DISTRICT
COURT
RECORD

NO. 2.

UNION
COUNTY.

MANUFACTURED BY

SIEBERT & LILLEY,

Opera House Building, COLUMBUS, O.

NOTICE.

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SIEBERT & LILLEY.

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G
H
I
J
K
L
M
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N
O
P
Q
R
S
T
U
V
W
Y
Z

73 Baxter W H. vs Z W. et
74 Same vs Sam
85 Brewster Richard et. al v.

73	Baxter W H. vs Z W. & Eval Cheaney	62	
74	Same vs Same	52	
85	Brewster Richard et. al vs Nathan Bell et al		110

76	Butler Jas Et als vs H.G. Hamilton 39
74	Chesney E L Et al Exrs W H. Barker 52
	Same a Same 62

D
E
F
G
H
I
J
K
L
M
Mc
N
O
P
Q
R
S
T
U
V
W
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E
F
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H
I
J
K
L
M
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N
O
P
Q
R
S
T
U
V
W
Y
Z

55 Finch H. R. abs vs

55 Finch H. R. abs vs M. Wart et al 58

No 77 Green Charles vs The Commissioners of Union County. 18

58 Garbarson J.R. vs Matthew

18

58 Garbutson J. R. vs Matthews Longpre Et als 44

Hamilton H. & Co vs Jas

Hamilton H.C. vs Jas Butler et als 39

I
J
K
L
M
Mc
N
O
P
Q
R
S
T
U
V
W
Y
Z

J
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58 Lingrel M. Et ala Adms } R Garbeson .44 1/14

M
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O
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Y
Z

171 Aaron J. Stevens vs School D

171 Aaron J. Steeves vs School Dist. No. 1. Paris Sp. 17

O
P
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Z

P
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V
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R
S
T
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V
W
Y
Z

71	School D. Nurl Paris Hr Cadors J J Morton + Co		17

T
U
V
W
Y
Z

U
V
W
Y
Z

V
W
Y
Z

Wolford Wm. H.	Vs.	Whelpley James B. et al.	95

Whelpley Jam

Phelps James B. et al. 55 Wort St Etal vs H Finch Etals 58 Wolford Wm H. St. 95

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P. H. Bauer and Union County Bank
vs.
H. H. Pringle, H. H. Lenox, G. H. Luellen
Cyrus Moore and M. H. Hill.

Pleas before his honor Thomas Beer Henry H. Dodge and John McCauley Judges of the Court of Common Pleas within and for the 10th Judicial District begun and held at the Court House in the town of marysville within and for the said County of Union and State aforesaid on the 16th. day of March A. D. 1880. Heretofore towit: on the 26th. day of February 1880 a Petition in error transcript and the original papers were filed with the Clerk of said District Court. The original petition was filed on the 18th day of April 1879 and reads as follows towit:

Ettinger & Arnold
vs.
H. H. Pringle et.al.

P. H. Bauer
vs.
H. H. Pringle, H. H. Lenox et.al.

The Union County Bank
vs.
H. H. Pringle, H. H. Lenox et.al.

Court of Common Pleas, Union County Ohio.

And now come the said P. H. Bauer and the Union County Bank and Ettinger & Arnold Plaintiffs by their attorneys and moved this honor the said Judge of said Probate Court for the appointment of a Receiver, in the above actions in said Court of Common Pleas to carry the said judgments heretofore obtained in said actions and other judgments vs. said Pringle & Lenox into effect, according to the priorities of their several liens by levy.

1st Because the said H. H. Pringle and H. H. Lenox, are partners in business and as such partners are insolvent and unable to meet their liabilities, and that executions having been issued in the above cases, on the judgments, rendered therein in said Court and levied upon the entire stock of goods and merchandise of said Pringle & Lenox and said stock being of ready made clothing and such articles of merchandise as will not sell for more than one half of their value, at Sheriffs sale, and will therefore be insufficient to pay said judgments if so sold. 2d Because neither of said Partners have any property or means out of which said judgments can be made of their individual or separate property and unless the said stock in trade of said partnership shall be sufficient to pay said judgments and other indebtedness. the same can not be paid, and will therefore be lost by said creditors. 3d Because there are numerous other creditors of the said Pringle & Lenox besides those represented in the above judgments and if said stock of clothing piece goods &c can be judiciously sold as by a receiver instead of by Sheriffs Sale enough or nearly enough may be realized therefrom to pay said indebtedness in full. 4th Because, the said H. H. Pringle the managing partner in said business of the said Pringle & Lenox ling now in feeble health confined to his room and entirely unable to attend to business and that said Lenox is away from Richwood, where said business is carried on, attending to other business, requests and urges upon said judgment creditors not to sacrifice his goods by sheriffs sale, but to have a receiver appointed to take charge of the same and see and apply the proceeds thereof to the payment of said judgments and other indebtedness of the said Pringle & Lenox. 5th Because other creditors of the said Pringle & Lenox who have no liens on said stock of goods for their

No. 3373

plaintiffs urge the appointment of a receiver in the premises so that something may be saved for them. P. R. Kerr Attorney for P. H. Bauer and Union County Bank. S. S. Gardiner Attorney for Ettinger & Arnold.

State of Ohio, Union County ss. H. H. Pringle of the firm of Pringle & Lenax being sworn says that the representations in the foregoing motion are true as he believes, and that it will be necessary to have a receiver appointed as in said motion prayed for, to save said property from being sacrificed and that it will be to the interest of said partnership and its creditors and asks therefore that said appointment be made. H. H. Pringle.

Sworn to before me and subscribed in my presence this 17th day of April 1879. M. W. Hill Justice of the Peace for Claibourne Township Union County Ohio.

To his honor John B. Coats: We the undersigned creditors of said Pringle & Lenax respectfully represent that the motion to appoint a Receiver to take charge of the property and convert into money, will be for the best interest of all concerned and therefore ask that the appointment may be made for the purposes in the foregoing motion stated.

G. M. Luellen. M. W. Hill.

The within motion for the appointment of a Receiver in this case has by me been duly considered and the said appointment is hereby made as prayed for, wherefore I by the Power invested in me by law in the absence of J. L. Porter Judge of Common Pleas Court from the County, do appoint J. P. Brookins of said County, as Receiver in said case with power to act in the premises according to law. upon his giving bond and qualifying in pursuance of the statute, and to the acceptance and approval of the Clerk of the Court of Common Pleas of the County of Union in the State of Ohio. John B. Coats Probate Judge.

And afterward on April 18th 1879 an entry was made on the journal of said Common Pleas Court which reads as follows to wit:

Ettinger & Arnold
vs.
H. H. Pringle et.als.

P. H. Bauer
vs.
H. H. Pringle et.al.
No. 3373

Union County Bank
vs.
H. H. Pringle et.al.

And now come as well the said Plaintiffs as the said plaintiff for the appointment of a receiver in these actions for reasons stated in said motion come on to be heard before the Hon. John B. Coats Judge of the Probate Court of said County (the judges of the Supreme, District and Common Pleas Courts being absent from said County of Union) upon affidavits and other evidence. On consideration whereof it is found that said property in said motion mentioned is in danger of being lost or greatly sacrificed, and that it is for the best interests of the said Plaintiffs and defendants that a Receiver be appointed as prayed for in said motion. It is therefore ordered that J. P. Brookins be and he is hereby appointed receiver in these several actions on his giving an undertaking to the Clerk of this Court in the sum of $ 5000.00 conditioned that the said J. P. Brookins shall faithfully discharge the duties of such Receiver in these actions and obey the orders of the Court therein. And thereupon came the said J. P. Brookins and entered into an undertaking as aforesaid with A. J. Blake and Thomas P. Crotty as his sureties to the acceptance of the Clerk of said Court, and was thereupon duly sworn faithfully to perform his duties as such Receiver and it is further

Receiver's Bond

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ordered that the said J. P. Brookins do proceeds forthwith to take possession of such property, as such Receiver as is mentioned in said motion and all book accounts and credits of every description belonging to said defendants Pringle & Lenax, and all persons having any of said property in their possession or under their control are hereby required and commanded to deliver the same to said J. P. Brookins as such Receiver on his demand under penalty of the law for a contempt for not so delivering the same and it is further ordered that said Receiver proceed as fast as consistent with the nature of said property and the situation of said affairs to convert the same into money and apply the proceeds to the payment of the judgments against said defendants Pringle & Lenax according to the priority of liens obtained by levies made in said judgments, said priorities to be determined by this Court upon the proofs shown. Done this 17th day of April 1879.

John B. Coats Judge of Probate Court Union County Ohio.

And afterward on April 18. 1879 the Bond of the Receiver was filed with the Clerk of said Court which reads as follows to wit:

Receiver's Bond

"Know all men by these presents: that we J. P. Brookins, A. J. Blake and Thomas P. Tratty of the County of Union and State of Ohio are held and firmly bound unto the State of Ohio in the sum of Five thousand Dollars to be levied of our goods and chattles, lands and tenements if default be made of the Conditions following: That whereas the above bound J. P. Brookins has been duly appointed and qualified as Receiver of the goods and effects, book accounts and credits of H. H. Pringle and W. H. Lenax. Partners doing business under the firm name of H. H. Pringle on the application of the creditors of said Pringle and Lenax, and whereas the said J. P. Brookins has accepted said Trust and entered upon said duties. Now therefore, if the said J. P. Brookins shall faithfully and honestly perform the duties of such Reciever and obey the orders of the Court in the premises and duly account for all of the proceeds of said property credits &c to the Court of Common Pleas of said County of Union upon the order of said Court, then these presents to be void, otherwise to be and remain in full force and effect in law as given under our hands and seals this 18th day of April 1879.

J. P. Brookins (Seal) A. J. Blake (Seal) T. P. Tratty (Seal)

Aproved this 18th day of April A. D. 1879. W. M. Winget Clerk.

And afterward on June 27. 1879 the Report of the Reciever herein was filed with the Clerk of said Court which reads as follows, to wit:

Reciever's report

"To the Honorable Judge of the Court of Common Pleas, U. C. O.

As Receiver of H. H. Pringle & Co. I respectfully submit the following report. Amt. Recd from Sale of Goods $1022 96/100 Amounts rec'd from accounts 2 00 Total $1024 96/100. Expenses. 1 1/3 months rent $11 33/100. Printing $2 00 Compensation 1 1/3 months services $53 00/100. Expenses. going to Marysville to accept appointment and give bond &c. $10 00/100. Attorney fees $10 00/100. Total $86 33/100. Leaving in my hands to be turned over to the Court as by my appointment I am found $938 63/100 which amount he brings into Court. J. P. Brookins Receiver, By P. R. Dean his attorney.

And afterward on September 16th. 1879 an entry was made on the journal of said Court which reads as follows to wit:

Equity 3373

P. H. Bauer et. als. vs. H. H. Pringle et.als.

This day this cause came on to be heard upon motion to confirm report of Receiver J. P. Brookins heretofore appointed in this case and the Court being fully advised in the premises and finding that said report is in all things correct and the charges and expenses of said Receiver reasonable, it is ordered by the Court that said report be confirmed and said charges and expenses allowed and said Receiver is ordered to pay over to the Clerk of this Court the amount remaining in his hands to-wit: $938 63 and be discharged from further liability in the premises. Question on distribution reserved for further order.

And afterward on September 16. 1879 an Answer and cross petition was filed with the Clerk of said Court which reads as follows to-wit:

ans & cross pet of G. W. Court

P. H. Bauer et.al. vs. H. H. Pringle et.al.

Court of Common Pleas, Union County Ohio.

Now comes G. W. Court Treasurer of Union County Ohio, and for his answer and cross petition says there is due as tax to said County of Union upon the Stock of goods sold by J. P. Brookins assignee of H. H. Pringle as follows: Dec. tax for 1878. $24.33. June Tax for 1878 $24 34 Total $48 67. which sum is due and remains unpaid to the Treasurer of Union County Ohio.

R. L. Woodburn Attorney for G. W. Court Tr. Union Co. Ohio.

State of Ohio, Union County Ohio. } ss. G. W. Court being duly sworn deposeth and says that the facts and allegations stated in this his foregoing pleading are true as he verily believes. G. W. Court.

Sworn to before me and subscribed in my presence this 16th day of September 1879. A. H. Beightler Notary Public.

State

And on the same day an Answer was filed with the Clerk of said Court which reads as the following words and figures to-wit:

Ans. of S. H. Benedict & Co.

P. H. Bauer Plaintiff. vs. H. H. Pringle et.als. Defts.

Court of Common Pleas, Union County Ohio.

And now come S. H. Benedict & Co. judgment Creditors in above entitled case and for answer say: That on the 19th day of February A. D. 1879 the said S. H. Benedict & Co. by the consideration of the Court of Common Pleas of Union County Ohio recovered a judgment on a cognovit note against H. H. Pringle and W. H. Lemax for the sum of One hundred and Sixty five and 99/100 Dollars ($165 99) with interest thereon at 8% from date of said judgment and costs of suit taxed to $ That on the 5th day of March A. D. 1879 the said S. H. Benedict & Co. caused execution to be issued upon the above judgment by virtue of which J. J. Miller Sheriff of said County of Union on the 28th day of March A.D. 1879 at 10 o'clock A. M. did levy upon all the goods and chattles of said H. H. Pringle and W. H. Lemax and on the 9th day of April 1879 advertised the same for sale according to law and prior to said sale said goods and chattles were taken possession of by J. P. Brookins by virtue of his appointment as Receiver for said Pringle & Lemax.

The said S. H. Benedict & Co. say that their lien is the first and best lien upon said goods and chattles and they ask the Court here that on distribution of the proceeds of the sale of said goods and chattles now in the hands of said Receiver as per his report herewith filed, that said receiver be directed to first satisfy the claim of said S. H. Benedict & Co. together with their costs and for all proper relief.

Carpenter & Brodrick Attorneys for S. H. Benedict & Co.

ans. & cross pet. of G. W. Lewellen

The State of O... of the attorney... That said D... are now absen... in the foregoin... believes.

Sworn to by... this 16th day...

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P. H. Bauer e... vs. H. H. Pringle e...

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Cross pet. of Cyrus Moore

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The State of Ohio, Union County ss. A. J. Carpenter being sworn says he is one of the attorneys of said S. H. Benedict & Co. duly authorized in the premises. That said S. H. Benedict & Co. are non residents of said County of Union and are now absent therefrom and that the facts stated and allegations contained in the foregoing answer of S. H. Benedict & Co. are true as affiant verily believes.

A. J. Carpenter.

Sworn to by A. J. Carpenter before me and signed by him in my presence this 16th day of September A. D. 1879.

W. M. Winget Clerk.

And afterward on September 18. 1879 another answer was filed with the Clerk of said Court which reads as follows towit:

P. H. Baur et. als. vs. H. H. Pringle et. als. } ans. & cross pet. of G. W. Lewellen

Court of Common Pleas, Union County Ohio-

The defendant G. W. Lewellen says that H. H. Pringle was doing business in merchandise consisting of Clothing &c, in Richwood Ohio in April 1878 and continued up to the month of April 1879 and bought of Robin & Hyde a large amount of goods in April, May, June and Aug. 1878 in his said business and a balance of $96 28/100 being due on said account a judgment was rendered in favor of said Robin & Hyde against said H. H. Pringle on the 15th of March 1879 for $96 28 debt and 1 60/100 costs and $3 65/100 increase costs before M. W. Hill J. P. and said G. W. Lewellen signed a bond to stay execution on said judgment according to law, but on the 28th day of March 1878 made the proper oath to authorize an execution to issue on said judgment and an execution did issue thereon and a levy was made by virtue thereof by the constable holding the same upon the goods sold by the Receiver which levy was made March 28th 1879 and the goods were given up to the said Receiver by the order of this Court.

The said H. H. Pringle conducted said business in his own name but in fact the defendant Lenax was his secret partner in said business when said goods were bought of said Robin & Hyde and said debt was in fact the debt of said Pringle & Hyde as parties aforesaid.

The said Lewellen has since paid said judgment and took an assignment of the same and he still holds his lien on said goods from the 28th of March 1879 and asks that the said sum and interest be paid out of the proceeds of said sale.

Robinsons & Piper attorneys for Lewellen.

The State of Ohio, Union County, ss. G. W. Lewellen being duly sworn says he believes the allegations of the foregoing cross petition are all true.

G. W. Lewellen.

Sworn to before me this 13th of Oct. 1879 and signed by G. W. Lewellen.

W. M. Winget Clerk.

And afterward on October 11. 1879 a cross petition was filed with the Clerk of said Court which reads as follows towit:

P. H. Baur et. als. vs. H. H. Pringle et. als. } cross pet. of Cyrus Moore

Court of Common Pleas, Union County Ohio.

The defendant Cyrus Moore Administrator of the estate of Magdalene Moore dec'd now comes and by leave of the Court represents that in February 1878 H. H. Pringle was engaged in the clothing business in Richwood Union County Ohio occupying the store room of said Magdalene Moore and for the rent of the same gave his promissory note on the 20th. of February 1878 for $105 08/100 which failing

to be paid the same was entered into judgment by said Plaintiff against said H. H. Pringle before M. H. Hill J. P. on the 29th of January 1879 for $109 70 debt and $2 25 costs and on the 28th of March 1879 by virtue of an execution on said judgment the Constable levied on the property sold by the Receiver and the same was not sold because the property was delivered to said Receiver by order of the Court. This defendant says that at said time when said debt was contracted by H. H. Pringle the defendant W. H. Lenox was his secret partner and said use of said room was for the benefit of said Pringle & Lenox and was in fact the debt of Pringle & Lenox and the defendant says his lien on said property by virtue of said levy dates the 28th of March 1879 and the defendant asks that his said judgment which remains unpaid shall be paid out of the proceeds of said sale prior to any lien attaching subsequent to March 28th 1879. The defendant makes the transcript a part of this his cross petition.

Robinsons & Piper Attorneys for Cyrus Moore Admr of Magdalene Moore.

The State of Ohio, Union County ss. Cyrus Moore being duly sworn deposes and says the allegations of the above cross petition are all true as he believes.

Sworn to before me and signed in my presence by said Cyrus Moore this day of October 1879.

Transcript

Cyrus Moore Admr
vs.
H. H. Pringle

} Before me M. H. Hill J. P. in and for Claibourne Township Union Co. Ohio, suit brought to recover money on a note, of which the following is a copy. The plaintiff says: That he has been duly appointed and qualified and that letters of administration have been granted to him as administrator aforesaid by the Probate Court of said County, That there is due him as administrator from said Defendant the sum of $105 85/100 with interest thereon from the 20th day of June A. D. 1878 upon a promissory note which is hereto attached and marked "A" "$105 85 Richwood O. February 20th 1878. Four months after date I promise to pay to the order of Magdalen Moore, One hundred and Five 85/100 Dollars, with interest added in - Attorney fee attached. "H. H. Pringle"

The Plaintiff therefore asks judgment as aforesaid amount and interest.

S. S. Gardiner Plaintiffs attorney.

Jany 25th 1879. Issued summons on the above, returnable Jany 29th at 9 o'clock A. M. and handed to W. H. Robinson Constable.

January 29th 1879. Received this Jany 25th 1879 and served the same on January 25th 1879. By copy personally. W. H. Robinson Con's.

January 29th 1879 at 9 o'clock A. M. the defendant appeared and confessed his indebtedness on the above note and ordered me to render judgment thereon. It is therefore considered by me this 29th day of January A. D. 1879 that Cyrus Moore Admr recovers of the defendant H. H. Pringle, the sum of $109 70 and cost herein taxed at $2 25. M. H. Hill J. P.

March 28th A. D. 1879. Issued execution on the above judgment returnable April 28th A. D. 1879 and handed to W. H. Robinson Con's. April 1st A. D. 1879. Writ returned endorsed as follows. Received this writ March 28th 1879. Levied on the goods and chattels of the within named H. H. Pringle described in the annexed schedule marked "A." all of the clothing in the store of H. H. Pringle, one lot Hats & caps, one lot of trunks, one lot of Paper Collars, one coal stove, Lamps and Tables and all fixtures belong-

Cross Pet. of M. H. Hill et al.

ing to said store [illegible] been appointed [illegible] goods levied [illegible] A. D. 1879, [illegible]

The State of O[illegible] that the above [illegible] had by and [illegible]

And a further [illegible] of said Court [illegible] M. H. Hill [illegible] W. C. Brown [illegible]
vs.
H. H. Pringle [illegible]

came indebted [illegible] them to said [illegible] gle & Lenox [illegible] the docket of [illegible] $213 28 and [illegible] an execution [illegible] said writ of [illegible] 28th of March [illegible] the Receiver [illegible] ieved from the [illegible] increase costs [illegible] M. Hill has [illegible] the same and [illegible] be paid out [illegible] lected accor[illegible]

The State of O[illegible] defense and [illegible] are true.

Sworn to [illegible]

And a further [illegible] put on the Jou[illegible] P. H. Bauer [illegible]
vs.
H. H. Pringle [illegible]

and evidence [illegible] ants is set out [illegible] a part hereof [illegible] find that the [illegible] defendant [illegible] preference over [illegible]

ing to said store. On the 18th day of April A. D. 1879, J. P. Brookins, having been appointed by the Probate Court the Plaintiff ordered me to turn over the goods levied upon to said J. P. Brookins which I did on the 19th day of April A. D. 1879, Cost. Services and return 40 mileage 20 Total 60.

W. K. Robinson Con's.

The State of Ohio, Union County Claiborne Township ss. I do hereby certify that the above is a true and true copy from my docket of the proceedings had by and before me at my office in said Township in the above action.

M. H. Hill Justice of the Peace of the aforesaid Tp.

And afterward on October 13th 1879 a cross petition was filed with the Clerk of said Court which reads as follows toriz:

M. H. Hill et al
W. E. Browning Co.
vs.
K. K. Pringle et al

Court of Common Pleas Union County Ohio.

M. H. Hill and W. E. Browning Co. for cross petition says that K. K. Pringle was doing business in Richwood Ohio in his own name but in fact Wm Lenax defendant was his secret partner and said firm became indebted to W. E. Browning Co. for goods sold and delivered by them to said K. K. Pringle but which were in fact for said firm of Pringle & Lenax and afterwards the same was duly put into judgment on the docket of J. S. Gill justice of the peace of said County for the sum of $2 13 28 and costs and costs that may accrue the 20th of December 1878 and an execution issued thereon March 28. 1879 and the Constable holding said writ of execution levied on said goods sold by said Reciever the 28th of March A. D. 1879 and held the same until they were reld by the Receiver under the order of this Court. The lien of said levy has existed from the 28th of March 1879. Said judgment and costs and increase costs amounting to $1.60 remains due and unpaid and Morris M. Hill has bought said judgment having been docket bale and paid the same and is now the owner of the same and asks that the same be paid out of the proceeds of said sale and that his liens be fully protected according to law.

Cause & cross pet of M. H. Hill et al.

Robinson & Piper Attorneys for M. H. Hill.

The State of Ohio, Union County ss. Morris M. Hill being duly sworn deposes and says he believes the allegations of the foregoing cross petition are true.

M. M. Hill.

Sworn to before me and signed in my presence this 13th of Oct. 1879

W. M. Winget Clerk.

And afterward on October 16th 1879 an entry and Bill of Exceptions was put on the Journal of said Court which reads as follows toriz:

P. K. Bauer et als
vs.
K. K. Pringle et als.

Be it remembered that at the September Term 1879 of the Court of Common Pleas, in said County of Union before the Hon. John L. Porter Judge this cause came on to be heard upon the order of distribution, upon the pleadings and evidence all of which evidence in behalf of both plaintiffs and defendants is set out in the agreed statement of facts hereto attached and made a part hereof marked "Exhibit A" and the Court after consideration thereof find that the levies made by the Constable upon judgments in favor of the defendant Lewellan, Moore and Hill were valid levies and entitled to preference over levies made by the Sheriff, on judgments of the Plaintiffs

P. H. Bauer and the Union County Bank. That the levy of the Sheriff on the judgments of the defendants Benedict & Co was a valid levy and entitled to preference over the levies made by said constable. It is therefore ordered and adjudged by the Court that out of the proceeds of the sale of the goods and chattles levied upon as returned by the Receiver appointed in this case, there be paid first the costs in this action. 2d Judgment, interest and costs of the defendant Benedict & Co. Tourt: $174 76. 3d The several judgments interests and costs of the defendant G. W. Lueellen, Cyrus Moore and M. W. Hill Tourt: George Lueellen $102 45, M. W. Hill $226.68 and Cyrus Moore $116 16 and that the residue if any be paid to the plaintiff P. H. Bauer.

To the above findings and judgment of the Court the Plaintiffs P. H. Bauer and Union County Bank except, Except as to levies made by the Sheriff in favor of Benedict & Co. it being conceded that said claim is entitled to priority as found by the Court, and the payment of the residue to P. H. Bauer.

P. R. Kerr attorney for Plaintiffs.

Exhibit "A"

Agreed Statement of facts and as the evidence on behalf of all the parties in this case. 1st all judgments and claims set up by the different parties in this motion are alike against the defendants H. H. Pringle and W. H. Lenox who were partners doing business under the name of H. H. Pringle & Lenox or against said Pringle for indebtedness of said Pringle & Lenox. 2d The Execution upon the judgment of Benedict & Co. against said Pringle & Lenox was levied upon the goods and chattles of said Pringle & Lenox by the Sheriff on the 28th day of March 1879 in the manner hereinafter mentioned and the executions of the defendants Lueellen, Moore and Hill upon the several judgments as set up in the pleadings were levied on the same goods and chattles of Pringle & Lenox on the said 28th day of March by the Constable of Claiborne Township but in point of time subsequent to the levy made by the Sheriff in favor of Benedict & Co. but on the same day and before the store house in which the goods were, was closed

3d That the executions upon the judgments of P. H. Bauer and the Union County Bank against the said Pringle & Lenox were placed the first day of April 1879 in the hands of said Sheriff of Union County, who proceeded to levy the same upon the same goods and chattles of Pringle & Lenox that were levied upon by him in the case of Benedict & Co. against the said Pringle & Lenox on the 1st day of April 1879 as shown by said Sheriffs return upon said writs.

4th That when the Sheriff levied upon said goods and chattles on the 28th of March 1879 he found the same in charge of Wm H. Richards who carried on the tailoring business in the same room in which Pringle & Lenox had their clothing store, Pringle being absent from home or sick having left them in his charge and that the Sheriff after making the levy made a memorandum of the same on the back of his writ and left the goods in charge of the said Richards as the agent of the Sheriff and for that reason did not lock up the store room, That he did not take personal possession of said goods but had them under his control.

5th That when the Constable levied upon the same goods he found them in charge of said Richards as aforesaid, who told him the Sheriff had levied upon them, and that after he had levied his writs upon these goods he left them in said Store room in charge of said Richards and

Undertaking in error

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Petition in error

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6th That said goods were sold by J. P. Brookins who was appointed by the Court as Receiver in this case and the proceeds were brought into Court for distribution by order of this Court.

And afterward on October 17. 1879 an undertaking in error was filed with the Clerk of said District Court which reads as follows to-wit:

Undertaking in error

Whereas, The Union County Bank, a firm doing business under said name in Ohio and P. H. Bauer have instituted proceedings in the District Court in and for the County of Union to reverse a judgment rendered in the Court of Common Pleas in said County, on the 16th day of October 1879 in favor of G. W. Luellen, Cyrus Moore and M. H. Hill against the Union Co. Bank and P. H. Bauer on the question of the priority of liens on certain funds in said Court for distribution to the amount of $400 Dollars.

Now. Therefore we, A. J. Blake do bind ourselves to the said Luellen, Moore and Hill in the sum of nine hundred Dollars, that the said judgment shall be affirmed in whole or in part, we will pay to the said Defendants Luellen, Moore and Hill the amounts ordered to be paid to them respectively the whole or the part of the said judgment so affirmed, and the costs which have accrued, or may accrue, in the District Court.

Dated this 16 day of October A. D. 1879.

A. J. Blake (Seal) M. H. Hill (Seal)

The execution of the above Undertaking, and the sufficiency of the sureties therein approved by me this 16. day of October A. D. 1879.

W. M. Winget Clerk of said County.

And afterward on Feburary 26. 1880. a Petition in error was filed with the Clerk of said District Court which reads as follows to-wit:

Petition in error

P. H. Bauer and Union County Bank
vs.
H. H. Pringle, W. H. Lenax, G. W. Lueleen Cyrus Moore and M. H. Hill, Defendants

District Court of Union County Ohio.

The Plaintiffs P. H. Bauer and Union County Bank complain of the Defendants for that, at the September term of the Court of Common Pleas of said County 1879, the defendants procured an order of said Court of Common Pleas in a certain action therein pending. in which the said P. H. Bauer and others were Plaintiffs and said Pringle, Lenax, Lueleen, Moore and Hill et al were Defendants. upon a motion for the distribution of funds then in the hands of the Clerk of said Court, a copy of the record of said order and proceedings of said Court upon said motion, duly certified is hereto attached marked "A" and made a part of this petition. And the plaintiffs aver there is error in the said Record and proceedings in this to-wit: The Court erred in holding that the liens of the defendants, obtained by the pretended levy of the Constable in favor of the Defendants G. W. Lueleen. Cyrus Moore and M. H. Hill was a prior and better lien upon said funds, than the liens of the Plaintiffs P. H. Bauer and Union County Bank on said funds by reason of the levies made in their favor by the Sheriff of said County.

The said P. H. Bauer and Union County Bank therefore pray that said order and finding of said Court may be reversed and that the liens of said Plaintiffs by virtue of said Sheriffs levies in their favor may be declared to be

the first and best liens upon said funds and that the judgments of said P. H. Bauer and Union County Bank be paid out of said funds in their respective order of priority and they be restored to all things they have lost by reason of said erroneous order. P. R. Kerr Attorney for Plaintiffs

Feb. 26. 1880. I hereby waive the issuing of process in the above case and enter the appearance therein of the defendants. G. W. Lueller, Cyrus Moore and M. W. Hill. Robinson & Piper Attorneys for above defendants.

And afterward on March 18. 1880 an Entry was made on the journal of said District Court which reads as follows to wit:

No. 60 Entry

P. H. Bauer & others vs. H. H. Pringle et. als

This day came the parties and submitted this cause came on to be heard by the Court. Whereupon the Court being fully advised in the premises do affirm said judgment and order of the Court of Common Pleas. It is therefore considered and adjudged by the Court that said judgment and order stand affirmed and that defendants recover of the plaintiffs their costs in this behalf expended taxed to $ to which judgment of this Court affirming said judgment below, the plaintiffs in error do except.

Attest: W. M. Winget Clerk.

No 77.

Charles Green
vs
The Commissio
County Ohio

John McCauley
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No 3727.

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No 77.

Charles Green
vs
The Commissioners of Union
County Ohio et al

Pleas **before** the Honorable Thomas Beer Henry H. Dodge and John McCauley Judges of the court of common pleas within and for the Tenth Judicial in the State of Ohio, at a District-Court begun and held at the Court house in the town of Marysville within and for the county of Union on the 9th day of March A.D. 1881. Heretofore on the 25th day of February 1881. The appeal bond transcript-agreed Statement of facts and original papers in this case were filed with the Clerk of said District-Court- which read as follows;

State of Ohio Union County s.s.

No 3727.

Charles Green. Plaintiff
against-
The Commissioners of Union
County, Ohio and William
M. Leggett as Treasurer of said County

To the Court of Common Pleas.

Petition

The said Charles Green complains of the said defendants for that-the said plaintiff is the owner and proprietor of about 148½ acres of land in said county lying and being in Survey No 5799 which said land lies about-One and three quarter miles from a certain road known as the Berlin Road. That during the early part of the year 1880 proceedings were had by petition of the resident- landholders owning lands adjacent- to and adjoining upon said road by and before said commissioners to improve said road by gracing and graveling the same, Said proceedings were had under the laws of Ohio. known as the "Two mile assessment laws" That-after the said petition was filed Such other and further proceedings were had that-said Commissioners ordered said improvement to be made and the Expense thereof to be assessed upon the lands lying along and adjacent to said road not Exceeding two miles on each side thereof. The plaintiff avers that-by the said law authorizing said improvement-the land to be assessed in payment-therefor were to be assessed according to the benefits derived therefrom and no other manner.

