I have known them ever since I have known any thing – I have known J. L. Brown twenty five years. have known James P. Brown ever since he was born Mrs Gaffney ever since I can remember the balance of them since they were born.

3d Intr. Were you acquainted with Bernard Gaffney in his lifetime, and if so, how long?

Answer I was from 1838 to the time of his death.

4th Intr. Are you acquainted with the premises in controversy in this suit and if so state where they are situated –

Answer. I am - they are situated on the Corner of Washington and Desplaines Streets in the City of Chicago County of Cook - State of Illinois -

5th Int'y State whether Bernard Gaffney was a householder and had a wife and family in 1856 -

Answer He was and he did have a wife and family in 1856 -

6th Int'y. Where did he reside at that time and from that time up to the time of his death and had he a wife and family during all that time?

Answer. He resided on the property in Controversy situated as described above also had a wife and family during all that time? -

7th Int'y. Was that the Homestead of Bernard Gaffney from 1856 up to the time of his death and when did his death occur and was that his only homestead? -

Answer. It was during all that time, I think he died in the month of July or August 1859 could not tell the exact day or month it was his only homestead -

8th Int'y State who now resides on the premises in question and whether the same persons

have resided there ever since the death of the said Bernard Gaffney and have they any other homestead –

Answer. The Wife and family of B Gaffney are now residing on said premises and have since the time of his death and have no other homestead –

Q. Interr 7. Is there a dwelling house on the said premises wherein they have during all this time resided –

Answer There is –

10th Int 7. Do you know of Bernard Gaffney's going to California and if so when did he go and when did he return

Answer I do know of his going to California he went in 1850 and returned in 1856 I think –

11th Int 7. What was his physical and mental Condition on his return from California from that time until the time of his death.

Objected to by Defendant.

Answer He was very weak and feeble during all that time both in mind and body.

12th Int 7 Was he during all or any portion of the time after his return from California up to the time of his death a man capable of doing

or transacting his ordinary business affairs as a prudent and careful man ought to do

Objected to by Defendant.

Answer I should not consider that he was -

13th Int'y Can you state the cause or causes act or acts upon which you base your judgment if so, state fully all the means you have had for forming your opinion -

Answer I dont know as I could state the cause of his incapability but suppose it to be from a constitution broken down and worn out by disease I base my opinion upon his general appearance and conversation at different times - he would sometimes appear very flighty in his conversation sometimes building one castle at other times others at sometimes would be very gay or almost silly at other times dejected -

14th Int'y Did you ever have conversations with him or hear him have conversations with others when the price or value of property was brought in controversy or in regard to other business transactions, and if so, how did his mind compare at such times and in such conversations with other men -

Answer I have talked with him at different times in relation to his property in controversy and in relation to business when in

my opinion he was very much lacking in judgement.

15th Intg. Did he in those conversations have wild and flighty ideas in regard to the value of property at times in regard to their value or otherwise –

Answer I think he had –

16th Intg. Did he ever make to you wild and improbable statements about his future prospects in life, and if so state what they were –

Answer I have heard him talk of going into the grocery business on a large scale at one time at another of going into the post Office in Chicago as one of the head clerks which I considered at the time as being rather flighty –

17th Intg. Did it or not appear during all or some portion of the time after his return from California a great exertion for him to exercise his mental faculties or did he seem to use them as easily as men in general?

Answer At times he appeared to use them without much exertion at other times would appear dull and stuped

18th Intg. During the times that you say that he

appeared stupid would he not rather yield his rights or neglect his business rather than exert his mind?—

Objected to by Defendant.

Answer I dont know that I could state.

19th. Inty. Did you ever have a conversation with Jeremiah L. Brown in regard to the indebtedness of Bernard Gaffney to him Jeremiah L. Brown—

Answer I did not.—

Cross examined by Defendant.

1st Cross Inty. How long have you resided at Roscoe your present place of residence?

Answer Since the Spring of 1854—

Subscribed and sworn to before me this 10th day of April 1861.

Silas G Tyler
Justice of the Peace.

Lionel W. Richardson

The Deposition of William M. Richardson –

William M. Richardson being duly sworn testifies as follows;

1st Inty. What is your name age occupation and where do you reside?

Answer My name is William M Richardson my age is forty occupation Blacksmith and reside in Roscoe – Winnebago County State of Illinois –

2d Inty. Do you know the parties to this suit Complainants and respondents and if so how long have you known them respectively and are they any way Connected to you and if so how?

Answer I know the parties to this suit, I have known Mrs Gaffney since I knew anything the others were since they were born, Jeremiah L. Brown 29 or 30 years, and James P. Brown ever since he was born Mrs Gaffney is my sister the other Complainants are nephews and nieces, the Defendant Jeremiah L Brown is my brother in Law and James P Brown is a nephew. –

3d Inty Were you acquainted with Bernard Gaffney in his lifetime and if so in what way was he related to you and was he related to the Complainants in this Cause

and if so in what way was he so related?

Answer I was acquainted with Bernard Gaffney in his lifetime he was related by marriage as brother in law - he was related to the Complainants in this cause he was Mr. Gaffney's husband the other Complainants were his Children

4th Int. Are you acquainted with the premises in controversy in this cause and if so state where they are situated?

Answer. I am acquainted with the premises in controversy in this cause they are situated in Chicago, Cook County Illinois on the corner of Washington and Desplaines Streets.

5th Int. State whether Bernard Gaffney was a house-holder and if so where did he reside in 1856?

Answer He was a householder resided in Chicago, Cook County Illinois in 1856 -

6th Int. State whereabouts in Chicago he resided and whether it was on the premises in controversy in this cause?

Answer. He resided on the Corner of Washington and Desplaines Streets on the premises in controversy in this Cause -

7th Int. Had Bernard Gaffney a family at that time and if so what were the members of that family

Answer. He had a family - four girls and one boy and a wife -

8th Int'y. Were those premises in question the homestead of Bernard Gaffney and his family whereon they then resided, and if so how much of the time since have they continued to occupy these premises as their homestead?

Answer. They were all the time since 1856 when I said all the time I meant from 1856 till this time said Gaffney till his death.

9th Int'y. Had they or have they any other home and is this not their only home?

Answer They have no other home -

10th Int'y. Do you know of Bernard Gaffney's going to California and if so when did he go and if he has returned when did he return?

Answer I do know of his going in 1850. he returned in 1856 I think -

11th Int'y. Did you see him after his return from California and if so, where?

Answer. I did see him in my house in Roscoe -

12th Int'y What was the condition of his health in mind and body after his return from California?

Answer Very poor in body and mind -

13th Int'y. How was his mind to be compared as to its capability of doing the ordinary business of life with the minds of men in general?

Answer His mind at that time wouldnt compare well with many other men - he could not talk very well at that time on amount of his lungs talking would put him out of breath, his lungs were affected -

14th Int'y Was he capable at that time of transacting business or otherwise?-

Answer I dont think that he was -

15th Int'y. Was his mind at that time in such a condition that a designing man could not have taken the advantage of him easily or otherwise, and if otherwise how otherwise?

Answer. I think they could -

16th Int'y. Did you ever have a Conversation or Conversations with Jeremiah L. Brown during Bernard Gaffney's absence in California in regard to the amount of Money he Brown advanced to Gurney Hayden & Co. - if so state what was said about the payment of that Money?

Answer I did have a conversation with Mr Brown Mr Brown stated that he had seen Mr Yoi and that he had purchased a part or all of the demands of Mr Gurney against Gaffney and

that he had done a good thing in purchasing it Mr. Yoi intended to keep it from Mr. Gaffney -

17th Int'y. Did you or have any other conversation with Mr Brown in regard to these transactions and if so what did you learn from him in regard to the claim or claims that he had or held against the property in controversy in this suit?

Answer. I think I did - I learned that he held the property of Bernard Gaffney in trust and if Mr. Gaffney done well in California and could pay him Brown when he returned what Mr. Brown had paid on the place with the interest Mr. Gaffney was to have it - he asked me if I thought Gaffney would or make enough to pay it or would or come back that he hoped he would do well while he was there or something to that effect.

19th Int'y. Did Mr Brown claim to you that he had any title in the property except as a security for the money he had advanced for Mr. Gaffney?

Answer He did not -

Cross examined by the Defendant.

1st Cross Int'y. How long have you resided in Roscoe your present place of residence?

Answer It will be fifteen years in July next.

Subscribed and sworn to before me this 10th day of (Wm M. Richardson

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April A.D. 1861.

Silas G. Tyler

Justice of the Peace.

State of Illinois } s.s.
Winnebago County

I the Subscriber a Justice of the Peace of the said County do Certify that the foregoing depositions were taken by me at the place and commencing at the time mentioned in the Caption thereof and continuing from day till completed and the several Witnesses were first duly sworn and their depositions were carefully read to the said Witnesses and signed by them respectively

Dated April 11th A.D. 1861.

Silas G. Tyler
Justice of the Peace.

15th June order

And afterwards to wit on the twenty eighth day of June A.D. Eighteen hundred and sixty one, there was filed in the Office of the Clerk of said Court Replications to said Answers of said Defendants in words and figures, as follows to wit,

Esther E. Gaffney et al
vs
Jeremiah L. Brown and James P. Brown

In the Superior Court of Chicago.

The replication of Esther E. Gaffney et al Complainants to the several Answers of Jeremiah L. Brown and James P. Brown Defendants

These repliants saving and reserving to themselves all and all manner of advantages of exception to the manifold insufficiencies of the said Defendants Answer to their Original and Amended Bill filed in this cause and for and by way of replication saith that their said Original and Amended Bill of Complaint exhibited in this Cause against the said Defendants saith that they will aver and prove their said bills to be true certain and sufficient in the law to be answered unto, and that the said Answers of the said defendants is uncertain, untrue and insufficient to be replied unto by these defendants repliants: Without this that any other matter or thing whatsoever in the said answers contained material or effectual in the law to be replied unto confessed and avoided, traversed or denied is true; All which matters and things these defendants are ready and will be ready to aver and prove as this honorable Court shall direct, and humbly pray as in and by their said Bill they have already prayed.

Le Roy & Fairfield
Complainants Solicitors"

And afterwards to wit on the ~~fifth~~ fifteenth day of June (being one of the days of the June term of said Court) A.D. Eighteen hundred and Sixty one, the following proceedings were had in said cause and entered of record in said Court, to wit

"Esther E. Gaffney in her own right, LeRoy Gaffney and James B. Gaffney, Judith A. Gaffney Mary E. Gaffney, Esther E. Gaffney and Delia M. Gaffney by Esther E. Gaffney their next friend . . . Bill

vs

James P. Brown and Jeremiah L. Brown . . . . . "

And now comes on to be heard the Motion of the Complainant to file an Amended Bill, and the Defendants object to the same being allowed, and the Court Orders that the said Motion be allowed - and the Defendants except - The Complainants thereupon file such Amended bill, and the Defendants refile their answer to the ~~same~~ original bill as their answer to the Bill and amended bill.

And thereafter to wit on the fifteenth day of June A. D. Eighteen hundred and sixty one there was filed in the Office of the Clerk of said Court Chancery Bill in said Cause in words and figures as follows to wit.

Esther C. Gaffney et al
vs.
James P. Boyon &
Jeremiah L. Boyon

In the Superior Court
of Chicago
In Chancery

Amended bill.

The complainants amend their original bill by striking out all after the words and figures in in the ninth line and second page of the original bill, to wit September 1857 leaving the first second & third paragraph of said bill and instituting the first paragraph of the amended bill filed March the 5th 1861 commencing with the first word in the first paragraph "That and ending with the last word of said paragraph "fee simple" inclusive and by striking out all in the said amended bill after the word fee simple in the first paragraph and fifteenth line and instituting the following in the paper entitled amended bill of the June term of the Superior Court of Chicago 1861 commencing with the words beginning the first paragraph "And these complainants" and ending with the words concluding the last paragraph those of "they will ever pray" inclusive.

And these complainants further state that on or about the thirteenth day of March A D 1850 the said Barnard Gaffney being about to go to California for the purpose of bettering his condition in life and making money sufficient to pay for the said lots purchased of said Canal Trustees that he might secure a permanent homestead for himself and family and a comfortable independence for them and himself and being poor and without the necessary money and means to defray his expenses to California he borrowed of certain persons then doing business in Chicago under the name and style of Gurnee Haydon and Company a certain amount of money for which he executed to them his notes for the sum of six hundred and twenty one dollars in all but whether the said Gurnee Haydon & Co. let said Gaffney have so much money down as the consideration of said notes; or gave him some money and assumed the payment of the notes which said Gaffney had made to said Canal Trustees in all amounting to said consideration of said notes to Gurnee & Co. they do not know but believe the latter is true and that Gurnee Haydon & Co. only advanced to said Gaffney by way of loan a very small sum of money not to exceed two hundred or two hundred and fifty dollars and that the assuming the Canal notes upon their part was treated as so

much money loaned to Gaffney and recoined into the notes given by said Gaffney to them and for the purpose of securing to them the payment of said notes the said Gaffney by way of mortgage transfered to said Burnee Hayden & Co the said Certificate of purchase which the said Canal trustees had made and delivered to said Gaffney by assignment regularly endorsed on the back thereof a copy of which with said endorsement or assignment (marked Exhibit A) is herewith filed and asked to be taken as part hereof and the said Gaffney and wife also by way of mortgage and to make the said security more ample and complete on the said 13th day of March AD 1850 made executed and delivered to the said Burnee Hayden & Co. a quit-claim deed of their right title and interest in and to said lots or pieces of Ground described in said certificate of purchase (marked Exhibit A) as aforesaid A Copy of which said deed (marked Exhibit (B) is herewith filed & prayed to be taken as a part of this bill of Complaint

And these Complainants further show that by way of Defeasence of said mortgage or quit claim deed the said Burnee Hayden & Co. entered into an article of agreement bearing date on the said 13th day of March AD 1850 by which they agreed and bound themselves on the payment of a certain sum

of money to them therein named and at certain time and place to convey to the said Barnard Gaffney the said lots or sublots conveyed to them by said Gaffney & wife by way of mortgage as aforesaid a copy of which said article of agreement (marked exhibit 1e) the original not being now in the possession or power of these complainants herewith filed, and these complainants pray that the same may be taken and read as a part of this bill and these complainants here state and charge that said assignment of the canal trustees certificate of purchase and said quit-claim deed from said Gaffney and wife and the said article of agreement were all but parts of one transaction done at the same time and place and as a mere security for money loaned and money assumed to be paid for Gaffney, and treated by the parties as a loan and that said article of agreement was not given as a bond or a repurchase of said lots, that the transaction never was regarded by said Gurnee Haydon & Co. as a purchase but as in the nature of a mortgage and complainants allege and ~~over~~ that the same was a mortgage and nothing but a mortgage.

And your complainants would further show unto your honors that on or about the same time but subsequent to the said transaction with Gurnee Haydon & Co. one Jeremiah L. Brown who they pray may be made a party

defendant to this bill who being aware of the said transaction between said Bernard Gaffney and the said Gurnee Haydon & Co. and knowing also that said Gaffney besides being improvident and unfortunate in the way of acquiring property ~~or~~ in keeping it when acquired and was also but poorly provided with money and means to defray his expenses to California they being brother in laws having married sisters he the said defendant being full handed and having money to loan and having as your complainants verily believe and so charge the fact to be coveted the ownership of the aforesaid sublots they being eligibly situated in the growing city of Chicago on the corner of Desplains and Washington streets near the west market and the Chicago river offered to advance by way of loan to said Gaffney money for that purpose to wit for the purpose of enabling him to prosecute his contemplated adventure to California and also to pay off the notes to Gurnee Haydon & Co. and entirely remove the incumbrances upon said sub lots and thereby save the same from forfiture to which said Gaffney readily agreed and it was agreed between them that the said Brown should advance a sum of money to said Gaffney the precise amount however these complainants are unable to state, but let said

Gaffney have a couple of horses or some other personal property which was with the money valued or considered as two hundred and thirty five dollars for which the said Gaffney executed two notes for two hundred and thirty five dollars each one payable on demand and the other being due one day after date. the entire sum of one of these notes being usurious and for the purpose of securing said real estate from forfiture and falling into the hands of strangers it was agreed between said defendant and said Gaffney that the said Gaffney should assign to said defendant said agreement between him said Gaffney and the said Gurnee Haydon & Co. and order the said Gurnee Haydon & Co. to convey the same or all their right title and interest therein by quit claim deed to said Brown and also requested or directed them to assign the said certificate of purchase for the said sublots to said Brown which he was to hold for the purpose aforesaid and as a mortgage or security for the money and property loaned and advanced to said Gaffney and that he might thereafterwards advance for the purpose of securing to himself the legal title to said lots or pieces of ground and for the aforesaid purpose and no other whatever the said Gaffney executed the two several notes aforesaid

to said Brown assigned the said obligation or defeasance of Gurnee Haydon & Co. to the said Brown and directed the said Gurnee Haydon & Co. to convey their said interest to him as aforesaid with the belief that in so doing. While he would be making his brother-in law amply secure in the sums advanced and to be advanced by him as well to the said Gurnee Haydon & Co. as to said Canal Trustees or whoever might hold the evidences of said Gaffney's indebtedness for said lots or real estate he would at the same time be placing it in secure and safe hands. that whatever might happen to him said Gaffney there would be no danger of his wife and children being wronged or defrauded of their rights by so near a kinsman as the said defendant. These complainants expressly charge that the assignment of the contract or defeasance of Gurnee Haydon & Co. and the direction to them to convey absolutely their title to said lots to said Brown and assign the aforesaid certificate of the Canal Trustees to him were all done for the purpose and with the understanding between the said Brown and said Gaffney that he the said Brown should thereby acquire the legal title thereto and hold the same as a security or

mortgage for all advancements made by him in persuance of which said arrangement & agreement the said Brown by means of the assignment of said obligation or defeasance obtained from said Gurnee Heydon & Co. and the transfer of the said certificate of purchase by the assignment of the same endorsed thereon and also a quit claim deed from Gurnee Heydon & Co. for all their title or interest legal and equitable, A copy of which deed of the sublots as specified in said certificate of purchase from said Gurnee Heydon & Co. (marked Ehibit (D). is herewith filed as part hereof.