The plaintiff further says that-his said lands lie remote from said road the distance aforesaid and that-other lands intervene between the lands of this plaintiff and said road and that-the location and lay of the lands is such that-the lands of said plaintiff receive no benefit-from drainage or other local improvement or advantage consequent-upon the said improvement-of said road and that-the same is no benefit-to the lands of the said plaintiff whatever and no benefit-to the said plaintiff except-as he may occasionaly pass over the same in his travel, That-said plaintiff has other outlets and seldom is required to pass over said road. That by reason of the foregoing facts the said improvement-of said road is of little or no value to the said plaintiff or to his said lands. The said plaintiff avers that-in order to make an assessment-to pay for said improvement-the said commissioners caused certain persons to view the lands along and adjacent-to said road and to apportion the expense of the same upon said lands which the said plaintiff says ought-to have been done according to the benefits said land would receive from said improvement-) That-afterwards the said persons so appointed to make said view and appraisement-made their report-to said Commissioners and among other things reported that-they assessed the lands of the said plaintiff in the sum of Two hundred and Eighty dollars. thereupon the

Said commissioners appointed a day for all persons to appear and make known their objections to said assessment-if any they had, upon which day the said plaintiff appeared and made objections and asked the said commissioners not to approve or confirm said report-as to the plaintiff that-as to him said assessment was unjust and inequitable and that he ought not to have been assessed to exceed 50 cents on the acre of his said land, but the said Commissioners disregarding the objections of the said plaintiff proceded to order that the lands of the plaintiff should be assessed in the sum of $280.00 for said improvement-and to order the Auditor of said county to place the same on the duplicate of said county for collection as other taxes and the said plaintiff avers that the same is now so assessed and ordered to be assessed by the usual installments provided by law in such cases and that-the sum of $67.20 is now upon the duplicate of the said county and the same is in the hands of the said dependant William M. Liggett Treasurer of said county who is now actually threatening to collect-the same and to distrain and subject-the property of this plaintiff to the payment thereof. The said plaintiff avers that-the action of said Commissioners and said Treasurer is illegal and arbitrary and that-said assessment-is unjust-and wholly inequitable and not in accordance with law or the benefits received by plaintiff for the said improvement; That many others who live near said road and who have the benefits of drainage and other real benefits not had by the plaintiff are not assessed in proportion and that-the plaintiffs lands does not-have benefits to exceed fifty cents per acre. That-said assessment-is wrong unjust-and a hardship upon the plaintiff and that-unless restrained by the order of this court, the said defendants will go on and carry their threats into execution and compel the plaintiff to pay said unjust-and illegal assessment- Wherefore the plaintiff prays the court here for an order that-the said defendants be each enjoined forever & perpetually from collecting said illegal assessment-and that the same may by the order of the court be stricken off from the said duplicate and ordered not to be collected-and that the said plaintiff may be restored to all things he has lost by reason of said illegal assessment.

J. M. Kennedy & Cameron & Benton Attorneys for Plaintiff

State of Ohio Union County s.s. Charles Green being first-duly sworn says that-the foregoing fact-stated in his petition are true.

C. Green.

Sworn to before me by said Charles Green and by him subscribed in my presence this 2d day of December 1880. W. M. Winget- Clerk

Afterward on the 2d day of December 1880 an Entry was made on the journal of said Court-which reads as follows,

Entry

Charles Green Plaintiff vs The Commissioners of Union County Ohio and William M Liggett Treasurer of said County Defts-

This day this cause come on for hearing on the Motion of Plaintiff for a temporary injunction in the above case before the Probate Court-of said County the Judge of the Court-of Common Pleas being absent-from said County and good cause shown Therefore it-is ordered that-on an undertaking being given in the sum of $800 00 with Sureties to be approved by the Clerk an injunction be allowed to issue herein enjoining the said defendants-from collecting the assessments on the Perkins Gravel Road improvement-until further order of this court-

December 2d 1880

Seal

John B. Coats

Probate Judge.

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on the 2d day of December 1880 an undertaking was filed with the clerk of said court-which reads as follows.

Undertaking The State of Ohio. Union County S.S. Charles Green Plaintiff vs The commissioners of Union County and William M. Liggett Defendant- We bind ourselves to the said defendants The Commissioners of Union County and William Liggett in the sum of Three Hundred dollars that-the said plaintiff Charles Green shall pay to the said defendants the damages they may sustain by reason of the injunction in this action, if it be finally decided that-the said injunction ought-not-to have been granted. December 2d 1880- C. Green. Philip Snider

This undertaking approved by me this 2d day of December 1880- W. M. Wright- Clerk

The following as a copy of the Summons and Sheriffs Return on same

Summons The State of Ohio Union County ss

To the Sheriff of the County of Union, Greeting:

We command you to notify The Commissioners of Union County Ohio and William Leiggett a Treasurer of Union County-Ohio-that they have been sued by Charles Green in the Court of Common Pleas of Union County, and that-unless they answer by the 1st day of January A.D. 1881 the petition of the said Charles Green against-them filed in the Clerks Office of said Court, such petition will be taken as true, and judgment rendered accordingly- You will make due return of this Summons on the 13th day of December A.D. 1880- Witness my hand and the Seal of said Court,- this 2d day of December A.D. 1880. W. M. Wright- Clerk

Seal

Sheriffs Return The State of Ohio Union County S.S. Received this writ-December 2d 1880 at-4 o'clock P.M., and pursuant-to its command, served the same on the 6th day of December 1880 by delivering a certified copy thereof with the endorsements thereon to William M Liggett as Treasurer of Union County and to John E. Dodge. James B. Wheeley and James T. Mahaffey as Commissioners of Union County Ohio personally.

J. J. Miller. Sheriff-

Afterward on the 30th day of December 1880 an answer was filed with the Clerk of said Court which reads as follows.

Answer

Charles Green Plaintiff Against- The Commissioners of Union County Ohio and William M. Liggett as Treasurer of said County	Court of Common Pleas of Union County Ohio No 3722 Answer;

And now comes the said defendants and for answer to plaintiffs petition say; That-they admit that plaintiff is the owner of about-148⅛ acres of land in U.M. Survey No 3499; That-said lands were assessed under the two mile assessment laws, for the improvement of the Dover & Perkins road by grading and graveling &c; That the Commissioners appointed viewers and appraisers on said road; That-said appraisers & viewers reported to said Commissioners appointed a day to hear Exceptions to said report; and that-the said assessments have been placed upon the Tax duplicate for collection-

And defendants deny each and every allegalgation in said petition contained not herein admitted. Defendants therefore ask that the injunction heretofore granted herein be dissolved and said defendants restored to all things they have lost-by reason of the granting thereof; that-they be allowed to go hence without-day and recover of the said plaintiff their costs herein expended and for all proper relief-

Carpenter & Brodrick
Attorneys for defendants-

The State of Ohio Union County ss- J.B. Whelpley one of the defendants herein being Sworn makes oath that the facts Stated in the foregoing answer are as affiant believes true - J.B. Whelpley

Sworn to by said J.B. Whelpley before me and Signed by him in my presence this 30th day of December A.D. 1880. W. M. Winget - Clerk -

Afterward on the 8th day February 1881 an Entry was Made on the Journal of Said Court - which reads as follows -

Entry No 3727.

Charles Green
vs
Commissioners of Union County Ohio et al

This day this cause came on for trial before the Court upon the issues Joined between the parties; On Consideration whereof after hearing the Evidence and arguments the court do find that the said defendants were Guilty of attempting to collect - illegal and arbitrary assessments and that said assessments made on said plaintiffs land were not - illegal and arbitrary as said plaintiff hath in his said petition declared against them; It is therefore considered that the injunction heretofore granted be and the same is hereby dissolved; and it is further considered that the said plaintiff pay one half of the cost herein taxed and the said Commissioners pay the other half of said costs out of the County treasury of said County of Union & State of Ohio. And Execution is awarded for said costs. At the same time came said plaintiff and gave notice of his intention to appeal this Case to the District Court, and thereupon the Court fixed the amount of the appeal bond herein at Two hundred dollars.

Afterward on the 24th day of February 1881 an Appeal bond was filed with the Clerk of said Court - Which reads as follows.

Appeal Bond

Know all men by these presents, That we, Charles Green and Sol Burtz are held and firmly bound unto the Commissioners of Union County and W. M. Liggett Treasurer in the penal Sum of Two Hundred dollars, to the payment of which, well and truly to be made we do hereby jointly and severally bind ourselves, our heirs, Executors and administrators. Signed by us, and dated this 24th day of February A.D. 1881 -

The condition of the above obligation is such, that: Whereas, the said Charles Green has taken an appeal from the a certain decree and judgment rendered against him in the court of common pleas within and for the county of Union in the State of Ohio at the January Term thereof, A.D. 1881 for the Sum of twenty five dollars costs to the District Court within and for the county aforesaid

Now if the said Charles Green shall abide and perform the order and judgment of said District Court, and shall pay all Moneys, Costs and damages, which may be required of or awarded against him by said District Court, then this obligation to be void; otherwise to remain in full force and virtue in law -

Signed C. Green [Seal]
Sol Burtz [Seal]

I approve the above bond, with the Sureties therein, this 24th day of February A.D. 1881 -

W. M. Winget - Clerk -

Afterward on the 11th day of March 1881 the following Statement of facts was filed with the Clerk of the District Court which reads as follows; viz

Agreed Statement of facts

Charles Green
vs
The Commissioners of Union County et al

In the District Court of Union County Ohio.
No 77.

It is agreed by all the parties in this action

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that the facts in this case are as follows: On the 15th day of January A.D. 1880 James H. Perkins & others filed in the auditors office of Union County Ohio. their petition for the improvement by grading, graveling &c. the road known as the Dover & Perkins Road; That on the 4th day of March 1880 an order was made by the Commissioners of said County granting said improvement- That on the 30th day of April 1880 the improvement was sold out by said Commissioners That on the 3d day of May, 1880 the contract for said improvement under said sale was entered into and approved by said Commissioners; That on the 15th day of June 1880 assessors were appointed to assess the costs &c of said improvement on the lands benefitted thereby; That on the 17th day of August 1880 the report of said Commissioners assessors was heard and on account of the general dissatisfaction existing against said report, was set-aside; That on the 17th day of August 1880 assessors were appointed to reassess the costs &c on the lands benefited by said improvement. That on the 21st day of September 1880 the report of said 2d assessors was heard and, with slight alterations was approved and confirmed. It is further agreed that the lands of said plaintiff assessed at $280.00 and consisted of 148⅛ acres all lying within one mile of said improvement.

It is further agreed that if said 2nd assessors were not authorized to take into consideration assessments made on other road improvements in that vicinity other than said Dover and Perkins road then said assessment on said plaintiffs lands were in excess of assessments on some other lands lying immediately on said Dover and Perkins improvement. But if said assessors were authorized to take into consideration the assessments made on said other road improvements, then said plaintiffs lands were not assessed as high as the other lands above refered to.

It is further agreed that the plat of said road hereto attached & made be taken as true in reference to the said improvement and all distances thereon noted.

It is further agreed that said plaintiff was not one of the petitioners herein but remonstrated against the granting of same.

It is further agreed that if under the law the said assessors were authorized to take into consideration previous assessments made for the improvements of other roads, then the judgment of the Court of Common Pleas was correct; but if said assessors were not authorized to take such assessments into consideration, but ought to have been made according to benefits derived only, and assessments previously made on said Dover and Perkins road and no other, then the judgment of the Court of Common Pleas was not correct and this should be remanded.

Cameron & Benton & J. W. Kennedy.
Attorneys for Plaintiff
Carpenter & Brodrick attorneys for Defendants.

Afterward on the 1st day of March 1881 an entry was made on the journal of said District Court which reads as follows, viz;

Entry

Charles Green
vs
The Commissioners of Union County O. et-al
} No 77.

This day came on this cause to be heard on the pleadings agreed Statement of Facts and arguments of Counsel. Whereupon the Court find for the plaintiff. It is therefore adjudged and decreed that the injunction heretofore granted in this case be and the same is made perpetual.

It is further ordered that the defendants pay the costs of these proceedings within thirty days, and in default thereof that execution issue therefor as upon judgments at Law.

To all of which rulings and decisions of the court the defendants

then and there excepted, and asked, that the court would then and there order that their exceptions should be signed by the court and made a part of the record in this case, which was accordingly and done. And thereupon the defendants filed their written motion for a new trial stating their reasons therefor, Whereupon the court overruled said motion, to which rulings and decisions of the court the defendants then & there excepted and again asked the court to sign their bill of exceptions, which was accordingly done.

71

J. S. Norton
vs
School District

and for the 10th Jud
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3081

School District
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Petition

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J. S. Norton Et al Partners &c
VS
71 School District No. Paris Tp. Union Co

Pleas before the Honorable Thomas Beer Henry H. Dodge and John McCauley Judges of the Court of Common Pleas within and for the 10th Judicial District in the State of Ohio at a District Court begun and held at the Court House in the Town of Marysville within and for the County of Union on the 11th day of March 1881. Heretofore on the 22d day of March 1880 the appeal Bond. Transcript and Original papers in this case were filed with the Clerk of said District Court to wit J. S. Norton and F. H. Bently Partners in trade under the firm name of J. S. Norton Plaintiff

3081 VS

School District No. One Paris Township Union County Ohio
Moses Thompson Darius Buxton David Edwards J. W. Field R. L. Woodburn
and Leonidas Piper Directors John Fleck and A. S. Chapman Partners in busines
under the firm name of Fleck & Chapman R. G. Hancock and William Dow
Partners in busines under the firm name of Hancock & Dow, J. V Sanflet, Hubbell Brown
Petition & Co. S. W. Dolbear and W. W. Woods Partner in trade under the firm name of Dolbear & Woods
The Marysville Butter tub & Spoke Company Ezra S. Woodward & Ezekiel B. Woodward
Partners in busines under the firm name of E. S. Woodward & Son Defendants

Petition. The Plaintiffs J. S. Nalon and F. H. Bentley Partners &c - Say that the directors of School district No. One Paris Township Union County Ohio made & Entered into a contract in writing with the Defendants E. S. Woodward and E. B. Woodward as partners in busines under the firm name of E. S Woodward & Son. by the terms of which contract the said E. S. Woodward & Son were to perform the necpary. work and furnish the Materials (Except, brick) necessary to erect and complete a School House building for said School District No - One &c Defendants - which building was to be Situate on Lands owned by said School district Situate in the South East angle formed by South Street and Weaver Street in the Village of Marysville Union County Ohio according to certain Plans & Specifications made by Gibbs and Moses Architects of said building and the directors of said School District agreed to pay said E. S. Woodward & Son for furnishing said Materials & performing said labor in the erection of said building the Sum of $23.148 00 as plaintiffs are informed and believes and therfor alleges the fact to be which Sum was to be paid on estimates to be made of the quantity of Materials furnished and amount of labor performed for and on said building which Estimates were to be made by the Superintending Architect of said building once in each month. On each of which estimates fifteen per cent and no more was to be retained by the Board of Directors of said School District until the building was completed - That said Board of Directors at the same time received from the said E. S. Woodward & E. B. Woodward a bond with good & Sufficient Sureties conditioned that the said E. S. Woodward & Son Should faithfully perform their contract and complete said work or building within a time named - These plaintiffs are not able to State other and further Stipulations (if any) that are material in said contract or bond as they are not in possession of a copy of either. That Subsequently to wit On or about the 6th day of September 1876 the said E. S. Woodward & Son Defendants entered into a contract with the firm of Maples & Norton (of which firm J. S. Norton one of the plaintiffs was member) the terms of which were in Substance as follows The said Maples & Norton agreed to furnish Materials and do the work necessary to place in position on said School House building all the Galvanized iron work all the tin work including hot and foul air pipes register heads Smoke flues of no 18 black iron all registers cast iron cresting all Slate roofing

Said Materials and labor to be furnished and performed according to plans and Specifications made by Gibbs and Moses Architect. In consideration thereof the said E. S. Woodward & Son were to pay the said Maples and Norton the Sum of $3500 Dollars upon the same stipulations as to estimates and payments as contained in the Contract between the Board of Directors and the said E. S. Woodward & Son that is to say upon monthly estimates to be made by the Superintending Architect. A copy of said contract is hereto attached marked "A"

Plaintiffs further say that they made a bid to the said Board of Directors for the said Galvanized iron work and other work in said contract mentioned before the contract made with said Woodward and Son and before the letting of the Job to said Woodward & Son. That in arranging with said Woodward & Son as to their contract after the bids were opened the said Board of Directors reserved the right to

Petition

to contract with Mssrs Maples & Norton directly for the said Galvanized iron work on their bid and there was an understanding between said Board of Directors

Contd

and said E. S. Woodward and Son to that effect and that although in form the contract was let by the Board to said E. S. Woodward & Son and then Sub let by Woodward & Son to said Maples & Norton - in fact the said Board of Directors from the beginning of the work by Maples & Norton treated them as original contractors with said Board, and said Board of Directors expressly undertook to reserve to Maples & Norton the payments due them upon estimates made by their Architect.

Petition

Contd

That Subsequently these plaintiffs became the successors of said firm of Maples and Norton and and became entitled to all the rights of the said Maples & Norton under said contract with E. S. Woodward & Son. under said agreement and understanding between said Board of Directors and said Maples and Norton and at the same time became subject to all the responsibilities of the same.

The said firms of Maples & Norton and J. S. Norton & Co. the plaintiffs have done and performed all that their said contract required them to do or perform and in the manner required by it - They further say that on the 21st day of July 1877 they caused to be filed with L. Piper one of the defendants and Secretary of the Board of Directors of said School District a Sworn and Itemized account of the amount the were to receive under their said contract; The amount and value of the labor performed and materials furnished the amount then due & payable the amount received by them and the amount to become due under their said contract - The amount then due being about $300 00 and the amount to become due being about $500 00 making in the aggregate at that date due and to become due to the plaintiffs on said contract the Sum of $819 00 There having been paid on said contract to the plaintiffs and their predecessors the Sum of $2681 00 That they at the same date to wit July 21st 1877 caused a duplicate copy of the said Sworn Statement and account to be to be filed with the Recorder of Union County according to law

That of said Sum of $300 00 or there abouts then due to plaintiffs under said contract there was due according to estimates before that date made by the Superintending Architect to plaintiff the Sum of $91.37 with interest from January 16th 1878 and there is now due to the Plaintiff under said contract the Sum of $819 00 from the defendants E. S. Woodward & Son with interest from November 1st 1877

The plaintiff further says that the defendants Moses Thompson Darius Burton David Edwards J. W. Field Leonidas Piper and R. L. Woodburn Directors of said School District No. One Paris Township Union County Ohio wholly disregarded their duties and the law in such cases made and provided as well as their promise to these plaintiffs in this

Jurat

that from and after the said 21st day of July 1877 they the said Board did not have or cause any estimates to be made by the Architect of said building of the value

or amount of labor or Materials - done or furnished to or for said School House building as by law and their contract they were bound to do ; that on or about the 2d day of August 1877 the said Board took charge of said building employed laborers purchased Materials and proceeded to finish and complete the said building without authority of law and without calling upon the bondsmen of the said E. S. Woodward & E. B. Woodward to finish and complete said building and contract of their principals as by law and their contract they were to do. That the said Board of Directors without authority of law expended and paid out for labor and Materials a large sum of money as Plaintiffs are informed and believe amounting to $3200 and they therefore charge the fact to be that, that was the sum part of which sum should have been paid by said Board of Directors to these plaintiffs in liquidation of the entire claim of the plaintiffs so perfected by being filed with the Secretary of said Board of Directors of School District No One Paris Tp. Union Co. Ohio and with the recorder of said County.

Plaintiffs further say that said E. S. Woodward & Son executed and delivered to them on the 21st day of July 1877 an Order upon the Secretary of said Board of Education for what ever sum of money might be due from said E. S. Woodward & Son to the plaintiffs on the Contract between them at the final Settlement of the School Board and E. S. Woodward & Son which order was presented to said Secretary and he declined to accept the same. That the plaintiffs are in equity entitled to whatever sum of money was due said Woodward & Son from said Board by reason of the execution and delivery to them of the said order by said Woodward & Son a copy of said Order is hereto attached Marked "B"

Petition

Contd.

The plaintiffs say that by reason of the premises there is due from the said School District No. One of Paris Township Union County Ohio to them the sum of Eight Hundred and nineteen dollars with interest from November 1st 1877.

The plaintiffs further say that the defendants Tack & Chapman - Hancock & Dow J. V. Sanplet - Hubbell Brown & Co Dolbear & Woods. The Marysville Butter Tub & Spoke Company claim to have an interest in the subject matter in this action and are in the opinion of plaintiffs necessary parties to the full adjustment of the matters and things in controversy.

The plaintiffs therefor ask that they made parties defendants in this action and that all the parties named in the Caption hereof be required to answer this petition setting up their claims if any they have, That the said Directors of School District No. One Paris Township be especially required to State the amount remaining on the 21st day of July 1877 and to become due to E. S. Woodward & Son under their contract with said Board in case the said Woodward & Son or their bondsmen had finished and completed said building according to the terms of said contract without calling upon the Board for any further payment.

That the plaintiffs may have Judgment against the said School District No One Paris Township Union County Ohio for the sum of Eight Hundred and nineteen dollars with interest from November 1st 1877 and such other and further relief as equity may allow or the case require

Scribner Hurd & Scribner and
M. G. Lawrence Attys for Plaintiffs

The State of Ohio Union County ss

M. G. Lawrence being sworn says that he is one of the Attorneys of the Plaintiff in this action duly authorized in the premises that said plaintiffs are not residents of the County of Union and are now absent therefrom & that the facts stated & allegations contained in the foregoing pleading are true as he verily believes

Jurat

M. G. Lawrence

Sworn to by M.b. Lawrence before me and signed by him in my presence
this 7th day of September AD. 1878 W. M. Winget Clerk

Waiver of notice — We hereby waive the issuing and service of process upon us in this action and enter our appearance therein this 7th of September A.D. 1878
R.G. Hancock by M.b. Lawrence his Atty
Wm Dow By M.b. Lawrence his Atty
J.V. Saufley By M.b. Lawrence his Atty

Precipe — Mr. Clerk. You will issue a Summons addressed to Sheriff Delaware County Ohio for E.S. Woodward & E.B. Woodward — To Sheriff of Union County for John Fleck & A.S. Chapman partner &c. S.W. Dolbear & W. Woods partners &c. The Marysville Butter Tub & Spoke Company — School district no one Paris Township Union County Ohio Moses Thompson David Edwards. J.W. Fields Leonidas Piper R.L. Woodburn and Darius Burton — Endorse Plaintiff asks Judgment against School District No one Paris Township Union County Ohio for $819 00 with interest from November 1st 1877 and other and further relief
Sept 7th 1878 Scribner, Hurd & Scribner and
M.b. Lawrence Attys for Plaintiffs

Mr Clerk — You will issue a Summons to Shff. of Cuyahoga County Ohio for Hubbell Brown & Co. with the same endorsement as above
Sept 7th 1878 Scribner Hurd & Scribner and
M.b. Lawrence Atty for Plaintiffs

The following are a copy of Summons in this case and Sheriffs returns thereon as follows
The State of Ohio Union County ss To the Sheriff of the County of Delaware Greeting

Summons — We command you to Notify E.S. Woodward and E.B. Woodward that they & others have been sued by J.S. Norton & F.H. Bentley under the firm name of J.S. Norton & Co. in the Court of Common Pleas of Union County and that unless they answer by the 5th day of October A.D. 1878 the petition of the said J.S. Norton & Co. against them filed in the Clerks office of said Court such petition will be taken as true and Judgement rendered accordingly
You will make due return of this Summons on the 16th day of September A.D. 1878
Witness my hand and the Seal of said Court this 7th day of September A.D. 1878 W. M. Winget Clerk

Delaware Co

Sheriffs Return — The State of Ohio Delaware County ss} Received this Writ Sept. 7th A.D. 1878 and pursuant to its command I Served this writ September 16th 1878 by leaving with E.B. Woodward a true copy of the Original Summons with the Endorsements thereon and on the 16th day of September I Served the within E.S. Woodward by leaving at his usual place of residence a true copy of the Original Summons with the endorsements thereon
Total fees $2.20 paid M.b. Lawrence. Geo. L. Sackett Sheriff Delaware Co. Ohio

Cuyh & Co — The State of Ohio Union County ss To the Sheriff of the County of Cuyhoga Greeting
We command you to Notify Hubbell, Brown & Co. that they and others have been sued by J.S. Norton & Co. in the Court of Common Pleas of Union County and that unless they answer by the 5th day of October A.D. 1878 the petition of said J.S. Norton & Co. against them filed in the Clerks office of said Court such petition will taken as true & Judgement rendered accordingly.
You will make due return of this Summons on the 16th day of Septmbr A.D. 1878.
Witness my hand and the Seal of said Court this 7th day of September A.D. 1878 W. M. Winget Clerk
Amount claimed from said District $819 00 and Interest on $819 00 from Nov 1st 1877
M.b. Lawrence Plffs Atty

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Sheriffs return — The State of Ohio
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Defendants Hubbe
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Shffs return

The State of Ohio Cuyahoga County ss } Received this writ September 9th A.D. 1878 at 4 oclock P.M. and pursuant to its command on the 13th day of September A.D. 1878 I served the same on the within named Defendants Hubbell, Brown and Co. by leaving a true & attested copy thereof at their usual place of doing busines in said County Total fee $1.30 Jno. M. Wilcox Sheriff By F.B. Bangs Deputy

Summons to Union Co.

The State of Ohio Union County ss To the Sheriff of the County of Union Greeting

We command you to Notify John Fleck & A.S. Chapman partners doing busines under the firm name of Fleck & Chapman & W. Dolbear & W.W. Woods partners doing busines under the firm name of Dolbear & Woods The Marysville Butter Tub & Spoke Company, School District no. 1 Paris Township & Co. O. Moses Thompson David Edwards J.W. Fields Leonidas Piper R.L. Woodburn & Darius Burton Directors that they & others have been sued by J.S. Norton & T.H. Bentley under the firm name of J.S. Norton & Co. against them filed in the Clerks Office of said Court such petition will be taken as true and judgment rendered accordingly

Dated

You are will make due return of this Summons on the 16th day of September A.D. 1878

L.S. Witness my hand and the Seal of said Court this 7th day of September A.D. 1878 W. M. Winget Clerk

Amount claimed $819.00 & interest on $819.00 from Nov 1st 1877. M.C. Laurence Plffs. Atty

Shffs return

The State of Ohio Union County ss } Received this writ Sept. 7th A.D. 1878 at 3 oclock P.M. and pursuant to its command Served the same September 13th 1878 by delivering a certified Copy thereof with the Endorsements thereon to each of the within named John Fleck, A.S. Chapman, S.W. Dolbear Moses Thompson David Edwards, J.W. Field Leonidas Piper R.L. Woodburn & Darius Burton and by leaving a Certified Copy thereof with the endorsements thereon at the residence of the within named W.W. Woods Total costs $5.00 J.J. Miller Sheriff

I as Secretary of Marysville Butter Tub & Spoke Company hereby waive issuing and Service of process L. Piper Secretary Marysville Butter Tub & Spoke Co.

On the 8th day of January 1879 the answer of School District No. 1 was filed herein which reads to wit.

3081

J. S. Norton & Co
vs
School District No. 1 in Paris Township Union County Ohio & others

Court of Common Pleas Union County Ohio
Answer of Dist No. 1

Answer of School Dist no 1

Now comes the defendant Said School No one and for Answer Says that it admits that said District by its Board of Trustees on or about the 22d of June 1876 executed with E.S. Woodward & Son the written agreement refered to in the petition in the words & figures of said written agreement a full & true copy of which is hereto attached marked "A" but the terms thereof are different from the terms stated in said petition in sundry respects as herein after stated.

That at the time of the execution of said contract a written guaranty was entered into by George Schell & J. Grow of Morrow County Ohio on behalf of said Woodward & Son in the words & figures attached to said written contract a copy which is hereto attached & Said Board of Trustees are informed & believes they are pecuniarily responsible of that have no personal Knowledge

The said defendant says said writing contained the whole of said contract and they made no other or further agreement with said Woodward & Son and the said Board made no contract with plaintiffs or said Maples & Norton for the construction of any part of said house & denies the allegations of the petition that there was any understanding or agreement by & between said defendant & said Maples & Norton or plaintiffs that at this defendant should pay them for said work alleged in said petition to have been done by them but on the contrary said Maples & Norton made their agreement with said Woodward & Son and this defendant had no claim upon them except as contained in said written Agreement A. Nor did the said School District at any time undertake or agree to pay said plaintiff or Maples & Norton except as they were bound in said writing "A" and defendant did not treat them Plffs or Maples & Norton as original contractors nor (except on one dividend) was the money paid direct to plaintiffs and that was done at the plaintiffs request and on the order of said Woodward & Son at the time

The said house was to have been completed by the 1st of Sept. 1877 and was very much needed by said District for the public Schools which were to have opened that year in September

That in order to secure the said district against loss & against in the completion of the same the said Board not only took personal Security as aforesaid but in addition thereto had a condition in said written agreement that said Board would & should retain 15 per cent of this pay back to meet contingencies as the work progressed and if said Board or if the Superintendant of Construction should deem it necessary to prevent delay beyond Sept. 1 1877 in the completion of said house they had the right to employ other workmen and get further materials and finish said house and deduct the costs thereof from the stipulated price of $23148.

That said Board found that said Woodward & Son could not & would not complete said house in said time nor in time for the opening of the public Schools in Sept. 1877 as required by their rules and therefor in order to get the same finished far enough to occupy a part of the same to use the winter of 1877 & 1878 the said Board as it had a right to do employed other workmen & got materials to finish the house -

That owing to the filing of claims for liens by different persons (the plaintiffs being one) the credit of Woodward & Son was so impaired that they could not obtain workmen and materials. and from August 2. 1877 and for that reason the Board was compelled to become directly responsible for work and materials from that date and did with the Consent of and upon the Orders of Woodward & Son continue thus to pay directly for work and material up to and until said Woodward & Son quit work entirely as hereinafter mentioned - That the said Board still finding was not going on sufficiently fast to complete the same in said time did on the 7th of Sept. 1877 serve upon said Woodward & Son a written notice a copy of which marked "C" is hereto attached and made part hereof and on the 15th of October 1877 served on them another notice a copy of which marked "D" is hereto attached and made part hereof and from that time forward said Woodward & Son abandoned this job and the Board proceeded to complete the job so far as it has gone but it is not entirely finished yet - The whole amount paid to Woodward & Son before August 2d 1877 was $20.192 00/100 leaving $2955 38/100 on the contract price - the Board after that date paid for work and material up to the 15th of oct. 1877 all of said $2955 38/100 except $775 94/100 and all of that sum has been paid out for work and material on said house except $17 33/100 but the said Board paid insurance on the building which Woodward & Son were by the contract to pay & the amount of said insurance exceeds said balance by about $75 which sum with other sums said Woodward & Son still owe the Dept the said Board have not paid Woodward & Son any sum since Aug. 2d 1877 nor since the filing of said first lien.

The plaintiffs did not within one year from the time of filing their claim for lien commence this proceeding to enforce the same as required by law

The said Board would have caused a very great loss to the public Schools if they had delayed the completion of said house and brought an action simply to recover damages against Woodward & Son & their Sureties as desired by plaintiffs besides they the Board have never waived any right in said Board and if the bringing of such an action would have benefitted plaintiffs the same right is yet existing

The Board say the only advancement was made was one made before the building was commenced to enable the said Woodward & Son to obtain materials upon which to commence work upon said House and there was no time when the board could have obtained a return of that advancement amounting to $1500 without stopping the work on the house and board in assuming said work as they had a right to do in Specific terms in taking the possession of the House for the completion of the Job reserved all its rights against said Woodward & Son and their Guarantor as shown in said notice "D" and thereupon the defendant

Answer

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Answer & Brief of

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denies that it disregarded the law & their duties under said contract in taking charge of said building and employing laborers &c as alleged in petition and they deny that it proceeded without the authority of the law and of the said contract without calling upon said bondsmen to finish said building and they said Bond & Security was taken for the benefit of the board and not for sub contractors and they deny that the said defendant owes said plaintiff the sum of $9 37/100 or any other sum whatever and denies that by reasons of filing said account with the said County Recorder and causing the same to be recorded the plaintiffs obtained any lien on said building or any of the balance of the said purchase money to become due said Woodward & Son in case they had completed said work.

Therefore the said defendant the School District No. One in Paris Township Union County Ohio asks to be dismissed Robinson & Piper Attys for Deft. Dist. No. 1

Jurat — The State of Ohio Union County ss J W Field being duly sworn says he is one of the board of Directors of School Dist. No. 1 in Paris Township Union Co Ohio and he believes the allegations Of the foregoing Answer are true J W Field

Sworn to before me and signed in my presence this 8 of January 1877 John H. Kinkade Notary Public

May 7th 1879 the following Answer and Cross Petition was filed in this case which reads to wit,

3081 — J. S. Norton & Co. vs. School District No. 1 Paris Township Union County Ohio

In Court of Common Pleas. Union County Ohio

Answer and Cross Petition of Hancock & Dow Defendants

Now come the defendants R. G. Hancock and William Dow Partners under the firm name of Hancock & Dow and for answer say That they are not fully informed as to the claim of Plaintiff J. S. Norton & Co and therefore neither admit or deny the matters set forth in their petition

Answer & Crop Pet. of Hancock & Dow — By way of Cross Petition they say that on about the 22d day of June 1876 the said School district No. 1 of Paris Township Union County by and through its board of Directors as these defendants are informed and believe and therefore aver the fact to be made and entered into a contract in writing with the defendants E. S. Woodward and E. B. Woodward partners in business under the firm of E. S Woodward & Son a true copy of which contract defendants believe is attached to the answer of the defendant said School district No. 1 in Paris Township Union County Ohio

By the terms of which contract as may be seen by inspection of the same the said E. S. Woodward & Son was to perform the necessary work and furnish the material (Except brick) necessary to erect and complete a School house building for said School District No. 1. Paris Township Union County Ohio to be located in Marysville. which building was to be erected and completed in accordance with certain plans drawing and Specifications made by Gibbs & Moses architects of said building

And said School District No. 1 &c by its directors agreed to said E. S. Woodward & Son for furnishing said Materials and performing said labor in the erection of said building in the sum of $2314 80cts which Sum was to be paid on Estimates to be made of labor to be performed for and on said building. which estimates were to be made by the Superintending architect of said building once in each month, on each of which estimates the said board of directors were to pay eighty five (85) per cent, upon the work, labor and materials on said building as it progressed and the remaining fifteen (15) per cent was to be was to be retained by said board of directors of said School District until the building was completed

That said Board of directors at same time received from said E. S. Woodward & E. B. Woodward a bond with good and Sufficient Sureties conditioned that the said

E. S. Woodward & Son should fully perform their contract and comple said work or building within a time named. These defendants further say that Subsequent to wit on or about the 20th day of July 1876 they entered into a contract and complete said with in a time named - These defendants further say that Subsequently to wit on or about the 20th day of July 1876 they entered into a contract with the said E.S. Woodward & Son defendants by which these defendants promised and agreed to do all the Stonework and furnish all the material for such Stone work of the New School House building which was then bing erected in Marysville Ohio by E. S. Woodward & Son (with this Exception) the said Hancock & Dow were not to Set the Stone on the Superstructure.

For which work the said Hancock & Dow were to receive the Sum of $5399 00 in Monthly Estimates of Eighty five per cent of the Architects estimate on labor and Material and the balance (15) per cent to paid when the building was completed. A Copy of said contract is hereto attached and marked "A"

Answer & Petition

Defendants further Say that they completed the work under this Contract about the 15th day of May 1877 and the Same was accepted by the Superintending architect

Contd.

The defendants further say that on the 26th day of July 1877 they caused to be filed with L. Piper Secretary of the Board of Directors of said School District No. 1 &c a Sworn and itemized account of the amount they were to receive under said contract so made between them as Subcontractors and the said E. S. Woodward & Son the principal or head contractors.

Also The amount and value of the labor performed and Materials furnished under said contract, the amount then due and payable under said contract, the amount received by them and the amount to become due and this said contract

This defendants further Say that there was then owing to them under said contract from Said E. S. Woodward & Son the Sum of $751 62/100 with interest from May 15 1877 that Sum being the fifteen (15) per cent retained under said last mentioned contract. These defendants having received on said contract the Sum of $4647 38/100 and no more,

These defendants further Say that at the same date to wit July 26th 1877 they caused a duplicate copy of said Sworn Statement and account &c to be filed with the Recorder of Union County Ohio according to Law

That Said Sum of $751 62/100 with interest on any part there of so owing to these defendants under this said contract has not been paid. That said amount of ($751 62/100) was owing to them on said 15th of May 1877 in accordance with estimates prior to that date made by the Superintending architect under the contract made between these defendants and said principal or head contractors as well as under the contract made between the Board of Directors of School District No. &c and E. S. Woodward & Son Attached to the Answer of said School District &c,

These defendants further Say that the defendants Moses Thompson Darius Burton Danis Edwards J.W. Finds Leonidas Piper and R. L. Woodburn as Directors of said School District No. 1. Paris Township &c wholly disregarded their duties and the law in such cases made provided in this. That from and after said 26th day of July 1877 they the said Board did not have or cause any Estimates to be made by the Superintending Architect of said building of the value or amount of labor done or Material furnished for said Schoold building as by law and this contract they were bound to do. That on or about the 2d of August 1877 said Board of Directors took charge of said Building Employed laborers purchased Materials and proceeded to finish and complete said building without authority of law and without calling upon the bondsmen of the said E. S. Woodward and E. B. Woodward to finish

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and complete said building according to the contract made by said bondsmen and their principals as by law and their contract they the Board of Directors were to do. That the said Board of Directors without authority of law expended and paid out for labor and material about the sum of $3200 00 subsequent to July 26th 1877 sufficient of which sum should have been paid by said Board of Directors to these defendants to liquidate the entire claim of these defendants.

These defendants say that by reason of the premises there is due from the said School District No. 1 of Paris Township Union County Ohio to them the sum of $751 62/100 with interest from July 26th 1877. These defendants R. G. Hancock & William Dow as such partners therefore ask that they may have judgement against the School District No. 1 Paris Tp. Union County Ohio for the sum of $751 62/100 with interest from July 26th 1877, and such other and further relief &c

Scribner, Hurd & Scribner and Laurence & Mulford Attorneys

State of Ohio Union County ss. M. C. Laurence being first duly sworn says that he is one the Attorneys of the defendants Hancock & Dow in this action duly authorized in the premises that said defendants are not residents of the County of Union Ohio and are now absent therefrom and that the facts stated and allegations contained in the foregoing pleading are true as he verily believes M. C. Laurence

Jurat Sworn to by M. C. Laurence before me and signed by him in my presence this 7th day of May 1879 W. M. Winget Clerk

On the 8th day of May 1849 the following Entry was made in the Journal of said Court to-wit

J. S. Norton & Co.
vs
3081 School District No. 1 & others

This day the Court Order all defendants to file their Answers in 30 days and Cause Continued

On the 9th of June 1879 the following Answer and Cross Petition was filed herein which reads to-wit,

J. S. Norton & Co. Plffs
vs
School District No. (1) One Paris Tp Union County Ohio Dolbear & Woods Et. als. Defendants

In Union Common Pleas Court.
Answer & Cross Petition of Woods & Dolbear

The defendants S. W. Dolbear and W. W. Woods partners in business under the firm name of Dolbear & Woods now come within the rule of the Court and by way of answer to the Plaintiffs petition if say that they are ignorant as to the Claims of the plaintiff in said petition set forth and therefore neither admit or deny any of the allegations therein. For cross petition these defendants say that at various times between the 25th day of July 1876 and the 15th day of July 1877 they sold and delivered to the Defendants E. S. Woodward & Son — a partnership firm composed of E. S. Woodward & E. B. Woodward certain Materials to be used in the erection and completion of a School House building by said E. S. Woodward & Son for School District No. (1) One Paris Tp. Union County Ohio That said Materials were delivered to the said E. S. Woodward & Son as called for by them and that the same were used in the execution and completion of said School House building. A copy of said account of Materials so furnished is hereto attached Marked "A" That said E. B. Woodward & Son were at the time said Materials were sold and delivered to them the principal or head contractors for the erection & completion of said School House building under and by virtue of a contract made & entered into between the said E. S. Woodward & Son on the one part and Board of Directors of School District No. (1) Paris Tp Union County Ohio

Answer of Dolbear & Wood

That said contract was dated about the 22d day of June 1876 & by its terms the said Woodward & Son were to perform the necessary work and furnish the necessary Materials (except brick) to erect and complete a School House building for School District No. one

Answer

Cont'd.

To be located in Marysville Ohio which building was to be erected and completed in accordance with certain plans drawings and Specifications made by Gibbs & Moses Architects of said building - And said School District No. One &c, defendant by its said Board of directors agreed to pay said E. S. Woodward & Son for furnishing said Materials and performing said labor in the erection & completion of said School building the sum of $23148^{00} which Sum was to be paid upon monthly estimates made by the Superintending Architect of said building - said estimates were to include labor performed and Materials furnished and said Board were to pay 85 per cent of such estimates (Monthly) and retain 15 per cent until the completion of the said building - These defendants further say that said Board of Directors on or about the said 22^{d} day of June 1876 and at the same time the contract last mentioned was entered into received from the said E. S. Woodward as E. S. Woodward & Son a bond with good and Sufficient Sureties conditioned that the said E. S. Woodward & Son should perform all the conditions Specified in said contract on the part of said E. S. Woodward & Son to be kept and performed and should complete the same within the time named in said contract - These defendants further say that on the 31st day of July 1877 they caused to be filed with the Secretary of the Board of directors of said School District no. One &c and with the Recorder of this County Sworn & itemized accounts (one with each officer) of the amount and value of the Materials so sold by them and delivered to said E. S. Woodward & Son. The amount then due and payable to said Dolbear & Woods. These defendants under the provisions of the Statute in case made and provided - These defendants further say that the defendant School District no (1) one Paris Tp. by and through its said directors wholly disregarded its duty, contract and the law in this

1st That from and after the said 31st day of July 1877 it through its said Board of Directors or Superintending architect or any other person did not make or cause to be made any estimate or estimates of the value of labor performed or Materials furnished in the erection or completion of said School building as the said directors and Superintending architect by the law and their contract were bound to do.

2^{d} That said Board of Directors took charge of said building about the 2^{d} day of august 1877 and employed laborers purchased materials and proceeded to finish and complete said building without authority of law and without any notice to or call made upon the bondsmen of said E. S. Woodward & Son to furnish money to complete said building or to take charge of the same and complete it themselves as by law and their guarantee upon said bond they were bound to do.

3^{d} That said Board of Directors did without authority of law expressed and pay out for labor performed and Materials furnished subsequent to said 31st day of July 1877 about the sum of $3200^{00} and thereby used up the 15 per cent which by the contract between said Woodward & Son was to be retained until said building was fully erected and completed These defendants further say that a Sufficient amount of said $3200^{00} should have been retained by said Board of directors to have liquidated the entire claim of these defendants.

These defendants say that by reason of the premises there is due to them from the defendant School District no (1) one Paris Tp Union County Ohio on account of said Materials so furnished the sum of ninety five $^{63}/_{100}$ Dollars with interest from the 15th day of July 1877.

These defendants therefore asks Judgment against the School District no. (1) one

Answer of E. S. W. & Son &c.

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Sworn to by S. W.
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J. S. Norton
vs
School Distr
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Paris Tp. Union County Ohio for the Sum of Ninety five 63/100 dollars ($95.63) with interest thereon from the 15th day of July A.D. 1877 Lawrence & Millspaw Attys for Dolbear & Woods

The State of Ohio Union County ss Samuel W Dolbear one of the defendants being duly sworn says the facts stated and allegations contained in the foregoing are true as he verily believes

Jurat. S. W. Dolbear

Sworn to by S.W. Dolbear before me and Signed by him in my presence this 9th day of June 1879 W. M. Winget Clerk by Jabez Randall Deputy Clerk

And on the 9th of June 1879 the following Answer & Crop Petition was filed herein to wit

3081

J. S. Norton Vbs Plaintiffs
vs
School District No (1) one Paris Township Union County Ohio Et. Als. Defendants

In Union Common Pleas
Answer and Crop Petition of Marysville Butter Tub & Spoke Co.

Answer of M. B. T. & S. Co.

The defendant the Marysville Butter Tub and Spoke Company now comes within the rule of the Court and Says that it is Coporate body duly incorporated under the laws of the State of Ohio and that its principal place of business is Marysville Union County Ohio. It further Says that it is totally ignorant of the claim of the plaintiff against the defendant School District no. one Paris Tp. Union County Ohio and therefore cannot neither admit or deny the allegations of the petition in this case. For Crop Petition it Says that between the 12th day of March 1877 and the 24th day of July 1877 at various times. Sold and delivered to the defendant E. S. Woodward & Son a partnership compose of E. S. Woodward and E. B. Woodward certain Materials to be used in the erection and completion of a Schouse building by said E. S. Woodward & Son for School District No (1) one Paris Township Union County Ohio

That said Materials were delivered to the said E. S. Woodward & Son as called for by them and that the same were used in the erection and completion of said School building a copy of said account of Materials so furnished is hereto attached and marked "A".

That said E. S. Woodward & Son were at the time said Materials were sold and delivered to them the principal or head contractors for the erection and completion of said School building under and by virtue of a contract made and entered into between the said E. S. Woodward & Son on the one part and the Board of directors of School District No (1) one Paris Tp. Union Co. Ohio. That said contract was dated about the 22d day of June 1876 and by its terms the said Woodward & Son were to perform the necessary labor and furnish the necessary materials (except brick) to erect and complete a School House building for said School District No (1) one &c defendant to be located in Marysville Ohio which building was to be erected and completed in accordance with certain plans drawings and Specifications made by Gibbs & Moser architects of said building and said School district no. (1) one &c. defendant by and through its directors agreed to pay said E. S. Woodward & Son for furnishing said materials and performing said labor the sum of $2314.80 which sum was to be paid upon monthly estimates made by the Superintending architect of said building. Said estimates were to include labor performed and Materials furnished as said building progressed and said Board were to pay 85 per cent of such estimates (monthly) and retain 15 per cent until the completion of said building. This defendant further said Board of Directors on or about the 22d day of June 1876 and at the same time the contract last mentioned was entered into received from the said E. S. Woodward and E. B. Woodward as Woodward & Son a bond with good sufficient Sureties Conditioned that the said E. S. Woodward & Son Should perform all the conditions Specified in said contract on the part of said E. S. Woodward & Son to be kept and performed and Should complete the same

Answer

Contra

within the time named in said contract. This defendant further says that on the 2d day of August 1877 it caused to be filed with the Secretary of the Board of Directors of said School District no one &c and with the Recorder of this County sworn and itemized accounts (one with each officer) of the amount and value of the Materials so sold by it and delivered to said E. S. Woodward & Son - The amount then due and payable under the provisions of the Statute in such case made and provided.

This defendant further says that the defendant School District no. one Paris Tp &c by and through its directors wholly disregard its duty, its contract and the law in this

1st That from and after the said 2d day of August 1877 it through its said Board of directors or Superintending Architect or any other person did not make or cause to be made any estimate or estimate of the value of labs performed or Materials furnished in the erection and completion of said School building as the said Directors and architect by the law and their contract were bound to do.

2d That said Board of Director took charge of said building about the 2d day of August 1877 said Board took charge of said building and employed labors purchased materials and proceeded to finished and complete the said building without authority of law and without any notice having previously given or call made upon the said bondsmen of said Woodward & Son to furnish the money to complete said building or to take charge of the same and complete it themselves as they bound to do.

3d That said Board of Directors did without authority of law expend and pay out for labor performed and Materials furnished subsequent to said 2d day of August 1877 about the sum of $3200 00 and thereby used up the 15 per cent which by the contract between them and said E. S. Woodward & Son was to be retained until said School building was fully completed

This defendant further says that a sufficient amount of said $3200 00 should have been retained by the said Board of Directors to have liquidated and paid off the entire claim of this defendant.

This defendant says that by reason of the premises there is due to it from the defendant School District no. (1) one Paris Tp Union County Ohio. on account of said Materials so furnished the sum of Two hundred Seventy two 95/100 dollars with interest from the 24th day of July 1877

This defendant therefore asks Judgement against School District no (1) One Paris Tp. Union County Ohio for said sum of Two Hundred Seventy two 95/100 Dollars with interest thereon from July 24th 1877 and such other and further relief &c

Lawrence and Mulford Attys for M, B, Z, & S, Co.

The State of Ohio Union County ss

W. F. Wilcox being duly sworn says that he is the Superintendent of the Marysville Butter Tub and Spoke Company duly authorized in the premises That the Marysville Butter Tub and Spoke Co. is a corporation and that the

Jurat facts stated in the foregoing pleading are true as he verily believes

W. F. Wilcox

Sworn to by W. F. Wilcox before me and signed by him in my presence this 9th day of June 1879

W. M. Winget Clerk

By Jabez Randall Deputy

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J. S. Norton

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Answer & Cross Petition

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On the 9th day of June 1879 the following Reply was filed herein which reads to wit,

J. S. Norton & Co. Plffs
vs
School District no (1) One Paris Tp.
Union County Ohio & others Defts

In Union Common Pleas
Reply of J. S. Norton & Co.

3081

The Plaintiffs now come and for Reply to the answer of School District no. (1) One Paris Tp Union County Ohio say - That they deny that the said Board of Directors or the Superintendent of construction had the right to employ other workmen and get further materials and finish said house and deduct the costs thereof from the stipulated price of $ 2314800 if that cost exceeded the 85 per cent which was to be paid upon estimates by the Superintending Architect and they deny all allegations in said Answer relating thereto. They deny that the credit of said E. S. Woodward & Son was in any degree impaired by the plaintiff or any other persons filing liens with the Board of Directors or with the Recorder They deny that the Board was compelled to become directly responsible for work and material from August 2° 1877 or from any other date, and they deny all allegations in that regard or of that notice in said Answer.

Pffs.

They deny that the said Board would have caused a very great loss to the public Schools if they had delayed the completion of said house and brought an action simply to recover damages against Woodward & Son and their Sureties and they say said Board has been negligent in their duties in not bringing such suit to reimburse or pay these plaintiffs the money due them under their contract to the extent of the 15 per cent which they (the said Board had unlawfully expended. They deny that said bond and security was taken for the benefit of the Board and not for Sub contractors and those furnishing Materials as alleged in the said Answer of the Board.

Reply.

Having thus fully replied to the Answer of said School District No. (1) One Paris Tp Union County. Ohio the Plaintiffs continue to pray Judgement &c. as in their Petition they have prayed

Scribner Hurd & Scribner and Lawrence & Mulford Attys. for Plaintiffs

The State of Ohio Union County ss M C. Lawrence being duly sworn says that he is one of the Attorneys for Plaintiffs in the foregoing action duly authorized in the premises. that the plaintiffs are not residents of Union County Ohio and are now absent therefrom and that the facts stated and allegations in the foregoing Reply are true as he verily believes M C. Lawrence

Jurat.

Sworn to by M C. Lawrence before me and signed by him in my presence this 9th day of June 1879 W. M. Winget Clerk By Jabez Randall Depty.

On the 9th day of June 1879 the following Answer & Cross Petition was filed herein which reads to wit,

J. S. Norton & Co. Plaintiff
vs
School District No. (1) One
Paris Tp. Union County Ohio
Hubbell Brown & Company Defendants

State of Ohio Union County ss.
In the Court of Common Pleas
Answer and Cross Petition of
Hubbell Brown & Co.

3081

The said Hubbell and Company now come within the rule of the Court and for Answer and Cross Petition say that said Hubbell Brown and Company is a partnership firm formed for the purpose of doing business in the State of Ohio and that its firm name and that by which it is usually known is Hubbell Brown and Company

Answer

That this defendant knows nothing of the matters stated in the said petition and asks proof of the same.

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This defendant says that about the 22° day of June A.D. 1876 the said defendant School District No (1) of Paris Township in said County of Union and State of Ohio entered into a contract with one E. S. Woodward & Son a partnership firm composed of E. S. Woodward and E. B. Woodward whereby said Woodward and Son agreed to construct for the said School District a School House under certain plans Specifications and Stipulations then agreed upon which School House was to be located in Marysville in said County and built under the supervision of Architects Gibbs & Morse and it was further agreed that said District should pay said Woodward and Son for the said building the sum of $2314800 Said Woodward & Son to furnish all the materials (except Brick) and do all the work in the construction of said House and complete the same in time for occupation by said District in the fall of 1877
It was further agreed that to enable said Woodward & Son to procure labor and Material and go on with the construction of the said building. the Architect employed by said School district to Superintend the construction of the said building should each month make a just estimate of the amount and value of the Material procured and Labor done during the month and make certificate of the same to said School District and said District was to pay said Woodward & Son the value of said monthly Estimates each month. But it was agreed that only the sum Equal to 85 per cent of the whole cost of said building Should be thus paid and said Board were to retain 15 per cent of the sum that would be due said Woodward & Son upon the completion of the said building until the whole was completed and accepted.

That in order to secure compliance on the part of the said Woodward & Son & protection all parties the said School District took from said Woodward and Son a bond with good and ample Sureties that the contract on the part of said Woodward & Son Should be completed and fully complied with on their part upon the closing up of said contract and the Execution of said bond the said Woodward & Son entered upon duties in that behalf and employed labor and began procuring materials

This defendant says that during the month of March 1877 the said Woodward & Son applied to these defendants for Material and then and there Exhibited his said Contract with said District and fully made known to this defendant all the foregoing facts in regard to his contract.

This defendant relying upon the good faith of said School District and the rights and protection afforded to this defendant by the laws of Ohio in such cases Sold and delivered to said Woodward & Son Material to be used in the construction of the said building to wit 10.000 feet # Box Surface @ 26. 260⁰⁰ 10.000 feet Norway Bedd Only @ 22 $220⁰⁰ which Material was so Sold and furnished during the month of March 1877.

This defendant says that on the 24th day of March 1877 he received upon said Material the sum of $260⁰⁰ leaving a balance of $220⁰⁰ Still unpaid a true copy of said account for material is hereto attached and marked "A" and made part hereof. This defendant says that on the 7th day of July 1877 the demand of this defendant being then due and paid this defendant and his agent A. J. Carpenter filed with the Clerk of the Board of Directors of said School District No. One and with the Owner of said building a Sworn and itemized account of the amount and value of the said Materials with all the credits and Set off thereon and immediately deposited a true copy of said account with the Recorder of said County and in the District where said building is Situate.

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This defendant says that all the material sold and furnished by this defendant to the said Woodward & Son as stated in the said account went into and formed a part of the said School House and the said School District received the full value and benefit thereof.

This defendant says that at the time he filed with the School Board having Charge of said Building on behalf of the said District there was then a large amount of money still in the hands of said School District due to the said Woodward & Son upon said contract as well as the 15 per cent which said District was entitled to hold until the building was completed and that the bond of said Woodward and Son for the fulfillment of the said contract and the completion of said building on their part was and is ample & good

Answer & Cross Pet

Bond

This defendant relied upon the good faith of said School District when he furnished said material and would not otherwise have given credit to said Woodward & Son. This defendant says that said account of this defendant was never denied contested or disputed by the said Woodward and Son or by said District.

This defendant says that by reason of the premises he has perfected a lien upon the funds and money in the hands of said School District due and to become due upon said contract to said Woodward & Son and which is and was more than sufficient to pay all liens in full. This defendant says there is still due and unpaid upon his said account for material so furnished by this defendant to said Woodward & Son and which went into and formed a part of said building and of which the said School District received the full benefit the sum of Two Hundred and Twenty dollars together with the interest thereon from the 15th day of March 1876 no part of which has been paid either by the said Woodward & Son or by the said School District and said School District still neglects and refuses to pay the same and said Woodward & Son is insolvent and no part of the same can be collected from it.

Wherefore this defendant prays judgement against the said School District No. One of Paris Township Union County Ohio for the sum of $220 00 and interest from March 15th 1876 and for all proper relief

Cameron & Benton Attys for Defendants Hubbell Brown & Co

State of Ohio Union County ss. I J. L. Cameron being first duly sworn depose and say the facts stated and allegations made in the foregoing answer and Cross Petition are true as verily believe that I am the Attorney for the said Hubbell Brown and Company defendant duly authorized as such and that said Hubbell Brown and Company are non residents of the said County of Union and now there from

J. L. Cameron

Jurat

Sworn to before me by said J. L. Cameron and by him signed in my presence this 9th day of June 1879

W. M. Winget Clerk

On the 9th day of June 1879 the following Answer was also filed herein which reads to wit,

3081

J. S. Norton Vs. Plaintiff
vs.
School District No (1) One Paris
Township Union County Ohio
J. V. Saufley Et. als. Defendants

In Union Common Pleas.
Answer and Cross Petition of
J. V. Saufley.

Now comes the defendant J. V. Saufley within the rule of the Court and by way of Answer to the petition of the plaintiffs says that he is ignorant as to the claim in said petition set forth and therefore neither admits or denies the matters in said petition set forth.

By way of Cross Petition this defendant says that on or about the 18th day of April 1877 he sold to the defendants D. B. Woodward & Son by a verbal Contract certain Materials

to be used by said E. S. Woodward & Son in the erection and compltion of a School House building for School District No (1) on Paris Tp. Union County Ohio; That he subsequently delivered said Materials to the said E. S. Woodward & Son and that said materials were used in the erection and completion of said School Building a copy of the account of said material so sold and delivered is hereto attached and marked "A."

Answer & Cross Pet. of J. V. Saufley

That the said E. S. Woodward & Son were at the time said materials were so sold and delivered the head or principal contractors for the erection and completion of said School House Building under and by virtue of a contract made and entered into by and between the said E. S. Woodward & Son and the Directors of said School District No (1) One. That by the terms of said contract which was dated about the 22d day of June 1876 the said E. S. Woodward & Son were to perform the necessary work and furnish the necessary materials (except Brick) to erect and complete a Schouse building for said School District no. One to be located in Marysville Ohio which building was to be erected and completed in accordance with certain plans drawings and Specifications made by Gilb & Moser Architects of said building. And said School District No One the defendant by its Board of Directors agreed to pay said E. S. Woodward & Son for furnishing said Materials and and performing said labor in the erection and completion of said building the sum of sum of $23148 00 which sum was to be paid on estimates to be made by the Superinting architect once in each month. Said estimates were to include both labor performed & Materials furnished as said building progressed and said School Board were to pay 85 per cent of such estimates (monthly) and retain 15 per cent until the completion of said building.

This defendant further says that said board of directors at or about the said 22d day of June 1876 and at the same time said contract last mentioned was entered into received from the said E. S. Woodward & E. B. Woodward who were the members of the firm of E. S. Woodward & Son a bond with good and Sufficient Sureties conditioned that the said E. S. Woodward & Son should perform all the conditions Specified in said Contract on the part of said E. S. Woodward & Son to be kept and performed and should complete the same within the time named in said contract.

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This defendant further says that on the 21st day of July 1877 he caused to be filed with the Secretary of the Board of Directors of said School District No One the defendant a sworn & itemized account of the amount and value of the materials so sold by him & delivered to said E. S. Woodward & Son the said principal or head contractors and the amount then due and payable to said J. V. Saufley this defendant under the provisions of the Statute in such case provided

3081

He further says that on said 21st day of July 1877 he also caused a true copy of said account to be sworn to by him to be filed with the Recorder of Union County Ohio in accordance with the Law.

Answer & Cross Pet. of J. V. Saufley & Chapman

This defendant further says that the defendant School District No (1) on Paris Tp. Union County Ohio by and through its said Directors wholly disregarded its duty, contract and the law in such case made and provided in this

That from and after the said 21st day of July 1877 it through its said Board of Directors did not have or cause to be made any estimates or estimates of the value of labor performed or Materials furnished to be made by the Superintending Architect or any one else in the erection or completion of said School House building as the said directors were bound by the Law and their contract to do.

That on or about the 2d of August 1877 said Board of Directors took charge of said building employed laborers purchased materials and proceeded to finish and compute the said building without authority of law and

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without any notice to or call upon the bondsmen of the said E.S. Woodward and E.B. Woodward to furnish money to complete said building or to finish and complete the same themselves as by their guarantee upon the said Bond they the said Sureties were bound to do by the law and by the contract.

That said Board of Directors without authority of law expended and paid out for labor performed and Materials furnished Subsequent to said 21st day of July 1877 about the sum of $3200cts and thereby used up the 15 per cent which by the contract between said Board of Directors and said E.S. Woodward & Son was to be retained until said building was fully erected and completed — This defendant further says that a Sufficient amount of said Sum of $3200cts should have been so retained by said Board until the said building was completed to have liquidated the entire claims of this defendant. This defendant J.V. Saufley says that there is due to him from the defendant School District No (1) one of Paris Tp. Union County Ohio On account of said Material So furnished and the other matters herein stated the Sum of Four Hundred and ninety six 96/100 Dollars with interest from July 21st 1877.

And this defendant asks Judgement against the said School District No (1) Paris Tp. Union County Ohio for the Sum of Four hundred ninety 96/100 Dollars with interest from July 21st 1877 and such other and such other and further relief &c.

Scribner Hurd & Scribner and Lawrence & Mulford Attys for Saufley

The State of Ohio Union County ss. M.G. Lawrence being duly Sworn Says that he is one of the Attorneys for the defendant J.V. Saufley duly authorized in the premises, that said J.V. Saufley defendant is not a resident of the County of Union Ohio and is now absent therefrom and that the facts Stated and allegations contained in the foregoing pleading are true as he verily believes M.G. Lawrence

Sworn to by M.G. Lawrence before me and Signed by him in my presence this 9th day of June 1879 W. M. Winget Clerk

Jurat

3081

J.S. Nalon & Co. Plaintiff
against
School District No (1) One Paris Township Union County Ohio Et. al. Defts

In Union Common Pleas

Answer and Cross Petition of Fleck & Chapman

The said Fleck & Chapman now come and for Answer & Cross Petition say that said Fleck & Chapman is a partnership firm formed for the purpose of doing business in the State of Ohio and that its firm name and that by which it is usually known is Fleck and Chapman.

This defendant further says that it is totally ignorant of the claim of the plaintiffs against the defendant School District No (1) one Paris Township Union County Ohio and can not therefore Either admit or deny the allegations of the petition in this case.

For cross petition it says that between the 22d day of June 1877 and the 26th day of July 1877 at various times it sold and delivered to the defendants E.S. Woodward & Son a partnership composed of E.S. Woodward and E.B. Woodward certain Materials to be used in the erection and completion of a Schouse House building by the said E.S. Woodward & Son for School District No (1) One Paris Township Union County Ohio That said Material were delivered to the said E.S. Woodward and Son as called for them and that same were used in the erection and completion of said School Building A copy of account of material so furnished is hereto attached and marked "A"

That said E.S. Woodward & Son were at the time said Materials were sold and delivered to them the principal head contractors for the erection and completion of said School building made by virtue of a contract made and entered into between the said E.S. Woodward & Son on the one part and the Board of Directors of School District No (1) One Paris Township Union County Ohio. That said contract was dated about the 22d

Answer & Cross Pet. of Fleck & Chapman

day of June 1876 and by its terms the said Woodward & Son were to perform the necessary labor and furnish the necessary material (except Brick) to erect and complete a School House building for said School District No (1) one Paris Township Union County Ohio defendant. which School House building was to be erected & completed in accordance with certain plans drawings and Specifications made by Gibbs & Morse architects of said building: And said School District No (1) onte Defendants by and through its Directors agreed to pay said E. S. Woodward & Son for furnishing said materials and performing said labor the sum of $2314800 which sum was to be paid upon monthly estimates made by the Superintending architect of said building said estimates were to include labor performed and material furnished as said building progressed and said Board were to pay 85 per cent of such Estimates (monthly) and retain 15 per cent until the completion of said building.

Answer & Cross Pet. Contd.

This defendant further says that said Board of Directors on or about the 22d day of June 1876 and at the same time the contract last mentioned was entered into received from the said E. S. Woodward and E. B. Woodward as Woodward and Son a bond with good and sufficient Sureties conditioned that the said E. S. Woodward and Son should and perform all the conditions Specified in said Contract on the part of E. S. Woodward & Son to be kept and performed and should complete the same within time named in said Contract.