These Complainants further state that said Jeremiah Le Brown designing & intending to defraud the said Barnard Gaffney and to deprive him of his right to redeem said property, sought for some person as a confederate in the intended fraud to consent to act the part of an innocent third person and purchaser that in furtherance of said fraudulent intent said Jeremiah Le Brown on the 11th day of August 1851 as appears from the endorsement on the said certificate of purchase without any any consideration assigned said Canal Certificate to one Ezra S Gregory a relative of said defendants as these complainants are informed and believe and so charge the facts to be.

These Complainants would further state that said Ezra S Gregory from some cause to complainants

unknown but fearing perhaps that he might be called upon by bill of discovery or in some other form to state under oath all the particulars and circumstances attendant upon the transfer and assignment of said certificate to him or dreading the odium that might attach to his name in thus lending it to a man for the purpose of perpetrating so great a wrong and fraud or from the working of an uneasy conscience that would not be still whether from one or all of these causes complainants cannot say yet nevertheless for some reason best known to said Brown and Gregory the said Gregory on the 6th day of March 1854. without any consideration whatever reassigned the said certificate of purchase or sale from canal trustees to said Gaffney to the defendant Jeremiah L Brown as will appear by the endorsements on said certificate already made a part of this bill reference being thereunto had for that purpose. ~~The~~

These Complainants especially charge that the said Jeremiah L Brown made said transfer and assignment with the intent which had long before that time been formed by him to cheat and defraud the said Barnard Gaffney of said lots and thereby fraudently convert what was ~~especially~~ originally intended as a mortgage into an absolute fee simple

and thereby embarass the said Barnard Gaffney in any suit he might bring up by raising up new and third parties to the controversy expecting thereby to keep himself out of sight and imposing upon said Gaffney the "Onus" of showing and connecting such persons with the fraudulent designes and purposes of said Jeremiah L Brown. And said complainants state and charge that afterwards in the beginning of the year 1855 the said Jeremiah L Brown being in daily expectation of the return of said Gaffney with the same fraudulent intent and purpose of cheating and defrauding said Gaffney voluntarily and without any valuable consideration assigned the said Canal Certificate to his then infant son James P Brown whom your complainant make a defendant to this bill which assignment was endorsed on said certificate of said canal trustees and bears date the 5th day of March 1855 and your complainants are informed and believe that said assignment by endorsement was made in the absence of said James P Brown. Complainants further show that to carry out his fraudulent design against the said Gaffney the said Jeremiah L Brown on the ~~Sixth~~ Eighth day of June AD. 1855 presented said certificate so endorsed and assigned to the board of trustees for the said canal and fraudulently and with the intent to cheat

and defrend said Gaffney procured a conveyance of the legal title of said lots now in controversy to his said son and co defendant James P Brown which said deed a copy of which marked exhibit (E) is herewith filed as part thereof, though nominally and on its face being for the consideration of Six hundred and twenty dollars. Yet Complainants allege it was without any consideration but was made on the part of Jeremiah L Brown with the fraudelent intent and purpose aforesaid

These ~~Your~~ Complainants further allege that said James P Brown was at that time under the age of twenty one and had not then assumed or commenced to act for himself being still an inmate of his fathers house in the county of Dekalb and state of Illinois

Your complainants further state that during all this time the said Gaffney and his family had the actual visible notorious and exclusive possession of said lots of ground now in controversy having built a dwelling house and made some other improvements thereon and by himself and family before he went to California and by his family while absent in California and from some time before the commencement of the first transaction between Jeremiah L Brown and said Gaffney the said premises now in controversy

were in the possession as aforesaid of said Gaffney and so continued up to the time of his death which occured 1859 and that during all this time he held said possession he exercised an absolute ownership over the same with the full knowledge of the said defendants father and son These complainants expressly charge that defendent was fully acquainted with and knew all about the nature of the transactions and dealings between his said father and Co Defendant Jeremiah Le Brown and said Gaffney he knew that the same was held by his father as a security for money advanced and that his father had frequently confessed and admitted that he held in his hands the legal title thereto in trust for the said Gaffney and that he spoke of it as a sacred trust that he would not violate

And these Complainants further represent unto your Honors that Bernard Gaffney returned to this state from California sometime in the latter part of the year 1856 perfectly broken down in health and his intellect so shattered and decayed from sickness misfortune and pecuniary embarassment that from said causes and others unknown to Complainants that he was reduced intellectually to perfect imbecility finding also that the said Jeremiah Le Brown had betrayed the trust reposed in him

and procured the legal title to his said son James P Brown who refused to recognize the said Gaffney as having any right or title legal or equitable to said sublots and being also threatened with an action of ejectment and he and his family turned out of possession he was the fit subject for any new arrangement or agreement that the Browns might propose. He proposed to the Browns that if they would state the amount and make a full and fair exhibit of the money and property advanced by said Jeremiah L Brown as well what he had paid to the said Gurney Haydon & Co as well what he had paid to the said trustees together with the money and property advanced to said Gaffney and also what was paid for the taxes or any and every sum or sums of money which the said Jeremiah L Brown had advanced to or for said Gaffney on account of said sublots with legal interest thereon to pay them the same or let the property be sold to satisfy the same but the said defendants indignantly spurned his proposition.

But said defendants notwithstanding their inexcusable course of treatment to said Gaffney having become alarmed least the said Gaffney feeble and imbecile as he was in mind and body might meet with some good samaritan who would instruct him in his

right at last having by means of their power over the said Gaffney reduced him to the lowest state of abject humility and despair so that he made the wildest and most extravagent propositions to them some offering them one half of the said property then worth not less than eight or ten thousand dollars, and again offering to and proposing through Mr Geo. to give them five thousand dollars and at last tamely yielded to the terms that said Brown dictated to him which was that they would convey to him the legal title which the said James P Brown then held by the deeds of the said trustees but that he the said Gaffney should immediately and instanter convey to the said James P Brown twenty feet off the east side of said peice of ground by paralel lines and simultaneously execute to the said James P Brown his three several promipary notes for the sum of six hundred and three dollars and sixteen cents each payable in one two and three years from date and at the same time execute and deliver to them a mortgage on said Gaffney's remaining forty feet conditioned that if he paid said notes as they became due and payable untill he paid the whole of said several sums then the said mortgage to be paid but when the first note due in

one year arrived at maturity and the same should not be punctually paid the whole of said notes should be considered as due amounting to over 1809 with a power in said mortgage to James P Brown to sell All of which the said Gaffney submitted to being wholly in the power as he supposed of said defendants, and the respective deeds and notes together with said mortgage were prepared executed and delivered by both parties, Copies of which are herewith filed and marked according to the order of time in which they accrued from No 1 to No 5 inclusive bearing date the tenth day of March AD 1854 all of which said copies marked exhibits No 1-2-3-4 & 5 are prayed to be taken an regarded as part of this bill. thus did the said defendents by means the most iniquitous and fraudulent by the power and advantage they had obtained over the weak and feeble minded man succeed in imposing upon him one of the hardest and most inconceivable contracts or arangements ever made between the most perfect and distant strangers. much less over a kinsman and a friend. The twenty feet which said Gaffney deeded back to the said James P Brown was valued by them at twenty two hundred dollars, this for a time quieted in some degree the mind

of said Gaffney and for a time lulled to sleep the fears of the said defendants they thinking that they had put a new face upon said original transaction

And these complainants further show that soon after the making the above unconscionable contract or arrangement and the executing and delivering of the aforesaid three notes for 1809 dollars and the mortgage on Gaffneys forty feet to secure the payment of the same The said James P Brown assigned said notes and mortgage by indorsement thereon to his father and codefendant Jeremiah L Brown as these complainants are informed and believe without any good or sufficient consideration, And that afterward the said Jermiah L Brown reassigned said notes and mortgage back to his son and codefendant James P Brown without any good or sufficient consideration And these complainants aver and charge the fact to be that said Jermiah L Brown was and still is the party in interest and that James P. Brown has no real interest in any of said transactions but has been and still is the convenient and willing tool of his father and codefendant in carrying out his unconscionable design of defrauding and cheating the said Gaffney in the premises. That from some cause or other to complainants unknown when the first note for $1603.16 cents

fell due the said Brown threatened to sell said Gaffneys forty feet of said ground embraced within his said mortgage actually proceeded so far as to advertise the same for sale under the power contained in said mortgage and while the same was pending and hanging over the head of said Gaffney the said defendant James P Brown by his codefendant Jeremiah L Brown proposed to the said Gaffney that if he and his wife would relinquish their right to redeem and give him an absolute deed of conveyance in fee simple for said forty feet embraced in said mortgage he would pay them five hundred dollars in money and give to said Gaffney his choice of two horses out of three a certain wagon and the harness belonging to said wagon for two horses. Now may it please this honorable Court this last proposition from the said Brown was made by them when they knew the said Gaffney had no means to extricate himself from the web which they had wove around him but being suspicious or having obtained legal advice from some source or other that if they sold under the said inconsionable mortgage made under such great inequality as to the independence of the parties with a person embarased and in great pecuniary distress and weak and feble in body and mind such as was the

condition and circumstances of said Gaffney at the time he made said agreement and such great inadequacy between the sums advanced and the value of said lots that two chances to one a court of equity would returns against said mortgage and let Gaffney in to redeem upon equitable terms but whatever consideration may have influenced said Brown it is clear and these complainants expressly charge that although said Gaffney under the pressure of the same state of embarassment imbecility and inadequacy of consideration that overwhelmed him in the last arrangement agreed orally that if said James P Brown would deposit with one G W. Richardson the said sum of five hundred dollars to be delivered to said Gaffney and the said horses and wagon and harness that then a deed of conveyance which had been prepared executed and acknowledged by said Gaffney and wife and left with said Richardson as an escroll to be delivered upon said terms and no other which might be delivered by said Richardson to said James P. Brown. But your complainants expressly charge that said deed got into the possession of James P Brown surreptiously and contrary to the terms upon which said Gaffney authorized said Richardson to delivered the same to said Brown, that true it is they did leave the sum of four hundred and

twenty five dollars with said Richardson but said Richardson did not let them have possession of said deed in pursuance of said last agreement but for a temporary purpose and with the promise to return said deed but contrary to the authority given they had the same placed upon record and have and do insist that by virtue thereof they are now the complete owners of said property as well in law as in equity but your complainants would respectfully state that said Gaffney never did receive money in satisfaction or as a compliance with said acepted proposition that the same was in due time tendered back to said Broons, which they refused to receive that said Gaffney never received said money or any part thereof. that the same was for a while deposited by said Gaffney or Richardson and kept upon deposit for the purpose of being returned to said Broons, that it was finally withdrawn from deposit and placed in the hands of said Richardson ready to be returned to the said James P. or Jeremiah L. Broon but they have both refused to receive it where it still remains for their benefit and can be had by them or either of them by calling for the same. That said Gaffney never did receive any portion of said personal property in compliance with said contract - and that if the said Richard-

son gave up said deed to the said Browns in pursuance of the agreement his act therein was without authority of said Gaffney and immediately thereafter disavowed and repudiated

These complainants file a copy of said last mentioned deed marked Exhibit (G) and pray that the same may be taken as part of this bill

These Complainants further allege that the said agreement to take the said five hundred dollars was a parole agreement executory and never executed that said deed was obtained by the fraud of said defendents. and that said executory agreement was made with said Brown under the same pecuniary embarasment when he was in very weak feble and imbecile state of mind easily alarmed and with the said Brown when ~~the~~ was still in their power and when they stood towards in ~~the~~ a relation which gave to them the power of dictating their own terms.

That said new agreement was made by them for the purpose of merging and hiding the enormous and unconsionable features of the former transaction and dealings between the parties These complainants further show that said defendant James P Brown at the september term of the Cook county court of common pleas A.D. 1858 now the superior court of Chicago on the law side of said court commenced

an action of ejectment against said Barnard Gaffney and that after the decease of said Gaffney and his death being suggested to the court these complainants were made defendants to said action and that judgment at law was obtained against these complainants at the November term of said Superior Court for A.D. 1861 and have sued out a Habere facias possessionem and about to proceed to turn your complainants out of their home where they have all lived together ten or twelve years. Your complainant Esther C Gaffney who was the wife and now widow of said Barnard Gaffney and was his wife during all the time from the time of the first purchase of said Canal lot and long before up to the time of his death which occured as before stated. She further without any prejudice to the claims of her Co Complainants to relief by way of redemption states that said lots and the dwelling house thereon formed a single class and tenement that the same was their homestead during the whole of the time from long before the contract with said Gurnee up to the time of his said Gaffney's death and since his death the said Esther C has lived therewith her children the heirs and lawful children of the said Gaffney being the only home she had upon the earth and that she has never by any deed or writing of hers or in

any other way surrendered relinquished or waived her homestead rights in and to the said premises and she ~~here~~ sets up and claims the same if the court shall not grant to to complainants relief by way of redemption. And said Esther E Gaffney further alleges that none of said instruments of writing given to the said Brooms or either of them by said Gaffney and Complainant were given for the purchase money of said sublots or any of the improvements thereon.

That the Complainant Esther E Gaffney was the wife and is now the widow of Barnard Gaffney deceased and that the complainants James B Gaffney Judeth Ann Gaffney Mary Elizabeth Gaffney Esther Eliza Gaffney and Delia M Gaffney are the lawful children and heirs of Bernard Gaffney and that he has no other children or desendants of children

~~And these Complainants~~ state that the said Barnard Gaffney departed this life on the third day of may AD 1859 testate having a will by which he left all of his real and personal estate to his wife Esther E Gaffney during her life with the remainder over to his children a copy of said bill is herewith filed for to be read as part of this bill (Marked Exhibit (A)

These complainants distinctly charge that the whole trans action between said Gaffney and defendant Jeremiah Le Broon was a loaning of money and

property on the one side and the giving of security upon the other in the nature of a mortgage that such was the transaction with Gurnee Hayden and Company and repeatedly so recognized and admitted by them and also by the said Brown that said James P. Brown had full notice and knowledge of the nature and character of said transaction that he never advanced any funds or property either to his codefendant and father or to said Gaffney or to these complainants or either of them. and complainants further allege and charge that said Jeremiah Le Brown never did advance to said Gaffney in money and property which was received by him to exceed the sum or value of nine hundred dollars. Complainants also distinctly charge that said Browns have from and after the transaction between said Jeremiah Le Brown and said Gurnee Hayden & Co. fraudently attempted to convert what was intended as merely in the nature of a mortgage and security for money and property advanced as a loan to said Gaffney into an absolute sale and transfer to said Brown that the whole transaction between said Gaffney and defendants were usurious oppressive inconscionable and unjust and inequitable advantage knowingly taken of said Gaffney when so feeble in body and mind and laboring under great pecuniary embarrasment and in

In the Superior Court of Chicago — In Chancery.

Esther E. Gaffney, Widow & James B. Gaffney, Judith Ann Gaffney Mary Elizabeth Gaffney, Esther Eliza Gaffney & Delia Gaffney minors &c

vs

James P. Brown & Jerusah L. Brown

Bill —

It is stipulated that the Defendants may proceed on the 26th day of August A. D. 1861. at 9 A. M. to take the depositions of Witnesses, residents of DeKalb County County Illinois before some competent Officer at the Office of E. L. Mayo in Sycamore in said County to be used in the above entitled Cause —

A. F. Lucier
Solicitor for Complts
W. T. Burgess
for Defendts

95.

Esther Gaffney Widow &
James B. Gaffney, Judith
Ann Gaffney, Mary Elizabeth
Gaffney, Esther Eliza Gaffney
& Delia Gaffney, Minors
vs
James P. Brown & Jeremiah L. Brown

In the Superior
Court of Chicago
In Chancery
Bill —

The depositions of Benjamin P. Brown, Jared Preston Ephraim Hall, Edward L. Mayo, D. H. Kelly and Jeremiah L. Brown Witnesses of lawful age, residents of De Kalb County, Illinois, produced sworn and examined upon their several Corporal Oaths before Caleb M. Brown, Clerk of the Dekalb County Circuit Court in the State of Illinois at the Court House in said County and State last aforesaid on the 26th and 27th days of August A.D. 1861, pursuant to the stipulations of the said parties hereto and the subsequent agreement of the said parties — the said Complainants having appeared by Messrs Lezey & Blaisdell, their Solicitors and the defendants by William T. Burgess their Solicitor, first at the Office of E. L. Mayo in Sycamore and thereafter by agreement of parties by their said Solicitors, at the Court House in said Sycamore, for the purpose of taking the depositions of said Witnesses — The said Benjamin P Brown Jared Preston, Ephraim Hall, & H Kelly

& Jeremiah L. Brown, being first duly sworn by me as Witnesses in the said Cause.

Interrogatories propounded to Benjamin P. Brown a Witness produced sworn & examined on the part of the Defendants & his answers thereunto as follows; —

Interrogatory 1st What is your name age residence and occupation

Answer Benjamin P. Brown, was fifty one years old last May resides at Gem in Detroit Co Ills. am a farmer.

Int 2 Do you know the parties to this suit or either of them and if so which?

Ans I know all the parties

Int 3 Are the Defendants relatives of yours and if so what degree?

Ans I am a brother to Jeremiah L. Brown and uncle to James P. Brown —

Int 4 Did you know Bernard Gaffney the husband of Esther E. Gaffney and father of the other Complainants and if so long did you know him?

Ans I did — my first acquaintance with him was in A.D. 1848 —

Int 5 How long after that did you know him

Ans. I think it was earlier that that upon my return about two years - I saw him occasionally until he went to California I have seen him since his return from California -

Int 6. How much were you acquainted with him before he went to California

Ans It is what I should call well acquainted

Int 7. What was the state of mind and body of the said Bernard Gaffney after his return from California, so far as you know?

Objected to

Ans. His mind was as good as ever it was so far as I know - He was thinner in flesh, the first time I saw him since he came from California his health was reasonably good and the last time his health want so good

Int 8 Did you at any time have any conversation with said Gaffney after his return if so when and where, how long a time and upon what subjects -

Ans. I did - at two different times or more I would have to refer to Corn planting in A.D. 1858. I met him in the road between Tibbetts and George Shurtleff's on horseback another time on the 31st day of July A.D. 1858. I stopt at the house of G[redacted] W. Richardson during the shower, I saw Gaffney there and talked with him - I know the date for it was the day my barn was struck by lightning - I talked with him I should think about an hour about California Politics and

crops, raising wheat and so forth.

Int 9 How long did you talk with him at the time of corn planting you mentioned?

Ans But a few minutes

Int 10 What if any thing did you notice peculiar in his conversation or any thing showing weakness of mind in him?

Ans. Not any thing –

Cross examined

Ques 1 – Where does this man Tibbetts referred to by you in your answer to the 8th Interrogatory reside?

Ans In the Town of Genoa, if that isn't near enough, I can give it nearer, DeKalb County Illinois –

Ques 2 In what part of the Town of Genoa does he reside

Ans. On Section twenty eight

Ques 3 In what direction from the Village of Genoa

Ans East of a South East Course

Ques 4 In what direction from Washington Richardson does he reside

Ans. West – the first house west of the big Slough.

Ques 5. In what direction does George Shurtleff reside from Washington Richardson –

Ans West ~~of~~ by the section line

Ques 6 How far from Washington Richardson?
Ans. About three quarters of a mile –

Ques 7. Do they reside both upon the same road
Ans Yes Sir, on the same side –

Ques 9 Does the road run on the section line?
Ans. Yes Sir – It passes both houses on the section line, after the road gets west of Shurtleffs it leaves the section line –

Ques 10. In what direction from Shurtleff and also from Richardsons does Tibbets live.
Ans. East of Shurtleffs and West of Richardsons about half way between the two –

Ques 11. Further in your answer to the eighth Interrogatory you stated that you met Bernard Gaffney at G W Richardsons ~~[illegible] Richardsons~~ at that time except Bernard Gaffney and in what year was that?
Ans: I recollect seeing Richardsons wife Gaffney's third girl, James Chambers I think it was and Richardsons small children this is all I recollect of now – It was in 1858?

Ques 12 Further in your answer to the eighth Interrogatory you said that you talked with Gaffney at that time about California State what he said to you about California

Ans. He said he had not made any thing there he said he liked the Climate but did not want to go back to California - he said that the country was not so good for farming as this, in some parts was very hilly and rough and heavy ledges of stone, at that time he told me that there were hundreds there that would come home if they could get home that he could buy a quarter of beef and stick it up in the air ten or fifteen ~~days~~ feet and it would keep good several days. and other conversation -

[illegible] about California

Ans. I think not.

Ques 14. How long did that conversation between you and Gaffney about California, continue?

Ans. Probably a quarter of an hour.

Ques 15 Further in answer to the eighth Interrogatory you say that you had also a conversation with him about politics what was said in that conversation?

Ans. He was a Democrat and I was an Abolitionist - we disagreed generally - I accused him of his party being determined to rule or ruin - And he accused me of wanting to free the negroes and have them up here, amongst us that I denied - There was other conversation - I dont recollect of any other particular items in relation to politics

Ques 16. Did or did not that conversation

about politics get Mr Gaffney very much excited and if so did he not at that time use very harsh and abusive language?

Ans. It did not - He never used any abusive language to me in the world to my recollection

Ques 17. Did or did not you make the remark on Mr Gaffney's passing out of the room in the presence of three persons adults, at that time present in the room, that Mr Gaffney returned from California very much altered in his mind, so much so, that you either considered him foolish or crazy or something to that effect?

Ans. I never made any such reply or statement to my knowledge and I think at that time I left Gaffney sitting on the lounge or chair by the window in the East room.

Ques 18 How long did that political conversation last?

Ans About a quarter of an hour -

Ques 19. You also state in your answer to the 8th Interrogatory that you also had a conversation about the Crops, now did you converse upon any other subject or subjects with Bernard Gaffney at that time? and if so what were they?

Ans Not to my recollection

B P. Brown

Sworn to & subscribed before me this 26 day of August AD 1861.

C M Brown - Clerk

By Jesse C Kellogg. Deputy

Jared Preston a Witness of lawful age produced sworn and examined on the part of the Defendant.

First Interrogatory — What is your name age residence and occupation?

Answer — Jared Preston, am thirty seven years old reside at Genoa DeKalb County Illinois am a farmer —

Second Int — Do you know the parties to this suit.

Ans. I know the widow Gaffney and some of the Children — I know the Defendants Brooms —

Third Int. Did you know Bernard Gaffney in his lifetime and if so how long?

Ans Yes Sir — I knew him from fourteen to sixteen years.

Fourth Int. Did you know of his going to California

Ans: I did —

Fifth Int How much were you acquainted with him before he went to California —

Ans I was very well acquainted with him

Sixth Int. Did you see him after his return from California?

Ans I did

Sixth Int. Did you have any conversations or do any business with him after his return

Ans. I had conversation with him but no business

Seventh Int. What was the state of his mind after his return, so far as you observed?

Ans. Good –

Eighth Int. What was the state of his bodily health after his return home from California

Ans Not very good I should judge –

Ninth. Int. What, if any thing in your conversations or interviews with him after his said return did you notice peculiar or showing any signs of mental weakness or different from what his mind had been before he went to California –

Ans. I did'nt see any thing that showed any signs of weakness as far as his mind was concerned – I thought he was more capable of doing business after he came back than he was before – he was keener –

Tenth Int How far do you live from G. W. Richardsons?

Ans Well, from eight to twelve rods.

Eleventh Int. How long have you lived there

Ans. A little over four years last past – I have lived there longer but have been away some part of the time –

Twelfth Int Were you living there at the time Guffey came back from California

Ans. I could not tell you

Thirteenth Int. If he came back in the fall of

A.D. 1856. was you then living there –
(Objected to)

Ans I was not.

Fourteenth Int. Do you know of Gaffneys being for any length of time at G.W. Richardsons house since his return from California If so how long and when?

Answer – I do – from two to four weeks in July I think A.D. 1858 –

Fifteenth Int. How often did you see him while he was so staying there –

Ans. Sometimes I saw him every day and sometimes ~~very~~ several times a day, and there might have been some days that I did not see him at all –

Cross examined

Question 1. Are you in any way connected to the Defendants or either of them and if so, in what degree –

Ans No Sir –

Question 2. You state in your direct examination that you was ~~connected~~ acquainted with Bernard Gaffney before he went to California, now where did Bernard Gaffney reside before he went to California –

Ans Chicago –

Ques. 3 – Whereabouts in Chicago did he reside

Ans – On the Westside of the River, I think on

Washington Street

Ques 4. Where did you reside before Gaffney went to California?

Answer. In Genoa –

Ques 5 – What is the distance between Chicago and Genoa by the ordinary carriage road –

Ans From 55 to sixty miles –

Ques 6. What business was Bernard Gaffney in or carrying on before he went to California

Ans. He was in the Glove and mitten business awhile and kept a boarding house some and was in the tanning business some –

Ques 7. How long was he in the glove and mitten business and up to what time? and what business was he in just before he went to California?

Answer. I do not mollect how long he was in the Glove and mitten business – I do not know what business he was in just before he went to California

Ques 8. How long was you acquainted with Bernard Gaffney before he went to California

Ans. I should judge about six years.

Ques 9. How often did you see ~~him~~ Bernard Gaffney during that time?

Ans. I could not state exactly, probably two or twelve times a year, and perhaps more

Ques 10. What was your occupation during that time
Ans Part of the time farming and a part of the time working by the month - most of the time farming -

Ques. 11. In what place were you farming
Ans. Geneva -

Ques 12. During the time that you worked by the month where was it where you worked

Answer. In Geneva -

Ques 13. How long after Bernard Gaffney's return from California; was it before you saw him -
Ans I do not know - I think first in 1857.

Ques 14. Where was Bernard Gaffney residing at that time?
Ans. In Chicago I suppose -

Ques 15 How many times did you see Bernard Gaffney after that time during his life?
Ans I saw him a great many times on different days.

Ques 16. How many times was he at Mr. G. W. Richardsons after his return from California
Ans. Twice to my knowledge and I think three times perhaps more -

Ques 17. How long did he stay there at any

one time

Ans. I think from two to four weeks

Ques. 18. Had he a family at that time and if so where were they?

Ans. He had - one of them Aija was at Mr. Richardsons -

Ques 19. Where were the balance of his family at that time?

Ans I could'nt tell you - I supposed that they lived ~~at~~ in Chicago - I dont know but James Gaffney might have been at Mr Richardsons - he lived there some -

Ques 20. What was the state of Mr Gaffney's health at that time.

Ans Rather poor, I should judge.

Ques 21. Was he or not at that time sick and unable to get home.

Ans He was unwell, I should judge, I think he was able to ride

Ques 22. How far should you judge that he was able to ride

Ans I cannot tell

Ques 23. Did you or have any dealings with Mr. Gaffney after his return from California and if so what was it about?

Ans. I think not -

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Direct examination resumed.

First Question

Upon what terms were you with Richardson and his family at the time of Gaffneys visits to Richardson's House

Ans. On good terms so far as I know

Second Ques - Were your families intimate with each other then?

Ans. They were

Third Ques: Did you hear at that time any thing said about Gaffneys being weak minded (Objected to)

Ans I did not.

Cross examination resumed.

Ques 1. In your answer to second direct ~~interrog~~ ~~atory~~ question you stated that your family and that of M Richardson were on intimate terms, Are they still on intimate terms, and if not how otherwise?

Ans They are and always have been as far I know -

Ques 2. Are there any differences now existing between you and M Richardson

Ans There are not to my knowledge -

Sworn to and subscribed
before me this 26th day of
August A.D. 1861.

C M Brown Clerk
By Jesse C Kellogg. Deputy.

Jane Preston

Ephraim Hall a witness produced sworn and examined on the part of the Defendant testified as follows to wit.

Int 1. What is your name age residence and occupation
Ans. Ephraim Hall - age fifty three - I reside in Sycamore, am a farmer.

Int 2. Do you know the parties to this suit or either of them and which of them?
Ans. I know Mr Gaffney and I should the Children if I should see them at home, and I know the Browns.

Int 3. Did you know Bernard Gaffney in his lifetime and if so, how long and to what extent.
Ans. I did - I should think I had known him twelve or fifteen years. I saw him from six to a dozen times a Year and things were sent in by me to him and have staid several times at his house -

Int 4. Did you know of his going to California?
Ans. I know of his going to California, as well as I could without seeing him there -

Int. 5 Did your seeing him and staying at his house alluded to in your answer to the 3 interrogatory

occur before he went to California or after his return

Ans. Before —

Int 6. Did you see him after his return from California and if so how often —

Ans. I did, but a few times —

Int 7. Did you ever hear any time in conversation with him after his return, and if so, when and where? how came you to go there and upon what subjects did you converse —

Ans. I did — In 1858 in June at his house in Chicago — Jeremiah L. Brown said that James Brown wanted me to go there and see when he could have possession of the house, we conversed upon a good many subjects, I also enquired when Mr Brown could have possession of the house he lived in

Int 8. What reply did Gaffney make to this inquiry?

Ans. He told me that he would let me know tomorrow morning at 8 o'clock.

Int 9. What reason did he give for putting you off till the next morning?

Ans. He said he wanted to see his Lawyer.

Int 10. How long did you converse with him at that time

Ans. I should think an hour or an hour and a half.

Int 11 Did you go there next morning to see him and did you see him and converse with him and how long?

Ans. I did and conversed with him some fifteen minutes or over—

Int 12. At the time of these conversations, what was the state of mind of the said Bernard Gaffney.

Ans. It was good so far as I knew or could perceive, I could tell you why—

Int 13. Please tell us.

Ans. When I went there next morning he told me to tell Mr Brown if he wanted to know when he could leave or any thing about the place to put his questions in writing and he would answer them in writing, his conversation showed that he was perfectly sane as far as I could see on all subjects that I conversed with him about

(Objected to)

Int 14 Can you relate the conversation that occurred between you and him when you first went there to see him. if so state it or the substance as near as you can

Ans. I cannot— the first conversation I had with him was not in reference to the place

I could not state the substance, it was about California and the general news.

Int 15 Can you state the conversation or the substance of it that occurred the next morning more than what you have already stated.

Ans. He told me what I have stated before was all the word he wanted to send to Mr. Brown.

Int. 16th Did or not anything unusual occur in the conversation or demeanor of Gaffney at the time of these conversations to attract your attention –

Ans There was not any thing very unusual that I saw or recollect.

Int 17. If there had been anything unusual or different from his ordinary Conversation or demeanor, do you or not think that you would have noticed it?

Ans. There was not any difference except there might have been a little more warmth or feeling in reference to the place between the conversations of the morning and Evening

(The question being repeated to the witness he adds) There was nothing unusual in his conversation or demeanor

Int 18th. Who sent the things to Gaffney spoken of by you in answer to the third Interrogatory

Ans. Jeremiah L. Brown's first wife Mrs. Gaffneys Sister and Lina Preston

Int 19. What was the State of Gaffneys bodily health at the times that you saw him after his return from California

Ans. I should think it was poor, not so but what he walked about erect as he did before he went to California

Cross examined.

Ques 1. How far do you reside from the residence of Jeremiah L. Brown -

Ans. We call it two miles.

Ques 2. Have you any dealings with Jeremiah L. Brown and if so, what?

Ans. I have - He had a thousand and a half of shingles of me a year or two ago, I believe his boy or some body brought back half a thousand of them which they said he did not use -

Ques 3. Have you not borrowed money of Jeremiah L. Brown or James P. Brown or both of them, and if so, when and how much?

Ans: I have no knowledge of taking a penny or having a penny passed into my hands from James P. Brown I have borrowed of Jeremiah L. Brown for a few days or weeks but not within a year or two to my recollection?

Ques 4. Were you not at the time of going to see Gaffney at the request of Jeremiah L Brown as spoken of by you in your direct examination indebted to Jeremiah L. Brown in a considerable sum of money and if so, how much, and has that money been paid and if so, when?

Ans: No Sir I never was indebted to him to any considerable amount. I think he never had my note, he might have had.

Ques. 5 How many times did you meet Mr Gaffney to have any conversation with him after his return from California

Ans. I dont recollect of any but these two times, I may have seen him, I think I have seen him at other times –

Ques 6. State the year and the month in the year when you carried the message from Jeremiah L. Brown referred to in your direct examination

Ans; I carried it in June A.D. 1858 to the best

of my belief, I could not state the day. –

Ques: 7. Did you ever carry any other message, before or since to Bernard Gaffney at the request of Jeremiah L. Brown?

Ans. I dont know – I have carried butter for Mr. J. L. Brown – I think Mr Brown has sent words by me a good many years ago ~~at the~~ ~~way~~ but I cant recollect any particular time –

Que 8. Did you ever carry any other request to Bernard Gaffney from Jeremiah L. Brown in regard to that property?

Ans I do not recollect any.

Que 9 On your making known your business to Bernard Gaffney did he or not immediately order you off his premises –

Ans. He did not.

Que 10. You say in your direct examination that in the morning when you returned that he spoke with more warmth than on the evening before, did he or not then tell you to leave his premises and not to come there with any more of Brown's messages or something to that purport.

Ans. He did not.

Que 11. At the time that you were there in the morning referred to in the last interrogatory

how many persons were there in the room and who were they?

Ans. The conversation in the morning was mostly out of doors - he stood in the door yard and I on the side walk - There were boarders going in and out I did not know them - they kept a boarding house -

Que 12. What was the condition of Mr Gaffney as to his health?

Ans. I should think his health was poor -

Que 13. Did he complain to you about his health at that time -

Ans I think that he did the afternoon that I went there -

Que 14 What did he say in regard to his health.

Ans I cannot tell just what he said - I think he told me he had not been able to do any thing since he came from California

Que 15. You say that you had a conversation in the Evening of an hour and a half, now have you stated all that you can recollect of that Conversation

Ans I dont recollect any thing in particular besides - (the Witness states that by the Word evening he means the afternoon of the day and also that he is not certain that he know the younger of Gaffneys Children) -

Ephraim Hall

Sworn to and subscribed
before me this 26th day of
August A.D. 1861

C W Brown, Clerk
By Jesse C. Kellogg Deputy.

Edward L Mayo, a Witness produced sworn and examined on the part of the Defendants testified as follows towit,

First Int. What is your name age residence and occupation?

Ans. Edward L. Mayo, age 54. residence Sycamore DeKalb County & State of Illinois An Attorney at Law by occupation.

Second Int. Did you know Bernard Geffney in his lifetime?

Ans. I did very well —

Third Int. When did you first become acquainted with him?

Ans: If I am not mistaken in dates, and I think I am not, I first made his acquaintance in the latter part of January or the fore part of February 1857.