This defendant further says that on the 4th day of august 1877 it caused to be filed with the Secretary of the Board of directors of said School District No. (1) One &c. and with the Recorder of said County a sworn and itemized Statement and account (One with each officer) of the amount and value of the Materials so sold by it and delivered to said E. S. Woodward & Son the amount then due and payable to this defendant under the provisions of the Statutes in case made and provided.

This defendant further says that the defendant School District No (1) One Paris Township Union County Ohio by and through its Directors wholly disregarded its duty, its contract & the law in this behalf

1st That from and after the said 2d day of August 1877 it through its said Board of Directors or Superintending Architect or any other person did not make or cause to be made any estimate or estimates of the value of labor performed or materials furnished in the erection and completion of said School building as the said directors and Architect by law and their contract were bound to do

2d That said Board of Directors took charge of said building about the 2d day of August 1877 and employed laborers - purchased materials and proceeded to furnish and complete the said building without authority of law and without notice having previously been given to or call made upon the said bondsmen of said Woodward & Son to furnish the money to complete said building or to take charge of the same and complete it themselves as they were bound to do.

3d That said Board of Directors did without authority of law Expend and pay out for labor performed and Materials furnished Subsequent to said 2d day of August 1877 about the sum of $320000 and thereby used up the 15 per cent which by the contract between and said E. S. Woodward & Son was to be retained until said School - building was fully completed

This defendant further says that a Sufficient amount of said $320000 should have been retained by the said Board of directors to have liquidated and paid off the entire claim of this defendant.

This defendant says that by reason of the premises there is due it from the defendants School District No. (1) One Paris Township Union County Ohio on account of Materials so furnished the sum of One Hundred and Sixty four

Jurat

3081

Answer to Cross Pets.

Jurat

Second

and Six Dollars ($164 76) with interest thereon from the 26th day of July 1877
This defendant therefor asks Judgement against School District No (1) one Paris Township Union County Ohio for said sum of One Hundred and Sixty four 76 Dollars with interest thereon from the 26th day of July 1877 and for such other & further relief as the case may require D. W. Ayres Atty for Fleck & Chapman

State of Ohio Union County ss. A. J. Chapman being says he is a member of the firm of Fleck & Chapman and one of the defendants in the above case duly authorized in the premises - that the facts stated and allegations made in the foregoing pleading are true as he verily believes

Jurat

A. J Chapman

Sworn to by A. J. Chapman before me and signed by him in my presence this 4th day of August A.D. 1879 (L.S.) A. H. Kellyrath Notary Public

On the 15th day of September 1879 the following Reply was filed herein which reads to wit,

3081

J. S. Norton & Co Plffs
vs
School District No. One Et als

} Court of Common Pleas
} Union County Ohio
} Answer to the Cross Petition of Hancock and Dow - and J. V. Sanford and of Habbell Brown & Co and of Dolbear & Woods and of The Buttle Sub & Spoke Co and of Fleck & Chapman

Answer to Cross petitions

The said School District No. One of Paris Township for answer to all of said Cross petitions says they were not any of them filed within one year from the filing of said claim to stop money coming to said Woodward & Son nor was this suit commenced within one year from the time said papers were filed with L. Piper the Secretary by either of said Cross petitions.

And it further says the said Cross Petitions ought not to recover their said claims or any part thereof by reason of the facts set up in the answer of said School District to the petition of J. S. Norton & Co which averments it here reaffirms as true as being as bar to their right of recovery and therefore pray that said Cross Petitions be also dismissed Robinson & Piper Attys for School Dist No One

The State of Ohio Union County ss.

L. Piper being duly sworn says he is one of the Board of Trustees of the said School District No One of Paris Township and he believes allegations of the foregoing Answer are true

Jurat

L. Piper

Sworn to before me & signed in my presence this 15th of Sept. 1879
W. M. Winget Clerk

On the 15th day of Sept. 1879 the following Reply was filed herein which reads to wit

J. S. Norton & Co Plffs
vs
School District No. One & C

} Court of Common Pleas Union County Ohio
} Answer to Cross petition of Fleck & Chapman

The said School District No One says for his first defense says the said cross petition was not filed nor this action commenced until after more than one year from the time said Fleck & Chapman filed said pretended Mechanics lien papers and therefore the said claim if it ever existed in law or equity is lost by lapse of time in bringing their action

Second. For the further defense to said cross petition said School District say the said District ought not to be required to pay said claim of Fleck & Chapman by reason of the facts set up in the answer of said School District to the petition of J. S. Norton & Co which are hereby referred to as the as the answer of said District no One to said Cross petition which allegations said District here represents to be true and therefor ask that said cross petition be dismissed & recover its costs herein expended Robinson & Piper Attys for School District No One

The State of Ohio Union County ss L. Piper being duly Sworn Says he believes the allegations of the foregoing Answer are true L. Piper
Sworn to before me and Signed in my presence this 15th day of Sept. 1879
W. M. Winget Clerk

On the 30th day of January 1880 the following Entry was made in the Journal of said Court to wit.

3081 J. S. Norton & Co Plffs
vs
School District No. One Paris
Township Union County Ohio Et al Defts

Journal Entry on Special Demurer to Reply to Answers and Cross Petitions.

This day this cause came on to be heard upon the Special demurer of the defendants Woods & Dolbear J. V. Entry Saufleet, Hubbell Brown & Co. Hancock & Dow and the Marysville Butter Tub and Spoke Company to that part of the Reply of School District No. (1) One Paris Township &c in which it Pleads the Statute of limitations under the Mechanics lien law and the Same was Argued by Counsel. On consideration Whereof the Court Sustained said Special demurer. To all of which ruling and decision of the Court the defendant School District No. One Paris Township Union County Ohio then and there by its Attorneys excepted

Also on said 30th day of January 1880 the following Entry was made in said Journal to wit

J. S. Norton & Co.
3081 vs
School District No. One
Paris Township Union
2d Entry County Ohio Et. Als

Journal Entry on Demurer to Answer of School District January Term 1880

This day this cause came on to be heard upon the general demurer of the plaintiffs J. S. Norton & Co. and the Defendants Woods & Dolbear. J. V. Saufleet. Hubbell Brown & Co. Hancock and Dow and The Marysville Butter Tub & Spoke Company to the Answer of the Defendant School District No (1) One Paris Tp Union County Ohio and the Same was Argued by Counsel.

On Consideration where of the Court do overrule said demurer.
To which ruling and and decision of the Court the said Plaintiffs and the said Defendants herein named then and there by their Attorneys Excepted.

On the 2d day of February 1880 the following Entry was made in the Journal of said Court to wit

J. S. Norton & Co
3081 vs
School District No. One of
Paris Township & Others Defts

Court of Common Pleas

This day came on the cause to be further heard in the pleadings and evidence Whereupon the Court having fully heard the parties do find that on the 21st day of July 1877 plaintiff filed their claimed as alleged filed for $819 00/100 That Woods & Dolbear filed their claim as alleged July 31, 1877 for $95 63/100 That J. V. Saufleet filed his claim July 21, 1877 as alleged for $496 53/100 That Hubbell Brown & Co On July 7th 1877 filed their claim as alleged for $220- That Fleck & Chapman filed their claim as alleged for $164 70/100 - That Hancock & Dow filed their claims as alleged for $751 61/100 That the Butter Tub & Spoke Co. filed their claim as alleged for $272 95/100 That all of said claim was for materials & work done for E. S. Woodward & Son on his contract with the said School District a copy of which is attached to the Answer of said District.

The Court further find that One hundred dollars and no more after the time of filing of said claims was paid to said E. S. Woodward & Son contrary to the rights of said lien holders by the Board of Directors of said School District and that said School District did not Owe said E. S. Woodward & Son any Sum of Money at the time of the filing of said claims except the said One hundred dollars.

Therefore it is considered ordered and adjudged by the Court that the said School District pay within ten days said Sum of one hundred dollars to the said Several

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creditors of said E. S. Woodward & Son prorata according to the Several Amounts claimed by them Severally as aforesaid and further that said School District pay the costs of this proceeding Taxed to $
And thereupon plaintiffs and each one of the said parties who have filed Cross Petitions in this case Severally gave Notice of their intention to appeal to the District Court— And the said School District also gave Notice of its intention to appeal to the District Court. and thereupon at the request of the said Several parties the Court fix the appeal Bond at $ 200.
Afterwards on the 22d day of March 1880 the following appeal Bond was filed herein which reads to wit,
Know all Men by these presents That We J. S. Norton and F. H. Bentley Partners &c as J. S. Norton & Co are held and firmly bound unto School District No. 1 Paris Township & others Defendants in the penal Sum of Two Hundred Dollars to the payment of which well and truly to be made we do hereby Jointly and Severally bind our Selves. our heirs executors and Administrators Sealed with our Seals and dated this 22d day of March 1880.
The Condition of the above obligation is Such that Whereas the said J. S. Norton and F. H. Bentley as partners &c and the other defendants who have filed Answers & Cross Petitions have taken an appeal from a certain Judgment rendered against the defendants ~~&~~ and in favor of the said J. S. Norton & Co and the other defendants who have filed Answers and Cross Petitions in the Court of Common Pleas within & for the County of Union and State of Ohio at the February Term 1880 in case No 3081 entitled J. S. Norton & Co vs School District No 1 &c for the Sum of One hundred dollars and Costs to the District Court of said County. Now if the said J. S. Norton and F. H. Bentley as Such partner in trade under the firm name of J. S. Norton & Co Shall prosecute their appeal to effect without unnecessary delay and Shall abide and perform the Order and Judgment of said District Court and pay all moneys damages and costs which may be awarded against them the said J. S. Norton & F. H. Bentley as Such partners in trade then this obligation Shall be void &c. otherwise it Shall remain in full force and virtue in Law

J. S. Norton Seal F. H. Bentley Seal
By their attorney M. G. Laurence Seal
O. M. Scott Seal

Filed and Approved March 22d 1880 W. M. Winget Clerk

On the 29th day of June 1880 the certified Copy of Journal Entries was filed in said District Court to wit

J. S. Norton Et al Partners &c Plaintiff
against
School District No. One Paris Tp & Co Mals Defendant

The State of Ohio Union County ss.
In the Court of Common Pleas
January Term 1880 Journal Vol. 11 Pag

Certified Copy of Journal Entry's

May 8th 1879 J 11 P 392. This day the Court ordered all defendants to file their Answers in 30 days and cause is continued

Sept 15th 1879 This day this cause came on to be heard upon the Special Demurr of the plaintiff to that part of the Answer of said School District No. Paris Tp in which it pleads the Statute of limitations and the Same was argued by Counsel on consideration whereof the Court Sustain said Demurer. To all of which ruling of said Court the defendant School District No 1 Paris Township Union County Ohio hereby Excepts

Jan. 30. 1880 This day this cause came on to be heard upon the Special Demurr of the Defendants Woods & Dolbear J. V. Sandfet. Hubbell Brown & Co. Hancock & Dow & the Marysville Butter Tub and Spoke Company to that part of the Reply of School District No One Paris Tp &c in which it pleads the Statute of limitations under the Mechanics lien Law and the Same was argued by Counsel,
On consideration whereof the Court Sustained said Special Demurer.
To all of which rulings and decision of the Court the defendant School

District No One Paris Township Union County Ohio Then and There
by its Attorneys Excepted

Jany 30. 1880 This day this cause came on to be heard upon the General Demurr of the Plaintiffs J.S. Norton Hbo and the defendants Woods & Dolbear. J.V. Saufley. Hubbell, Brown Hbo. Hancock & Dow and the Mansville Butter Tub & Spoke Company to the answer of the Defendant School District No(1) One Paris Township Union County Ohio and the Same was argued by Counsel.

On Consideration where of the Court do Overule Said Demurer.

To which ruling and decision of the Court the Said plaintiffs and the Said defendants herein named Then and there by their Attorneys Excepted

July 2d 1880 This day came on this cause to be further heard on the pleadings and evidence Whereupon the Court having fully heard the parties do find that on the 21st day of July 1877 plaintiffs filed their claim as alleged for $819.00 That Woods & Dolbear filed their claim as alleged July 31st 1877 for $95.63. That J.V. Saufley filed his claim July 21st 1877 as alleged for $496.80. That Hubbell, Brown Hbo on July 7th 1877 filed their claims as alleged for $220.00 That Fleck & Chapman filed their claims as alleged for $164.70 That Hancock & Dow filed their claim as alleged for $751.62 That the Butler Butter Tub & Spoke Co. filed their claims as alleged for $272.95 That all of Said claims were for Materials & work done for E.S. Woodward & Son on his contract with the Said School District a copy of which is Attached to the Answer of said District.

The Court further find that One hundred dollars and no more after the time of the filing of said claims were paid to Said E.S. Woodward & Son contrary to the right of the said lien holders by the Board of directors of Said School District and that School District did not Owe Said E.S. Woodward & Son any Sum of Money at the time of the filing of said claims Except the Said One Hundred Dollars.

Therefore it is ordered Orderd and adjudged by the Court that the Said School District pay within ten days Said Sum of One hundred dollars to the Said Several creditors of E.S Woodward & Son pro rata according to the Several Amounts Claimed by them Severally as aforesaid and further that Said School Distrct pay the costs of this procedings Taxed to $

And thereupon plaintiffs & Each One of the Said parties who have filed Crop petitions in this Case Severally gave notice of their intention to appeal to the District Court and the Said School District gave notice of its intention to appeal to the District Court Court Thereupon at the request of the Said Several parties the Court fix the appeal Bond at $200.00

The State of Ohio }
Union County ss } I W. M. Winget Clerk of the Court of Common Pleas within and for Said County and in whose custody the Files Journals and Records of Said Court are required by the laws of the State of Ohio to be Kept hereby certify that the foregoing is taken and copied from the Journal of the proceedings of the Said Court within and for Said County and that Said foregoing copy has been compared by me with the Original entry on said Journal and that the is a correct transcript thereof

In Testimony Whereof I do hereto Subscribe my name officially and affix the Seal of Said Court at the Court House in Marysville in Said County this 30th day of June A.D. 1880.

W. M. Winget Clerk

And afterwards on the 11th day of March 1881 the following Entry was made in the Journal of Said District Court which reads in the words as follows to wit

No 71

J. S. Norton & Co,
VS
School District No 1. Paris Tp. Union County Ohio

This day came on this cause to be heard and thereupon

On consent of parties this appeal is dismissed at the costs of appellants leaving the Decree in the Common pleas in full force and effect.

It is therfor considered and decreed that the Defendant the said School District recover of said appellants the costs appended by it in this Court,

W. M. Winget Clerk

H. C. Hamilton
vs
James Butler Et als

76

Pleas before the Honorable Thomas Beer, Henry H. Dodge & John McCawley Judges of the Court of Common Pleas within and for the Tenth Judicial District in the State of Ohio at a District Court begun and held at the Court House in the Town of Marysville within and for the County of Union on the 9th day of March A.D. 1881 Heretofore on the 24th day of February A.D. 1881 The Petition in Error, Transcript & Original papers in this case were filed with the Clerk of said District Court which reads as follows The Original Petition in this case was filed March 27th 1880 and reads as follows to wit

H. C. Hamilton Plaintiff
vs
James Butler R. L. McAllister
and Hylas Sabine Defendants

3589

Court of Common Pleas Union County Ohio
Petition.

The Plaintiff H. C. Hamilton complains of the Defendants James Butler R. L. McAllister and Hylas Sabine and Says That on or about the 30th day of March 1876. the Defendants were Appointed and were duly qualified as the Assignees of one H. C. Hunt under the Assignment Laws of the State. That a deed of assignment was made and delivered to the said defendants by said Hunt of all the Estate both Real and personal of the said Hunt liable to be taken on Execution against him. That Prior to said assignment the plaintiff and the said H. C. Hunt had been Partners in business which partnership business had been on or about the 1st of Feb 1876 brought to a close and a Settlement was had between said partners by which certain hogs belonging to said Partnership were turned over to said H. C. Hunt to be fed and cared for by him and a certain day to be delivered to one Benjamin Waddle to whom they had been sold and the proceeds thereof applied to the payment of a certain note that day given to the Bank of Richwood Signed by H. C. Hunt and H. C. Hamilton and calling for $955 00 with 8 per cent cent interest from date this note was by agreement between said partners at the time of the said Settlement given to said Bank as the amount of H. C. Hunts Share of the partnership indebtedness of said Hunt & Hamilton to said Bank of Richwood and was to be paid by said Hunt individually in consideration of said hogs and other benefits moving to to said Hunt in said Settlement. The Plaintiff further says that said Defendants were by said Deed of asignment notified by said Hunt the plaintiff H. C. Hamilton had certain interest and rights in said hogs and the rights of said H. C. Hamilton therein whatever they might be were expressly reserved to said Hamilton in said deed of asignment

G & C Petition

That said defendants were duly notified by the plaintiff of his rights in said hogs and demand was made by said plaintiff of said defendants that the proceeds of said hogs be applied to the payment of said note of $955 00 both before & after the Sale of said hogs by the defendants. But said defendants refused and neglected so to do denying Plaintiffs rights therein and asserting their right to apply the proceeds thereof as the individual asets of said Hunt.

Whereupon on or about the 18th of Jan. 1879 The plaintiff H. C. Hamilton commenced an action in this Court against said defendants by which he sought to recover against said defendants for the value of said hogs alleging in his petition filed therein the facts substantially as herein setforth to which the

Defendants answered and upon the issue Joined the Court found that there were 70 hogs taken by said defendants as the individual property of said H. C. Hunt that were partnership property the proceeds of which should have bun applied to the payment of said note of $955.00 due the Bank of Richwood & that the value thereof at the time said defendants received them was $595.00 and that the Defendants were entitled as they claimed in this answer to an offset of $467.00 paid by the Defts on said note of $955.00 as against the said claim of the Plaintiff for $595.00 Plaintiff now says that said Bank of Richwood presented said note of $955.00 in due time to wit. On or about the 1st of June 1877 to said Defendants as Asignees of said H. C. Hunt and that said Asignees accepted the same on said date as a valid claim against said Hunt which amount at the time the dividend was made by the Asignees of said Hunt to his Creditors to wit on the 8th day of November 1878 by Probate Court of said County of Union $1.08 on which said Bank were entitled to be paid by said assignees out of the money then in their hands arising from the Sale of the property asigned to them including the said Seventy hogs First. The value of said hogs at the time they received the same March 30th 1876 to wit $595.00 with interest thereon from the 30th of March 1876 to nov. 30th 1878 the date of the dividend made by said Defendants as asignees of said in their final Settlement of their said trust where in they paid to the general Creditors of said Hunt 43 per ct. of their Several claims out of the Assets of said Hunt in their hands.

Second After receiving the said Value of said hogs and the interst amounting to $654.00 said Bank was entitled to the per ct. paid to the general creditors of said Hunt on the balance due them on said note after deducting therefrom said $654.00 to wit $436.00 which would be $198.50. The Repat for a final Settlement of said defendants as Asignees of H.C. Hunt was made in the Probate Court Sep. 25th 1878.

The plaintiff avers that out the funds arising from the Sale of said Seventy hogs the defendants found the Sum of $467.00 as alleged in their Answer in said former suit and as found by the Court the balance of which was adjudged against the defendants in said former suit. But that no part of said 43 per ct. to wit $198.50 was ever paid by the defendants to said Bank or upon said note that said Defendant refused & neglected to from assets of said Hunt one dollar upon said indebtedness of $1080.00 duly occupied by them as a valid claim against the said Hunt,

Whereby the plaintiff by reason of his personal liability upon said note was compelled to pay and did pay to said Bank of Richwood said note in full. There being endorsed on said note a payment of $467 paid the defendants as asignees of H.C. Hunt on the 8 of Janry 1879 $611.00

Jurat

Wherefore the plaintiff says by reason of said refusals and neglect of the defendant to pay said Bank out of the Assets of said Hunt in their hands said $198.50 which in Law and Justice they were bound to do. He has been damaged and depraudes in said amount of $198.50 Wherefor Plaintiff pr ays Judgement against the defendants James Cutler R. I. McAllister and H. Sabine for $198.50 with interest from Nov. 28th 1878

P. R. Kerr Atty for Plaintiff

State of Ohio Union County ss.

H. C. Hamilton being Sworn says the Statements and allegations in foregoing Petition are true as he verily believes H. C. Hamilton

Jurat

Sworn to before me and Subscribed in my presence this 25th day of March 1880

S. S. Gardner Notary Public

The Clerk will Issue Summons for the Defendants to Sheriff of Union County returnable according to law Endorse Amt. Claimed $198.50 with interest from Nov. 28th 1878

P. R. Kerr Atty for Plff

Summons

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Sheriffs Return

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Reply

Entry

Summons

Afterwards the following Summons was issued herein by the Clerk of said Court which reads viz
The State of Ohio Union County ss To the Sheriff of the County of Union Greeting
We command you to Notify James Butler R. Y. McAllister and Hylas Sabine that they have been Sued by H. C. Hamilton in the Court of Common Pleas of Union County and that unless they Answer by the 24th day of April A.D. 1880 the petition of the said H.C. Hamilton against them filed in the Clerks office of said Court Such petition will be taken as true and and a Judgement rendered accordingly.
You will make due return of this Summons on the 5th day of April A.D. 1880.
Witness my hand and the Seal of said Court this 27th day of March A.D. 1880
W. M. Winget Clerk

Shffs Return

Amt claimed $198.50 with interest from Nov. 28th 1878 Shffs return is as follows to wit
The State of Ohio Union County ss } Received this writ March 27th A.D. 1880 at one o'clock P.M. And pursuant to its command Served the same on the 1st day of April 1880 by delivering a certified copy thereof with the endorsements thereon to each of the within named James Butler & Hylas Sabine and by leaving a certified copy thereof with the endorsements thereon at the residence of the within named R. Y. McAllister Total fees $2.90 J.J. Miller Sheriff

Reply

On the 14th day of October 1880 the following Reply was filed herein which reads to wit,

H. C. Hamilton vs James Butler et als } 3589 — Court of Common Pleas Union Co. O.
Reply.

And now comes the Plaintiff and denies that this suit is for the same subject matter as the former suit alluded to in Plaintiffs Petition but is for an entirely different Subject Matter and denies that the issues ~~raised~~ by the petition in this suit was adjudicated in said former suit and did not enter into the issues of said former suit. And still allege that the $467.00 paid by the defendants was paid out of the proceeds of the property of H.C. Hunt but was paid out of the proceeds of said 70 hogs appropriated by the defendants as alleged in the petition.
Wherefore Plaintiff prays Judgement as in his petition.
P.R. Kerr. J.L. Cameron Attys for Plaintiff

Jurat

State of Ohio Union Co. ss
H.C. Hamilton being Sworn Says the Statements and allegations in the foregoing Reply are true as he believes H. C. Hamilton
Sworn to before me and Subscribed in my presence this 14th day of Oct. 1880
W. M. Winget Clerk

Entry

On the 15th day of October 1880 the following Entry was made in the Journal of said Court to wit

H. C. Hamilton vs James Butler et als } 3589 — This day came on this cause to be heard on the demurr of the Defendants to the plaintiffs amended Whereupon the Court being fully advised in the premises do Sustain said demurer.

Thereupon the plaintiff asked and obtained leave to file amended petition in 30 days making further parties to with the bondsmen of the Assignee of H.C. Hunt
On the 15th of January 1881 the following was also Entered in the Journal of said Court to wit

H. C. Hamilton vs James Butler et als } 3589 — This day came the parties and Submitted this cause the Court on motion of defendants to Strike the amended petition filed since the last term of this Court from the files for the reason that the Special leave granted by the Court to file amended petition did not authorize the filing of this amended petition which makes no new parties nor is it a Suit on the Assignees bond.

Whereupon the Court being fully advised in the premises do Sustain Motion and Order the Same Stricken from the files.

To which ruling the plaintiff Excepts

Thereupon the plaintiff asked leave to file Said amended petition which motion being fully heard and it appearing that Such amendment consist of Striking out apart of the matter in the original petition and that the original petition contained a true history of the transaction therefore the Court find that Such amendment is not to the furtherance of Justice but would Simply work delay and therefore overrules this motion and thereupon this cause came on to be heard on the defendants Motion for Judgement On the ruling of the Court Sustaining the demurer at last term & the plaintiff not giving any good cause for any further amendment to the plaintiffs original petition to the satisfaction of the Court. The motion for Judgement is Sustained Wherefore it is considered ordered & adjudged by the Court that the defendants go hence and recover of the plaintiff his costs herein expended taxed to $ To all of which the plaintiff Excepts and does now except

On the 24th day of February 1881 the Plaintiffs Petition in Error was filed herein to wit

76

H. C. Hamilton Plaintiff
vs
James Butler H. Sabine & R. J. McAllister Defendants

District Court Union County Ohio

Petition in Error.

Petition in Error

The Plaintiff H. C. Hamilton Complains of the defendants for that at the Last Term of the Courts of Common Pleas begun and held in Said County on the 10th day of January 1881 the Said Defendants recovered a Judgement against the Plaintiff by the consideration of Said Court in an action then pending in Said Court Wherein H. C. Hamilton was plaintiff and the Said defendants Butler Sabine & McAllister were defendants a copy of Said proceedings and Judgment in Said case duly certified is hereto attached and made apart of this Petition and the Plaintiff avers that there is Error in Said proceedings and Judgment as follows to wit.

1st The Court erred in Sustaining the demurer filed by the defendants to the original Petition of the plaintiff in this case filed March 27th 1880.

2d The Court in Sustaining the Motion of the defendants to Strike the amended petition filed in this case by leave of Court on the 15th day of Nov. 1880 from the files and ordering the Same to be Stricken from the files

3d The Court Erred in overruling the Motion of the plaintiff for leave to file Said amended Petition after the Same was Stricken from the files and in refusing to allow the amended Petition to be filed,

4th The Court Erred in giving Judgment against the plaintiff for costs For costs. for want of further prosecution.

Wherefore plaintiff prays Judgement of this Court that the Said Judgements and Orders of Said Court of Common Pleas be reversed and set aside.

That Said amended Petition may ordered to be filed in Said Court of Common Pleas and that Said Defendants be required to answer thereto and that Said case may be brought to final Issue in Said Court.

P. R. Kerr Atty for Plaintiff

On the 24th day of February 1881 the Certified Copys of Journal Entry were filed herein to wit

The State of Ohio Union County ss In the Court of Common Pleas

H. C. Hamilton Plaintiff
against
James Butler et. als. Defendants

Sept. Term 1880 and January Term 1881
Journal Vol. 12 Page 67 and 100
Certified Copy of Journal Entry's

Oct 15. 1880
J 12 P 67

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Oct 15. 1880
J 12 P 67

This day came on this cause to be heard on demurer of the defendants to the plaintiffs amended petition Whereupon the Court being fully advised in the premises do Sustain said demurer.

Whereupon the plaintiff asked and obtained leave to file amended petition in 30 days making further parties to wit. the bondsmen of the Assignees of H. C. Hunt.

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This day came the parties and Submitted this cause to the Court on Motion of the defendants to Strike the amended petition filed Since the last term of this Court from the files for the reason that the Special leave granted by the Court to file amended petition which makes no new parties nor is it a Suit on the assignees bond.

Whereupon the Court being fully advise in the premises do Sustain said Motion and Order the Same Stricken files. To which ruling the plaintiff Excepts.

Thereupon the plaintiff asked leave to file said amended petition which Motion being fully heard and it appearing that Such amendment consisting of Striking out apart the Matter in the original petition; and that the original petition contained a true history of the transaction.

Therefore the Court find that Such amendment is not the furtherance of Justice but would Simply work delay and therefore ruled said Motion.

And thereupon this cause came on to be heard on the defendants Motion for Judgment on the ruling of the Court Sustaining the demurer at the last term and the plaintiff not giving any good cause for any further amendment to the plaintiffs Original petition to the Satisfaction of the Court the Motion for Judgment is Sustained.

Wherefore it is considered Ordered and adjudged by the Court that the defendants go hence and recover of the plaintiff their costs herein Expended taxed to $

To all of which the plaintiff Excepted and does now Except.

The State of Ohio }
Union County ss } I W. M. Winget Clerk of the Court of Common Pleas within and for said County and in whose custody the Files Journals and Records of said Court are required by the laws of the State of Ohio to be Kept hereby certify that the foregoing is taken and copied from the Journal of the Proceedings of the said Court within and for said County and that said foregoing copy has been compared by me with the original entry on said Journal and that the same is a correct transcript thereof.

L. S.

In Testimony Whereof I do hereto Subscribe my name officially and affix the Seal of said Court at the Court House in Marysville in said County this 24th day of February A. D. 1881

W M. Winget Clerk

Afterwards on the 11th day of march 1881 the following Entry was made in the Journal of said Court

H. C. Hamilton
vs
James Cutler
R. J. McAllister
H. Sabine

This day came on this cause to be heard by the Court and was Submitted by the parties to the Court Whereupon the Court find there is no Error in said Record and therefore affirm the Judgement of the Court of Common Pleas at Plaintiffs Costs It is therefore considered and adjudged that the Defendants recover of the plaintiff their costs herein expended taxed to $

To all of which plaintiff Excepts.

And this cause remanded to the Court of Common Pleas

W. M. Winget Clerk

58

John R. Garbeson Adm Plaintiff
against
Mathew Lingrel Defendant

Pleas before the Honorable Thomas Beer Henry N. Dodge and John McCauley Judges of the Court of Common Pleas within and for the Tenth Judicial District in the State of Ohio at a District Court begun and held at the Court House in the Town of Marysville within and for the County of Union on 10th day of March A.D. 1881.

Heretofore on the 16th day of May 1879 the Appeal Bond Transcript and original papers in this case were filed with the Clerk of said District Court which reads to wit

John R. Garbeson Administrator de bonis non of Elisha Hardy d deceased Plaintiff
against
Mathew Lingrel & Martha Lingrel Defendants

The State Of Ohio Union County ss
In the Court of Common Pleas of Said County
Petition.

The plaintiff John R. Garbeson Says that on the 26th day of December 1877 he was by the Probate Court of Marion County Ohio duly and legally appointed and qualified as the Administrator de bonis non with the Will annexed of Elisha Hardy late of said County of Marion deceased and is now acting as such Administrator. He Says further that on the 15th day of February 1876 the defendant Matthew Lingrel made his certain promissory note in writing of that date (with another note of same amount due in ten years from date since paid) and then and there deliver the same to the said Elisha Hardy (then in full life but since deceased) and there and there promised to pay to the Order of said Elisha Hardy or bearer the sum of $620.00 in two years after date thereof with interest at the rate of 8 per cent per cent per annum a true Copy of which note is the following "$620.00 Feb. 15th 1876 Two years after date I promise to pay "to the Order of E. Hardy or bearer Six hundred and twenty dollars at "8 per cent per annum Value received Matthew Lingrel"

3152

II. In order to secure the payment of the aforesaid promissory note and the money due and to become due thereon according to the tenor and effect thereof said Mathew Lingrel and the said Martha Lingrel his wife did duly Execute and deliver to the said Elisha Hardy (then in full life but deceased) and convey to him his heirs and assigns the following described real estate Situate in said County of Union being in the Virginia Military District and part of Survey No 7375 and bounded as follows to wit. Commencing at the North west corner of said Survey at the North East corner of J. B. Haines' lands thence Southwardly along the Original West line of said Survey No. 7375 to the to the crossing of the Marysville and Kenton turnpike to a Stone thence Easterly about One hundred and eighty poles to the crossing of the East Liberty & Essex road and at the Southwest corner to land deeded to J. D. Haines by M & Matthew Lingrel thence North with the said J. D. Haines line Ninety Six (96) poles to John Grays line thence west along Grays line and the original Survey line about one hundred and ninety (190) poles to the place of beginning containing 80 acres more or less. And which deed had a condition thereunder written that if the said Mathew Lingrel should pay the said Sum of money in said promissory note mentioned (with an other of the same date and amount due in one year & since paid) according to the tenor and effect thereof then said deed should be void otherwise it was to remain in full force and virtue in Law. and said deed of Mortgage was on the 8th day of March 1876 duly left for Record in the Recorders office of said County of Union and recorded April 10th 1876 in Volume 12 pages 222 & 223 of Record of Mortgages therein.