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Fourth Int. Did you have conversations with him or do business with him after that, if so when how often and upon what subjects?

Ans. I had a number of conversations at that time and after with him and I left one a matter of my own with him to look after or transact in January or February A.D. 1857. I think it was I had had several Conversations with him on two or three several days while I was there in Chicago - I had several other Conversations with him between that time and the latter part of Summer or fore part of the autumn of A.D. 1858. and after that I had quite a number of conversations with him between that time and the time of his death - When I first made his acquaintance I had several conversations with him upon the Subject of the land in Controversy in this suit - I talked ~~with him about~~ on political subjects with him - I talked with him about Ireland, her statesmen Barristers poets historians and the alleged ~~Country~~ traitors of that Country, at other times between that and the Summer and fall of A.D. 1858, we talked on various kinds of politics, we talked about Senator

Douglass, James Buchanan and his Administration, the Lecompton Constitution and so forth - We also occasionally talked the State of his health and divers other subjects I could not tell half of them, we always had a good visit -

Fifth Int. Were you present at the first trial of the Ejectment suit brought by James P Brown to recover the property against Gaffney.

Ans. I suppose that I was - I have no doubt of it, I have been present at three jury trials of that case -

Sixth Int. Was Barnard Gaffney present at any of these trials and if so which?

Ans. He was present at one of them, the first one at the time it was tried before Judge John M. Wilson -

Seventh Int. From what occurred in your interviews with him and what you saw of him, what, if any thing did you see indicating in him imbecility of mind mental incapacity to do business a weakness of Intellect?

Ans I never discovered any thing that led me to believe or suppose that he was labouring under any aberration of reason or

that he had not sufficient capacity of mind to transact ordinary business - Nothing of the kind ever occurred to me until I heard it suggested some time after his death - I think it was after his death - it might have been suggested on the first trial of the suit at Law - I dont mean to be understood as saying that he had naturally a powerful intellect but was sufficient - as far as I ever discovered to transact any of the ordinary business of life - I regarded him as a pretty middling sharp Yankee - his bodily health sometimes made him a little moderate in his conversation -

Eighth Int. Was Jeremiah L. Brown sworn as a Witness on the trials of said Ejectment suit if so, how often and at whose instance?

Ans. He was sworn I think (Objected to) at all three of the trials but I may be mistaken - I am quite sure he was sworn at the at the first and third trials - I think at three - I dont recollect that I can now tell at whose instance -

Ninth Int. Did you hear his testimony on those occasions?

(Objected to)

Ans. I did -

Tenth Int. Do you recollect the fact of his attention being called to the payment of money by him to Gurnee Hayden & Co on a Contract touching the land in controversy in this suit and for whom he had so paid it?

(Objected to)

Ans. I recollect more particularly of his attention being called to it on the last trial and I have an indistinct recollection of its being called to it on one or both of the other trials —

(Objected to)

(By agreement of parties the further examination of Witnesses is adjourned until August 27 at 8 o'clock A.M.)

(August 27th A.D. 1861. 8 o'clock A.M. parties present as on yesterday and direct examination resumed.)

Eleventh Int. State, what he said at the said at the said last trial upon the subject ~~aforesaid~~ alluded to in the tenth interrogatory above, in his words if you can, if not in substance —

(Objected to)

Ans Well — I dont know whether I can state positively — as I am liable to mix up his testimony with that of others, and with conversations with others — my recollection is however that he stated that he paid several hundred

dollars I dont now recollect the amount to Gurnee Hayden & Co or perhaps to P.L. Goe for them, on a Contract formerly held by Bernard Gaffney given to him by the Canal Trustees I believe and assigned by said Gaffney to Gurnee Hayden & Co - I am not positive whether Gurnee Hayden & Co was the name of the Company - I think it was, I understood him to say that he paid it on his own account as near as I can recollect.

(Objected to by Complts Counsel)

Twelfth Int. Do you recollect in the course of his testimony of his testifying as to money paid by him on a Contract from Gurnee Hayden & Co to said Bernard Gaffney touching the lands in controversy in this suit?

(Objected to by Complts Counsel).

Ans. Yes Sir I think I do.

Thirteenth Int. Do you recollect the fact of his asking to see a Coby of that Contract for the purpose of refreshing his recollection as to the amount paid on it by him?

(Objected to)

Ans. Well - I dont know as I do distinctly I know the matters were talked ~~of~~ up there in Court Concerning the Contract and the Amount paid ~~it~~ on it - I mean the last mentioned Contract - I dont recollect of his

calling for the Contract –

(Objected to)

Fourteenth Int. Do you recollect of his stating the whole amount he had paid Gurney Hayden & Co on the Contract you have last alluded to? – (Objected to)

Ans: I recollect of his stating an amount as near as he said he could do it, I think he said that he paid at one time a certain sum a little before it was due in Consideration of which they throw off a little, I could not tell how much. I do not now recollect the amount he said he paid at any rate it was the amount due them – unless there was a deduction of a small amount in consideration of payment before it was due –

(Objected to)

Fifteenth Int. Do you recollect the fact of his attention then being called by direct interrogatory as to for whom he had paid this money.

(Objected to)

Ans. I think it was –

Sixteenth Int. What was his reply. (Objected to)

Ans. He said he paid it on his own account – he said when Gaffney wanted to go to California Gaffney wanted – him (Brown) to fit him out and told him that if he would do so that he would give him his Contract which he held from

Gurney Hayden & Co and that he did furnish him with some means to go with, and took from Gaffney an assignment of the Contract.

(Objected to)

Seventeenth Int. What do you recollect of any thing as to his statements on the said last trial as to Gaffney's indebtedness to him when he Gaffney returned from California

(Objected to)

Ans Mr Brown claimed that Gaffney owed him the whole amount of the outfit when he return from California - he claimed that he was to have the premises in Controversy by paying for them, he did not claim that their affairs were in that condition at the time of the said last trial because, he claimed, that those ~~[illegible]~~ old matters had all been settled in the Winter or Spring of A.D. 1857. I think in February or March 1857. I think in February, by the word claimed I mean that according to the best of my recollection he testified to that in substance, I do not recollect his words—

(Objected to)

Eighteenth Int.y. Did he in his testimony on that occasion include or exclude from what Gaffney was owing him on his Gaffney's return from California, the amount he, Brown, had paid Gurney Hayden & Co on their Contract?

(Objected to)

Ans. I think he stated on that occasion I am liable to confound these things ~~I was so many trials~~ There were so ~~many trials to~~ (Complainants Object to the words "~~I was so~~ There were so many trials" being ~~stricken out~~ ~~xxx~~ struck out) (which was done by direction of the Witness) That is, what he testified to on that occasion with what he testified to on the other trials of the same cause, and with conversations that I have had with him, but my recollection is that he testified on that occasion that he was to have the premises in question by paying what was due upon them - That he did not consider at the time he made the contract with Gaffney that the premises were worth the amount of money that he would have to pay out to get them - When Gaffney returned from California he claimed that the premises were his, that the sum he let Gaffney have to fit him out for California was by this Contract actually his due That - that sum and the sum or sums he paid Gunnee Hayden & Co had nothing to do with each other in reality - I may have confounded as I have said before, what he testified to on that occasion with what he has told me in our frequent Conversations

(Objected to)

Nineteenth Int^y. When you say that you confound what he testified to on the last trial with

what he said on some other occasion, what do you mean? (Objected to)

Ans. I mean to say that I may confound the testimony on that occasion with what he has testified to on other occasions and with what he has told me in Conversations, he may not have been interrogated at some of the trials upon certain points that he was interrogated upon on other trials, and hence, what he testified to on other trials, I may have confounded with his testimony on the last trial, and as I have said before I may have confounded his Conversations with me with what he testified to on that occasion - He has told me so, perhaps a hundred times, in these conversations and I am quite positive he testified so substantially on the last trial of the Ejectment suit in Chicago - (Objected to)

Twentieth Int. Now, if he testified on the last trial on these subjects did he or not testify as you have above stated - (Objected to)

Ans He did to the best of my recollection

Cross examined.

Question 1st Have you or not acted as attorney or in the capacity of an attorney & Counsellor

to Jeremiah L. Brown during the pendency of the suits in which the property mentioned by you has been in controversy?

Ans In the suit at Law I was Counsellor for James P. Brown. I have to a certain extent acted as Counsellor to Jeremiah L Brown and James P Brown in this Chancery suit I attended at the taking of some depositions in this case at Rockford at the request of the Defendants, probably most of the correspondence between Mr. Burgess, whose case this is, as Solicitor has been carried on through me and both of the Defendants especially Jeremiah L Brown have often conversed with me upon the subject of the suit.

Ques 2d In your direct examination you stated that Mr. Jeremiah L. Brown testified in a former suit at Law wherein this property was in controversy that he furnished to Gaffney at his Gaffneys request an outfit to California now what kind of property and to what amount did he then testify that he furnished to Gaffney.

Ans I think he said he let him have a span of horses and I guess some other property perhaps, some money I dont recollect distinctly my recollection is that he thought it would not exceed three hundred dollars, he stated some sum, that he thought it would not

exceed and I think it was three hundred dollars

Ques. 3d Do you recollect of two promissory notes being there shown to Jeremiah L. Brown and if so what was the amount that he testified each of those notes called for –

Ans: I do – I do not recollect either what he testified the amount of the notes to be or what they really were – I do recollect that the amount of the two notes was larger by some considerable than what what he fixed the cash values of the property and money to be –

Ques 4. Did he not testify at that time that one of those notes was made payable one day after date and the other due on demand and that they were given with the large excess for the property and money at that time furnished to Gaffney as his outfit to California?

Ans: I do not recollect whether he testified when they were due or not nor do I now recollect when they were due but I did learn during the progress of some of the trials and perhaps all of them either from the testimony of Jeremiah L. Brown or the inspection of the notes or from Conversation there in Court when each of said notes were payable, I understood him to testify that said notes were given for quite an excess

over what he then paid the cash value of the property to be, at the time that he Brown let Gaffney have it

Que 5th You stated that in your direct examination that Mr Brown testified to a Contract which was then shewn to him in Court purporting to be given by Gurney Hayden & Co to Bernard Gaffney for the Conveyance of the property in question from Gurney Hayden & Co to Bernard Gaffney - and that he further testified that Bernard Gaffney assigned that Contract to him, Brown, now what consideration did Brown then testify that he paid Gaffney for the assignment of that Contract with his rights therein to him Brown?

Ans I do not recollect that I testified that this Contract was shown to Mr Brown on trial but I do recollect about his testifying about it and my recollection is that I then understood him to say that the consideration for the transfer of the Contract from Gurney Hayden & Co to Gaffney was, that he was to pay to the Canal Trustees the balance due on the purchase money and what he Gaffney owed Gurney Hayden & Co and should furnish him Gaffney on credit with an outfit to California - this is just as I understood it -

Ques 6th Did or not Mr Brown then testify that all the monies that were due him from or that he had paid out for Gaffney was nine hundred dollars or thereabouts.

Ans: I could not say.

(On reading over the answer to the 8th direct Interrogatory the witness desires to add as follows to wit "On reflection I do recollect as nicely "that at the first trial certainly, Jeremiah "L Brown was first called upon the stand "as a Witness by Defendants Counsel"

Direct examination resumed.

First Question Did Brown on his examination on that trial testify that Gaffney owed him on his return from California for any thing other than on the notes, he Gaffney had given him before he went to California and if so, what?

Ans Well, in testifying on the last trial in the suit at law I did not understand him that Gaffney at the time of his return from California owed him any thing except the two notes —

Cross examination again resumed —

1st Question

How many trials at law were

there had where this property was in Controversy and how many of those trials were you present at!

Answer. There has been three jury trials in the Ejectment Suit, I was present at all of them if there have been other trials I dont know of them—

Edward L Mayo—

Sworn to and Subscribed before me this 27 day of August A.D. 1861.

C M Brown Clerk
By J C Kellogg Deputy.

(The further examination of Witnesses was postponed by agreement of parties until 2 o'clock this afternoon.)

(August 27. AD 1861. 2 o'clock P.M. parties present as in the morning and examination of Witnesses resumed—

Daniel H. Kelly a witness produced sworn and examined on the part of the Defendant testifies as follows to wit.

First Int. What is your name age residence and occupation –

Ans. Daniel H Kelly, am twenty eight; reside in the Town of Genoa DeKalb County and State of Illinois – am a farmer –

Second Int. Do you know the parties to this suit or either and which of them?

Ans. I know all the Complainants but Judith Ann Gaffney and I know both of the Defendants

Third Int. Did you know Bernard Gaffney and if so when and to what extent?

Ans. Yes – In 1858 I met him for the first time at G W Richardsons, was introduced to him by G W Richardson – I talked with him some half an hour probably – I met him again at Mr Richardsons talked with the biggest part of half a day – I saw him several other times while he was at Richardsons I conversed with him enough to be thoroughly acquainted with him –

Fourth Int. Can you state the conversation

you had with him, the substance if you cant give the language.

(Objected to)

Ans The first time I met him he asked me how my folks were and I asked him how his were also how his health was, he told me his family was well I think, he told me his health was very good for him, better than it was in the winter past - the rest was compliments upon the weather. I think that was all at that time - I met him again at G. W. Richardsons, talked with him sometime the conversation commenced about the time he went to California and when he returned also about the way of digging Gold where it was found how much he made in digging Gold and then about the way he came home then our conversation commenced about the history of France, about Bonaparte's allowing the Soldiers to destroy the nunneries this conversation led to about the founders of the Roman Catholic Church and considerable conversation about ancient and modern history - after that the conversation was about men's holding mortgages or Mortgage of Real Estate, we had some dispute about it, he gave his opinion why he thought he was right because he had attended the Court in Chicago occasionally

through the winter - that he had heard several cases tried where the man foreclosed on his mortgage, the conversation was then upon the rates of interest that some men charged He thought it did not amount to as much as it did by compounding interest - that is interest upon interest - We had quite an argument about it - I dont recollect of any thing else in particular I dont recollect of any other conversation after the ones I have spoken of - I met him several times and had a few minutes Conversation with him and passed the Compliments of the day

Fifth Int What if any thing did you notice in your conversation or intercourse with him showing in him any weakness of mind or incapacity to do the ordinary business of life? (Objected to)

Ans. I noticed nothing.

Cross examined

Ques first.

Have you stated all of your means of acquaintance with Bernard Gaffney and if so over what extent of time did this acquaintance extend

Ans Yes - somewhere near two weeks it

might have been three weeks.

Ques Second How far from Washington Richardsons did you reside at that time?

Ans. I should think between sixty and seventy rods —

Sworn to and subscribed before me this 27 day of August 1861 —

Daniel H Kelley.

C M Brown Clerk
By J C Kellogg Deputy.

Jeremiah L. Brown a Witness produced sworn and examined on the part of the Defendants testified as follows to wit

First Interrogatory — What is your name age residence and occupation —

Ans. Jeremiah L Brown Age 56 years resides in Genoa DeKalb County Illinois — am a farmer.

Second Int. Are you one of the parties to this suit?

Ans As I understand it the suit was commenced against me and my son –

(Complainants object to the further evidence of this witness on the ground that he is a party and interested in the suit)

Third Int'y. Look at the paper writing now shown you marked Exhibits "1" and "2" to be attached to your deposition and state by whom they are executed?

(Complainants object to the introduction of the paper writings marked "1" and 2 as evidence or for any other purpose).

Ans I have looked at the Exhibits, No "1" is executed by me and No "2" by James P Brown one of the Defendants in this suit.

Fourth Int'y. Did you know Bernard Jaffrey in his lifetime?

Ans. I did

Fifth Int. Did you know him before he went to California

Ans I did

Sixth Int. Did you let him have any property for his outfits

Ans I did

Seventh Int. Did you know at that time of his then holding a contract in writing between him and Gurnee Hayden & Co for the sale by them to him of the lands in controversy in this suit?

Ans. I did —

Eighth Int. Was that contract ever assigned to you and if so state the terms and time when

Ans. It was — Well, it was assigned to me on condition that I would help him off — It appears to me, well it was just before he went to California. I can't state the year without I refer to papers, It was in the year A.D. 1850 (The Witness having referred to paper before stating the time when) —

Ninth Int. How were you to help him off — State the whole arrangement then made between you and him!

Ans Well. I was to have the assignment of a bond for a Deed from Gurnee Hayden & Co. to Bernard Gaffney — He assigned to me the Bond, all his right and interest in the Bond upon my furnishing him the means to go to California with, and giving him time to pay for the means I furnished him to go with.

Tenth Int. Did you furnish him with means

if so what were they?

Ans. I furnished him means, horses and money. I dont now think of any thing else –

Eleventh Int. How much money did you let him have on that occasion?

Ans. I dont recollect – not to exceed a hundred dollars –

Twelfth Int. How did he secure to you the payment for these means by notes or how

Ans I took his notes.

Thirteenth Int. Did you on that occasion take an assignment of the bond or writing that Gaffney held that you have alluded to and upon what was the assignment made

(Objected to)

Ans. I took such an Assignment which was made upon the bond –

Fourteenth Int. What has become of the said Bond with the indorsed Assignment.?

Ans I let Peter L. Joe have it at the time I took up the notes alluded to in the Bond.

Fifteenth Int Did you pay the amounts to be paid Gunner Hayden &c under that paper?

Ans. Yes Sir

Sixteenth Int. When you paid them up what papers did they give to you?