Petition

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Plaintiff further says that of said County claims some lien upon said Real Estate by
or Mortgage derived from said Lingrel who plaintiff prays may be made defendant herein
and that he State fully his claims or lien, and said plaintiff avers that on the 18th day of
note May 1878 he and said defendant Matthew Lingrel made a full settlement of the amount
& then due and owing to the Estate of said Elisha Hardy on said note including said
Mortgage first named note mentioned in said Mortgage it was then found that there was by
the terms of said Settlement found to be due and owing to the Estate of Elisha Hardy
deceased upon the said note herein mentioned due in two years from February 15th 1876
the Sum of three hundred Dollars and when said sum of three hundred was paid then
said Mortgage was to be by this plaintiff cancelled upon the said Mortgage. And the
plaintiff further avers that said Matthew Lingrel has not paid said Sum of $300.00
nor any part thereof when the same became payable according to the terms of said
note & Settlement so that the same became according to the terms of said note & Settlement
so that the Sum of $300.00 (the same being of the assets of said Elish Hardy's Estate)
is now due upon said note to said Estate from said Matthew Lingrel & interest on
that Sum from may 18th 1878 at 8 per cent whereby said deed of Mortgage has become
absolute. Plaintiff therefore prays that said Lands & tenements may be appraised
advertised and Sold according to Law and the proceeds arising from said Sale
may be applied to the Satisfaction of the costs herein and the Satisfaction and
discharge of the amount then found to be due upon said note that he may have
such other relief as may be Equitable &c.

Jno. J. Williams Atty for Plff.

The State of Ohio Marion County ss } John R. Garbeson being duly Sworn according
to Law deposes and says that he is the Administrator debonis non
with the Will annexed of Elisha Hardy deceased and is the plaintiff in the action
just herein of him against Matthew Lingrel and the Statements of facts in the foregoing
and annexed petition contained are true as he verily believes J. R. Garbeson
Sworn to by said John R. Garbeson and by him Subscribed before me and in my
presence this 27th day of November 1878 A. H. Ford Clerk of Marion Com Pleas Court

John R. Garbeson Administrator debonis non
with the Will annexed of Elisha Hardy dec'd Plff
vs
Mathew Lingrel & Martha Lingrel Defendants

In Union Court of Common
Pleas Ohio

The Clerk of said Court will issue
Summons in this case returnable according to law
to the Sheriff of said County for Matthew Lingrel & Martha Lingrel the Cont claimed
$300.00 and interest from May 18th 1878 and for Sale of Mortgaged premises.

Jno. J. Williams Atty for Plaintiffs

The State of Ohio Union County ss To the Sheriff of the County of Union Greeting
We command you to Notify Matthew Lingrel & Martha Lingrel that they have
been Sued by John R. Garbeson Administrator debonis non with the Will annexed of Elisha
Hardy dec'd in the Court of Common Pleas of Union County and that unless they
answer by the 29th day of December A.D. 1878 the petition of the said John R. Garbeson
against them filed in the Clerks office of said Court Such petition will be
taken as true and Judgement rendered accordingly.
You will make due return of this Summons on the 9th day of December A.D. 1878
Witnes my hand and the Seal of said Court this 29th day of
November A.D. 1878

W. M. Wright Clerk

Endorsed by Clerk to wit. "In action for amt claimed $300.00 & int from May
18th 1878 and for Sale of Mortgage premises and was returned by Shff endorsed to wit

Sheriffs Return

The State of Ohio Union County ss Received this writ November 29th A.D. 1878 at 9 oclock A.M. and pursuant to its command Served the same November 30th 1878 by delivering a certified copy thereof with the endorsements thereon to the within named Martha Lingrel and at the same time having a certified copy thereof with the endorsements thereon at the residence of the within named Matthew Lingrel

Total fee $2.90 J. J. Miller Sheriff

On the 17 day of February 1879 the following answer was filed herein which reads as follows to wit

3152

J. R. Garbeson Admr. of Elisha Hardy Plaintiff
vs
Matthew Lingrel Defendant

To the Court of Union Ohio.

Answer and Cross Petition.

Defts Answer

The defendant Matthew Lingrel says that said Plaintiff ought not to have maintain his said action against this Defendant because there was and is no cons consideration for the note and Mortgage in the petition mentioned but the same was obtained from this defendant under the following circumstances to wit. before the date of the said Mortgage one A.B. Farnum had obtained a Judgement against this defendant by the consideration of the Common Pleas Court of Hardin County in said State of Ohio.

That on or about the date of the said Mortgage and note in the petition mentioned the said Elisha Hardy then in full life came to this defendant and represented to him that he the said Hardy had purchased and became the owner of the Judgment aforesaid and demanded payment thereof and thereupon this defendant relying in good faith upon the representation and claim of said Hardy that he was the rightful owner of said Judgement and in Order to Save Execution and costs then Settled said Judgement with said Hardy and paid him a large sum of money therefor and as part payment in addition to the money paid this defendant executed the note and Mortgage in the petition setforth and the said Hardy then and there agreed in consideration of said note and Mortgage and said money to forever protect and Save harmless the said defendant from cost Expense or damage on account of said Judgment and there was no other or further consideration whatever for said note and Mortgage.

The said Elisha Hardy failed to comply with said agreement to Save harmless and was not in fact the owner of said Judgement but said Farnum after the Execution of the said note and Mortgage proceeded to the collection of said Judgement and said Hardy agreed if said defendant would go on and contest the right of said Farnum to said Judgement he the said Hardy would be to all expense of Attys. fees and each and every expense and pay for all loss of time and fully protect said Lingrel in all that he did in that behalf Whereupon said Lingrel did go on and make said contest and the said of Hardin County decided against said Lingrel and Hardy and in favor of said Farnum and the matter was further litigated at the request of the said Hardy and under said agreement to pay all cost and Save said Lingrel harmless. Until said Lingrel had been to a loss and expense far greater than said Mortgage & note and finally had to Farnum said Judgement and Counsel fee to the amount of $1900 & counsel fees and Expenses cost amounting to about $1000. besides being at great loss of time, and damage.

This defendant says that he denies that part of said petition alleging a settlement and each and every allegation in regard to said Settlement Except this defendant

Jurat

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Entry

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Reply

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Says that at one time after said matters had been in litigation for several years and after the death of said Hardy the said plaintiff by his agent procured an arrangement with this defendant whereby it under the representations and Statements which they then had there would State due the said plaintiff as administrator about $300 and which the plaintiff then agreed to account for but this defendant soon learned that false Statements and representations had been made to him to procure said Settlement as this then was to pay on said Judgment to said Yarnum $1100 more than said plaintiff at the time of said Settlement represented that said Yarnum had agreed to &t And Also this defendant was compelled to pay about $200 more Atty fee than was represented whereby said Settlement wholly failed, but the ~~note~~ mortgage and note before that time was and ever since has been void and of no effect by reason of the failure of consideration and the promises. And this defendant denies that there is any Sum whatever due the plaintiff by reason of said note & Mortgage or the said pretended Settlement.

The defendant prays the Court that said pretended note and Mortgage may by order of the Court be cancelled and held for nought and the lands of the defendant wholly released from the same and that he may go hence and recover his costs and for all proper relief

R Cameron & Benton Attys for Defendant

State of Ohio Union County ss Matthew Lingrel being first duly Sworn deposes and says that the facts Stated and allegations made in his foregoing answer are true as he verily believes

Matthew Lingrel

Jurat Sworn to before me by said Matthew Lingrel and by him Subscribed in my presence this 17th day of Feby 1879

W. M. Winget Clerk

On the 21st day of February 1879 the following Entry was made in the Journal of Said Court

3152 John R. Garbeson vs Matthew Lingrel et al

This day came the defendant and by leave of the Court Signed and filed his answer herein.

Entry And thereupon this cause is continued with leave to plaintiff to Reply in 20 days.

On the 24th day of March 1879 the following Reply was filed herein which reads to wit;

3152 John R. Garbeson Administrator De bonis non of Elisha Hardy Plaintiff against Matthew Lingrel Wife Defendants

The State of Ohio Union County ss

In the Court of Common Pleas of said County.

Reply.

Reply The plaintiff for Reply to the Answer of the defendant Matthew Lingrel says that he denies that there was no consideration for the note & Mortgage in the petition mentioned but that on the contrary thereof said note and Mortgage are founded upon a full valid and legal consideration.

The Plaintiff denies that on or about the date of said note & Mortgage the said Elisha Hardy came to the said Lingrel & Represented to him that he (said Hardy) had purchased & became the owner of said Judgment against (said Lingrel) and demanded payment thereof but on the contrary thereof the said Lingrel came to said Hardy and made propositions to him (Haray) to pay said Judgment he having before that time seen and known the assignments thereof to the said Hardy of said Judgments recognizing him as the owner of said Judgement to wit about the first day of March 1876. That thereupon on the 2d day of March 1876 said Matthew Lingrel agreed to pay and did pay said Elisha Hardy said Judgment in full partly in money the balance in notes secured by Mortgage one of which is the subject of this action & Amounts against said A.B. Yarnum & was thereafter to see that said Hardy was to be held safe and harmless from any prosecutions expense or trouble from said Yarnum or any other person

or persons on account of said Judgement said Lingrel took from said Hardy a receipt in full for said Judgement on said 2d day of March 1876

That afterwards and during the year 1876 said A. E. Farnum Commenced

Reply an action at Law in the Court of Common Pleas of Hardin County Ohio against said Lingrel for the purpose of his right of Ownership to said Judgment

That during the pending of said Suit (and without the Knowledge of said Hardy)

Contd. he was on motion of said Lingrel made a party defendant to said action at the fall Term of said Court 1876 - Said Suit came on for trial to a Jury & before trial said Hardy on motion was dismiped said case and the same was tried between the said Lingrel & said Farnum and none of the rights of Hardy were adjudicated therein and no Judgement was rendered for or against said Hardy That a verdict therein was rendered in favor of said Farnum & Judgment and Judgement was therein rendered. That on or about the first day of January 1877 said Elisha Hardy then in full life filed his petition in the Court of Common Pleas of said County of Hardin in the nature of a bill in Equity Claiming therein to be and was the owner of said Judgement against said Lingrel A. E. Farnum & John Stilling & W. H. West (the latter two claiming to hold and an interest in said Judgement by assigment from said Farnum) were made parties defendants thereto That said Lingrel within rule filed an answer in said proceeding in Equity admits therein that said Hardy was the true owner of said Judgement that he had paid him therefor. That in this last proceeding an injunction was obtained and thereby said Farnum and his aspignees were prevented from proceding to collect said Juagment at Law. This proceding in Equity was continued from term to term of said Court, and in the meantime on the 13th day of May 1877 the said Elisha Hardy departed this life testate and the plaintiff afterwards became his administrator With the will annexed. That owing to the expenses of litigation growing out of said proceding delays and trouble various propositions for the final Settlement thereof were had between the Attorneys of said Farnum Lingrel & this plaintiff without Success until on the 18th day of May 1878 said Lingrel came to Marion and reported that he had Settled & compromised said case with said Farnum and his aspignees in That had closed out the whole matter with all concerned except the Estate of Elisha Hardy and that his business in Marion was to Settle with the Administrator of Hardys Estate accordingly after a tedious & prolonged conference between said Lingrel W. M. Hardy residuary legatee of said Elisha Hardy and this plaintiff said proceedings in Equity were fully settled so far as the Estate of said Hardy was concerned upon the following terms to wit That said action so far as the Estate of Elisha Hardy was concerned is settled the said Lingrel agreed to pay to the Administrator of said Estate $300.00 in two months from that date with interest. Also to pay all costs made in the cause as between himself and the said E. Hardy or his Estate and all the Attorney's fees in the case as between himself and said Estate. And was then further agreed that the Mortgage before that time given by said Lingrel to said Elisha Hardy in his lifetime and the notes therein named were to be reduced down to the sum of $300.00 and that the whole of said Attorneys fees and costs were to be paid within two months from that date. Said Settlement was on said 18th day of May 1878 reduced to writing & Signed by said Lingrel approved by said Administrator Signed also by W. M. Hardy residuary legatee of said Elisha Hardy and by the Atty of said Estate. So that said proceeding in Equity was never tried but was compromised and settled as herein Stated. That this plaintiff did on his part carry & all

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Entry

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things required of him in said written Settlement. But said Lingrel has refused and neglected to pay said $300.00 or in any way comply with the terms of said Settlement. Plaintiff further says that he denies that said Hardy agreed in consideration of said Notes & Mortgage and money advanced to forever protect and save harmless the said Lingrel from costs expenses or damages on account of said Judgment. That the said Judgment did belong to said Hardy he no doubt fully believed. but so or not that question as between said Hardy & Lingrel has now been determined by reason of said Settlement.

Plaintiff further denys that said Hardy agreed that if said Lingrel would go on & contest the right of said Farnum to said Judgement he the said Hardy would be to all expenses of Attys Fees & costs & any Expense and pay for all loss of time and money and fully protect the said Lingrel in all that he did in that behalf. Plaintiff further denies that said Lingrel prosecuted said Suit in Hardin Common Pleas at the instance of said Hardy. Plaintiff here says that he does not know how much ~~much~~ money said Lingrel spent in and about said litigation but denies that said Hardy or for the benefit of his Estate ~~is~~ upon any agent to do so by said Hardy or this plaintiff.

Plaintiffs further says that said Settlement was made in good faith without fraud or misrepresentation on his part or of any one representing said Estate but was made at Solicitation of said Lingrel as hereinbefore stated he had all the facts before him & had fully considered the whole matter had Settled with Farnum and Assignees and insisted on the aforesaid terms of Settlement.

This plaintiff did not represent at the time of said Settlement what Sum the said Farnum had agreed to take since he knew nothing about the Settlement with Farnum & his assignees only as he heard them from said Lingrel and the plaintiff denies all other matter herein not specifically replied to and prays for the same Judgement Orders decr and relief prayed for in his petition

Jno. J. Williams Atty for Plffs

The State of Ohio Marion County ss.

John R. Garbeson Administrator de bonis non with the With will annexed of Elisha Hardy dec'd Plaintiff in the aforesaid action vs Matthew Lingrel & wife being duly Sworn says that the facts stated in the foregoing Reply are true as he verily believes

J. R. Garbeson

Jurat

Sworn to by said Garbeson & by him Subscribed before me and in my presence this 21st day of March 1879

L.S.

A. N. Ford Clerk of Marion Com Pleas Court

On the 30th day of April 1879 the following Entry was made in the Journal of said Court

3152

John R. Garbeson Administrator de bonis non with will annexed of Elisha Hardy dec'd

against

Matthew Lingrel & wife

Petition — Foreclosure

This day this cause came on for hearing to the Court upon the petition of the Plaintiff Answer of Defendant Matthew Lingrel and Reply of the plaintiff thereto and

Entry

was argued by Counsel on consideration whereof the Court do find that there is at this date due upon the note in the petition mentioned including interest at the rate of 8 per cent per annum the sum of $322.80 and the Court further find that the defendants Matthew Lingrel & Martha Lingrel his wife executed & delivered to the plaintiffs testate their Mortgage and in the petition mentioned and described on the premises therein described that said Mortgage was duly recorded in Book 12 pages 222 & 223 of the record of Mortgages of Union County Ohio and the first & best lien on the premises described in the petition

herein. The Court further find that the condition of defeasance in the Mortgage has
decree & Order of Sale
been broken and the plaintiff is thereby entitled to the defendants Equity of redemption
foreclosed. It is therefore considered & decreed that unless the said defendants
within ten days from the Entry of this decree pay or cause to be paid to the Clerk
of this Court the costs in this cause and to the plaintiff the said sum
of $322.80 and interest thereon at the rate of 8 per cent per annum from the
18th day of May 1878 according to the terms of said Mortgage and
the defendants Equity of redemption be foreclosed and said premises shall be
Sold and an Order of Sale shall issue therefor to the Sheriff of Union County Ohio
directing him to Sell said premises free from Dower as upon Execution and
bring the proceeds of said Sale into Court for further Order.

Thereupon the defendant Matthew Lingrel gives notice of his intention to appeal this
cause to the District Court of said County of Union and the Court fixes the Amount
of the undertaking for appeal at $100.00

On the 16th day of May 1879 the following appeal Bond was filed herein which reads to wit
Appeal Bond
Know all men by these presents That We Matthew Lingrel Jeremiah Robinson, Richard
Hall and Lemuel Robinson are held and firmly bound unto John R. Garberson as
Administrator of Elisha Hardy in the Sum of One hundred dollars to the payment
of which well and truly to be made we do hereby Jointly and Severally bind ourselves
our heirs Executors and Administrators. Signed by us and dated this 3d day of May
A.D. 1879 – The condition of the above obligation is Such that whereas the said
Matthew Lingrel has taken an appeal from a certain Decree rendered against
in favor of the said John R. Garberson in the Court of Common Pleas within
and for the County of Union in the State of Ohio at the April Term thereof A.D. 1879
for the Sum of $322.80 and Order of Sale to the District Court within for the
County aforesaid. Now if the said Matthew Lingrel shall abide and perform the
Order and Judgment of said District and shall pay all moneys costs & damages
which may be required of or awarded against him by said District Court then
this Obligation to be void Otherwise to remain in full force and Virtue in Law

(Signed) Matthew Lingrel
Jeremiah Robinson
Richard A. Hall
Lemuel Robinson

I approve the above Bond with the Securities thereto this 16th day of May
A.D. 1879 W. M. Wingit Clerk

Afterwards the Certified Copies of the Journal Entries was filed with the Clerk of
said District Court which read in the words and figures as follows to wit

John R. Garberson Admr &c Plaintiff
vs
Matthew Lingrel Et al Defendant

The State of Ohio Union County ss

I W. M. Wingit Clerk of the Court of Common Pleas within and for the County of Union do
hereby certify that the following Entries and Judgments are truly copied from
the Journals of said Court to wit,

"No. 1" February 21st 1879. This day came the defendant and by leave of
the Court Signed and filed his Answer herein and thereupon this cause
is Continued with leave to plaintiff to Reply to said Answer in 30 days

April 30 1879. This day this cause came on for hearing to the Court upon the petition
of the plaintiff. Answer of the defendant Matthew Lingrel and Reply of
the plaintiff thereto and was argued by Counsel on Consideration whereof

58

the Court do find that there is at this date due upon the note in the petition mentioned including interest at the rate of 8% per annum the Sum of $322.80. And the Court further find that the defendants Matthew Lingrel and Martha Lingrel his wife executed and delivered to the Plaintiff the Mortgage deed in the petition mentioned and described in the premises therein described that said Mortgage Jr Entrs. was duly recorded in BOOK 12 pages 222 & 223 of the record of Mortgages Contd of Union County Ohio and is the first and best lien on the premises described in the petition herein - The Court further find that the condition of defeasance in the Mortgage has been broken and that the plaintiff is thereby Entitled to have the defendants Equity of redemption foreclosed.

It is therefore considered and decreed that unless the said defendant within Ten days from the Entry of this decree pay or cause to be paid to the Clerk of this Court the Costs in this cause and to the plaintiff the said sum of $322.80 and interest thereon at the rate of 8% per annum from the 18th day of May 1878 according to the tenor of said Mortgage and the defendants Equity of redemption be foreclosed and said premises shall be sold and an order of Sale shall issue therefor to the Sheriff of Union County Ohio directing him to sell said premises free from dower as upon Execution and bring the proceeds of said Sale into Court for further Order. Thereupon the defendant Matthew Lingrel gave notice of his intention to appeal this case to the District Court of said County of Union and the Court fixes the amount of the undertaking for appeal at $100.00

The State of Ohio Union County ß

I W. M. Winget Clerk of the Court of Common Pleas in & for said County do hereby certify that that the above is a true transcript of the Docket and Journal Entries of said Court in the above entitled cause and that the said Matthew Lingrel entered into bond with approved Sureties conditioned to abide and perform the Order and Judgement of the District Court and to pay all moneys costs and damages which may be required of or awarded against said Matthew Lingrel & Martha Lingrel by said District Court and I further certify that the papers herewith sent numbered from One up to Three are the Original papers and pleadings filed in the above cause of J. R. Garbrson Admr. &c Plaintiff against Matthew Lingrel et al Defendants

In Testimony Whereof I have hereunto set my hand and affixed the Seal of said Court of Common Pleas at the Court House in Marysville in Marysville Ohio on this 7th day of August A. D. 1879

(S. S.)

W. M. Winget Clerk

On the 10th day of March 1881 the following Entry was made in the Journal of said District Court viz

John R. Garbrson Administrator de bonis non of Elisha Hardy deceased	ß	Petition for foreclosure of mortgage
58 Against		Union District Court Ohio
Matthew Lingrel Et al	ß	Appeal.

This day this cause came on for hearing to the Court upon the petition of Plaintiff answer of the defendant Matthew Lingrel and Reply thereto of the plaintiff & testimony and was argued by counsel the defendant Martha Lingrel failing to answer or demur to said petition On consideration whereof the Court do find that there is due at this date upon the note described in the petition including interest at the rate of 8 per cent per annum the Sum of $372.50. And the Court further find that the defendants Mathew Lingrel & Martha Lingrel his wife

executed and delivered to the plaintiff the Mortgage sued in the petition
Decree & Order of Sale mentioned & described on the premises therein described That said Mortgage was
duly recorded in Book 12 pages 222 & 223 of the record of Mortgages of said Union County
Ohio and is the first and best lien on the premises described in the petition herein.
The Court further find that the condition of defeasance in the Mortgage has
been broken and that the plaintiff is thereby entitled to have defendants Equity
of redemption foreclosed.

It is therefore considered and decreed that unless the said defendants within
5 days from this date fail to pay the said sum of $372.50 with 8 per cent interest
paid according to the tenor of said Mortgage to this Plaintiff or to his Attorney
that then the Equity of redemption of defendants be foreclosed and said premises
shall be sold and that an Order of Sale issue to the Sheriff of said Union County
directing him to sell said premises according to law pro from dower as upon
Execution and bring the proceeds of said Sale into Court to be distributed in
accordance with this decree.
And it is further Ordered that a Special Mandate issue to the Court of
Common Pleas to carry this decree into Execution.

Attest W. M. Winget Clerk

74

W. H. Baxter Plaintiff
against
Eva L. Chesney Et al Defendants

Pleas before the Honorable Thomas Beer Henry H. Dodge and
John McCauley Judges of the Court of Common Pleas within and for the Tenth Judicial
District in the State of Ohio at a District Court begun and held at the Court House in
the Town of Marysville within and for the County of Union on the 11th day of March 1881
Heretofore on the 12th day of February 1880 the Petition in Error Transcript of Journal
Entries and Original papers in this case were filed with the Clerk of said District Court
which reads in the words and figures as follows to wit
Heretofore on the 29th day of March 1879 the original petition was filed in this case which reads in

3337

W. H. Baxter Plaintiff
vs
J. W. Chesney
E. L. Chesney Defendants

Court of Common Pleas Union County Ohio
Petition.

The said plaintiff says the defendants are husband
and wife being intermarried with each other and the said
E. L. Chesney has property and real Estate in her own and individual right.
That said defendants on the 27th of March 1876 Executed to the Plaintiff their
Petition promissory note which reads as follows to wit.
"$1500 Mechanicsburg O. March 27th 1876 On the 1st day of March 1879 we
"or either of us promise to pay W. H. Baxter or order the sum of Fifteen hundred
"dollars with Eight per cent interest from March 1st 1877 Value received
J. W. Chesney
E. L. Chesney"
That said E L Chesney at the time she signed said note and delivered the
same to the plaintiff as aforesaid and thereby promised to pay Plaintiff or
order said sum of fifteen hundred dollars on the first day of March 1879.
Eight per cent interest as aforesaid intended to and agreed thereby to bind her Separate & individual
property and real estate for said sum and there is now due to plaintiff from said
defendants on said note said sum of fifteen hundred dollars with interest at Eight

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per cent from March 1st 1877 for which sum with said interest the plaintiff asks Judgement against said defendants binding the Separate property of each for the same R.L. Woodburn & Robinson & Piper Attys for Plff

The State of Ohio Union County ss

R.L. Woodburn being first duly sworn deposes and says that he is one the Attorneys of the plaintiff in the foregoing case. that the plaintiff is not resident of said County of said County of Union and is absent now therefrom and that he believe the allegations of the foregoing petition are all true

R.L. Woodburn

Jurat — Sworn to before me and signed in my presence by R.L Woodburn this 29th day of March 1879 A.H. Brighter Notary Public

To the Clerk of the Court - Issue Summons in the above case & endorse "petition for $1500 with Eight per cent interest from March 1st 1877 on note

R.L. Woodburn. Robinson & Piper attys for Plff.

Thereupon the following was issued by the Clerk of said Court which reads to wit

The State of Ohio Union County ss. To the Sheriff of the County of Union Greeting

We command you to notify T. W. Chesney & E.L. Chesney that they have been

Summons sued by W.H. Barter against them filed in the Clerks office of said Court such petition will be taken as true and Judgment rendered accordingly.

You will make due return of this Summons on the 7th day of April A.D. 1879.

Witness my hand and the Seal of said Court this 29th day of March A.D. 1879 W. M. Winget Clerk

L.S.

Amt claimed $1500 00 and interest at 8% from March 1st 187

Sheffs Return — The State of Ohio Union County ss

Received this writ March 29th A.D. 1879 and pursuant to its command served the same April 3d 1879 by leaving a certified copy thereof with the endorsements thereon at the residence of the within name T. W. Chesney also by delivering a certified copy thereof with the endorsements thereon to the within named E.L. Chesney

Total fees $2.30 J.J. Miller Sheriff By Dyer Red Dept

On the 3d day of May 1879 the following Answer was filed herein which read as follows to wit

W. H. Barter Plaintiff — Court of Common Pleas

vs — State of Ohio Union County ss

T. W. Chesney & E.L. Chesney — Answer.

The defendant T. W. Chesney for his Separate Answer to the petition of the said Plaintiff says that said plaintiff ought not to have or maintain his said action against him because he says that at the time the said note was executed said plaintiff had sold to said E.L. Chesney wife of this defendant about 140¾ acres of land in said County for the sum of $7100 and said E.L. Chesney paid down about $2000 and assumed an Alimony charged on said land of 2100 and to secure the balance of said $7100 00 executed to said plaintiff two notes of $1500. each one of which is the note set up in the petition and gave her Mortgage on said premises to secure the payment of the balance of said purchase money viz $3000. when said papers come to be executed and said notes and Mortgage signed. the said plaintiff drew up both the notes and Mortgage and represented to this defendant that as the said E.L Chesney was a married woman and would as a matter of fasm be the Law required for this defendant to sign said note and Mortgage with the said E.L Chesney in order to enable to secure said $3000 by said land but in no way to bind this defendant to pay or in any manner be responsible or liable on the said note or in any manner

agreeing to pay the same and the said plaintiff well knew at this time this defendant signed said note he did bind or intend to bind himself but only signed the same in the manner and form above stated and the said plaintiff still has his Mortgage to secure the payment of said note. This defendant asks to go hence and recover his cost.

Cameron & Benton Attorneys

State of Ohio Union County ss

T. W. Chesney being first duly Sworn deposes and says the facts stated & allegations made in his foregoing answer are as he believes True T. W. Chesney

Jurat Sworn to before me by said T. W. Chesney and him signed in my presence this 3d day of May 1879

W. M. Winget Clerk.

On the 7th day of May 1879 the following Entry was made in the Journal of said Court

W. H. Baxter }
vs } This day come on this cause to be heard on the Demurrer
T. W. Chesney & } of E. L. Chesney to the petition and the demurer of Plaintiff to
E. L. Chesney } the Answer of T. W. Chesney Whereupon the Court being fully advised in

Entry the premises do Sustain both of said demurrers and thereupon plaintiff asked and Obtained leave to file amended petition by Thursday the 8th of may 1879. And thereupon the following Amended petition was filed herein to wit

W. H. Baxter Plaintiff } Court of Common Pleas Union County Ohio
vs. } Amended Petition.
T. W. Chesney & E. L. Chesney Defts. } The said plaintiff says the says the said Defts are husband and wife being intermarried with each

Amended Petition other and the said E. L. Chesney wife of said T. W. Chesney on the 27th of March 1876 at the time of making of the note herein after mention was and still is the owner of property personal & real in her own individual right.

That said defendants on the 27th of March 1876 executed to plaintiff their promissory note which reads as follows to wit: "$1500 Mechanicsburg O. March 27th 1876 On the 1st day of March 1879 We or either of us promise to pay to W. H. Baxter or Order the Sum of fifteen hundred dollars with Eight per cent interest from March 1. 1877

T. W. Chesney
E. L. Chesney "

That said E. L. Chesney at the time She Signed said note and delivered the same to plaintiff did so Sign & delivered the same as apart of the consideration for said real Estate which she at the same time purchased from said plaintiff and which said plaintiff then conveyed to her and She then intended to and did bind her individual property for the payment of said promissory note. That there is now due from said defendants on said note the Sum of fifteen hundred with Eight per cent interest from March 1st 1877 for which Sum and interest the plaintiff asks Judgement against said defendant.

R. L. Woodburn Robinson & Piper Attys for Plff

The State of Ohio Union County ss

R. L. Woodburn being duly Sworn says he is one of the Attorney for plaintiff in the above named case. That plaintiff is a non resident of said County & this action is for Money only on written promissory note in his possession and believes the allegations of the foregoing amended are true

Jurat R. L. Woodburn

Sworn to before me and Signed in my presence this 7th of May 1879

W. M. Winget Clerk

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3337 Entry

3337 Amended Petition

3337 Jurat

3337 Entry

On the 21st of J
W. H. Baxter
vs
T. W. Chesney

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On the 21st of January 1880 the following Entry was made in the Journal of said Court to wit,

W. H. Baxter
vs
3337
J. W. Chesney et al

Entry

On Motion by plaintiff leave is given plaintiff to file his amended petition this day which amended petition is now filed

And on the 22nd day of January 1880 the amended petition was filed herein which reads to wit

W. H. Baxter Plff
vs
3337
J. W. Chesney &
E. L. Chesney Defts

Amended Petition.

The plaintiff by leave of the Court files this his amended petition and says that the said defendants were lawfully intermarried and the said E. L. Chesney is the lawful wife of said J. W. Chesney and was such wife on the 27th of March 1876 at the time of the making the note herein after mentioned and was then and still is the owner of and possessed of an Estate personal and real in her own right.

Amended Petition

That said defendants on the said 27th of March 1876 executed and delivered to the plaintiff their promissory note of which the following is a copy, viz,
"$1500 Mechanicsburg O. March 27th 1876 On the 1st of March 1879 we or
"either of us promise to pay to W. H. Baxter or Order the sum of fifteen
"hundred dollars with Eight per cent interest from march 1st 1877
"value received
J. W. Chesney
E. L. Chesney"

That said E. L. Chesney at the time she signed said note and delivered the same to plaintiff did so sign and deliver said note as apart of the consideration of a farm then and there sold & conveyed to said E. L. Chesney by the plaintiff and which farm she still possesses & owns together with a large amount of personal property as her individual property and at the time of executing and delivering said note as aforesaid said E. L. Chesney thereby intended to, and did bind her individual property for the payment of said promissory note

That said defendants have not paid nor hath either of them paid said sum of money or any part thereof but the same is due the plaintiff to wit. the sum of fifteen hundred dollars with Eight per cent interest from March 1. 1877 on said note for which sum the plaintiff asks Judgment against the defendants binding the Separate property of the said E. L. Chesney as well as her husband

R. L. Woodburn Atty for Plff

Jurat

The State of Ohio Union County ss J. W. Robinson says under oath being first duly sworn that he is one of the Attys of the plaintiff in the above cause That plaintiff is not a resident of said County and is now absent from the same. And he (this affiant) believes the allegations of the foregoing petition are true

J. W. Robinson

Sworn to before me and signed in my presence this 22d day of Jany 1880

W. M. Wright Clerk

On the 31st day of January 1880 the following Entry was made in the Journal of said Court

W. H. Baxter
vs
3337
E. L. Chesney et al

Entry

This day came on this cause to be on the demurrer of E. L. Chesney to the Amended petition of plaintiff filed January 22d 1880 Whereupon the Court being fully advised in the premises Sustain said demurrer. And it appearing that Judgement was rendered on the note mention in said petition against J. W. Chesney at a previous term of this Court. And the plaintiff not desiring to further amend. The Court consider and adjudge that the defendant E. L. Chesney recover of the plaintiff her costs herein expended taxed to $

Heretofore on the 17th day of September 1879 the following Entry was made in the Journal of said Court which reads in the words to wit,

over

3337

W. H. Baxter
vs
T. W. Chesney &
E. L. Chesney

This day came this cause on to be heard on the demurer of E. L. Chesney to the amended petition of Plaintiff. Whereupon the Court being fully advised in the premises do Sustain said demurer, to which ruling of the Court the Plaintiff Excepts and thereup plaintiff asked and obtained leave to amend his petition as to said E. L. Chesney in thirty days from the rising of the Court and the said T. W. Chesney Stie remaining in default for Answer & neither party demanding a Jury this cause as to him is submitted to the Court. Whereupon the Court being fully advised in the premises do find there is due plaintiff on the note set up in said petition from said T. W. Chesney the sum of $1803 Cts as alleged in said petition. Whereupon it is considered and Adjudged by the Court that plaintiff recover of said T. W. Chesney the said Sum of Eighteen hundred and three dollars together with his costs herein taxed to $

Entry

Judgt vs T. W. Chesney

Afterwards on the 12th day of Febmary 1881 the following Petition in Error was filed herein to wit

74

W. H. Baxter
vs
Eva L. Chesney

District Court Union County Ohio
Petition in Error

The said plaintiff says that on the day of 1879 at the Term 1879 of the Court of Common Pleas of said County of Union in the State of Ohio in a certain cause then pending in said Court the said Court sustained a demurrer by said Eva L. Chesney to the amended petition of said W. H. Baxter and at the same time the said Eva L. Chesney obtained Judgment against said W. H. Baxter in said Court on the Merits of said cause and for costs of suit Amounting to the Sum of $

That said Judgement remains in full force & effect in Law.

That there is Error in said proceedings in this to wit, the said Court erred in Sustaining Defendant demurrer to said amended petition and in rending Judgement for said defendant when said Court should have overruled said demurer and given Judgement for said plaintiff as will appear by said record hereto attached

Petition in Error

Wherefore plaintiff prays Judgement of reversal against said defendants of said Judgement

Robinson & Piper & Woodburn
Attys for Plffs in Error

The issuing and Service of Summons is waived and the appearance of the defendants entered Feby 16th 1881

Cameron & Benton Attys for Defendant.

On the 14th day of February 1881 the certified copies of Journal Entries were filed herein to wit:

The State of Ohio Union County ss } In the Court of Common Pleas

W. H. Baxter Plaintiff
against
T. W. Chesney &
E. L. Chesney Defendants

} Certified Copy's of Journal Entries

May 7. 1879
J 11 p 388

This day this cause came on to be heard on the demurer of Eva L. Chesney to the petition and the demurer of plaintiff to the Answer of T. W. Chesney. Whereupon the Court being fully advised in the premises do sustain both of said demurers and thereupon plaintiff asked and obtained leave to file amended petition by Thursday the 8th day of May 1879

This day came this cause on to be heard on the demurer of E. L. Chesney to the amended petition of plaintiff Whereupon the Court being fully advised

Sept. 17. 1879
J 11 p 447

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in the premises do Sustain said demurer to which ruling of the Court Plaintiff Excepts.
And thereupon plaintiff asked and Obtained leave his petition as to said E.L. Chesney in thirty days
Sept. 17. 1879 from the rising of the Court and the said J.W. Chesney still remaining in default for
answer and neither party demanding a Jury this cause as to him is Submitted to the Court
Jl. p. 447 being fully advised in the premises do find there is due plaintiff on the note Set up in said petition
from said J.W. Chesney the Sum of $1803 as alleged in said petition. Whereupon it is considered and
adjudged by the Court that receve of said J.W. Chesney the said Sum of Eighteen hundred and
three dollars together with his costs herein expended taxed to $

Jany 21. 1880 On motion of plaintiff leave is given plaintiff to file his amended petition this day
which amended petition is now filed

Jany 31. 1880 This day came on this cause to be heard on the demurer of E.L. Chesney to the amended
petition of plaintiff filed Jan. 22d 1880 Whereupon the Court being fully advised in
premises Sustain said demurr and it appearing that Judgment was rendered on
the note mentined in said petition against J.W. Chesney at a previous term of
this Court and the plaintiff not desiring to further amend the Court consider and
adjudge that the defendant E.L. Chesney recover of the plaintiff her costs herein expended
taxed to $.

The State of Ohio Union County Ss

I. W. M. Winget Clerk of the Court of Common Pleas within and
for said County and in whose custody the files Journals and Records of said
Court are required the laws of the State of Ohio to be kept hereby certify that the forg=
oing is taken and copied from the Journal of the proceedings of the said Court within
and for said County and that the foregoing copy has been compared by me with the
original Entry on said Journal and that the same is a correct Transcipt thereof

In Testimony whereof I do hereby Subscribe my name Officially and
affix the Seal of said Court at the Court House in Marysville in
said County this 14th day of February A.D. 1881

W. M. Winget Clerk

On the 11th day of March 1881 the following Entry was made in the Journal of said District Court to wit,

W. H. Baxter
vs
J.W. Chesney &
Eva L. Chesney

Pet. in Error

This day came on this cause to be heard by the Court on the
argument of Counsel for the Several parties Whereupon the Court
do find find error in the Sustaining said demurr of the Defendant
of Eva L. Chesney to plaintiffs petition and do overrule said
Judgment and overrule said demurer at her costs and therefore it is considered
and adjudged by the Court that Plaintiff recver of said Eva L. Chesney his costs
herein expended taxed to $ and this cause remanded to the Common Pleas
Court for furthe action in the same

To all of which rulings of the Court the said Eva L. Chesney by her Counsel
Excepts and prays the Court to receve of her Exceptions and make the same
a part of the record of this case which is done accordingly.

W. M. Winget Clerk

Hosea Finch Et als
55 vs
Matilda Wort Et al } Pleas before the Honorable Thomas Beer Henry H. Dodge and John McCauley Judges of the Court of Common Pleas within and for the tenth Judicial District in the State of Ohio at a District Court begun and held at the Court House in the Town of Marysville within and for the County of Union on the 10th day of March March A.D. 1881.

Heretofore on the 18th day of March 1880 the appeal Bond and original papers were filed with the Clerk of said District Court Which reads in the words following to wit,

On the 26th day of December 1878 the following petition was filed in the Common Pleas Court to wit

Hosea Finch and others } Court of Common Pleas Union County Ohio
3170 vs } Petition
Matilda Wort & others } The plaintiffs Hosea Finch Albert Finch Jannie Finch Archibald Finch Lucy Finch Jerome Finch. Jennet Finch married to David Talbot Mollie Finch married to Josiah Cartmell Mary & L. A. Hedges - Say that John Wort late of Union County Ohio deceased died intestate leaving A. C. Wort, Marilla Wort Married to Peter Finch and Mary Wat married to L. A. Hedges his only three Children and hiers at Law. That said Marilla Finch died intestate leaving the said Eight plaintifs and one Elnora Finch Married to Morgan Young her only children and heirs at law.

That said A. C. Wort died in Nov. 1878 in said County of Union Ohio intestate leaving Matilda Wort his widow but left no children. And Geo. W. Drum is the Administrator of his Estate,

The plaintiffs say that while said John Wort was living and said A. C. Wort was unmarried and lived with said John Wort and businis for him the said John Wort bought two tracts of land Situate in County of Union and paid the Consideration therof but A. C. Wort doing the business won the title to said land in his own name,

The lands aforesaid are as follows Viz.

1st Bought of A. A. Woodworth July 11th 1853 50 acres (Vol 17 page 201) for $300 on Survy No. 6693 Beginning at a Stone in the center of the Toway Road corner of Moses land thence with said road N 85° E 92 poles to a Stone in the line of Plummers land thence with his line N 8 W 88 poles to a Stake in his line thence S 85 W 92 poles to Samuel Moses land thence S 8 E. 88 poles to the beginning. Second. In Same County and Survey of Stuart Longuet 45 acres for $270 (Vol 17 p. 203) Beginning at a Stone northeast Corner of the above above described lot thence northerly with the line thereof 51 poles and 10 links to a Stone thence Westerly 142 poles. thence Southerly 51 poles & 10 links to a Stone Northwest corner of Samuel Moses land thence easterly to the beginning.

The first tract was paid for largely in property of the said John Wort and the last lot from proceeds of a land Warrant of John Wort

That afterwards said A. C. Wort conveyed to Phlemon Kirby 15¾ acres off of said 50 acre tract of land for $235.75 as follows Beginning at N. E. corner of said Moses land thence N 7 W 51 51 poles & 10 links thence S 9 5 W 50 poles to a stone in the corner of J. R. Moses land thence S 9 E 51 poles & 10 links to a Stone thence N 9 5 E 78 poles to the beginning containing 15¾ acres more or less (Vol. 25 p. 152)

The said A. C. Wort held said lands in trust for said John Wort during his life time and at the death bed of said John Wort during his last Sickness the said A. C. Wort at the request of said John Wort promised said John Wat that he would execute to said Mary & Marilla a deed for said 45 acre tract and keep the other himself as his share of the Estate of said John Wort he the said John Wort desiring his Estate to be divided in that proportion

The A. C. Wort never made said Conveyance for said 45 acres to the said Mary

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Shffs. Return

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vs
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W. Drumm Ad
that plaintiffs
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of said Manilla nor to the heirs of the said Manilla dec'd since She died although at different times after the death of her father John Wort he promised to make it right as he had agreed with his father and make said deed but one excuse after another postponed it and died without complying with the trust under which he held said land,

The said Elnora Young declined to join as plaintiff in this petition & therefor She is joined as Deft.

The said Mary Hedges and the said heirs of Manilla Finch dec'd are entitled to said 45 acres of land and therefor they ask a decree for the same not waiving their interest in the other tract at the death of said Matilda Wort and when the decree is rendered for said 45 acres that said defendant Matilda Wort surrender the possession of said land to plaintiffs & that other and proper relief be granted to them Robinson & Piper Attys for Pltff

The State of Ohio Union County ss

jurat — Hosea Finch One of the plaintiffs being duly sworn deposes and says he believes the allegations of the foregoing petition are true. Hosea Finch

Sworn to before me and signed in my presence this 26th of Dec. 1878

W. M. Winget Clerk

praecipe — Issue Summons for Matilda Wort G.W. Drumm adm. Elnora Young Defts & endorse "petition for deed for land" Robinson & Piper

The State of Ohio Union County ss } To the Sheriff of the County of Union Greeting

Summons — We command you to Notify Matilda Wort, G.W. Drumm Adm. and Elnora Young that they have been sued by Hosea Finch Et als in the Court of Common Pleas of Union and that unless they answer by the 25th day of January A.D. 1879 the petition of the said Hosea Finch Et als. against them filed in the Clerks office of said petition will be taken as true and Judgment rendered accordingly You will make due return of this Summons on the 6th day of January A.D. 1879.

Witness my hand and the Seal of said Court this 26th day of December A.D. 1878 W. M. Winget Clerk

Endorsement — "In action for Deed for land" The Sheriffs return on said Summons is as follows to wit The State of Ohio Union County ss Received this writ December 26th A.D. 1878 at 5 oclock P. M. and pursuant to its command Served the same on the 4th day of January 1879 by delivering a copy thereof with the endorsements thereon to each of the within named named Matilda Wort and Elnora Young the within named G.W. Drumm not found in my County Total fee $3.30

Shffs. return — J. J. Miller Sheriff

On the 18th day of February 1879 Defendants Answer was filed herein which reads in the following words to wit.

Hosea Finch Et. als. Plaintiff
vs
Matilda Wort Et al Defendant

In the Court of Common Pleas of Union County Ohio

Answer

And now comes the said Matilda Wort and George W. Drumm Administrator, for their Answers to Plaintiffs. Petition and say that they admit that plaintiffs named in said petition are the heirs of John Wort deceased and that he died intestate. They also admit that A.C. Wort died in Nov. 1878. intestate leaving Matilda Wort his Widow and that he left no children and that the said George W. Drumm as Administrator. But the said defendants denies each and every allegation made and set forth in said petition except what has been excepted. Defendants further say that the said A.C. Wort purchased the said tracts of land described in said petition. of the said parties named in said petition and paid the same from his own personal earnings and that the said John Wort never had any right or interest in the said land nor was there any part of the consideration money paid the said John Wort The defendants say that the said A.C. Wort has been in quit possession of the said lands for the last 23 years last past and that he and the said Matilda Wort by their

labor industry and economy through a long Period of years purchased & paid for the same and that She now holds the legal and Equit title & interest in said land. These defendants therefor prays that this cause may be dismissed and that they may be dismissed and recover from the Plaintiffs their costs herein expended and go hence without day

Poppleton Cameron and Benton Attorneys for Defendants

State of Ohio Union County ss.

Matilda Wort one of the defendants being duly Sworn deposes and says that the facts stated and allegations made in the foregoing Answer are true as She verily believes

Matilda her X mark Wort

Sworn to before me by Matilda Wort and by her in my presence this 13th day of January A. D. 1879 (L.S.) Jno W Bradrick Notary Public

On the 8th day of May 1879 the following was made in the Journal of said Court to wit

3170 Hosea Finch et al vs Matilda Wort

This day came the parties by their attorneys and thereupon this cause came on to be heard upon the pleadings Exhibits and testimony and was argued by Counsel. On Consideration Whereof the Court being fully advised in the premises do find the Equity of the case to be with the defendants. It is therefore considered Ordered and Adjudged by the Court that the defendants recover of the plaintiff their costs herein expended taxed to $

Entry Judgt for costs &

Thereupon said plaintiff gave notice of his intention to Appeal this case to the District Court. And the Court fix the Bond at $200.

Appeal

On the 18th day of March 1880 the following Appeal was filed herein which reads as follows.

Know all men by these presents that we Hosea Finch L. A. Hedges and Simeon Adams are held and firmly bound unto Matilda Wort et als in the penal Sum of Two Hundred dollars to the payment of which well and truly to be made we do hereby Jointly and Severally bind our Selves Our heirs Executors and administrators

Appeal Bond

Sealed with our Seals and dated this 17th day of March 1880. The Condition of the above Obligation is Such that whereas the said Hosea Finch et als have taken an appeal from a certain Judgment rendered against Hosea Finch et als. and in favor of the said Matilda Wort et al in the Court of Common Pleas within for the County and State of Ohio at the April Term 1879 in case No. 3170 entitled Hosea Finch et als. vs Matilda Wort et als. for the Sum of $ dollars and $ Dollars costs of said ~~Said~~ Court to the District Court of said County Now if the said Hosea Finch et als Shall prosecute their appeal to effect without unnecessary delay and Shall abide and perform the Order and perform the Order and Judgment of said District Court and pay all moneys damages and costs which may be awarded against them the said Hosea Finch Et als the said plaintiffs then this Obligation Shall be void, Otherwise it Shall remain in full force and Virtue in Law

H. W. Finch (Seal)
In presence of L. A. Hedges (Seal)
Simeon Adams (Seal)

On the 19th day of March 1880 the following Entry was made in the Journal of said District Court viz

55 Hosea Finch et als vs Matilda Wort Et als

This cause is continued for want of time to hear it with leave to defendants to file an amended Answer in 40 days from the rising of the Court saving all rights to the plaintiffs as to times.

Entry

On the 19th day of July 1880 the following amended petition was filed which reads to wit

Hosea Finch Et a
vs
Matilda Wort et a

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Amended

Answer

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Hosea Finch
vs
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Hosea Finch Et als
vs
Matilda Wort et als

State of Ohio Union County
In the District Court.
Amended Answer

The said defendants now come and by leave of the Court amend their Answer & Say That the said John Wort deceased in his life time to wit during the years A.D. 1852 & A.D. 1853 knew said Andrew C. Wort took the title of said land in his own right and well knew that said Andrew C. Wort claimed said lands in his own right and well knew all the facts and circumstances in connection with the purchase of said land by said Andrew and that if the alleged facts and allegations in the petition setforth were true they were known to said John Wort in his lifetime and a right of action accrued to him then and that more than twenty one years have elapsed since the right of action if any there be accrued to the said defendant and the ancestor through whom they claim and the same have so elapsed before this action was commenced and that the plaintiff is barred by the Statue of limitations

Amended

Answer

2d Cause of Defence. For a second cause of defense the said defendants Say that they deny each and every allegation and averment in said petition contained except that the plaintiffs are heirs of John deceased and that said Andrew and John Wort died intestate and said Matilda Wort is his widow that he left no children, and that G. W. Drumm is his administrator

3d Defense. For a further defense these defendants say That said Andrew C. Wirt purchased & paid for said Lands in his own right and that he took the title to himself and claimed said Lands in his own right and that he had and held the Same notorious quiet peaceable Continued adverse possession and enjoyment of said lands for more than twenty three years before his death And that the said Matilda Wort as his widow and his has had and held said lands in the same manner ever since.

Wherefore the said defendants ask that they may be quited in their title and go hence without day and recover their reasonable costs herein expended

Cameron & Benton & E. F. Poppleton Atty's for Defts

State of Ohio Union County ss

This day personally came before me the undersigned authority Matilda Wort who being by me first duly Sworn deposes and says that the facts Stated and allegations made in the foregoing Amended Answer are true as She verily beives

Jurat

Matilda her mark Wort

Sworn to before me by said Matilda Wort and by her Signed in my presence this the 19th day of July A.D. 1880

W. M. Winget Clerk

On the 22d day of February 1881 the following Reply was filed herein which reads to wit

Hosea Finch Et als
vs
Matilda Wort Et al

District Court Union County Ohio
Reply to Amended Answers

The said Plaintiffs not waiving any of their rights by reason of the amended answer constituting a new pretended defense since this cause was appealed to the District Court. now comes and for Reply to said amended Answer Say that they deny that said A. C. Wort held said land adverse to the said John Wort but on the contrary the said A. C. Wort and said John occupied the same Jointly and said A. C. Wort from time to time promised to Execute the release mentioned in plaintiffs petition and delayed & hindered the plaintiff and those whom they hold from commencing an action against him by promising to comply with his promises aforesaid and the plaintiffs say that A. C. Wort was very many times in such a condition of health and mind that any effort to cross his wishes or enforce upon him the will of Others was attended with injurous effect on his health and mind

and for these reasons the plaintiffs delayed and postponed from time to time any action under promise of said A.G. Wort that would comply with his said promises until his death and therefor the plaintiffs deny the several allegations of the 1st and 3d defence in said amended Answer and pray decree as they did in their Original petition

Robinson & Peper attys for Plffs

The State of Ohio Union County ss

Hosea Finch one of the plaintiffs being duly Sworn deposes & Says he belives the allegation of the foregoing Reply are true Hosea Finch

Sworn to before me and signed in my presence this 22d of Feby 1881

(Seal) J.H. Rinkade Notary Public in & for Union Co. O.

And on the 10th day of March 1881 the following Entry was made in the Journal of Sd Court

Hosea Finch Et als }
vs } In District Entry
Matilda Wort Et al } This day came the parties by their Attorneys

5b

and thereupon this cause came on to be heard upon the pleadings of the parties and the Evidence and was argued by Counsel On consideration whereof the Court being fully advised in the premises do find the Equity of the case to be with the defendant.

and thereupon plaintiff moved the Court for a New trial which Motion the Court Overruled to which ruling the Plaintiffs Excepted.

It is therefor considered adjudged and decreed by the Court that the said Defendants go hence without day and recover their reasable costs To which ruling and Judgement the plaintiffs Excepts and ask the Court to Sign and Seal the Bill of Exceptions which accordingly done and the Ordered to be recorded as a part of the record of this cause.

Attest W. M. Winget Clerk

W. H. Baxter }
against }
J. W. Chesney Et al. } Pleas before the Honorable Thomas Beer Henry H. Dodge

73

and John McCauley Judges of the Court of Common Pleas within and for the Tenth Judicial District in the State of Ohio at a District Court begun and held at the Court House in the Town of Marysville within and for the County of Union on the 11th day of March 1881. Heretofore on the 5th day of March 1880 the Appeal Bond Transcript and Original papers were filed with the Clerk of said District Court which reads viz On the 6th day of april 1878 the Original petition was filed in this case with the Clerk of Com. Pleas

William H. Baxter Plaintiff } Court of Common Pleas Union County Ohio
vs } Petition.
J. W. Chesney & E. L. Chesney Defendants } The Plaintiff Says

2857

1st On the 27th day of March A.D. 1876 the Defendants J.W. Chesney and E.L. Chesney made and delivered to plaintiff their promisory note of which the following is true copy "Mechanicsburg O. March 27th 1876 On the first day of "March 1878 we or either of us promise to pay W.H. Baxter or order the Sum of Fifteen Hundred "Dollars with Eight percent interest from March 1st 1877 Value received

"J.W. Chesney
"E.L. Chesney"

Petition

2d There are no credits on said note

3d The defendants J.W. Chesney and E.L. Chesney on the 29th day of March

A.D. 1876 to secure
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Sworn to
Clerk. Issue
Amount cla
Precipe of Mortgage

A.D. 1876 to secure the payment of said note Executed and delivered to the plaintiff his Mortgage deed and thereby conveyed to the plaintiff his heirs and assigns the following lands and tenements Situate in said County of Union and State of Ohio and in Survey Nos. 4805, 7767 & 7472 bounded and described as follows - Beginning at the North east of the John Smith farm Thence running with the line of said farm S 6¾° W. 10 64/100 poles to a red and white Elm thence continuing the East line of said farm S ¾° E 155 4/5 poles to an ash and Elm corner to Taylor. Thence continuing with said East line S ¾° E 136 poles crossing Little Darby creek to the center of the post road at a Stone marked 6 Thence with the center of said Post Road N 81½° West 37 poles, thence with the same course 52 2/5 poles to a stone in the Liverpool Road, thence continuing with East line of said John Smith farm and with said road about 200 poles to the
Petition S.E. corner of said farm - thence N 84° W. with S. line of said farm 47½ poles to a Stake at the corner of Nelson J. Bennetts part of said farm as made by B.A. Fay Surveyor
Contra. by plat recorded - A Suit in Union County Common Pleas Wherein J. F. Bennett was pleaintiff, and the heirs of Ann Smith Defendants to which reference is made for further discription - thence No 26° E with the line between said J. F Bennett and N. J. Bennett 200 poles to a Stone and one of the corners thence N 74° W 8½ poles to another of the corners - thence N 26 E 19 poles to another in the center of the Post Road - thence down said Road S 74° E 6½ poles to another of the corners - thence N 16° E 16 72/100 poles to another of their corners. thence S 74° E 33 84/100 poles to another of their corners - thence N 2° E 25 4/5 poles to the center of Little Darby - thence down the creek 38 4/100 poles - thence N 2° E with the line between 247 68/100 poles to the North line of said farm - thence South 83° E 59 16/100 poles to the beginning containing 190¼ acres more or less. Excepting fifty acres off the North East end of said premises sold and deeded by Lucius A. Burnham to Foster Bennett.

The condition contained in said Mortgage Deed was in Substance that if the said G.W. Chesney and E.L. Chesney Shall pay or cause to be paid unto the said W.H. Baxter or order One promissory note dated March 27th 1876 calling for Fifteen Hundred Dollars on the first day of March 1878 with interest at Eight per cent from March 1st 1877 for value received when due - Then these presents Shall be void otherwise to be and remain in full force & virtue in Law fower

4th On the 12th day april A.D, 1876 at One o'clock P.M. the said Mortgage was delivered to the Recorder of said County to by him entered on record and was recorded May 13th 1876 in the Union County Records Ohio.

The said Mortgage Deed has become absolute - There is due and remaining unpaid upon said indebtedness the Sum of Fifteen hundred dollars with interest at Eight per cent from march the 1st 1877.

5th The plaintiff asks that said Mortgage may be foreclosed the said premises ordered to be sold and the proceeds applied to the payment of said debt and Execution awarded for the balance.

R.L. Woodburn Atty for Plff

The State of Ohio Union County ss. R.L. Woodburn being Sworn says that he is the Attorney of the above W.H. Baxter duly authorized in the premises and that the said W.H. Baxter is not a resident of the County of Union. and that said pleading is founded upon a written instrument for the payment of money only Secured by Mortgage and are now in the possession of this affiant - And that the facts Stated & allegations in the foregoing pleading of W.H. Baxter are
Jurat as affiant believes true

R. L Woodburn.

Sworn to before me and Signed in my presence this 6th day April 1878

W. M. Winget Clerk

Clerk. Issue Summons upon the petition in the above case returnable according to law.
Amount claimed $1500. with interest at 8 per cent from March 1st 1877 and foreclosure
Precipe of Mortgage

R L. Woodburn Atty for Plff.

Summons

Thereupon the following Summons was issued by the Clerk of said Court which reads to wit
The State of Ohio Union County ss To the Sheriff of the County of Union Greeting
We command you to Notify T. W. Chesney and E. L. Chesney that they have been Sued
by William H. Baxter in the Court of Common Pleas of Union County and that unless
they answer by the 4th day of May A.D. 1878 the petition of the said William H. Baxter
against them filed in the Clerks office of said Court such petition will be taken
as true and Judgment rendered accordingly.
You will due return of this Summons on the 15th day of April A.D. 1878
Witness my hand and the Seal of said Court this 6th day
of April A.D. 1878 W. M. Winget Clerk
By Jabez Randall Deputy

In action for Foreclosure of
Mortgage Amount claimed $1500. with interest at 8 per cent from March 1st 1877

Shffs. Return

The State of Ohio Union County ss Received this writ April 6th A.D. 1878 and pursuant
to its command I served the same on the within named T. W. Chesney & E. L. Chesney by
delivering to each of a certified copy of this writ with the endorsements thereon this 11th day
day of April 1878 Total fees $2.30 J. J. Miller Sheriff By G. G. Edwards Deputy

William H. Baxter Plaintiff
vs
T. W. Chesney & E. L. Chesney Defendants

2857

In Union County
Court of Common Pleas
Answer

The said defendants now come and for answer to the petition
of the said plaintiff Say The said plaintiff ought not to have or maintain
his said action against them or either of them because they say that the note
and Mortgage mentioned in the petition in this case was given as part purchase

Answer of Defts.

money for the premises in the petition described which premises the said plaintiff that
day sold to the defendant by deed of general warranty the said plaintiff did covenant
and agree by and with the defendants that said premises were free and unincumbered
and that he the said plaintiff was well seized of said premises in fee Simple and had
right and title to convey the same and that he the said plaintiff would forever
defend said premises against all adverse claims of all person both as to title and
incumbrances and the only and sole consideration of said note and Mortgage
was the said premises and warranty aforesaid and was given upon no other
Consideration whatever.

And the said defendants further Answer Say that said plaintiff did not protect
or defend the said defendant in said premises and that the Warranty of the said plaintiff
has been broken. There was at the time said deed was made and delivered a
large incumbrance on said premises by taxes then accrued and which was
then an incumbrance on said premises and was a lien thereon at the time of
said conveyance and warranty and which said plaintiff neglected and refused
to pay and which the defendants were compelled to pay in order to clear their said
premises.

That at the time of the said Warranty the plaintiff did have the full
& perfect title in fee as he in his deed did covenant but on the contrary
there was then adversely held by the citizens of Union Township in said
County a Church yard and burying place on said premises consisting of about one of
land situate in the body of said premises and of which said plaintiff never had title
and which is now held adversely to the said defendants and which reason of its
location is of great injury and damages to said premises and renders it of
much less value and which the said plaintiff neglects to procure for the
said defendants and which he never put the defendants in possession whereby

the consideration of said note materialy failed The defendants further
Say that at the time of said conveyance and warranty of the said plaintiff
there was an outstanding title and adverse covenant in said heirs to one Foster
Bennett which title and right of way entitled the said Foster Bennett and those
claiming under him his heirs and assigns to pass through over and upon the said
(and so conveyed to these defendants and to trample upon destroy the Meadows
pasture and injure the Arable so conveyed in such a manner as to greatly injure
and damage said lands and greatly depriciate the value thereof, and which
covenant adverse title and right of way the plaintiff did not and could not
extinguish and of which he was not seized as he did covenant and agree with the
defendants but which said Foster Bennett now holds adversely to the defendants
whereby the consideration for said note has failed

The defendants aver that by reason of the said Several incumbrances & adverse
titles and covenants the consideration for said note has wholly failed

The defendants Say that said note and Mortgage were given for only
a Small portion of the purchase money for said premises and the balance that
has been paid and secured is a full and ample consideration for said
premises in the condition it was when said note was made and by reason
of all the said Several premises the said plaintiff ought not to have or maintain his
said action and these defendants ask that said Mortgage may be cancelled
by order of the Court and said note ordered to be delivered up and that they may
recover their reasonable costs in this behalf expended

Cameron & Benton Attys at Law

State of Ohio Union County ss

I W. Chesney one of the Defendants being first duly Sworn depose
and Say that the facts Stated and allegations made in the foregoing answer
are true as he believes

I. W. Chesney

Sworn to before by said I. W. Chesney and by him Subscribed in my presence this
4th day of May 1878

W. M. Winget Clerk

William H. Baxter Pltff
vs
I. W. Chesney & E. L. Chesney Defts

Court of Common Pleas Union County Ohio

Reply.

Now comes the plaintiff and for his reply to Defendants
Says that he did Sell and convey the premises described in
his petition to the said E. L. Chesney defendant by deed of general Warranty and that
the said note in the plaintiff petition was given for the purchase money.

The plaintiff denys being any taxes or liens of any Kind upon said premises but
what were adjusted between him and I. W. Chesney the defendant.

The plaintiff further Says that at the time the defendant purchased said
premises that he well knew that there was a burying place on said premises
and that the same was used for such and would be and that the purchase
said premises with that understanding. The plaintiff further Says that at
the time he sold said premises and that it was agreed upon between the plaintiff
and defendant at that time that the plaintiff should make a deed pon
description of the deed made to him by L. A. Burnham and wife which he did
and that the said defendant accepted of the deed at the time knowing the
description made therein The plaintiff denies of there being any church on
said premises. The plaintiff denies that the defendants are damaged in
any as is set forth in said defendants answer and that said right of a gate way is
for a temporary purpose only and does not damage or injure the sale of the

(and in any respect whatever. And denies that Foster Bennett has any right of way across the premises as is described in Defendants Answer whatsoever
The plaintiff further says that the defence of Defendants in their Answer to his petition is without cause. And prays judgement for the amount as is claimed against Defendants in his petition

R L. Woodburn Atty for Plff

State of Ohio Union County ss.
W. H. Baxter being duly sworn upposeth and says that the facts and allegations as are set forth in his Reply are true as he verily believes. W. H. Baxter
Sworn to before me and Subscribed in my presence this 12th day of September 1878
(L S.) A N Beightler Notary Public

Wm H. Barter
vs
J. W. Chesney et als } Court of Common Pleas
Union County Ohio

2857

Answer of J F Bennett

I the undersigned J. Foster Bennett hereby waive Summons on me in this case and entey my appearance and Say I Sold to Nelson J Bennett the 50 acres of Land which W L Burnham Sold me as set forth in this case And I reserved the timber thereon.
That the only right of way which I had over the land in this case described I still retain and I claim the right over Said land to get out Said timber and nothing more
J. F. Bennett

Journal

On the 24th day of February 1879 the following Entry was made in the Journals of Said Court

William H. Baxter
vs
J. W. Chesney & E L. Chesney } Foreclosure.

2857

Entries

This day came the parties and Submitted this case on the pleadings and evidence Whereupon the Court being fully advised in the premises do find the allegations of the defendants Answer to be true to the Extent following Viz For the half acre taken for the Grave yard there should be a deduction of $25 and for the taxes paid by defendants for plaintiff in Excess of taxes by plaintiff for Def $3.05 and for damage for right of way as claimed by Foster Bennett in his Answer. the Sum of One hundred and fifty dollars making a total of $178.05/100 to be deducted at the date of Mortgage bearing $1321.25/100 balance with 8 per cent interest from March 1. 1877 amounting in the principal and interest to the first day of this term $1525.38/100 due and a lien on the land in the petition described.

Entered

Judgt. for

It is therefore considered Ordered and adjudged by the Court that unless said defendants pay to the plaintiff the said Sum of fifteen hundred & twenty five 38/100 dollars with interest at Eight per cent from Feby 3d 1879 & costs of this proceeding within ten days that an Order of sale issue to the Sheriff of this County commanding him to appraise advertise & sell said premises according to law and it appearing that another note of fifteen hundred dollars Secured by said Mortgage is not yet due this cause is continued as to said note not due.