Ans. They assigned back a Certificate of Sale given by the Canal Trustees to Bernard Gaffney and by him assigned to Gurnee Hayden & Co. - They made to me or James a Deed of the premises in question and gave to me a bond like the one I gave up to them but there was no assignment on the bond I received back like the one they took of me I dont now recollect of any thing else -

Seventeenth Int. When did Gaffney return from California -

Ans. It was in 1857 I believe - on further reflection I think it was in 1856.

Eighteenth Int. After his return from California did there any deeds or other papers pass between James P. Brown and him, touching these premises, if so how did they come to be given State if any reference to any person to settle the matter was made, to whom was it made and what was done in consequence?

Ans. There did papers pass. Will Barney Gaffney and James P. Brown by mutual agreement selected Peter L. Joe of Chicago to settle all matters of difference between them and he done so by having Gaffney

James gave to Gaffney a deed of the whole of the premises in question and by Gaffney's deeding back to James the East 20 feet and mortgaging to James the West 110 feet for between Eighteen and nineteen hundred dollars - That was to settle up every thing up to that time -

Nineteenth Int. Did you at that time surrender any papers and if so what were they and to whom?

Ans: I surrendered the notes that Gaffney gave to me when he went to California and I think all the notes that I paid up spoken of in the bond given by Gaines Hayden & Co. to Gaffney to Peter L Gee - at the time of the completion of the settlement

Twentieth What was Gee to do with them?

Ans He was to give them up to Bernard Gaffney.

Twenty first Int. Between whom was this to be a settlement of every thing up to the time of it?

Ans. Bernard Gaffney James P Brown and myself, that is Gaffney on the one side and James P Brown and myself on the other.

Twenty second Int. Were you present at the examination of Peter S Yoe before the Master in this cause in Chicago and were the documents and papers there produced and verified by him respectively, the same documents and papers so far as they were produced that you have now testified about excepting Exhibits No "1" and "2" on this occasion testified to by you –

Ans I was present at most of the examination and these Deeds and papers spoken of by me were exhibited to Yoe as near as I can remember –

Cross examined –

Ques 1. In your answer to the tenth Interrogatory on the direct examination you say that you furnished to Bernard Gaffney horses to go to California now how many horses did yo so furnish him and what was the value put upon those horses at that time by Yourself and Gaffney!

Ans. I furnished him two horses. I am not sure we valued them from a hundred and sixty to a hundred and eighty dollars

Ques 2 You also stated that you let Bernard Gaffney have some money is that true. Now, how much money did you let him have.

250

Ans. Near a hundred dollars, not to exceed that, I should think it would fall a little short.

Ques 3d State the aggregate sum agreed upon by you and Gaffney for the money and the price of the horses.

Ans. I cant recollect precisely

Ques 4th State as near as you can

Ans Well I think that he was owing me some besides that - I should think the full amount of the notes was over four hundred dollars.

Ques 5. You stated in answer to the first cross Interrogatory that the horses that you let Bernard Gaffney have was worth from a hundred and sixty to a hundred and eighty dollars, and in answer to the second cross Interrogatory you stated that you let him have something less than a hundred dollars in money, now was this the means that you furnished Bernard Gaffney as his outfit to California

Ans The horses and money were the means I furnished -

Ques 6. You stated in your direct examination that you took Bernard Gaffneys notes

for the horses and money that you let him have as his outfit to California, how low many Notes did you take of Gaffney for that money and property?

Ans I took two.

Ques 7. State for what amount each of these Notes were given?

Ans. Well I think for something over two hundred dollars each I dont recollect the amount.

Ques 8. Were they or not given for two hundred and thirty five dollars each.

Ans I should think that they were for about that amount but dont recollect.

Ques 9. Was or not one of these Notes made payable one day after date and the other due on demand?

Ans To the best of my recollection they were?

Ques 10. Did you give or pay to Bernard Gaffney any other consideration for the assignment of the Bond for deed than the property and money furnished him as above stated as his outfit to California

Ans I fitted him out for California and agreed to wait upon him (the Counsel

for Complainants Counsel is the question not answered and asks the same one again) The Witness then answers "No but he gave me an assignment of the Bond if I would fit him out for California and wait on him and I did fit him out.

Ques 11. Was or not those notes you speak of with the excess also taken for that property and money?

Ans. The notes were taken for the property and money.

Ques 12. You stated in your direct examination that you paid Gaffney, notes held by Gurney Hayden & Co now how much was the full amount of those notes and how much money did you actually pay them in all in paying up those notes.

Ans The Notes due Gurney Hayden & Co were near six hundred dollars they might be less or more - the full amount I had to pay was nine hundred and forty & some odd dollars. There was one or two notes that Gaffney gave to the Canal Trustees that made the full amount with Gurney Hayden & Co that I took up that makes the amount some nine hundred and forty some odd dollars.

Ques 13. Did you pay those notes given to the Canal Trustees by Gaffney to the Canal Trustees, or had Gurnee Hayden & Co. paid the Canal Trustees and taken up those notes and you paid the amount to Gurnee Hayden & Co.

Ans I think Gurnee Hayden & Co took the money I paid them and got up the first note and I think they sent me to go and take up the other.

Ques 14 Was or not the first note you speak of charged over to Bernard Gaffney and reckoned into the notes given by him for the six hundred dollars or thereabouts which you paid as stated by you above —

Ans. I dont think I know any thing about them deal Gaffneys and Gurnee Hayden & Co. as far as this question is concerned but I should think not.

Ques 15 — In what year and what part of the year did you pay and take up those notes given by Bernard Gaffney to the Canal Trustees?

Ans The year that they fell due and about the time —

Ques 16. What was the amount of each of those Canal Notes.

Ans: A hundred and fifty dollars more or less I dont mollect the amount.

Direct examination resumed.

First Question Were the Notes given by Goffney to you produced at the last trial of the common law suit and then identified by you?

Ans They were —

Second Ques: How many trials of the common law suit touching the premises in controversy in this suit were there to your knowledge.

Ans. There were three —

Third Ques: Were you sworn & examined as a Witness at any of those trials and if so how many and at whose instance

Ans I was at all three at the instance of the Goffneys —

Fourth Ques. Was Peter L Goe also examined at the last trial of said law suit and on whose behalf?

Ans He was examined and it is my impression at the instance of the Goffneys.

Sworn to and subscribed
before me this 27 day of

J. L. Brown

August AD 1861.
C M Brown Clerk
By Jesse C Kellogg Dept.

State of Illinois }
DeKalb County } ss

I Caleb M Brown, Clerk of the Circuit Court in and for said County in the State aforesaid do hereby certify that previous to the commencement of the examination of Benjamin P Brown Jared Preston, Ephraim Hall, Edward L Mayo, D H Kelly and Jeremiah L Brown, Witnesses in the above entitled Cause, They were each severally sworn by me to testify the truth the whole truth and nothing but the truth in relation to the matters in controversy between the said Complainants and Defendants so far as they should be interrogated concerning the same That the said Depositions were taken before me at the Court House in Sycamore pursuant to the stipulation hereto attached and the subsequent agreement of the parties by their Solicitors as aforesaid on the 26th and 27th days of August AD 1861 and that after said Depositions were taken as aforesaid, the Interrogatories and answers as written down were read severally to the said Witnesses and

that thereupon the same was signed and sworn to by the said Witnesses severally before me on the days and year aforesaid.

Witness my hand and the seal of said Court at Sycamore in the County and State aforesaid this 27th day of August AD 1861

(L. S.)

C M Brown Clerk
By J C Kellogg Deputy Clerk

In the Superior Court of Chicago
In Chancery.

Esther E Gaffney Widow &
James B Gaffney Judith Ann
Gaffney Mary Elizabeth Gaffney
Esther Eliza Gaffney & Delia Gaffney
minors &c

vs

James P Brown & Jeremiah L. Brown.

For value received I Jeremiah L Brown do hereby release James P Brown from any present or future claims or demands against him by reason of the determination of this cause or any matter brought or to be

brought in question thereby either for or against me, and also from all claims or demands ~~whatsoever~~ Estate rights titles or interests connected with or dependant upon the subject matter of this suit which I now or hereafter may have against him or them in hold —

Witness my hand & seal this 26th day of August 1861.

J L Brown (Seal)

Endorsed Exhibit No "1."

In the Superior Court of Chicago
In Chancery

Esther E Gaffney, Widow
James B Gaffney Judith
Ann Gaffney Mary Elizabeth
Gaffney Esther Eliza Gaffney
& Delia Gaffney. Minors &.
vs
James L Brown & Jemmah L Brown

For value received I do hereby release Jemmah L Brown a Witness to be offered by me on the trial of this Cause of any present

or future claims or demands against him by reason of the determination of this cause or suit or any matter brought or to be brought in question in this suit either for or against me - And also from all claims and demands connected with or dependant upon the subject matter of this suit which I now or hereafter may have against him.

Witness my hand and seal this 26th day of August 1861.

I P Brown [L.S.]

Endorsed, Exhibit No "2"

And thereafter to wit on the Eighteenth day of November A.D. Eighteen hundred and Sixty one, there was filed in the Office of the Clerk of said Court Certain other Depositions on the part of said Complainants, Which last mentioned Depositions now remaining on the files of said Court are in words and figures as follows to wit.

22.8.

In the Superior Court of Chicago
Of the November Term A.D. 1861.

Esther E. Gaffney in her own right
James B. Gaffney, Judith A. Gaffney
Mary E Gaffney, Esther E Gaffney
and Delia M Gaffney by E. E.
Gaffney their next friend —

vs

James P Brown and Jeremiah L. Brown.

In Chancery.

The testimony of Philo Carpenter a Witness produced sworn & examined on the part of the Complainants in open Court in the hearing of the above entitled Cause deposes and says.

1 Were you acquainted with Bernhard Gaffney in his lifetime

Ans I was —

2 How long were you acquainted with the said Gaffney?

Ans. I have known him about fifteen years previous to his death — continuously except while he was in California —

3 During the time you knew him where was his homestead and the homestead of his family say for the last ten or eleven years.

Ans. I should think for the last 10 or 11 years, on the Corner of West Washington and Desplaines Streets.

4 Who had the actual possession and occupancy of the premises there on the Corner of Desplaines & Washington Streets during the last 10 or 11 years.

Ans I should say Mr Bernhard Gaffney & family

5 Was he married, who was his wife & did he leave a widow?

Ans I am acquainted with his wife - he was married - her name was Esther I believe the Complainant in this Case, she was left as his widow.

6 Where does she now reside & how has she resided ever since you knew her.

Ans. For the last 10 or 11 years she has lived on the corner above mentioned.

7 Do you know the numbers of the lots -
Question withdrawn

8 What was the health of Mr. Gaffney when he went to California & the then state of his mind as compared with what it was at his return & up to the time of his death as far as you know -
Question objected to by the Defendant - so far as it relates to the state of his mind -

Ans I should say after he returned from California he appeared to be in very feeble health both of body & mind from conversations I had with him at different times - I saw him at his house & saw him frequently on the Street & noticed a marked change -

9 Please give to the Court any circumstances

within your remembrance or conversations from which you inferred the weakness of his mind.

Ans. I do not know that I could separate the weakness of his mind as it appeared to me from the weakness of his body - I did intend on one occasion to ask him for a small sum of money which I had loaned his family during his absence in California - but after conversing with him & finding him so feeble as I should judge in body & in mind that I concluded not to ask him for it.

10. How often did you see and converse with him from the time he came back to the time of his death.

Ans. I was in the habit of riding frequently past his residence & saw him a good many times in the Street. I do not know that I can answer more definite than that - I have previously stated that I had called upon him at least once at his own residence -

11. Did you notice any change from the time you first discovered the feebleness of mind & body you speak of up to the time of his death.

Ans. I think I did - I discovered it more particularly in his body as I saw him walking in the Street.

12. What was the change?

Ans. A continued decline in bodily health.

13 Did you perceive any change in his mind either for better or worse?

Ans. For sometime previous to his death I had

no conversation with him & could not judge –

14 What was the pecuniary circumstances of Mr. Bernhard Gaffney about the time he went to California if you have any means of knowing & after his return & up to the time of his death & the pecuniary circumstances of his family during his absence?

(Question objected to by Defendants Solicitor)

Ans: I have no means of knowing anything definitely respecting his pecuniary circumstances previous to his going to California & judge from what I knew of the circumstances of his family during his absence and after his return that the family were in rather embarrassed circumstances – that was my impression.

15 Do you know of any property that he had besides this little homestead.

Ans. Nothing at all that I know of –

16 How far do you live from this residence that you speak of – and what are the means you possess from your intercourse with the family or otherwise of knowing their circumstances.

Ans. Distance from a quarter to a half mile I should say – I have known the family from the time above mentioned 10 or 11 years – I have been interested in seeing the children in school and have known in a general way the circumstances of the family –

Cross examination –

1 Please read this letter marked exhibit B. in the deposition of G W Richardson in this cause & state whether at the time of the conversation you have mentioned you thought him capable of writing such a letter.

(Question objected to by Complainants Solr.)

Ans. Well I should say he might or might not have been – That is a point that had not occurred to me to judge of his capacity to write a communication –

Subscribed and sworn to before me this 18th day of November A.D. 1861. } Philo Carpenter.

Walter Kimball Clk

The testimony of Henry Witbeck a Witness produced sworn & examined on behalf of the Complainant in open Court on the hearing of the said Cause –

1. Were you acquainted with Bernhard Gaffney if so what was the condition of his health & mind from the time he returned from California up to the time of his death?

(Question objected to by Defendants Solicitor).

Ans I was acquainted with him – he was in feeble health – I dont know as to his mind whether it was injured any in consequence of his health or not – I dont know about that –

2 What appeared to be the matter with him & what appeared to be the condition of his bodily strength –

Ans. He appeared to be very feeble –

3 State if he continued so –

Ans He did – he continued so –

4 Had you any means of knowing his capacity for doing business & making contracts & if so state what they were?

Ans. I had not any.

5. State if you know the circumstances of Mr Gaffney about the time he went to California & after his return and up to the time of his death & what they were?

(Question objected to by Deft Solr)

Ans. Well – I had some knowledge of his circumstances through an intimacy with the family & understood it to be rather limited circumstances & during his absence I think the family were very much reduced for the want of means to live on for support – so much so that I think they were somewhat assisted by myself & by our family – To the best of my knowledge they remained in destitute circumstances up to the time of his death.

6. Do you know whether Mr Gaffney brought home with him any money?

Ans I do not –

7 How long was it from the time of his return till his death?

Ans: I dont know exactly - from two to three years.

8 Do you know whether he was able to do any work or follow any business whatever after his return from California

Ans I dont think he was able from his appearance & dont know that he did engage in any business after his return -

9 Do you know whether or not he was embarrassed pecuniarily during that time?

Ans. I understood that he was embarrassed somewhat -

10 You speak of yourself & family as having assisted them - What was the assistance?

Ans. Well - I think that I helped him to a little - to a small sum of money and also some little assistance by my family in the way of necessaries - I could not say what they consisted of -

11. How about you being reimbursed -

Ans: I think I never asked for any reimbursement.

12. Wherefore & why -

Ans. I considered them more in need of them than I.

13 Do you know this property in controversy.

Ans. I know the property very well that they have lived on & that they now live on -

14 Describe the property as well as you can by streets blocks and numbers & how long

they have lived on it & had actual possession thereof –

Ans It is situated on the South East corner of Desplaines and West Washington Streets – They have lived on it as much as 12 years and are still living there –

Subscribed & sworn to
before me this 18th
day of Nov. A.D. 1861.

Henry Witbeck –

Walter Kimbale
Clk.

And thereafter to wit on the twelfth day of November A. D. Eighteen hundred and sixty one there was filed in the Office of the Clerk of said Court certain other Depositions on the part of said Complainants which last named Depositions are in words and figures as follows, to wit.

"In the Superior Court of Chicago,
Of the November Term A. D. 1861.

"Esther E. Gaffney in her own right, James B. Gaffney, Lucretia A. Gaffney, Mary E. Gaffney, Esther E. Gaffney, and Delia M. Gaffney by E. E. Gaffney their next friend
vs.
James R. Brown and Jeremiah L. Brown . . . . . .

In Chancery.

The testimony of John M. Carey a witness produced sworn and examined on the part of the Complainant in open Court, in the hearing of the above entitled cause, who being duly sworn deposes and says.

Int 1. Where do you live and where have you lived for the last 8 or 10 years?

Ans I have lived in the City of Chicago since the fall of the year 1853, most of the time.

2 Were you acquainted with Bernhard Gaffney after his return from California?

Ans. I was.

3. What was the state of his health for a year or two before his death and the state of his intellect?

(Question objected to by Defendants Counsel so far as relates to the state of his intellect)

Ans. He was very feeble.

4. State any particular facts that came under your observation in relation to his bodily feebleness and mental feebleness.

Ans. I would say that he was very feeble physically so much so that it was almost impossible for him to walk, he passed most of his time in the house sitting in his chair - he sometimes went out of the gate into the Street, and some times went as far as the Post Office, but he had to walk exceedingly slow - tottering. - I was first impressed with his physical weakness by walking over to Town with - about Six Months before he died - when he was so weak and tottered so that I was afraid he would fall down, Although I was in the house with him every day for about three years before he died, I was never so aware of his weakness because I seldom stepped out of the house with him - He was very singular in his actions and daily conduct, at times he was morose, uncommunicative - would sit in his chair for days without hardly raising his eyes when I came in to meals. At other times he seemed to be different as communicative as soon as I came into the house & would ask what the news was & on very slight provocation he would curse - I regarded him as entirely incapable of transacting business, which required judgment.