Sale ordered

Notice of appeal by defendants and the appeal bond is fixed by the Court at $500

Know all Men by these presents That we J. W. Chesney et al and A. R. Bigelow are held and firmly bound unto W H Barter in the penal Sum of Five hundred Dollars to the payment of which well and truly to be made we do hereby jointly and Severally bind ourselves our heirs Executors and administrators Signed by us and dated this 20th day of March A.D. 1879
The condition of the above Obligation is Such that whereas the said J. W. Chesney and Eva L. Chesney has taken an appeal from a certain Judgement rendered against them in

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W. H. Baxter
vs
J. W. Barley et

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vs
J. W. Chesney &

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favor of the said W.H. Baxter in the Court of Common Pleas within and the County of Union in the State of Ohio at the February Term thereof A.D. 1879 for the Sum One Thousand Five Hundred Twenty five 75/100 dollars to the District Court within and for the County aforesaid Now if the said J. W. Chesney & Eva L. Chesney Shall abide and perform the Order and Judgement of said District Court and Shall pay all moneys costs and damages which may be required of or awarded against him by said District Court then this Obligation to be void, otherwise to remain in full force and virtue in Law (Signed) J. W. Chesney
A.R. Bigelow

I approve the above Bond, with the Sureties thereto this 20th day of March AD. 1879
W. M. Winget Clerk

The State of Ohio Union County ss } In the Court of Common Pleas
W. H. Baxter Plaintiff
vs
J. W. Bayley et. als, Defendants } I W M. Winget Clerk of the Court of Common Pleas within and for the County of Union do hereby Certify that the following Entries and Judgements are truly Copied from the Journals of said Court to wit,

Wm H. Baxter
vs
J. W. Chesney & E. L. Chesney } No. 2857. February 24th 1879

This day came the parties and Submitted this Cause on the pleadings and Evidence Whereupon the Court being fully advised in the premises do find the allegations of the defendants answer to be true to the Extent - Viz. For the half acre taken for the grave yard there should be a deduction of $25 and for the taxes paid by defendants for plaintiff in excess of taxes paid by plaintiff for defendants $3.05 and for damages of right of way as claimed by Foster Bennett in his answer the Sum of One hundred and fifty dollars making a total of $178 05/100 to be deducted at the date of the Mortgage leaving $1321.95 balance with 8 per cent interest from March 1st 1877 amounting in the principal and interest to the first day of this term $1525.38 due and a lien on the land in the petition described. It is therefore Considered Ordered and Adjudged by the Court that unless said defendants pay to the plaintiff the said Sum of fifteen hundred and twenty five 98/100 dollars with interest at Eight per cent from February 3d 1879 & costs of this proceeding within ten days that an Order of Sale issue to the Sheriff of County Commanding him to appraise advertise and sell said premises according to law and it appearing that another note of fifteen hundred dollars secured by said Mortgage is not yet due and this cause is continued as to said note not due.

Notice of appeal by defendants and the appeal Bond fixed by the Court at $500.00

The State of Ohio Union County S.S.

I W M. Winget Clerk of the Court of Common Pleas in and for said County do hereby certify that the above is a true transcript of the Docket and Journal Entries of said Court in the above entitled cause and that the said J. W. & E. L. Chesney entered into bond with approved Surety Conditioned to abide & perform the Order and judgment of the District Court and to pay all moneys costs & damages which may be awarded against said J. W. & E. L. Chesney in said District Court and I further certify that the papers herewith Sent numbered from one up to four are the original papers and pleadings filed in the above cause of W. H. Baxter Plaintiff against J. W. Chesney et al Defendant

In Testimony Whereof I have hereunto set my hand and affixed the Seal of said Court of Common Pleas at the Court in Marysville Ohio on this 5th day of March A.D. 1880 W. M. Winget Clerk

48½

On the 18th day of March 1880 the following Entry was made in the Journal of said District Court

Wm H. Baxter
vs
T.W. Chesney Et al

This day came the parties to this cause and submitted the cause to the Court upon the petition Answer Reply and Supplemental petition and the evidence Whereupon the Court being fully advised in the premises do find for defendants that they are entitled to have the Sum of One hundred and twenty eight dollars abated from said Mortgage on account of the avered in defendants answer and the Court further find that with the Exception of said $128.00 the plaintiffs are entitled to the amount called for in the two notes mentioned in the petition and Supplemental petition and that the same is a lien on said premises in the petition described and the Court find that the Sum so due after such deduction is ($3563.46) thirty five hundred and Sixty three & 46/100 dollars with Eight per cent interest

It is therefore Ordered and decreed that the defendants to pay to said plaintiffs said Sum of thirty five hundred & Sixty three 46/100 dollars with Eight per cent interest as aforesaid and his costs herein expended taxed to $

And if the defendants fail for three days to pay said Sum of money and costs that an order of Sale issue to the Sheriff of this County who is appointed Special Master for that purpose commanding him to appraise advertise and Sell said premises according to law and bring the proceeds into the Court of Common Pleas of this County for distribution And this cause is Remanded to the said Court of Common Pleas to be carried into effect.

On the 3d day of May 1880 the following Answer & Cross petition was filed herein which reads to wit

W. H. Baxter Plaintiff
vs
T. W. Chesney & others Defendants

Court of Common Pleas Union County Ohio
Answer of Addie F. Burnham

And Now comes Addie F. Burnham and by leave of the Court first had files her Answer by way of Cross petition and Says that on the 12th day of February A.D. 1873 in action in action in this Court of Common Pleas of the said County of Union She obtained a decree of this Court in the case of Addie F. Burnham vs Lucius A. Burnham in Dower & Alimony for the Sum of Three Thousand Dollars ($3000.00) as Alimony in said which said Sum of three thousand Dollars was to be paid three hundred Dollars in thirty days and $300 in one year $300 in two years and so on $300 each year until said Sum of $3000.00 was fully paid with interest on same from said 12th day of February A.D. 1873- That payments have been made in accordance with the said decree and Order of the said Court up to Feb. 12th 1879. that there is now due and remaining unpaid on said decree the Sum due and payable on February 12th A.D. 1879 and February 12th 1880 of three hundred dollars each with interest on same at Six per cent per annum from February 12th 1873.

This defendant further Says that by said decree said Sums of money are the first lien on said premises in the petition described prior to and better than the Mortgage lien Set forth in plaintiffs petition

This defendant therefore ask the Court that so much of the proceeds of said Sale as may be necessary be set apart to pay her said lien on the Sums aforesaid and for all further and proper relief that Case may agree

Robinson & Piper Attys. for Addie F. Burnham

State of Ohio Union County ss

Addie F. Burnham being duly Sworn Says the facts Stated and

Jur at 2857

Entry Sale set aside & Re appts & Sale ordered

Order of Sale

allegations in t

Sworn to befo
this 3d day of
On the 4th day of
W. H. Baxter
vs
T. W. Chesney &
Ed L. Chesney

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allegations in the foregoing Answer and Cross petition are as he believes true.

Jurat — Addie F. Burnham

Sworn to before me by Addie F. Burnham and by her subscribed before me this 3d day of May 1880 J. H. Kinkade Notary Public in & for Union Co Ohio

On the 4th day of May 1880 the following Entry was made in the Journal of said Court to wit

2857 — W. H. Baxter vs T. W. Chesney & Eva L. Chesney

This day came on this cause to be heard on the motion of Defendant to Set aside the Sale made in this case for reason on file in their Motion And also came on the Motion of plaintiff for confirmation of said Sale Whereupon the Court finding that the lands in said proceedings described are partly in Madison County Ohio and partly in Union County Ohio and that the Sale and appraisement are irregular and should be and are hereby Set aside to which ruling the plaintiff Excepts - Thereupon this cause came on further to be heard on the motion of plaintiff and thereupon it is Ordered by the Court that the Sheriff of this County who is appointed Special Master for that purpose proceed under the former order of the Court herein to Sell said lands in one body and he is Ordered hereby to Reappraise said lands in one body by appraisers Chosen from said County of Union and he is ordered to advertise the Sale in a Newspaper published in & of general circulation in said County of Union and one paper only and not in both of said Counties the said tract being all in one parcel and said Master is Ordered to report his proceedings herein to this Term of Court.

Entry Sale set aside & Re appts & Sale ordd

And thereupon the following Order of Sale was issued herein which reads to wit

The State of Ohio Union County ss } To the Sheriff of said County Greeting.

Whereas at a term of the District Court held at Marysville in and for said County on the 18th day of March A.D. 1880 in the cause of W. H. Baxter Plaintiff and T. W. Chesney Et al Defendants it was ordered adjudged and decreed as follows to wit, That the defendants pay the plaintiff the Sum of $3563.46 with 8 o/o interest and his Costs herein expended and the defendants fail for three days to pay said Sum of Money & costs that an Order of Sale issue to the Sheriff of this County who is appointed Special Master for that purpose commanding him to appraise advertise and Sell said premises according to law and bring the proceeds into the Court of Common Pleas of this County for distribution and this cause is Remanded to said Court of Common Pleas to be carried into effect and afterwards to wit On the 4th day of May it was further Ordered by the Court (The former Sale made having been set aside) that Lands be Sold in one body and that the said Sheriff cause said lands to be reappraised in one body by appraisers Chosen from said County of Union and he is Ordered advertise the Sale in a newspaper published in and of general circulation in said Union County

Order of Sale

Situate in the County of Union and State of Ohio part of Surveys 4805 & 7688 & 7472 bounded and described as follows. Beginning at the Northeast corner of the John Smith farm; thence running with the line of said farm S 6¾ W. 10 64/100 poles to a red & white Elm thence continuing with the East of said farm S. ¾° E 155 4/5 poles to an ash and Elm corner to Taylors - thence continuing with said east line S ¾ E. 136 poles crossing Little Darby creek to the center of the Post Road at a stone marked C. thence with the center of said Post Road N 81½° W 37 poles thence with the same course 52½ poles to a Stone in the Liverpool Road thence continuing with the East line of said John Smith farm and with said Road about 200 poles to the S. E. corner of said farm thence N 84° W with the South line of said farm 47½ poles to a Stake at the corner of Nelson Y. Bennetts part of said farm as made by B. A. Fay Surveyor by plat

found recorded - a Suit in Union County Common Pleas. Wherein J. F. Bennett was plaintiff and the heirs of Ann Smith defendants to which reference is made for further description - thence N 26° E with the line between said J. F. Bennett & N. F. Bennett 200 poles to a Stone and one of the corners; thence N 26° E 19 poles to another in the center of the post Road - thence down said Road S 74° E 6½ poles to another of the corners - thence N. 16° E 16 72/100 poles to another of their corners - thence S 74° E 33 84/100 poles to another of their corners - thence N 2° E 25 4/5 poles to the center of Little Darby thence down the Creek 3 84/100 poles - thence N 2° E with the line between them 247 68/100 poles to the north line of said farm - thence South 83° E 5 9 16/100 poles to the beginning containing 190¼ acres Excepting fifty acres off the north east end of said premises Sold and and deeded by Lucius A. Burnham to Foster Bennett.

Order bond

We Therefore Command You That you proceed to carry said Order Judgment and decree into execution agreable to the tenor thereof and that you expose to Sale the above discribed Real Estate under the Statute regulating Sales on Execution and that you apply the proceeds of such Sale in satisfaction of said Judgment and decree with costs and interest as Specified therein and that you make report of your proceedings herein to our Court of Common Pleas within Sixty days from the date here of and bring this Order with you

Witness my Signature as Clerk of our said Court of Common Pleas and the Seal of said Court at Marysville this 4th day of May A. D. 1880 W. M. Winget Clerk

L. S.

The State of Ohio } ss.
Union County }

Sheriffs Return

In obedience to the command of the Order of Sale hereto said on the 4th day of May 1880 Summon H. Sothes Martin Wetzel A. J. Rigdon three disinterested free holders of said County who were by me duly Sworn to view and appraise the lands and tenements therein described and afterwards on the 4th day of May A. D. 1880 said Appraisers returned to me under their hands and Seals that they did upon actual view of the premises estimate and appraise the real value in money of the same at Sixty Seven Hundred and Thirty Two Dollars. A certified copy of said appraisal I forthwith deposited in the office of the Clerk of the Court of Common Pleas of said County and on the fourth day of May 1880 I caused to advertised in the Marysville Tribune (a newspaper printed and published and of general circulation in Union County) Said lands and tenements to be Sold at public Sale at the door of the Court House of said County in the said County on the 4th day of June A. D. 1880 at One o'clock P. M. of said day. And having Advertised the said lands and tenements for more than thirty days previous to the day of Sale to wit five consecutive weeks and in pursuance of said notice I did on said 4th day day of June A. D. 1880 at the time and place above mentioned proceed to offer said lands and tenements at public Sale at the door of said Court House and then and there came W. H. Baxter who bid for the same the Sum of Forty eight hundred (4800) Dollars and said Sum being more than two thirds of the appraised value thereof and said William H. Baxter being the highest and best bidder thereof I then and there publicly sold and Struck of said lands and tenements to him for said Sum of Forty Eight hundred (4800) Dollars

Total Fees $59.57

J. J. Miller Sheriff

Plffs Sale

W. H. Baxter vs T. W. Chesney et al } Court of Common Pleas Union County O.
Order of Sale.

By virtue of the above stated writ from said Court to me directed I will offer at public Sale at the door of the Court House in Marysville O. on Friday June 4th 1880 at or about the hour of 1 o'clock P. M. the following described real estate to wit Situated in the Counties of Union & Madison

Notice of Sale bond

and State of Ohio at the northeast $6\frac{3}{4}$ W $10\frac{64}{100}$ poles 155 4/5 poles to an a 136 poles crossing center of said Post road thence contin South east corner o of Nelson F. Bennett Union County & defendant to w said J. F. Benn 8½ poles to anot thence down Sa another of their to center of Little between them 2 the beginning c premises Sold an Woodburn. Robi

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Notice of Sale bonds

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Woodburn, Robinson & Piper Attys for Plff. May 5. 1880 '5 W. p $1800 — J. J. Miller Sheriff

The State of Ohio Union County Ss.

The undersigned being duly Sworn Says that a copy of the annexed notice was published for five consecutive weeks in the "Marys Tribune" a newspaper of general circulation in the County of Union the first publication beginning with May 5th 1880 — W. O. Shearer

Jurat

Sworn to and Subscribed before me this 4th day of June 1880 — W. M. Winget Clerk

On the 5th day of June 1880 the following Entry was made in the Journal of said Court to wit

W. H. Baxter Plaintiff
vs
T. W. Chesney Et. als Defendants

In Foreclosure

On Motion of the plaintiff and on his producing the Return of the Sheriff of a Sale made under former Order of this Court, and the Court on Careful examination of the proceedings of the said Sheriff being Satisfied that the same have been had in all respects in conformity to law and the Orders of this Court it is Ordered that said proceedings and Sale be and the same are hereby appoved and confirmed.

And it is further Ordered that the said Sheriff convey to the purchaser W. H. Baxter by deed in fee Simple the lands and tenements so Sold and the said purchaser is hereby Subrogated to all the rights of the said lien holders in said premises so far as they may be paid herein for the protection of his title and a writ of possession is awarded to put the purchaser in possession of said premises. And the Court coming now to distribute the proceeds of said Sale amounting to forty Eight Hundred Dollars ($4800.00) it is Ordered that the Sheriff out of the money in his hands pay First - The taxes on said premises including the taxes for the year 1880 amounting to sum of $263.22 to be paid W. H. Baxter.

Secondly. The costs in this action taxed to $182.80

Thirdly, the decree for alimony in favor of the defendant Addie Y. Burnham which the Court finds to be the first and best lien upon said premises and which amounts to the sum of twelve hundred dollars and interest on same from date of decree to this date (June 5th 1880) at 6% making a sum of five five hundred & twenty Dollars & 80/100 Dollars making the total sum of $1726.80 and costs this suit amounting to $28.00 as the entire balance of said decree in favor of said Addie Y. Burnham which said Eva L Chesney had assumed to pay

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Fourthly. To the plaintiff the balance of said proceeds of said Sale amounting to $2599 18/100.

And there Still remaining due to the said plaintiff W.H. Baxter the Sum of $1025.25 It is considered that he recover the same from the defendant T.W. Chesney and Execution awarded therefor against said T.W. Chesney. and Plaintiff the Court on motion to also award Execution against the said Eva L. Chesney for said balance Which Motion the Court overruled to which ruling of the Court plaintiff Excepted and the Court at his request entered said Exceptions on the Journal

On the 12th day of February 1881 the following Petition in Error was filed herein to wit

W.H. Baxter
vs
Eva L. Chesney

73 District Court Union County Ohio

Petition in Error.

The said Plaintiff says that the 5th day of June 1880 at the May Term 1880 of the Court of Common Pleas of said Court the said plaintiff having previously obtained against said Eva L. Chesney a decree for a large Sum of money

Petition in Error

and an Order of Sale of Mortgaged premises therein described and after distribution of the proceeds of the Sale of said premises by said Court at its said May term 1880 there remained due of said decree and unpaid to the said plaintiff from said defendant the Sum of $1053.27 and thereupon the said plaintiff moved the Court to make an Order in said cause awarding Execution against said Eva L. Chesney for said balance of said unpaid decree which motion the said Court then and said term dismissed and Overruled to which Plaintiff Excepted

The plaintiff says there is Error in said Order and Judgment Overruling said motion to award Execution as aforesaid as will appear by said record herto filed Therefor plaintiff asks that said Judgement be reversed & Execution awarded for said balance due plaintiff against defendant with interest from June 5th 1880 Robinson & Piper & Woodburn Attys for Plff in Error

The issuing and Service of Service of Summons is waived and the appearance of the defendant entered Feby 16th 1881 Cameron and Benton Attys for Defendant

On the 14th day of Feby. 1881 the Certified Copies of Journal Entries was filed herein to wit

The State of Ohio } In the Court of Common Pleas
Union County ss }

W.H. Baxter Plaintiff } February Term 1879
against } Certified Copy of Journal Entry
T.W. Chesney & E.L. Chesney Defendants }

no 2857

Feb. 24. 1879
J 11 p 318

This day came the parties and Submitted this cause on the pleadings and evidence Whereupon the Court being fully advised in the premises do find the allegations of the defendants to be true to the extent following viz for the half acre taken for the Grave Yard there Should be a deduction of $25.00 and for the taxes paid by defendants for plaintiff in Excess of taxes paid by plaintiff for defendants $3.05 and for damages for right of way as claimed by Foster Bennett in his answer the the Sum of $150.00 making a total of $178.05 to be deducted at the date of the Mortgage leaving $1321.95 balance with 8% interest from March 1st 1877 amounting in the principal and interest to the first day of this Term $1525.38 due and a lien on the land in the petition described It is therefore considered ordered and adjudged by the Court that unless said defendants pay to the plaintiff the Said sum of fifteen hundred twenty five 38/100 dollars with interest at 8% from February 3d 1879 and costs of this proceeding within 10 days that an Order of Sale issue to the Sheriff of this County Commanding him to appraise

adivatise and Sell said premises according to law and it appearing that another note of fifteen hundred dollars Secured by said Mortgage is not yet due this cause is continued as to said note. Notice of appeal by defendants and the appeal is fixed by the Court at $500.00

W. H. Baxter vs T. W. Chesney Et al — Entry in District Court. March Term A. D. 1880

This day came the parties to this cause and Submitted the cause to the Court upon the petition answer and Reply and Supplemental petition and evidence. Whereupon the Court being fully advised in the premises do find for the defendants that they are entitled to have the Sum of One hundred and twenty Eight dollars abated from said Mortgage on account of the matters averred in defendants Answer. And the Court further find that with the Exception of said $128 the plaintiff is entitled to the amount called for in the two Notes mentioned in the petition and the Supplemental petition and that the same is a lien on said premises in petition described and the Court find that the Sum so due after Such deduction - is $3563.46 on Eight per cent

It is therefore Orderd and decree that the defendants pay to said plaintiff said Sum of $3563.46 with 8% due on said Mortgage as aforesaid & his costs herein expended. And if the defendants fail for three days to pay said Sum of Money and costs that an Order of Sale Issue to the Sheriff of Union County who is appointed Special Master for that purpose commanding him to appraise advertise and Sell said premises according to law and bring the proceeds into the Court of Common Pleas of this County for distribution. And this cause is Remanded to the said Court of Common Pleas to be carried into effect

W. H. Baxter vs T. W. Chesney & Eva L. Chesney — Entries. May Term Court of Common Pleas May 4th 1880.

This day this cause came to be heard on the Motion of defendants to Set aside the Sale Made in this case for reasons on file in their Motion also came on the motion of plaintiff for confirmation of said Sale. Whereupon the Court finding that the lands in said proceedings described are partly in Madison County Ohio and that so far the Sale and appraisement are irregular and Should be and are hereby set aside to which ruling the plaintiff Excepts - Thereupon this cause came on further to be heard on motion of plaintiff and thereupon it is Ordered by the Court that the Sheriff of this County who is appointed Special Master for that purpose proceed under former Order of the Court herein to Sell said lands in One body and he is ordered hereby to re appraise said lands in One body by appraisers chosen from said County of Union and he is Ordered to advertise the Sale in a newspaper published in and of general circulation in County of Union and One paper only and not in both of said Counties the said tract being all in one parcel and said Master is Ordered to report his proceedings herein to this term of Court.

June 5th 1880 J. 12. page 2

On motion of the plaintiff and on his producing the return of the Sheriff of the Sale made under former Order of this Court on careful Examination of the proceedings of the said Sheriff being Satisfied that the Same have been had in all respects in conformity to law and the Orders of this Court it is Ordered that said proceedings and Sale be and the same are hereby approved and confirmed.

And it is further Ordered that the said Sheriff convey to the purchaser W. H. Baxter by deed in fee Simple the lands & tenements So Sold and the said purchaser is hereby Subrogated to all the rights of the said lien holders in said premises So far as they may be paid herein for the protection of his title and a writ of possession is awarded to put the purchaser in possession of said premises.

And the Court coming now to distribute the proceeds of said Sale ascertaining

to forty eight hundred dollars (4800^{00} It is Ordered that the Sheriff out of the money in his hands pay first the taxes on said premises including the taxes for the year 1880 amounting to the sum of $263.22 to be paid by W.H. Baxter.

Secondly. The cost in this action taxed to $182.80.

Thirdly. The decree for alimony in favor of the defendant Addie F Burnham which the Court finds to be the first and best lien upon said premises and which amounts to the sum of twelve hundred dollars and interest on same from date of decree to this date (June 5th 1880 at 6% making the total sum of $1726.80 and costs of this Suit amounting to $28.00 as the Entire ballance of said decree in favor of said Addie F. Burnham which said Eva L. Chesney had assumed to pay.

Fourthly To plaintiff the balance of said proceeds of Said Sale Amounting to $2599.18 and there Stil remaining due to the said plaintiff W.H. Baxter the sum of $1053.77 It is Considered that he recover the same from the defendant T.W. Chesney and Execution is awarded therfor against said T.W. Chesney and plaintiff ask the Court to also award Execution against said Eva L. Chesney for said balance which Motion the Court Overruled to which ruling of the Court plaintiff Excepted and the Court at his request enter said Exception on the Journal

The State of Ohio Union County ss

I W.M. Winget Clerk of the Court of Common Pleas within and for said County and in whose custody the files Journals and Records of said Court are required by the laws of the State of Ohio to be Kept hereby certify that the foregoing is taken and copied from the Journal of the proceedings of the said Court within and for said County and that said foregoing copy has been compared by me with the original entry on said Journal and that the same is a correct transcript thereof.

In Testimony Whereof I do hereto Subscribe my name officially and affix the Seal of said Court at the Court House in Marysville in said County this 14th day of February A.D. 1881

W.M. Winget Clerk

On the 11th day of March 1881 the following entry was made in said District Court Journal

73

W. H. Baxter
vs
T.W. Chesney &
E. L. Chesney

This day came on this cause to be heard on the Petition in Error of Plaintiff. Whereupon Counsel for all parties being fully heard the Court find there is Error in said record as complained of in the Overruling of Plaintiffs Motion for awar of Judgement for Execution for $1053\frac{77}{100}$ the balance found to be due from Eva L. Chesney to plaintiff in said Cause to which finding said Eva L Chesney Excepts.

There upon the Court Reverses said action of said Court in overruling said Motion and now award Execution against said Eva L. Chesney for said balance to wit the Sum of $1053.77 with interest thereon from the 5th day of June 1880 as upon Judgements at Law against her Separate and Individual Estate together with costs of plaintiff herein Expended.

And this cause is Remanded to the said Court of Common Pleas for Execution and further proceedings. To all of which rulings Judgement and decree the said defendant Eva L. Chesney by her Counsel Excepts

Attest W.M. Winget Clerk

Petition

Belle Stu
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Belle Stultz
against.
Andrew. McLaughlin et.al.

Pleas before the Honorable Thomas Beer, James M. Kenyon & D.M. Phelps. Judges of the Court of Common Pleas within and for the third Judicial District in the State of Ohio. at a District Court begun and held at the Court House in the town of Marysville within and for the County of Union on the 2d day of January 1878. Heretofore on the 26th day of November 1877. the following Petition in Error and original papers were filed with the Clerk of said District Court which reads as follows, viz:

On the 30th day of January 1877 the original petition was filed in this case with the Clerk of Common Pleas.

Belle Stultz
vs.
Andrew McLaughlin
and D.F. Parsons

Petition

In the Court of Common Pleas of Union County, Ohio.

The said Belle Stultz plaintiff complains of the said Defendant Andrew McLaughlin for that the said Belle Stultz is the wife of one Christopher Stultz and was such wife before and after the happening of the grievances hereinafter set forth. and the said Christopher Stultz was a person in the habit of getting intoxicated; And that said plaintiff had a family of two children depending upon the labor of the plaintiff and Christopher Stultz for her and their sustainance, nurture & support, and that said plaintiff in compliance with the Statute in such case made and provided, did on the 2d day of November A.D. 1876. file with the Corporation Clerk of the Village of Richwood, Union County, Ohio. Notice to all liquor dealers not to sell to the said Christopher Stultz any intoxicating liquors from and after ten days from the said 2d day of November A.D. 1876; And that the said Defendant Andrew McLaughlin on the 23d day of December A.D. 1876; did sell, deliver and give to the said Christopher Stultz certain intoxicating liquor whereby the said Christopher Stultz became intoxicated; And that the said defendant Andrew McLaughlin on the 25th day of December A.D. 1876 did sell deliver and give to the said Christopher Stultz certain intoxicating liquor whereby the said Christopher Stultz became intoxicated; And that the defendant Andrew McLaughlin on Sundry days before and after the said twenty-third and twenty fifth days of December A.D. 1876 did sell deliver and give to the said Christopher Stultz certain intoxicating liquor whereby the said Christopher Stultz became intoxicated; And that the occupation of the said Christopher Stultz was that of a stock dealer, and that the said occupation was remunerative, the said Christopher Stultz usually earned from three to five dollars per day while sober, and by reason of the said Christopher Stultz being habitually intoxicated by said sales he became wholly unable to attend to his business. And that the said Christopher Stultz was frequently carried to the home of the said plaintiff, by the public officers of the law and other persons, in such a state of intoxication that he was wholly unable to stand or walk; And that for a great length of time the plaintiff was in great mental agony on account of the said intoxication of the said Christopher Stultz; And that the.

said Christopher Stultz by reason of the said habitual intoxication as aforesaid became diseased and caused the said plaintiff a great amount of labor in nursing and attending upon the said Christopher Stultz, on account of said disease and that by reason of the habitual intoxication of the said Christopher Stultz, the plaintiffs means of future support have been cut off and diminished below what is reasonable and competent for said plaintiff in her station in life and below what they otherwise have been, and that the said Christopher Stultz while intoxicated did cruelly beat, strike and otherwise ill-treat the said plaintiff and her family, and that in consequence of such cruelty and ill-treatment the said plaintiffs son Charley Stultz was compelled to leave the home of the said plaintiff and Charlie Stultz and seek refuge among strangers.

The said Plaintiff complains of the said defendant D. F. Parsons for that the said defendant. D. F. Parsons is the owner of the building occupied by the said defendant Andrew McLaughlin in the Village of Richwood Union Co. Ohio. as a public restaurant; And that the said D. F. Parsons did knowingly permit the said defendant Andrew McLaughlin to sell intoxicating liquors therein in violation of the law, which caused which caused the intoxication in whole or in part of the said Christopher Stultz. The said plaintiff says that by reason of said several grievances above enumerated she has been damaged in the sum of Five Thousand Dollars.

Therefore the plaintiff prays judgment against the said defendants for the said sum of Five Thousand dollars, her damages so sustained.

Benton & Brodrick Attorneys for Plaintiff

The State of Ohio. Union County ss. Belle Stultz being sworn makes oath and says that the facts stated and allegations made in the foregoing petition are as affiant believes true.

Belle A. Stultz.

Sworn to by Belle Stultz before me and signed by her in my presence this 25th day of January. A.D. 1877.

W. J. Woods. J.P.

Praecipe

To the Clerk: You will issue a summons to Andrew McLaughlin directed to the Sheriff of Marion County, Ohio. and returnable according to law. Endorse. "Action for damages. Amount claimed $5000.00."

On the 30th day of January A.D. 1877 the following summons was issued by the Clerk of said Court which reads as follows, viz:

Summons

The State of Ohio. Union County ss. To the Sheriff of Marion County Greeting:

We Command you to notify Andrew McLaughlin that he and another have been sued by Belle Stultz. in the Court of Common Pleas of Union County. and that unless they answer by the third day of March A.D. 1877 the petition of the said Belle Stultz. against them filed in the Clerks Office of said Court. such petition will be taken as true and judgment rendered accordingly. You will make due return of this summons on the 12th day of Febuary A.D. 1877. Witness my hand and the seal of said Court this 30th day of January A.D. 1877

Seal

W. W. Bunger Clerk.

Sheriffs Return.

The State of
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Amended Petition

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Sheriff's Return.

The State of Ohio. Union County ss. Received this writ February 1st A.D. 1877 at 8. oclock A.M. and pursuant to its command I served the same on the 7th day of February 1877 by delivering a true copy of this summons with the endorsements thereon to the within named Andrew. McLaughlin personally. Service 35¢ Mileage 20¢ Cop. 20¢ Return 25¢ Total $1.25

S. A. Guthrie Sheriff.

Entry.

On the 15th day of February, 1877 the following entry was made on the Journal of said Court which reads as follows, viz:

Belle. A. Stultz
vs
Andrew. McLaughlin Ind
D. F. Parsons.

Now comes the Plaintiff, and by the consent of the parties withdraws from the files Her Original petition

Entry.

On the 21st 1877. the following entry was made on the Journal of said Court:

Belle. A. Stultz
vs.
Andrew. McLaughlin and
D. F. Parsons.

This day this cause came on to be heard upon the demurrer of defendant to the petition, and was argued by counsel and the Court being fully advised therein sustained the demurrer, and the plaintiff has leave to file amended petition in ten days from the rising of Court, and cause Continued.

On the 13th day of March 1877 the following Amended Petition was filed with the Clerk of said Court which reads as follows, viz:

Amended Petition

Belle. A. Stultz
vs.
Andrew. McLaughlin Ind.
D. F. Parsons.

In the Court of Common Pleas Union County, Ohio.