5. State any conversation action or remark of his or other circumstance betraying weakness of mind

Ans. I should state that I have stated this in a portion of my remarks already put down. I should say that I have seen him when he seemed to have been taking beer or spirituous liquors, he seemed more communicative and free. On one occasion I remarked that he had been down town about a year before he died - he went to see a man with whom he had been talking of trading his property for a place in the country - when he returned I asked him how he made out, and he came near me so I could hear his voice & he smell very strong as though he had been drinking - he was very communicative.

6. Was he generally in his appearance sad or cheerful?

Ans. He was sad and dejected.

7. Was that sadness & dejection when he was free from drinking or when he drank?

Ans. That was constantly - He varied at times in his feelings - I should judge from his general debility & weakness, and the situation of his circumstances - sometimes he supposed that he would be able to overcome the disease which afflicted him - he seemed anxious to recover - at other times when his case seemed more hopeless he appeared dejected and sullen & would sleep for hours in his chair.

8 Did he drink very often or only occasionally.

Ans. I only know of his drinking from the smell of his breath

Question by the Court.

1. In what year or years did these conversations take place.

Ans. He died two years ago last May - His

conversations took place within a year & a half or two years before he died. I was in the house with him as a boarder from the time he returned from California most of the time. I was absent for 3 months in the South Division.

Q. Did the feebleness affect his voice in any manner?

Ans. Very much.

Q. In what way?

Ans. It was through physical weakness - through want of power to exercise it.

Q. Were you deaf at that time as now?

Ans. I was, he could converse with others in a low tone but it exhausted him to talk with me, I had to go close to him.

Cross Examination

Q. Are you a relative of the Gaffney family? If so, what?

Ans. I am not.

Direct Examination resumed.

Q. Do you know anything about his pecuniary circumstances, during the time you speak of being acquainted with him?

Ans. Nothing further than what I have learned by conversation.

John M. Cary."

Subscribed and sworn to before me this 19th day of Nov. A.D. 1861.

Walter Kimball

Clk."

And afterwards to wit on the twentieth day of November A. D. Eighteen hundred and Sixty one there was filed in the Office of the Clerk of said Court certain other Depositions on the part of said defendants which Depositions are in words and figures as follows to wit.

"In the Superior Court of Chicago
Of the November Term A. D. 1861.

Esther E. Gaffney in her own rights
James B. Gaffney, Sarah A. Gaffney
Mary E. Gaffney, Esther E. Gaffney
and Delia M. Gaffney by E. E.
Gaffney their next friend . . . . . In Chancery
vs
James P. Brown and Jeremiah
L. Brown . . . . . .

The testimony of Charles N. Reed a witness produced sworn & examined on the part of the Defendants in open Court on the hearing of the above entitled cause.

Charles N. Reed sworn

Were you present at the trial of the Ejectment suit on the Common law side of this Case wherein James P. Brown was Plaintiff and Esther J. Gaffney was Defendant on the 23d of Novbr 1860, if so, in what Capacity, and was Jeremiah L. Brown sworn as a witness on that occasion?

Answer, I was present at the Trial and assisted as Attorney for the defense. Mr Brown was sworn as a witness. He was introduced by the Defendant in that Case.

Q Did you hear his testimony on that occasion?

Answer I did.

Q Look at that part of the Bill of Exceptions in that

same now shown to you and state by whom the same was prepared?

Answer. It was prepared principally by Mr Lehry who was also Counsel for the defense, in our Office from the minutes of testimony taken by Mr Lehry, Mr Knox and myself. I assisted somewhat in the preparation of the bill of exceptions. I think the bill of exceptions was in the handwriting of Mr Fairfield partner of Mr Lehry. After the Bill was prepared it was compared with the minutes of the testimony, to which I have referred and was found to contain the evidence substantially as taken by Mr Knox, Mr Lehry and myself.

Q. State whether or not the evidence of A. L. Brown so contained in said Bill of exceptions is a fair and substantial statement of what he swore to on that trial?

Answer. I think it is.

Subscribed and sworn to before me this 20th day of November A.D. 1861 . . . . . Walter Kimball. Clk

Charles H. Reed.

And afterwards to wit on the twenty second day of March (being one of the days of the March term of said Court) A.D. Eighteen hundred and sixty two, the following proceedings were had in said cause, and entered of record in said Court to wit,

"Esther E. Gaffney in her own right James B. Gaffney Sarah A. Gaffney Mary E. Gaffney Esther E. Gaffney and Delia M. Gaffney by E. E. Gaffney their next friend . . . . . .

vs

James P. Brown & Jeremiah L. Brown . . . . . .

Decree.

This cause coming on to be heard upon the Bill, & amended Bill of Complainants Answers of Defendants James P. Brown and Jeremiah L. Brown, the depositions, exhibits and other proofs on file in the cause and documentary proofs referred to in Bill and Amended and Answers and considered and taken by the parties as on file it being agreed and stipulated by the Solicitors on both sides that all deeds and instruments in writing and documentary evidence on file or of record in the Recorders Office of Cook County or any of the Courts of said County referred to as proofs or exhibits but not on file as proofs in the cause should be considered as though they were on file as part of the proofs in the cause as well those referred to in the Bill and Amended Bill as in the Answers of defendants, and that the Court might refer to the same.

And the Court being now sufficiently advised

of and concerning the same, after the arguments of Counsel and deliberation being had thereupon it is Ordered, adjudged and decreed that the defendant, James P. Brown be and he is hereby deemed and regarded as Mortgagee of the said Barnard Gaffney deceased, of the premises in controversy as described in Complainants Bill and Amended Bill, and that the Complainants Bill be and they are allowed to ~~remain~~ redeem by paying to said James P. Brown all moneys advanced upon the faith of that security and Mortgage with interest thereon at the rate of Six per Cent per annum from the times the same were respectively advanced and that an account thereof be taken, the Court allowing in such account, the following items.

First - The amount paid under the Contract between Furnes Hayden & Co. and Barnard Gaffney (the Defendants conceding that the same includes the payments made to the Canal Trustees under the Certificate of purchase, both in evidence in the case)

Second - The taxes and assessments on said premises

Third - All necessary expences paid or incurred by either of said defendants in and about procuring the title of said premises from said Canal Trustees,

The Court refusing to allow in such account the following items namely: First. The two Notes made by Barnard Gaffney for $235# each to Jeremiah E. Brown.

Second. The money and property left with G. W. Richardson as the consideration of the deed dated May 1858. Third. The taxes costs and expenses recovered in the Ejectment Suit mentioned in the bill of Complaint and in evidence.

Fourth - The expenses of advertising the property

for Sale under the Mortgage of date of March 13. 1857 in Evidence. Fifth. The actual Money and property advanced by Jeremiah T. Brown to Barnard Gaffney as the Consideration of the two Notes of $235 each.

And it is further Ordered that it be referred to Ira Gott Esq. one of the Masters in Chancery to take and state said account giving to the Solicitors five days Notice in writing of the time and place. and if necessary, on either of the parties, or their Solicitors require it, he shall cause the parties to come before him, and severally be sworn touching said account and that either of the parties or their Solicitors shall be permitted to file such written interrogatories as they may deem expedient, and the opposite party shall be required to answer the same. the said Master noting all objections and preserving and reporting all the proofs taken before him, together with such exceptions as may be taken by either party to the manner of his proceeding and said Master shall cause to come before him all necessary witnesses that either of said parties or their Solicitors may require, and hear all the proofs and require either or any of the parties to produce all necessary deeds, bas receipts or other Vouchers going to show the real state of the accounts between the parties and report the same to this Court and make his report to the next term of this Court.

And it is further Ordered adjudged and decreed that upon the Confirmation of said report said Complainants do pay to the said defendant James P. Brown, the amount which shall be certified to be due within thirty days after the order of Confirmation, and thereupon the said James P. Brown, do assign all his right title and interest to him for principal and interest, either in law or Equity to the premises in question controversy by a proper deed to be settled by said Master.

But in default of said Complainants paying to the

said defendant James P. Brown the amount so reported due with interest thereon as aforesaid, it is Ordered adjudged and decreed that said Master sell the said property: or so much thereof as shall be sufficient to pay the same, and for that purpose he shall advertize the same for sale describing it, as in the Bill and Amended Bill, in some daily newspaper published in the City of Chicago for Twenty days previous to the time of said Sale, stating the time of said Sale and also the place, which shall be at the North door of the Court House in said City of Chicago, and he shall sell the same, or some part thereof as will be sufficient to pay said principal and interest to the highest and best bidder for Cash in hand giving to the purchaser or purchasers a Certificate of purchase which shall Certify the said Sale, and that such purchaser or purchasers will be entitled to a deed of Conveyance within fifteen months from the date thereof unless before that time the same shall be redeemed according to the Statute in such case made & provided And it is further Ordered adjudged and decreed that the said Defendant James P. Brown be enjoined and restrained perpetually from enforcing his said judgment at law in Ejectment against said Complainants and that he be and he is hereby perpetually enjoined from proceeding at law upon any of the deeds or Mortgages from Barnard Gaffney to him against said Complainants, and that all said deeds be held and be considered as sure Mortgages to secure the principal and interest aforesaid.

And it is further Ordered adjudged and decreed that said Complainants recover of said defendants their Costs and charges by them expended in and

about the prosecution of this suit and that the same be taxed including the costs and charges of said Masters Report, and that they have execution therefor.

And it is further ordered that when said costs be collected, be paid to Complainants Solicitor N. F. Snider, and defendants except to the said decree and pray an Appeal therefrom to the Supreme Court of this State which is allowed to them on their filing in fifteen days from this date their Bond in the penalty of Five hundred dollars with Edward L. Mayo as their surety conditioned as required by law.

And thereupon accordingly on the twenty ninth day of March A. D. Eighteen hundred and Sixty one the said defendants filed in the Office of the Clerk of said Court, their Appeal Bond in said cause: Which said Bond is in words and figures as follows to wit

"State of Illinois
County of Cook } ss

Know all Men by these presents that we James T. Brown & Jeremiah L. Brown as principal and Edward L. Mayo as their surety are held and firmly bound unto Esther B. Gaffney, James B. Gaffney, Dwight Ann Gaffney, Mary Elizabeth Gaffney, Esther Eliza Gaffney and Delia M. Gaffney Complainants in the penal sum of Five hundred dollars for the payment of which well and truly to be made unto them their executors administrators or assigns we the above bounden do hereby bind ourselves our heirs executors & administrators jointly and severally firmly by these presents.

Sealed with our seals and dated this twenty

seventh day of March A.D. 1862.

Whereas during the March Term in the year Eighteen hundred and sixty two A.D. 1862, of the Superior Court of Chicago in and for said County in a cause wherein said Esther E. Gaffney, James B. Gaffney, Judith Ann Gaffney, Mary Elizabeth Gaffney, Esther Eliza Gaffney, & Delia M. Gaffney were complainants and said James F. Brown & Jeremiah L. Brown were defendants a decree was rendered in favor of said complainants & granting them relief against said Defendants and for costs as by said decree will more fully appear - from which said decree the said James F. Brown & Jeremiah L. Brown have prayed an Appeal to the Supreme Court of the State of Illinois.

Now therefore the condition of the above obligation is such that if the said James F. Brown & Jeremiah L. Brown shall duly prosecute their Appeal without delay and pay the Judgment Costs interest and damages in case the judgment and decree aforesaid shall be affirmed then the above bond to be void otherwise to remain in full force and effect,

(signed) J. L. Brown (Seal)
J. F. Brown (Seal)
Edward T. Mayo (Seal)"

And thereafter to wit on the Sixth day of April A.D. Eighteen hundred and sixty two, the Masters Report in said cause was filed in the office of the Clerk of said Court: which report is in words and figures as follows to wit.

State of Illinois } Superior Court of Chicago
County of Cook } ss. In Chancery.

Esther Gaffney et al
vs
James P. Brown et al

To the honorable the Judges of the Superior Court of Chicago:

In pursuance and in virtue of a decretal order entered in the above cause by which it was among other things ordered adjudged and decreed that the said defendant James P. Brown be deemed and regarded as Mortgagee of Barnard Gaffney deceased (mentioned in said decree) of the premises in controversy as described in Complainants Bill and Amended Bill and that the Complainants heirs and they are allowed to redeem by paying to said James P. Brown all moneys advanced upon the faith of that security and Mortgage with interest thereon at the rate of Five per Cent per annum from the times the same were respectively advanced and that an account thereof be taken, the Court allowing in such account the following items.

First. The amount paid under the Contract between Spencer Hayden & Co. and Barnard Gaffney (the defendants conceding that the same includes the payments made to the Canal Trustees under the Certificate of purchase both in evidence in the cause)

Second. The taxes and assessments on said premises.
Third. All necessary expenses paid or incurred by either of said defendants in and about procuring the title of said premises from said Canal trustees. And that it be referred to Asa Scott one of the Masters of this Court to take and state said account giving to the Solicitors five days notice in writing of the time and place - and if necessary or either of the parties or their Solicitors require it he shall cause the parties to come before him and severally be sworn touching said account and that either of the parties or their Solicitors shall be permitted to file such written interrogatories as they may deem expedient and the opposite parties shall be required to answer the same. The said Master noting all objections and preserving and reporting all the proofs taken before him, together with such exceptions as may be taken by either party to the manner of his proceeding, and said Master shall cause to come before him all necessary witnesses, that either of said parties or their Solicitors may require and hear all the proofs and require either or any of the parties to produce all necessary deeds, tax receipts or other vouchers going to show the real state of the accounts between the parties and report the same to the Court and make his report to the next term of this Court &c

To the said Master do respectfully report that on this Seventh day of April A. D 1869 appeared before me the said Complainants by their Counsel Mr Snider and the said defendants by their Counsel Mr Burgess at my office in the City of Chicago pursuant to Notice as directed by

said Decree. At which time and place I proceed to hear and examine the matters embraced in said Order of reference, and the following proceedings were had before me.

Jeremiah L. Brown one of the Defendants being produced sworn and examined on the part of the defendants deposes and says.

1st Int. Look at the Exhibit marked "A" and state what it is?

Ans. It shows the date of payment of and amount of taxes paid partly by myself and partly by James T. Brown on the property in controversy in this suit. It also shows the amounts paid Spence, Hayden & Co on this Contract with Gaffney dated March 13th 1850.

The first two payments are endorsed upon the Contract itself and the other is of the date when it was taken up as appears by the endorsement upon the face of the Contract. I suppose I paid this last payment in advance upon a discount of interest. These payments include the payments to the Canal Trustees and includes all I had to pay to get the land from Spence Hayden & Co aside from Expenses. It also shows my expenses in going to and from Lockport Illinois to obtain the deed of the premises from the Canal Trustees when I got to Lockport I found I had to return to Chicago to obtain an Affidavit. The fare and Tavern Bills charged in said Exhibit are as near correct as I can state them. My own time I consider worth Two dollars for half a day. It also shows Expenses in paying taxes and looking after the property. The charges for time, fare,

and Tavern Bills are the same as above.

I produce and have with the Master the tax receipts and redemption Certificates alluded to by me, abstracted or mentioned in Exhibit A"

Cross Examination.

1st Cross Int. The item in reference to the several indorsee payments referred to in your answer to defendants first interrogatory. Do you say that you actually paid the amounts there indorsed to Gurnee, Hayden & Co.

Answer. I paid the most of it to Gurnee Hayden & Co and a part of it to the Canal Trustees to take up one or two Notes at the request of Gurnee Hayden & Co.

2nd Int. That is not exactly what I want to know. I wish to know from you how much you actually paid on the Contract with Gurnee Hayden & Co. and whether you did not pay less than the face of said Contract.

Answer I think I paid the full amount of the Contract.

3. Do you not know that you obtained a deduction on that Contract and a pretty considerable one?

Answer. I don't know it. My recollection is I paid a part of the Contract before it fell due, and they made me a deed in consequence of paying it before it became due. The understanding was that Gaffney was to pay the expense of the Deed from Gurnee Hayden & Co but in consideration of my paying up in advance Gurnee Hayden & Co furnished the Deed at their own expense. On reflection I am of the impression that there was a deduction of

legal interest on that payment from the date of payment to the maturity of the contract.

4. Did you actually pay the full amount of those Notes to the Canal Trustees. The full sum.

Answ. That's my recollection.

5. Did you have to come to Chicago to pay the taxes, or had you an Agent here who did it?

Answ. I came myself most of the time. I had no agent here.

7. Why did you not make an Agent?

Answ. I preferred attending to it myself.

8 Do I understand you to say that you came down expressly to pay the Taxes each time?

Answ. Most of the time I did.

9. Why did you not send the money to the proper authority by letter, or place the money in Bank and draw upon it in favor of the tax gatherer?

Answ. I preferred attending to it myself.

10. There's a good portion of this time it seems that you were paying taxes upon James F. Brown's property. Did not he pay you for your expenses in coming down?

Answ. I think not.

11. Why did you undertake to pay the taxes on another man's property?

Answ. Well I don't know, unless it was to know it was paid.

12. Then James F. Brown did not agree to pay you for coming down here, did he?

Answ. There never was any agreement about it that I recollect. He pay I mean.

13. You then furnished your own money to bear your expenses and with your own money paid

the taxes during that time?
Answer. I believe I did.

Subscribed and sworn
before me this 7th day of
April A.D. 1862. . . . .

J. L. Brown.

Ira Scott
Master in Chancery of
the Superior Court of Chicago.

"Exhibit A"

Amt. of taxes paid on property

Date	Kind		Amt	Int
Jany 4. 1851	City tax for	1850	2 55	
Jany 2. 1852.	City tax	1851	1 95	
" 9 "	State & Co	"	3 16	
" 27. 1853	City	1852	8 80	
" " "	State	"	10 70	
Dec 28 "	City	1853	10 20	
Jany 27. 1854	State	1853	12 95	
Dec 22 "	"	1854	11 19	
" " "	City	"	14 40	
Jany 15. 1856.	"	Special 1855	3 82	
" " "	"	" "	14 40	
" " "	State & Co,	"	18 55	
" " "	City Special	"	1 61	
Decr. 10. 1856	City	1856	22 80	
" " "	State & Co	"	17 57	
Ap. 30. 1858	"	1857 (& 2/3 of 4)	6 40	
Jany 11. 1859	City	1858	23 10	
May 25. 1858	City	1857	18.55 7.55 14.05 4.45	26 10
" " "	"	"		18 50
June 13. 1860	State & Co,	1859		16 55
Jany 18. 1861	City	1859.		32 02

Feb. 14, 1861	City 1858	19 72	
" " "	" 1859	24 22	
Jany 8. 1862	" 1861	33 60	
May 10. 1861	State Tax 1860	16 12	
Jany 18 "	City 1860	22 55	
" "	" 1858	33 16	
			$480 03

Amts paid Lyman Hayden Tax under Contract between him & Gaffney.

Date		
Sep. 13. 1850	1st Payt	$164.50
	Int to date	
Dec. 28. 1850	2nd Payt	198 " 72
	Int;	
Mar. 17. 1851	3rd Payt	577 " 49
	Int.	

Expences in going to and from Lockport Ills. to obtain Deed at Canal Office

Fare from Lyons DeKalb Co residence of Brown to Lockport & back	$9 " 00
Fare from Lockport to Chicago & back	3 " 00
6 days time at $2.50 a day	15 " 00
Tavern Bills 2 "	12 " 00
	$39 " 00

Expences in paying taxes on property and looking after it each year from 1850 to 1861 inclusive 12 years.

Fare in & out	$5 " 00	
2 days time	5 " 00	
Other Expenses	4 " 00	
	14 " 00	$168 " 00

Also I do further report that as to such part of the decree as directs an account to be taken of the amount paid as aforesaid under the Contract between Murray Hayden & Co and Barnard Gaffney I find and allow to the defendant James F Brown for such payments including interest down to & including the date of this report from the date of the respective payments the sum of Fifteen hundred and fifty six & 66/100 Dollars ($1552.66) The interest on the last payment being computed from September 1, 1851 the date of the maturity of the Contract instead of March 17, 1851 the date of such payment by reason of the rebatement of interest thereon by Murray Hayden & Co to September 1, 1851 on account of such advance payment. The particular items of which said account together with the period of the computation of the interest and its rate appears in Schedule A hereto annexed and made a part of this my report

And as to such part of the decree as directs an account to be taken of the taxes and assessments paid on the premises as aforesaid I find and allow to the said Defendant for such payments including interest thereon from the date of making the same respectively down to and including the date of this report the sum of Five hundred and twenty dollars & sixty three cents. The particular items of which account together with the period of the computation of the interest and its rate appear in Schedule B. hereto annexed and made a part of this report. The tax receipts and tax certificates introduced before me numbered from 1 to 27 inclusive and attached

to deposition of Jeremiah L. Brown being herewith returned.

And I do further report that as to such part of the decree as directs an account to be taken of all necessary expenses paid or incurred by either of said defendants in and about the procuring the title of the premises in question from the Canal Trustees. I find and allow to the defendant James P. Brown for such payments the sum of Thirty nine dollars - the particular items of which account appear in Schedule "B." hereto annexed and made a part of this report.

And I do further report that the aggregate amount of such payments allowed by me to the said defendant including interest as aforesaid is the sum of Two thousand one hundred & sixteen dollars and twenty five cents ($2116.25).

And I do further report that the defendant claim before me the allowance of an account of One hundred and sixty eight dollars for expenses in paying taxes on property & looking after it each year from 1850 to 1861 inclusive "twelve years." The particular items of which account appear in Exhibit "A." attached to the examination of Jeremiah L. Brown hereto annexed - which claim I have disallowed for the reason that if sufficiently proven the omission of the decree to provide for an allowance for such expenditures would in my opinion preclude me from making it.

All which is respectfully submitted.

Date Chicago April 4th 1862.

Ira Scott
Master in Chancery of the
Superior Court of Chicago.

Schedule A. showing payments on Contract of Spencer Hayden & Co with Griffiths with interest thereon at the rate of 6 per cent per annum

1850 Sept 13.	First payment	$ 164	50
	Int thereon to April 7/62 being for 11 years 6 months & 25 days	114	19
" Dec 28	Second payment	198	72
	Int thereon to April 7/62 being 11 years 3 months & 10 days	134	46
1851 Mar. 17.	Third payment	57	49
	Interest thereon from September 1. 1851 to April 7. 1862 being for 10 years 7 months and 6 days	36	76
	Total amt paid with interest thereon to date on Contract	$555	62

(Schedule B. showing amount of taxes paid on property with interest at the rate of 6 per cent per annum from date of each payment)

1851 Jany 4.	City tax for 1850 (see receipt No 1.)	$ 2	55
	Interest thereon to April 7/62 being 11 years 3 mos 3 days	1	68
1852 " 2.	City tax for 1851 (receipt No 2)	1	95
	Interest thereon to April 7/62 being for 10 days 3 mos & 5 days	1	21
" " "	State County for 1851 (receipt No 3)	3	16
	Interest thereon to April 7/62 being for 10 years 2 mos 29 days	1	93
1853 " 27	City taxes for 1852 (receipt No 4)	8	80
	Interest thereon to April 7/62 being for 9 years 2 mos & 11 days	4	84
" " "	State & County taxes for 1852 (receipt No 5)	10	70
	Interest thereon to Apr 7/62 being for " " " " "	5	87
" Dec 28	City taxes for 1853 (receipt No 6)	10	20
	Interest thereon to Apr 7/62 being for 8 years 3 mos & 10 days	5	04
1854 Jany 27.	State & County taxes for 1853 (receipt No 7)	12	95
	Interest thereon to Apr 7/62 being 8 years 2 mos & 11 days	6	33
" Dec 22	State & County taxes for 1854 (receipt No 8)	11	19
	Int: thereon to Apr 7/62 being 7 years 3 mos & 16 days	4	88
" " "	City taxes for 1854 (receipt No 9)	14	40
	Interest thereon to April 7/62 " " " "	6	30

1856 Jany 15	City taxes for 1855 (Special assessment) receipt No 10	3	82
	Interest thereon to April 7/62 being 6 years 2 mos & 23 days	1	40
" " "	City taxes for 1855 (receipt No 11)	14	40
	Interest thereon to April 7/62 being " " " "	5	37
" " "	State & County taxes (receipt No 12)	18	55
	Interest thereon to April 7/62 being " " " "	6	82
" " "	City taxes for 1855 (Special) (receipt No 13)	1	61
	Interest thereon to April 7/62 being " " "		58
" Decr 10	City taxes for 1856 (receipt No 14)	22	80
	Interest thereon to April 7/62 for 5 yrs 3 mos & 28 days)	7	28
" " "	State & County tax for 1856 (receipt No 15)	17	51
	Interest thereon to April 7/62 " " " " "	5	51
1858 April 30	State & County taxes (E 2/3 of lot 4) (receipt No 16)	6	40
	Interest thereon to April 7/62 being for 3 yrs 11 mos & 8 days	1	51
1859 Jany 11	City tax for 1858 (receipt No 17)	23	10
	Interest thereon to Apr 7/62 being 3 yrs 2 Months 27 days	4	48
1858 May 25	City taxes for 1857 (Cert of Sale to M L Donnelly for $18.53 Cert 18 7.73 assigned to J. L Brown by Donnelly Int fee on redemption)	26	10
" " "	City taxes for 1857 (Tax Cert issued to M L Donnelly for $14.05 Cert No 19 assigned to J. L. Brown by Donnelly Int fee on redemption 4.45)	18	50
	Interest to Apr 7/62 on above payments of $26.10 and $18.50 from May 25, 58 ($44.60) being for 3 yrs 10 Mos 13 days	10	32
1860 June 13	State & County tax for 1859 (see receipt No 20)	16	55
	Interest thereon to Apr 7/62 being 1 year 9 Mos & 25 days	1	79
1861 Jany 18	City taxes for 1859 (fee redemption Certificate No 21)	32	02
	Interest thereon to Apr 7/62 being 1 yr 2 mos 20 days	2	35
" Feb. 14	State & County taxes for year 1858 (fee redemption Certificate No 22)	19	72
	Interest thereon to Apr 7/62 being 1 year 1 Month 24 days	1	36
" " "	City taxes for 1859 (fee redemption Certificate No 23)	24	22
	Interest thereon to Apr 7/62 being " " "	1	67
1862 Jany 8	City taxes for 1861 (fee tax receipt No 24)	33	40
	Interest thereon to Apr 7/62 being 3 mos		50
1861 May 10	State & County taxes (fee tax receipt No 25)	16	12
	Int on above payment of $16.12 to Apr. 7/62 being 10 Mos 28 days		87

1861 Jan 4 18	City taxes for 1860 (See tax receipt No 26	22	55
	Int. thereon to Apr 7/62 being 1 year 2 mos 20 days	1	64
" " "	City taxes for year 1858 (See redemption Deed No 27)	33	16
	Int thereon to Apr 7/62 being 1 year 2 mos 20 days	2	48
		$59	63

Schedule C referred to above showing items of Expense in procuring deed from Canal Trustees.

Expenses in going to and from Lockport Illinois to obtain deed at Canal Office.

Fare from Geneva DeKalb Co residence of Brown to Lockport & back	$ 9.00
Fare from Lockport to Chicago & back	3.00
Six days time at $2.50 per day	15.00
Tavern Bills	12.00
	$ 39.00

Dated Chicago April 7. 1862.

Geo Scott
Master in Chancery of the
Superior Court of Chicago."

Tax receipts and Certificates above referred to.

"State of Illinois }
County of Cook } S.S. West Chicago Jany 4th 1851.
Town of West Chicago.

No 1. Received of B. Goffney Two dollars and 55 cents in full for State, County and Town taxes levied for the year 1850 on the following described property.

Part of town	Personal property	Lot	Block	Valuation.	State tax.	Co tax.	Town tax.	Total
Improvement on Canal lot	Sublot 5.		2.	48.	250.	1.45.	1.00.	2.55

$2.55

E. Edwards. Collector of West Chicago

"State of Illinois } Collectors Office Chicago
City of Chicago } ss January 27. 1852

No 2. Received of B. Gaffney One & 95/100 dollars for City, School, interest, Lamp, Safe fire protection, & Building taxes assessed by said City for the year 1851 on the following property situated in said City, viz.

Part of City	Sub Lot.	Lot.	Block	Valuation	City tax	School tax	Int. tax	Lamp tax	Safety & fire protection	Building tax	Total
Improvement on	5.	2.	48	300.	1.05.	.45.	.15.			.30.	1.95

James Fitzsimons
Collector of the City of Chicago"

"State of Illinois
County of Cook } ss West Chicago Jan. 9th 1852
Town of West Chicago

No 3. Received of Bernard Gaffney three dollars and 16 cents in full for State, County and Town taxes, levied for the year 1851 on the following described property.

Part of Town	Lot	Block	Valuation	State tax	County tax	Town tax	Total
Canal improvements	48		300	1.81.	1.20.	.15	$3.16

John Sprey
Collector West Chicago."

"State of Illinois } Collectors Office Chicago
City of Chicago } January 27. 1853.

No 4. Received of S. S. Brown Eight & 80/100 dollars for City, School, Interest, Building, Hydrantic, Market and Division taxes assessed by said City for the year 1852. on the following property viz.

Part of City	Sub Lot.	Lot.	Block.	Valuation	City tax	School tax	Interest tax.	Building tax	Hydrantic tax	Market tax	Division tax
Orig Town	4.	2.	48	400	1.40	.40.	.20.	.40.	.40.	.20.	.20
" "	5	"	"	700	2.45	.70.	.35.	.70	.70.	.35.	.35

Total $8.80

James Fitzsimons. City Collector."

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"State of Illinois } Town of West Chicago
Cook County } ss. Jany. 27. 1853.

No 5.

Received of S. L. Brown Ten dollars and 70 cents in full of all taxes for the year 1852 on the following described Real Estate and on personal property as valued below, to wit

Part of Town	Sub Lot.	Lot.	Block	Valuation	Int tax.	State tax.	County tax	Town tax	School tax	Road tax	Equalz. tax	Basin tax	Total
C. Town	4	2.	48	300	38.	1.81.	1.20	18					3.57
" "	5			600	75.	3.62.	2.40.	36					7.13
													$10.70

John O. Neill
Collector of the Town of West Chicago."

"State of Illinois } Collectors Office Chicago
City of Chicago } ss. Dec 28. 1853

No 1

Received of S. L. Brown Ten 70/100 dollars for City tax 3 1/2 m. School tax 1/2 m. Interest tax 1/2 m. Building tax 1 m. Water tax 1 m. Market tax 1 m. Lamp District tax 1/2 m. on the taxes assessed by said City for the year 1853, on the following described property, situated in said City, viz

Part of City	Sub Lot.	Lot.	Block.	Valuation.	General taxes.	Lamp tax.	Total
Origl town	4.	2.	48	500			4.25
	5.	"	"	700.			5.95
							$ 10.20

James FitzSimons
By Putnam
City Collector."

"State of Illinois } Town of West Chicago
Cook County } ss. January the 27th 1854.

No 7.

Received of S. L. Brown Twelve dollars and ninety five cents in full of all tax due for the year 1853, on the following described real

Estate, and on personal property as valued below, to wit,

Part of Town.	Part of S. Lot	Lot.	Lot.	Block.	Valuation.	State tax.	County tax.	Town tax	Interest tax.	Total.
Original Town		4.	2.	48	600	2.94	2.40	12	50.	5.95
" "		5.	"	"	700.	3.45.	2.80	14.	58.	6.97

Patrick Kennessey $12.95
Collector of West Chicago
By Orin Allen."

"State of Illinois
County of Cook } ss. Town of West Chicago
Town of West Chicago Dec 27th 1854.

No 8. Received of D. G. Brown Eleven dollars and Nineteen cents in full of all taxes due for the year 1854, on the following described Real Estate, and on personal property as valued below, to wit,

Part of Town	Sub Lot.	Lot	Block.	Valuation.	State tax.	County tax.	Town tax.	School Road tax.	Total
Original T.		4.	2.	48	600	294	200	21	5.17
" "		5.	"	"	700	345.	2.33.	24	6.02

A. C. Ellsbarper $11.19
Collector of Town of West Chicago
By F. W. Smith."

No 9. "State of Illinois } North Division
City of Chicago } ss. Collectors office. Dec 27. 1854,

Received of Jeremiah. G. Brown Fourteen 40/100 dollars for City tax 3/4 m: School tax 1/2 m: Interest tax 1 m. Lamp tax 1 m: Building tax 1 m. Market tax 1/2 m. Division tax 1/2 m: assessed by said City for the year 1854 in the following described property viz:

Part of City	Sub lot.	Lot.	Block.	Valuation.	General tax	Lamp tax	Total
Original Town		4.	2.	48	600	5.40	5.40
		5.			1000	9.00	9.00

James Fitzsymons $14.40
By Henry Roesah. City Collector."

No 10. "State of Illinois } Special Collectors Office
City of Chicago } ss. West Division Chicago
January 15: 1856.

Received of S. P. Brown Three dollars 82 cents being the amount assessed by said City on the 19th day of January 1855, for "the purchase and laying out of Union Park," on the following described property situated in said City. viz.

Part of City	Sublot	Lot	Block	Valuation	Amount.
Original Town	4.	2.	48	1700	1.70
" "	5	"	"	2000	1.70
			Cost		40
					$3.82

E. A. Webber
Special Collector of West Division, Chicago."

No 11. "State of Illinois } South Division
City of Chicago } ss. Collectors Office Chicago
Jany 15. 1856.

Received of S. P. Brown Fourteen 40/. dollars for City tax 3/p m: Reform School tax 1/p m. Int. tax 1 m: Building tax 1/p m: Hospital tax 1 m. Gas tax 1 m: as the taxes assessed by said City for the year 1855, on the following described property. viz.

Part of City	Sublot.	Lot.	Block	Valuation.	Total taxes.
Original Town	4.	2.	48	750	6.00
" "	5.	"	"	1050	8.40
					14.40

Jacob Russell
for Robt Griffith. Collector

No 12. "State of Illinois }
County of Cook } ss. Town of West Chicago
Town of West Chicago } Jany 15th 1856
Received of S. P. Brown Eighteen

dollars and 55/100 in full of all State, County, Town and School taxes due for the year 1855 on the following described Real Estate, and on personal property as valued below, to wit.

Part of Town	Sub Lot.	Lot.	Block.	Valuation.	State tax.	County tax.	Town tax	School tax.	Total tax.
Original Town	4.	2.	48	750	7.50		23		7.73
" "	5.	"	"	1050	10.50		34		10.84
									$18.55.

D. H. Howard
for T. A. Smith."

No 13. "State of Illinois } Special Collectors Office
City of Chicago } ss. West Division, Chicago
Jany 15. 1856.

Received of D. B. Brown One dollar 61 cents being the amount assessed by said City on the 9th day of July 1855 for "improving Union Park" on the following described property situated in said City. viz.

Part of City	Sublot	Lot.	Block.	Valuation	Amount.
Original Town.	4.	2.	48	1100	36
" "	5.	"	"	2000	63
				Cost	42
					$1.61.

E. A. Theller
Special Collector of West Division
Chicago."

No 14. "State of Illinois } West Division
City of Chicago } ss. Collectors Office Chicago
December 10th 1856.

Received of James. T. Brown Twenty two 50/100 dollars for City tax 3/p m: School tax 2/p m: Int tax 1 m: Building tax 1 m: Hospital tax 1 m: Reform School tax 1 m: Market tax 1/p m: Park tax 1/p m: Sewerage tax 1 m; as the taxes assessed by said City for the

year 1856 on the following described property situated in said City, viz:

Part of City	Sublot.	Lot.	Block.	Valuation.	General tax	Lamp tax.	Total
Original Town	4.	2.	48	800			9.60
" "	5	"	"	1100.			13.20
				Owen McCarthy			$22.80
				City Collector."			

No 15. "State of Illinois
County of Cook } ss. Town of West Chicago
Town of West Chicago } Dec 10. 1856.

Received of James F. Brown Seventeen dollars & 57/100 in full of all State, County, Town and School taxes due for the year 1856 on the following described real Estate and on personal property as valued below, to wit.

Part of Town	Sublot	Lot	Block	Valuation	State and County tax.	Town and School tax	Total tax
Original Town	4.	2.	48	7.80	6.75	57	7.32
do	5.	"	"	1050	9.45	80	10.25
				E. B. Kingsley			$17.57
				for F. A. Smith			
				Collector for Town of West Chicago."			

No 18. "General Tax Certificate, City of Chicago.

This is to certify that Sublot (5) of lot numbered (2) in Block Numbered (48) of Original Town of Chicago in the City of Chicago County of Cook and State of Illinois with the buildings, if any, situated therein was duly assessed to pay Eighteen dollars and — cents as Corporation, School and Special taxes levied in the year 1857, and the said taxes not having been paid, a judgment was entered thereon in the Cook County Court of Common Pleas, at the

January Special term of said Court in the year 1858, and the said Court by an order issued out of the office of the Clerk of said Court, and under the Seal of said Court, directed to the City Collector of the City of Chicago, to advertize said Lots, pieces and parcels of land, and sell at Public Auction so much of the same as might be necessary to pay the taxes above mentioned, with interest and expenses thereon; that pursuant to said Order said piece or parcel of land, was duly advertized in the Corporation paper of said City for the period of twenty days as directed by law, and this day, at a Sale at Public Auction N. L. Donnelly was the purchaser of the whole of the piece or parcel of Land above described and assessed and paid therein the taxes above mentioned and fifty five Cents Costs, that being the smallest portion of said piece or parcel of land for which any person would pay the tax and costs accruing therein amounting in all to Eighteen dollars and fifty five cents.

Now therefore in case the premises above sold are not redeemed in manner and form as the law directs, within two years from the date hereof, the said purchaser his heirs or assigns will be entitled to receive a deed of the premises above sold from the City of Chicago, containing a Special warranty.

Dated at Chicago this thirty first day of March 1858.

Jos. N. Henricks
City Collector of the City of Chicago."

No 19.

"General Tax Certificate City of Chicago.

This is to certify that Sublot (4) of Lot Numbered (2) in Block Numbered (48) of Original Town of Chicago, in the City of Chicago, County of

Cook and State of Illinois with the Buildings thereon situated thereon was duly assessed to pay Thirteen dollars and fifty cents as Corporation, School and Special taxes levied in the year 1857, and the said taxes not having been paid, a judgment was entered thereon in the Cook County Court of Common Pleas at the January Special term of said Court in the year 1858; and the said Court by an order issued out of the Office of the Clerk of the said Superior Court, and under the Seal of said Court directed to the City Collector of the City of Chicago to advertise said lots pieces and parcels of land and sell at public Auction so much of the same as might be necessary to pay the taxes above mentioned, with interest and expenses thereon; that pursuant to said order said piece or parcel of land was duly advertised in the Corporation paper of said City, for the period of Twenty days as directed by law, and this day at a Sale at Public Auction M. L. Donnelly was the purchaser of the whole of the piece or parcel of land above described and assessed, and paid therefor the taxes above mentioned, and fifty five cents costs, that being the smallest portion of said piece or parcel of land for which any person would pay the tax and costs accruing thereon amounting in all to Fourteen dollars and five cents.

Now therefore in case the premises above sold are not redeemed in manner and form as the law directs, within two years from the date thereof the said purchaser his heirs or assigns will be entitled to receive a deed of the premises above sold from the City of Chicago containing a Special warranty

Dated at Chicago this Thirty first day of

March 1858.

Jos: N. Hennicks
City Collector of the City of Chicago."

"State of Illinois } City Collectors Office Chicago
No 244. City of Chicago } ss. January 8. 1862.

Received of James F. Brown Thirty three 60/100 dollars for City tax 3 1/2 m: School tax 2 m. Int tax 2 m: Sewerage tax 2 1/2 m: Lamp District tax 2 m. War tax 2 m; Reform School tax 1/4 m: Police tax 1 3/4 m: as the taxes assessed by said City for the year 1861 on the following described property situated in said City. viz:

Part of City	Sublot.	Lot.	Block.	Valuation.	General tax.	Lamp tax.	Total.
Original Town	4.	2.	48.	900	12.60.	1.80	14.40
	5	"	"	1200	16.80	2.40	19.20
							$33.60

John Rahr
City Collector."

"State of Illinois }
No 16. Cook County } ss. Chicago April 30th 1858

Received of J. F. Brown Six dollars and 40 cents in full of the following taxes due for the year 1857 on the following described real Estate and on personal property as valued below to wit:

Part of Town	Sub Lot.	Lot.	Block.	Valuation.	State & County Tax.	Town tax	School tax	Road tax	Total.
Original Town	5 1/2.	4.	2.	48.	600	Cents.			6.34

Spare 06
$6.40

A. H. Boyden
for H. G. Boyden - Treasurer."

"State of Illinois } City Collectors Office Chicago
Cook County . . } ss. January 11th 1859.

No 17.

Received of D. P. Brown Twenty three 10/100 dollars for City tax 3/4 m: School tax 2 m: Sect tax 1 m: Sewerage tax 1 m: Sanp District tax 2 m: Permanent improvement tax 3 m: Park tax 1/2 m: assessed by said City for the year 1858 on the following described property situated in said City, viz:

Part of City	Sublot	Lot	Block	Valuation	General tax	Sanp tax	Total
Original Town	4	2	48	900			9.90
	5	"	"	1200			13.20
							$23.10

Jos: N. Sennotts
Collector of City of Chicago
Hammerick."

"State of Illinois } Office of the Clerk of the County
Cook County . . } ss. Court of Cook County.

No 27.

Charles B. Farwell Clerk of the County Court of Cook County do Certify that James D. Brown has deposited in my Office dollars for the redemption of Sublot 5 Lot 2 Blk 48 original Town of Chicago which was sold to R. Potts for the County and State taxes due and unpaid for the year 1858 on the twenty fifth day of July A.D. 1859 by the Treasurer of said County.

Amount of Sale	11.71
One hundred per cent	11.71
Subsequent taxes	9.211
Interest	32.66
Advertising	
Cost	50
	$33.16

Seal

Given under my hand and Seal of

the power of said defendants as not to have the ~~free~~ free exercise of an enlightened volition.

Now may it please your honors in as much as these complainants are wholly remidless by the strict rules of the common law and can only obtain relief in a court of consciance where such matter are cognizable and retrievable. They therefore pray your Honors to grant to them process of summons against the said defendants compelling them to severally answer (without their answers being under oath the same being waived and true and perfect answers make to each and every allegation and statement in this their bill of complaint and as fully and particularly as if here repeated by way of interrogatories with injunction against the said James P Brown enjoining and restraining him his counsel and all other persons acting under him and by his advice from further proceeding towards the execution of said writ of possession in said action of ejectment and upon the final hearing of this cause order and adjudge and decree that an account be taken before and by the master in chancery of all the moneys advanced by said Jeremiah LeBrown to said Gaffney - that the said several deeds and writings between said Brown and Gaffney be taken and deemed as one transaction and considered as a mortgage and that said James P Brown

be deemed and considered as being affected with full notice of all the complainants equities and that said complainants be allowed a day in court to redeem upon such terms and time as the court may deem reasonable and that upon the payment by these complainants to the said defendents or either of them the said redemption money with interest, that then the said quit claim deed from Gurnee Heydon & Co. to Jeremiah Le Brown and the said deed from the said canal trustees to said James P Brown and the said deed from the said Gaffney to the said James P Brown for the east twenty feet thereof and the said deed of mortgage with power of sale from said Barnard Gaffney to said James P Brown for the west forty feet of said premises and the said last mentioned absolute deed left with said Richardson as and for an escrow be and the same be all taken and held as void in law and equity and utterly null and of no effect and further be adjudged and decreed that said injunction be made perpetual, and grant to these your complainants such other further and general relief as from the allegations and proofs in this cause are allowable from the rules and principles of courts of equity and as in duty bound they will ever pray.

L. E. Ray & Linder for
Complainants.

And afterwards to wit on the Seventeenth day of June (being one of the days of the June term of said Court) A. D. Eighteen hundred and sixty one, the following proceedings were had in said Cause and entered of record in said Court to wit.

"Esther E. Haffney in her own right. LeRoy Haffney and James B. Haffney, Judith A. Haffney Mary E. Haffney, Esther E. Haffney and Delia M. Haffney by E. E. Haffney their next friend
vs
James D. Brown & Jeremiah L. Brown } Bill.

This day again comes the said Complainants by Knox, Eustace and Rees their Solicitors, and the said defendants by William J. Burgess their Solicitor also comes, and thereupon by leave of the Court the said Defendants withdraw the answer filed from the files of this Court and file New Answers, and the Cause stands Continued.

For Replication see page 172.

Ora thereafter on the ~~14~~ 16th day of ~~April~~ September 1811 there was filed in the Office of the Clerk of said Court certain other Depositions of said Complainant in words and figures following to wit

said Court this 18 day of January A.D. 1861

C.B. Farwell

Clerk of the County Court."

"State of Illinois } Office of the Clerk of the County
Cook County . . } ss. Court of Cook County.

No 22.

I Charles B. Farwell Clerk of the County Court of Cook County do hereby certify that John B. King has deposited in my Office Nineteen 72/100 dollars for the redemption of Sublot 4 Lot 2 Block 48 Original Town of Chicago, which was sold to E. P. Slocum for the County and State taxes due & unpaid for the year 1858 on the 25th day of July A.D. 1859 by the Treasurer of said County

Amount of Sale	9.61
One hundred per cent	9.61
Subsequent taxes	
Interest	
Advertizing	
Cost	50
	$19.72

Seal

Given under my hand and Seal of said Court this 14. day of February A.D. 1861.

C.B. Farwell

Clerk of the County Court."

"State of Illinois }
Cook County . } ss. Chicago. June 13th 1860.

No 20

Received of D. P. Brown Sixteen dollars and fifty five cents in full of the following taxes due for the year 1859 on the following described real Estate and on personal property as below, to wit.

Part of Town	Sub lot	Lot	Block	Valuation.	State and County tax.	Town tax.	School tax.	Road tax	Total
Original Town	4.	2.	48	720					6.93
" "	5	"	"	960.					9.24
					Costs 20				
					Specia 18				
									$16.55

(signed) A. H. Burden
By Geo. D. Burden. Treasurer."

"State of Illinois
County of Cook } ss. Office of the City Comptroller
City of Chicago.

No 71. I S. D. Ware City Comptroller hereby certify that James P. Brown has deposited in the City Treasury as per Treasurers receipt filed in this Office Thirty one 57/100 dollars for the redemption of Sublot 5 of Lot 2 Block 48. Original Town which was sold to John B. King for the City Taxes due and unpaid for the Municipal year A. D. 1859 on the 20th day of April A. D. 1860, by the Collector of said City

Amount of Sale	15.76
One hundred per cent	15.76
Subsequent taxes	
Interest	
Advertizing	
	$ 31.52
Costs of this Redemption	50
	$ 32.02.

Seal

Given under my hand and Seal of said City this 18th day of January A. D. 1861
Saml. D. Ware City Comptroller."

"State of Illinois
County of Cook } ss. Office of the City Comptroller
City of Chicago

No 73 I Samuel D. Ware, City Comptroller hereby certify that James P. Brown has deposited in the City Treasury, as per Treasurers receipt filed in this Office Twenty three 72/100 dollars for the redemption of

Sublot 4. of Lot 2 Block 48. Original Town which was sold to Pope & Slocum for the City taxes due and unpaid for the Municipal year A.D. 1859 on the 20th day of April A.D. 1860 by the Collector of said City

Amount of Sale	11.86
One hundred per cent	11.86
Subsequent taxes	
Interest	
Advertizing	
	$23.72
Costs of this redemption	50
	$24.22.

Sent

Given under my hand & seal of said City this 14th day of February A.D. 1861.

Saml. D. Ware
City Comptroller."

No 25.

"State of Illinois
Cook County } ss. Chicago May 10th 1861.

Received of V. T. Brown Sixteen dollars and 12 cents in full of the City taxes for the year 1860, on the following described Real Estate and on personal property as valued below* to wit,

Part of Town	Sub lot	Lot	Block	Valuation	State & County tax	Town tax	School tax	Road tax	Total
Original Town	4.	2.	48	420					6.83
" "	5.	"	"	960					9.19
								Cost	20
									16.12

A. H. Boyden
Treasurer By Gray."

"State of Illinois } City Collectors Office Chicago
City of Chicago } ss. January 15. 1861.

Received of V. T. Brown Twenty two 55/100 dollars. City tax 3/12 in; School tax 2 in. Int tax

1 m: Sewerage 2 m: Lamp District tax 2 m: Reform School tax 1/2 m: as the taxes assessed by said City for the year 1860 on the following described property situated in said City, viz:

Part of City	Sub Lot	Lot	Block	Valuation dollars	General tax dolls cents	Lamp tax dolls cents	Total tax dolls cents
Original Town	4.	2.	45	900	8.10	1.80	9.90
" "	5.	"	"	1150	10.35	2.30	12.65
							$22.50

John Raber
p Holt City Collector."

And afterwards the costs were taxed by the Clerk of said Court as follows.

Plaintiffs Costs.	$40.95
Defendants Costs.	34.10

State of Illinois }
Cook County . . } ss.

I Thomas B. Carter Clerk of the Superior Court of Chicago, within and for the County of Cook in the State of Illinois Do hereby Certify the above and foregoing to be a full true and correct Transcript of the Bill of Complaint - Bond for Costs - process Amendments to Bill - Answers of Defendants. Stipulations - Depositions taken on behalf of the Complainant - Depositions on behalf of the Defendants - Motion to Amend Bill - Replications - Amended Bill - Appeal Bond - Masters Report & Exhibits, all of which papers are now remaining on file in my office - together with all orders and the Decree Entered of record in said Court, in a Certain Suit heretofore pending in said Court, on the Chancery Side thereof, wherein Esther B. Gaffney and others were Complainants and James P. Brown and Jeremiah L. Brown, were defendants.

In testimony whereof I have hereunto set my hand and affixed the Seal of said Court at Chicago in said County this Eighteenth day of April in the year of our Lord one thousand eight hundred and sixty two.

Fee for Transcript Certificate $80.50 Thomas B Carter Clerk

Paid by Defendant J P Brown
per W J Burger Atty
T. B Carter Clerk

In the Supreme court of the State of Illinois. Of April Term in the year of our Lord one thousand eight hundred & sixty two.

James P. Brown & Jeremiah L Brown Appellants
vs
Esther L. Gaffney. James B. Gaffney Judith Ann Gaffney Mary L Gaffney Esther Eliza Gaffney and Delia M. Gaffney Appellees

Appeal from the Superior Court of Chicago

And now come the Appellants by their Attorney W. T. Burgess and say that in the aforesaid proceedings record & decree there is manifest and material error appearing of record in this.

1st That the appellees complainants below after issue joined were allowed to amend by stating an entirely new case and also were not required to pay costs.

2 That the court below found the appellants to be mortgagees & the appellees in right of their Decease Bernard Gaffney to be mortgagor & entitled to redeem the property in controversy

3 That the facts grounds or reasons upon which the court based its opinion & pricing and rendered its decree are not set out or recited in the decree.

4 That the appellees were not required to redeem upon the terms offered in their bill in stating their case for relief.

5. That the court below found the appellants to have acquired by verbal transfer merely the rights of Bernard Gaffney under his contract with Turner Hayden & Co. to the property - when the bill states an assignment and the statute of frauds & perjuries is not set up in the bill to avoid such assignment whatever it might be

6 That the court refused to allow the items specified as expended in taking the account under said decree respectively as to each

7 That the court did not direct under the account the appellees to pay the costs charges & expenses of looking after the property & paying the taxes.

8 That the appellees in order to redeem were not required to pay the costs of this suit & the ejectment suit the notes made by Bernard Gaffney of $235 each & the money & value of the property paid Richardson for the land of May 1858.

9 That the defendant Jeremiah C.

Brown is required to pay the costs of this suit

10 That the property was directed to be sold in case of failure to pay the amount due & allowing redemption from such sale

11 That the court overruled the proceedings at law without requiring the amount that should be found due to be brought into court

12 That the court directed the costs to be paid to N. F. Lucidin he being no party to the suit

13 That the court did not render a decree for the appellants dismissing the bill at costs of appellee

In all which matters the said decree record & proceedings are erroneous & should be set aside.

Whereupon for the said Errors and other errors appearing of record therein the said appellants pray that the said decree may be set aside and annulled & they restored to all which they have lost thereby &c

W. M. Fewell
for Appts

And now come said appellees by N. F. Linder, their Solicitor, and say that there are no such errors or error in the above and foregoing record.

April 28. 1862 N. F. Linder
Solr. for appellees.

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3307

Jas. P. Brown et al

vs

Esther E. Gaffney et als

Decree & mots

Filed Apl. 24. 1862

L. Delano

Clk