The said Belle. A. Stultz plaintiff now comes and for her amended Petition complains of the said defendants for that long before and at the time of the committing by the said defendants of the wrongs and grievances hereinafter to be mentioned, the said Plaintiff was and she now is the wife of one Christopher Stultz. That said plaintiff and one Christy Stultz has resided in the Village of Richwood said County of Union for more than ten years last past and have a family of two small children and the plaintiff and said children are and have been during all said time dependent upon the said Christy Stultz for support. That the said defendants both reside in said Village of Richwood. And the said defendant Andrew. McLaughlin is the keeper of a room, Restaurant and Saloon in said Village where intoxicating liquors are sold contrary to law and in violation thereof; And the said D. F. Parsons is the owner of said building and room and rents the same to the said Andrew McLaughlin, and knowingly permits him to sell intoxicating liquors therein in violation of law; The said McLaughlin has so kept and sold intoxicating liquors and the said D. F. Parsons has so permitted the same for the two years last past; That the said Christy Stultz before the committing by said defendants of the wrongs and greivances to be stated, was an industrious, kind and provident husband and father and

provided for the plaintiff and her said children, but about the day of
A.D. 1874 the said Christy Stultz began frequenting the saloon of the
said McLaughlin and buying and drinking intoxicating liquors of
him the said McLaughlin; his visits becoming more and more frequent
and at times the said Christy Stultz would become excessively and
grossly intoxicated. The plaintiff tried to prevail upon the said
defendant to cease furnishing to said Christy Stultz intoxicating
liquors but to no avail; Plaintiff threw on or about the 6th day of July
A.D. 1876. in the presence of witnesses notified the said Andrew McLaugh-
lin, not to sell or furnish any more intoxicating liquors to her said
husband the said Christy Stultz, and the plaintiff also on the 2d day
of November A.D. 1876 did file with the corporation Clerk of the Village of
Richwood notice to all Liquor dealers not to sell any intoxicating liquors
to the said Christy Stultz from and after ten days after the said
2d day of November A.D. 1876. but the said Andrew McLaughlin totally
disregarded the said notice, and that the said defendant Andrew
McLaughlin on the 23d day of December A.D. 1876 at the Village of
Richwood, Union County, Ohio. did sell, deliver and give to the said
Christy Stultz certain intoxicating liquors, whereby the said Christy
Stultz became intoxicated; And that the said defendant Andrew
McLaughlin on the 25th day of December A.D. 1876 at said village of
Richwood, Union County, Ohio. did sell, deliver and give to the said
Christy Stultz certain intoxicating liquors whereby the said Christy
Stultz became intoxicated; And that the said Andrew McLaughlin
on Sundry days before and after the said 23d & 25th days of
December A.D. 1876 at said Village of Richwood, Union County Ohio. did
sell deliver and give to the said Christy Stultz certain intoxicating
liquors whereby the said Christy Stultz became intoxicated. And that
by reason of the above mentioned sales the said Christy Stultz was
habitually intoxicated; That the occupation of the said Christy Stultz
was that of a stock dealer and that the said occupation was remun-
erative; The said Christy Stultz from three to five dollars per day
when not intoxicated; And that by reason of the said Christy Stultz
being habitually intoxicated by said sales above mentioned he became
wholly unable to attend to his said occupation; and that the said
Christy Stultz was frequently carried to the home of the said plaintiff
by the public officers of the law and other persons, in such a state
of intoxication resulting from said sales that he was wholly unable
to stand or walk; And that for a great length of time the plaintiff was
in great mental agony on account of the said intoxication of the said
Christy Stultz. And that the said Christy Stultz by reason of the habitually
intoxication aforesaid and brought on by the same cause aforesaid became
diseased and caused the said plaintiff a great amount of labor in
nursing and attending upon the said Christy Stultz on account of
such disease; And that by reason of the intoxication aforesaid habi-
itual and otherwise of the said Christy Stultz the plaintiff's means
of future support have been cut off and diminished below what
is reasonable and competent for said plaintiff in her station in
life, and below what they otherwise would have been; and that the

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said Christy Stultz while so intoxicated as aforesaid did cruelly beat, strike and otherwise ill-treat the said plaintiff and her family, and that in consequence of such cruelty and ill treatment the said plaintiff's son Charlie Stultz was compelled to leave the home of the said plaintiff and Charlie Stultz and seek refuge among strangers. Plaintiff says that the building occupied by the said Andrew McLaughlin as aforesaid as a saloon and restaurant is situated on In Lots Nos 41 & 42 in the Village of Richwood, Union County, Ohio. on Franklin Street and being the same property formerly occupied by the said defendant D. F. Parsons and one John Sidle as a store room and deeded to D. F. Parsons by James W. Robinson as special Master Commissioner, for a more accurate description of the said building and lot, reference is hereby made to page 144 Volume 35 of the Records of deeds of Union County Ohio. in the Recorders Office in Marysville Union County, Ohio; And that the defendant D. F. Parsons is the owner thereof and knowingly permitted the said defendant Andrew McLaughlin to sell intoxicating liquors therein in violation of law which caused the intoxication in whole or in part of the said Christy Stultz. Plaintiff says that by reason of said several grievances hereinbefore enumerated she has been damaged in the sum of Five Thousand Dollars. Therefore plaintiff prays judgment against the said defendants for the said sum of Five Thousand Dollars and that such judgment be a lien on the premises and building aforesaid.

Benton & Brodrick & J. L. Cameron. attys

State of Ohio. Union County ss. Belle A. Stultz being sworn make oath that the facts stated and the allegations made in the foregoing petition are as affiant believes true

Belle A. Stultz

Sworn to by Belle A. Stultz before me and signed by her in my presence. this 15th day of March A.D. 1877

Seal. J. V. Rayford. Notary Public.

On the 18th day of May 1877 the following Entry was made on the Journal of said Court, which reads as follows, viz:

Entry.

Belle A. Stultz
vs
Andrew McLaughlin et al } This day came the parties by their attorneys and the defendants hereby withdraw their motion herein filed, and file their answer in this case and cause continued.

On the 18th day of May 1877 the following Answer was filed with the Clerk of said Court which reads as follows viz:

Answer

Belle Stultz
vs.
Andrew McLaughlin et al } Court of Common Pleas Union County Ohio.

And now comes the defendant Andrew McLaughlin and answering the petition in the above action says: he admits that he is keeper of a rooms and Saloon in the building belonging to the said defendant. D. F. Parsons that the Plaintiff is the wife of one Christy Stultz. that she has a family of two children

That they live in Richwood, Ohio. and have for more than two years. that both the defendants reside in the said Village of Richwood. that the building aforesaid is situated in part of lot No. 46 in said Village That the said Christ Stultz is a notorious and habitual drunkard and has been for the last 15 years, that he often has to be carried home by the Officers of the law and other persons so drunk he can not stand or walk. And that he does not deny, that said plaintiff did on the 2d day of Nov. 1876 file with the Corporation Clerk of the said Village of Richwood, notice to all liquor dealers not to sell any intoxicating liquors to the said Christ Stultz from and after ten days from the said 2d day of Nov. 1876. That he does not deny that the said Christ Stultz by reason of his habitual drunkenness become diseased and cause the plaintiff a great deal of trouble and mental anguish and pain.

That the said Christ Stultz did ever cruely beat, strike and otherwise ill treat the plaintiff and the defendant has no means of knowing and therefore denies the same, and the defendant expressly denies each and every allegation in said petition contained except what has been herein admitted and ask that he may be discharged and permitted to go hence without day and be allowed his costs.

P. L. Kerr Atty for A. McLaughlin.

State of Ohio Union County ss. Andrew McLaughlin defendant being sworn says the allegations in the foregoing answer are true as he believes.

Andrew McLaughlin.

Sworn to before me and subscribed in my presence this 24th day of April 1877.

G. B. Hamilton J. P.

On the 18th day of May the following Answer was filed with the Clerk of said Court which reads as follows, viz:

Answer of D. F. Parsons

Belle Stultz vs. Andrew McLaughlin and D. F. Parsons

Court of Common Pleas Union County, Ohio.

And now comes the defendant D. F. Parsons and expressly denies each and every allegation in Plaintiff's petition filed herein contained. as against him the said Parsons, except that he is the owner of the building in which said defendant Andrew McLaughlin keeps a saloon and that the same is situate on lot No 46 in the Village of Richwood and asks that he may be discharged from further answering in this action and be allowed his costs.

P. L. Kerr atty.

State of Ohio Union County ss. D. F. Parsons defendant being sworn says the allegations in the forgoing answer are true as he verily believes.

D. F Parsons.

Sworn to before me and subscribed in my presence this 24th day of April 1877.

G. B. Hamilton J. P.

On the 3d day of Oct. 1877 the following Entry was made on the Journal of said Court:

Belle Stultz vs. Andrew McLaughlin et al.

This day came the parties by their attorneys

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Belle Stultz

Petition in Error.

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and this cause came on to be heard, and thereupon came a Jury, to-wit: J. H. Kazerta, Jacob Vannes, J. H. Perkins, Isaac Brake, William Perkins Thos. Cahill, Amon Davis, A. H. Dean, Perry Cook & G. W. Carey, regular Jurors and J. D. Reid and Andrew Anderson Talis Jurors, being duly empanneled and sworn to well and truly try the issue joined between the parties in this cause, after hearing the testimony arguments of counsel, and charge of the Court. The said Jurors upon their said oaths returned their verdict in writing as follows, to-wit: "We, the Jury in this case, being duly empanneled and sworn do find and say that we do find for plaintiff and against the Defendants and assess the damage at ($2000). Two Thousand Dollars.

Signed. J. Vannes. Foreman.

On the 12th day of Oct. 1877 the following entry was made on the Journal of said Court.

Belle Stultz

vs.

Andrew McLaughlin et al

Entry.

This day this cause came on for hearing upon the motion by the defendants for a new trial of this cause. Whereupon the Court being fully advised in the matter do overrule said motion to which the defendants then and there excepted.

On the 12th day of Oct. 1877 the following entry was made on the Journal of said Court.

Belle Stultz

vs.

Andrew McLaughlin et al.

Entry.

The Jury in this action having at a former day of this Court upon an inquiry of damages for the plaintiff assessed the same against the defendants at Two Thousand Dollars. It is therefore considered by the Court that the Plaintiff Belle Stultz recover from the said defendants Andrew McLaughlin and D. F. Parsons the said sum of Two Thousand Dollars so found due together with her costs herein expended taxed at $——

On the 15th day of Oct. 1877 the following Entry was made on the Journal of said Court.

Belle Stultz

vs.

Andrew McLaughlin et al.

Entry.

The defendants filed a Bill of Exceptions in the above titled case at the September term of the Court of Common Pleas Union County, Ohio. for 1877, & signed and sealed by John L. Porter Judge and dated as of November 14th 1877.

On the 26th day of Nov. 1877 the following Petition in Error was filed with the Clerk of ~~said~~ District Court which reads as follows, viz:

Andrew McLaughlin and
D. F. Parsons.
vs
Belle Stultz

Petition in Error.

Union County Ohio. District Court.

The said Andrew McLaughlin and D. F. Parsons the plaintiffs complain in of the defendants Belle Stultz for that the said Belle Stultz at the September term of the Court of Common Pleas A.D. 1877. in the said County of Union recovered a judgment by the Contribution of said Court against the said plaintiffs in a certain action then pending in said Court, wherein the said Belle Stultz was plaintiff and the said Andrew McLaughlin

and D. F. Parsons were defendants; An authentic Transcript of the Journal entries and of the final judgment made and entered in the case, together with the original papers and pleadings in the case are herewith filed & made a part of this petition. The said Andrew McLaughlin and D. F. Parsons aver that there is error in the said record and proceedings in this to-wit: 1st. That the said Court erred in the instructions given to the Jury on the trial of the said action. 2d. That the said Court erred in refusing to give the instruction which the said Andrew McLaughlin and D. F. Parsons prayed the said Court to give to the Jury on the trial of said action. 3d. The said Judgment was given for the said Belle Stultz when it ought to have been given for the said Andrew McLaughlin and D. F. Parsons according to the law of the land.

4th The said Court erred in ruling out the evidence offered by the said Andrew McLaughlin and D. F. Parsons on the trial of said action.

5th That the said Court erred in admitting the evidence of said Belle Stultz to which the said Andrew McLaughlin and D. F. Parsons objected.

6th The said Court erred in overruling the motion of the plaintiffs for a new trial in said case. The said Andrew McLaughlin and D. F. Parsons plaintiffs, thereupon pray that said judgment may be reversed, and the said plaintiffs settled to all things they as lost by reason thereof.

Sterling & Ayers. Atty for Pltffs.

Petition in Error.

Undertaking in Error.

Whereas Andrew McLaughlin and D. F. Parsons have instituted proceedings in the District Court in and for the County of Union to reverse a judgment rendered in the Court of Common Pleas in said County, on the 15th day of October 1877 in favor of Belle Stultz against the said Andrew McLaughlin and D. F. Parsons for the sum of Two Thousand dollars and for One Hundred and Ninety Four Dollars & forty eight cents the costs of such suit: Now Therefore, We A. McLaughlin, D. F. Parsons M. W. Hill, A. J. Blake, W. H. Ferguson and James Cutler do bind ourselves to the said Belle Stultz in the sum of Four Thousand Dollars that if the said judgment shall be affirmed in whole or in part we will pay to the said Belle Stultz the whole of the part of said judgment so affirmed and the costs which have accrued, or may accrue, in the District Court.

Dated this 30th day of November A.D. 1877.

A. McLaughlin (Seal)
D. F. Parsons. (Seal)
M. W. Hill. (Seal)
A. J. Blake (Seal)
W. H. Ferguson (Seal)
James Cutler (Seal)

The execution of the above Undertaking and the sufficiency of the sureties therein approved by me this 1st day of December A.D. 1877.

W. M. Wright. Clerk.

On the 7th day of January 1878. the following entry was made on the Journal of said Court:

Andrew McLaughlin and D. F. Parsons. vs. Belle Stultz. in error.

District Court. Jan. Term 1878.

This cause came on for hearing upon the petition in error. The transcript and the original papers and pleadings.

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from the Court of Common Pleas of Union County and was argued by counsel on consideration whereof the Court find there is no error apparent on the record and proceedings and Judgment. It is therefore considered by the Court that the Judgment aforesaid be and the same is hereby affirmed and that the defendant in error recover from the plaintiffs in error here costs herein expended taxed to $.

And the Court being of the opinion that there was reasonable ground for proceedings in error. Allow. no penalty. It is further ordered that a special mandate be sent to the Common Pleas Court of Union County for execution upon said Judgment.

On the 18th day of January 1878 the following Petition was filed with the Clerk of the Supreme Court which reads as follows, viz:

Petition in Error.

Andrew McLaughlin and D. F. Parsons vs. Belle Stultz } State of Ohio Supreme Court.

The said Andrew McLaughlin and D. F. Parsons plaintiffs in error complain of the said Belle Stultz defendant in error for that the said Belle Stultz did: At the September term 1877 of the Court of Common Pleas of Union County obtain a judgment against these plaintiffs for the sum of $2000. and costs of suit in a certain action then pending in said Court wherein the said plaintiffs in error were defendants, and the said defendant in error was plaintiff. These plaintiffs complain that at the January term 1878 of the District Court held within and for said County of Union, said District Court affirmed the decision and Judgments of said Court of Common Pleas, on an authenticated Transcript of the Journal entries and of the final Judgments made and rendered in the case to get therewith the original papers and pleadings in the case are herewith filed and made a part of this petition. The said plaintiff in error avers that there is error in said record and proceedings in this, to-wit:

1st The District Court erred in affirming the Judgment, decisions and rulings of the Court of Common Pleas, and directing a mandate to be sent to said Court of Common Pleas directing said Court to carry into effect its Judgments and decisions. 2d The District Court erred in affirming to be the law of the land, the instruction given to the Jury in the charge by the Court of Common Pleas on the trial of this case in said Court, to-wit: That McLaughlin sold or furnished intoxicating liquors to Stultz in violation of law as stated in the plaintiffs petition. The Jury will therefore look to the testimony and the whole testimony and say whether you find these facts proven by a fair preponderance by the plaintiff. 3d The District Court erred in affirming the instructions given in charge to the Jury by the Court of Common Pleas on the trial of this case, As to what would constitute a furnishing in law." 4th to 11th The District Court erred in affirming the Judgments and decision of the Court of Common Pleas on the trial of this case in said Court in refusing to give in charge to the Jury the instructions as requested by these plaintiffs.

5th The District Court erred in affirming the Judgments and

decisions of the Court of Common Pleas. and rejecting the testimony of James Cutler offered by the plaintiffs on the trial of this case to prove the hand writing and signatures of the defendant to some orders or papers writing which plaintiffs claimed defendant had written directing parties to let Christy have liquors. 6th These plaintiffs therefore ask that said judgment, Order and decisions may be reversed and they be entitled to all things which they have lost by reason thereof.

Sterling & Ayers Attys for Plaintiff

On the 15th day of January 1878. at the Court Room of the Supreme Court of Ohio. A motion will be made for leave to file a petition in error upon the errors herein upon set forth.

Sterling & Ayers Attys for Plaintiffs

Hereby acknowledge service of notice of the motion &c. in above suit and enter our appearance in this case. Jan. 15: 1878

Burton & Brodrick
J. L. Cameron Attys for Defendants

On the 2d day of July 1881 the following mandate of the Supreme Court was filed with the Clerk of said Court which reads as follows viz:

Mandate

The State of Ohio. } January Term A.D. 1881.
City of Columbus }

Andrew McLaughlin et al
vs.
Belle Stultz } Error to the District Court of Union County.

This cause came on to be heard upon the Transcript of the Record of the District Court of Union County and was argued by counsel. On consideration whereof, it is ordered and adjudged by this Court, that the Judgment of said District Court be and the same is hereby affirmed. It is further ordered that the defendant in error recover of the plaintiffs in error her costs herein expended taxed at $——

Ordered, That a special mandate be sent to the Court of Common Pleas of Union County, to carry this Judgment into execution.

Ordered, That a copy of this entry be certified to the Clerk of the District Court of Union County "for entry" I. Dwight Cowell Clerk of the Supreme Court of Ohio. do hereby certify that the foregoing entry is truly taken and correctly copied from the Journal of said Court.

Witness my hand and the seal of said Court this 1st day of July A.D. 1881

(Seal)

Dwight Cowell. Clerk.

State of Ohio. } Supreme Court of Ohio.
City of Columbus }

To the Honorable Court of Common Pleas within and for the County of Union Ohio. Greeting: We do. hereby command you, that you proceed to carry the within and foregoing Judgment of our Supreme Court of Ohio. in the cause of Andrew McLaughlin et al vs. Belle Stultz into execution, the petition in Error herein and heretofore granted, to the contrary notwithstanding. Witness. Dwight Cowell Clerk of our Supreme Court of Ohio at Columbus. this 1st day of July 1881.

(Seal)

Clerk's cost. $2.00

Dwight Cowell Clerk
Attest. W. M. Winget. Clerk.

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W. W. Woods et als
vs
Alvah Smith

Pleas before the honorable John A. Price Henry H. Dodge and John McCauley Judges of the Court of Common Pleas within and for the tenth Judicial District in the State of Ohio at a District Court begun and held at the Court House in the town of Marysville within and for the County of Union on the 16th day of March A.D. 1882.

Heretofore on the 17th day of June A.D. 1881 the bill of exceptions and original papers were filed, also on the 25th day of Oct. A.D. 1881 the transcript was filed and on the 15th day of Dec. 1881 the petition in Error was filed with the Clerk of said District Court And on the 6th day of Sept. A.D. 1880 the original petition in this case was filed with the Clerk of the Court of Common Pleas which reads as follows, to wit,

Alvah Smith Plaintiff
vs
W. W. Woods, Charles Phillis and James Fullington in the name of The Bank of Marysville, Defendants

Court of Common Pleas
Union County Ohio

The said plaintiff says that defendants W. W. Woods, Charles Phillis & James Fullington are & on the 26th of June 1879 & ever since have been partners doing business as such at Marysville Ohio as Bankers in the name of the Bank of Marysville and that on the 26th day of June 1879 George Beecher deposited with said defendants as Bankers the sum of Five Thousand Dollars under and by virtue of an agreement then made by & between them that if said Beecher should leave said sum with defendants for two months they would pay interest thereon and if left twelve months they would pay Eight per cent interest thereon and then and there the defendants executed and delivered to said George Beecher their written certificates of deposite & agreement in writing (a copy of which marked "A" with the endorsement of George Beecher thereon is hereto attatched & made part hereoff) and thereby and therein promised and agreed with the said George Beecher that defendants in consideration of said deposite & loan of five thousand dollars to defendants promised said Beecher, or his order on return of said certificate said Five Thous. to repay to said Beecher with Eight per cent Interest if the same should be left by the holder of said certificate on deposite with the defendants for twelve months from said date and in consideration of said promise of defendants said Beecher made said deposite & loan and took said certificate on said terms That afterward said Beecher endorsed and delivered said certificate of deposite to the Peoples Bank of Marysville which afterwards sold and delivered the same to the Plaintiff who is the bona fide holder and owner of the same and there is due the Plaintiff from said defendants said Sum of five Thousand dollars with Eight per cent interest since June 26th 1879 on said certificate of deposite and written promise which was presented to said defendants on the 26th day of July 1880 for payment and on divers other days after the 26th day of June 1880 and was not paid by the

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defendants but payment was refused by them. The plaintiff says there is
an ambiguity as to the meaning of the words in said written certificate
viz- "Interest 6 per cent 2 months after date- 8 per cent 12 months after
date" The agreement of said parties named in said certificate was that
if the holder of said certificate should leave said sum on deposite with
defendants for two months defendants would pay six per cent interest from
its date and if the holder thereof should leave said sum with them for twelve
months then they would pay interest at Eight per cent from its date and
both of said parties understood such to be the effect of said writing but by
the mutual mistake of said parties the same is ambiguous and uncertain
in its meaning- Therefor the plaintiff asks that said writing may be
corrected and reformed so as to express the true meaning aforesaid of
said parties and that judgment be given to plaintiff as above claimed.

Second- The said plaintiff further says that for a second cause of action that Wm. C.
Wood on the second day of July 1879 deposited with the defendants doing business
as aforesaid the sum of five Thousand dollars, under and by virtue of and
in pursuance of an agreement then made by and between them that
if said Wood then deposite with defendants said sum of Five Thousand
Dollars they would repay the same with Eight per cent interest thereon if
the said Wood or the holder of said certificate should leave the same with
defendants on deposite for a period of twelve months and then and
there at the defendants said Banking house in pursuance of said
agreement the said Wood made said deposite & loan on said terms
and defendants executed and delivered to said Wood their written
certificate of deposite and written promise to pay (a copy of which
marked "B." with the endorsement of said Wood is hereto attached and
made part hereof) and thereby and thereon promised and agreed with
said Wood that defendants, in consideration of said deposite and
loan of Five Thousand dollars would repay to him or order on
the return of said certificate said Five Thousand Dollars with
Eight per cent interest if the same should be left by the holder of
said certificate on deposite for the period of Twelve months from
said date and in consideration of said promise in writing the
said Wood made said loan of Five Thousand Dollars and
the same was left so on deposite for Twelve months and was
now demanded of defendants until after the Twelve months had expired
from July 2nd 1879. That afterward said Wood indorsed said certificate
to the Peoples Bank which sold and delivered it to the plaintiff who is
the bona fide holder thereof and the owner of said claim and there is
due plaintiff thereon from the defendant said sum of Five Thousand
Dollars with Eight per cent interest since July 2nd 1879 on said certificate of
deposite which was on the 26th of July 1880 and on divers days after the 2nd
of July 1880 presented by said plaintiff to defendants for payment but
which they did not pay but refused to pay. The plaintiff says the words
in said writing ____ interest as follows- "Interest 6 per cent two months
" 8 " " twelve "
after date" are ambiguous but plaintiff says said parties to said
"writing" meant to express by said words the idea that if the holder of
said certificate should leave said sum of money on deposite for twelve
months they would pay Eight per cent thereon but by the mutual mistake

of both of said parties said idea is not clearly expressed therein
Therefor plaintiff prays that said writing be corrected & reformed
so as to express said idea clearly as the said parties intended & that
judgment be granted plaintiff as before claimed.

Robinson and Piper Attys for Plff

"A" Copy of writing. Bank of Marysville- No. 21873- Marysville O. June 26th 1879
Mr. George Beecher has deposited in this Bank Five Thousand Dollars
payable to the order of himself on return of this certificate in
current funds $5000.00 Interest 6 per cent 2 mons after date "
8 " " " tworbor "R M Henderson" Cashier
" Fullington "

"B" Endorsed on back, "George Beecher" Marysville Ohio July 2nd 1879
Copy of Writing. Bank of Marysville- No. 21903- Wm. C. Wood has deposi-
ted in this Bank Five Thousand Dollars payable to the order of
himself on return of this certificate in current funds $5000-
Interest 6 per cent 2 months after date "R. M Henderson" Cashier
8 " " 12 " "
Endorsed on its back "Wm. C. Wood"

State of Ohio Union County ss. J. W. Robinson being first duly sworn
deposes and says he is one of the attorneys of the plaintiff in
the above cause and the two certificates of deposite for money are
in his possession for collection and that plaintiff is not a resident
of said county of Union and is absent from the same and this
affiant believes the allegations of the foregoing petition are all true
Signed "J. W. Robinson"

Sworn to before me and signed in my presence by J. W. Robinson
this 30th day of July 1880 J. D. Kinkade Notary Public. In for Union Co. O.

answer Alvah Smith Plaintiff
vs
W. W. Woods, Charles Phillis } Court of Common Pleas Union County
& James Fullington Partners. In the name of Marysville Bank Co.

Now comes the defendants and for answer to the petition of the
plaintiff, and to each of the causes of action therein set fourth, as
if separately answering says. That they admit the deposit of money
and issuance of the certificates of deposite and the transfer thereof to
the peoples Bank alleged therein, and say that on the 20th day of
December A.D. 1879 The said peoples Bank was the bona fide owner
and holder of said certificates. But the defendants say that on said day
last named, they made a tender to the said Peoples Bank of the sum of
$10,000.00 principal together with $286.70/100 interest then due on said cer-
tificates, and that said Peoples Bank then refused to receive the
same, and the said defendants further say that from the time of
making said tender up to the time of the commencement of this
suit they have been and still are ready to pay to the owner of
said certificates the said sum of $10,000.00 principal, and the said
sum of $286.70 interest thereon if the said owner and holder thereof
will accept the same, and they further say they will bring said
sums of money into Court here ready to be delivered to the owner
of said certificates whenever he will accept the same.

Second ground of defense.

The defendants
they admit that
in plaintiffs first
the sums of money
named
delivered to the Peoples
said Peoples Bank
1879 on which day
$10,000.00 principal
and that said Peoples
time of making
they have been and
Peoples Bank the
$286.70 interest,
petition to both

Third defense.

The defend
deposite set fourth
delivered the same
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delivered to the
and the defend
to the said Peoples
certificates to get
the plaintiff then
that time up to
ready and still
Court may direct
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were ready and
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Alvah Smith
vs
Fullington Phell
duly sworn says
answer are true
in my presence
Alvah Smi
vs
W. W. Woods, Cha
James Full
defendants a

Reply

The defendants for a second defence to the Plaintiffs petition say that they admit that they executed and delivered the certificates of deposite set forth in plaintiffs first and second causes of action in consideration of the sums of money named in each being deposited by original person therein named They also admit that the said certificates were endorsed and delivered to the Peoples Bank of Marysville as alleged in plaintiffs petition and say said Peoples Bank were the owner and holder thereof on the 20th day of December 1879 on which day the defendants tendered to the said Peoples Bank the sum of $10,000oo principal together with $286 70 interest then due on said certificate and that said Peoples Bank then refused to accept the same, That from the time of making said tender up to the time of commencement of this action they have been and still are ready to pay to the plaintiff or to the said Peoples Bank the said sum of $10,000oo principal and the said sum of $286 70 interest, and the defendants deny all the other allegations of plaintiffs petition to both and each of the counts of plaintiffs petition.

Third defence.

The defendants for a third defense say that as to the certificates of deposite set fourth in plaintiffs petition they admit that they executed and delivered the same to the original person therein named, for the consideration therein named and they also admit that the same were endorsed and delivered to the Peoples Bank to the 20th day of December 1879 And the defendants further say that on this day last named they did tender to the said Peoples Bank the sum of $10,000oo principal then due on said certificates together with $286 70/100 interest also then due thereon and which the plaintiff then refused to receive and the defendants further from that time up to the commencement of this suit they have always been ready and still are to pay to the plaintiff or to the Peoples Bank as the Court may direct the said sum of $10,000oo principal and $286 70/100 interest the amount so due on said certificates and the defendants allege that the plaintiff knew and was informed of the tender so made by the plaintiffs to the Peoples Bank and so was informed and knew on the 20th of December 1879 and ever since that the Defts were ready and willing to pay said sum of money but the plaintiff refused and still doth refuse to receive the same and the Defts will bring said sum of money into Court to be delivered to the plaintiffs as the Court may direct.

And now the defendants deny that they are indebted to the plaintiff, any other or further sum than as above tendered. P. B. Cole & Son Attys for Defendants

Alvah Smith
vs
Fullington Phellis & Woods

Union Common Pleas.

W. W. Woods one of the defendants being duly sworn says that the facts stated and allegations in the foregoing answer are true as he believes. Sworn to before me and signed in my presence this 8th day of Oct, 1880 W. M. Winget Clerk

Court of Common Pleas
Union County Ohio

Reply

Alvah Smith
vs
W. W. Woods, Charles Phellis, & James Fullington Partners &c

The Plaintiff for reply to the defendants answer says a large part of the money deposited with

with the defendants by George Beecher and Wm C. Woods was at the time of said deposite the property of the plaintiff and the said certificates were held to about the 20th of December 1879 by the Peoples Bank on which day the said certificates were delivered to J. B. Whelpley and the plaintiff of the said 20th day of Dec. 1879 became the absolute owner of said certificates - The plaintiff further replying says he denies that the defendants on the 20th of Dec. 1879 or at any other time tendered to the peoples Bank the sum of $10,286 77/100 or any other sum of money and says further that said certificates were not on said 20th day of December 1879 due and defendants had no legal right to pay said certificates against the will of the holder thereof until the holder thereof or his order should return said certificates and demand payment thereof and at the time of said pretended tender the said Peoples Bank had not nor had the plaintiff the possession of said certificates or either them so as to return to defendants on payment or tender nor is it true that defendants have kept said tender good, nor is it true that said sum is or has been in Court for the plaintiff so that plaintiff could receive the same nor has plaintiff refused to receive said sum of money or any other sum but would now and has been ready to receive the same if offered without condition, to apply on said certificates but the plaintiff refuses to accept said sum and deliver said certificates over to defendants and thereby waive his right to receive & collect the interest on same as agreed on by said parties. Therefor plaintiff prays Judgment as he has done in his petition. Robinson & Piper, Atty's for Plaintiff.

The State of Ohio Union County SS. J.W. Robinson being duly sworn says he is one of the plaintiffs Attorneys in the above cause and plaintiff is not a resident of said County and is now absent therefrom and he believes the allegations of the foregoing reply. J.W. Robinson Sworn to before me and signed in my presence this 12th of Oct. 1880 W.W. Wright, Clerk.

Alvah Smith
vs
The Bank of Marysville

Entry

This day came the parties and thereupon it appearing that defendant has deposited with the Clerk of this Court the sum of $10,286 70 for the plaintiff it is a motion of plaintiff ordered by the Court that said Clerk pay the said sum of money to the plaintiff the receipt of same to be without prejudice of either party at the trial of the issues in this case

Alvah Smith
vs
Bank of Marysville

Entry

This day the plaintiff having pled his motion for new trial and there not being sufficient time to hear the same and complete the hearing of the case said motion in cause is continued for further hearing

Alvah Smith
vs
W.W. Woods et. als

Entry

This day came on this cause to be heard by the Court on the evidence, pleadings and motion to set aside

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Alvah S
vs
W.W. Wood
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Entry

verdict of the Jury on the special issue sent to the Jury by consent of parties do find that the said certificates of deposite should be reformed so as to clearly express the agreement and intention of the parties thereto as prayed for in said petition and the same is so reformed. And thereupon the Court find specially at the request of defendants, 1st as a matter of Law that under said certificates the depositors had the right to demand and receive payment of said sums deposited at any time after the money was deposited and if they did so before two months they could not require any interest and if they demanded payment before twelve months they could not require only six per cent thereon from their date but if the depositor did not demand payment before twelve months and the defendants against the wish of the depositors offer to pay the same before two months they must pay interest at six per cent from date of certificates and if they offer to pay the same after two months but before twelve months they must pay interest at Eight per cent from their date. The Court find 2nd as a matter of fact by the verdict of the Jury that the tender was made after two months from the date of the deposites and for six per cent interest only whereas the Court find 3rd as a matter of law that the defendants should have tendered interest at eight per cent instead of six per cent and therefore the tender was insufficient in amount. The Court find there is due to plaintiff from the defendants on the said certificates the sum of Five Thousand Dollars with eight per cent from June 26th 1879 and the further sum of Five Thousand Dollars with interest from July 2nd 1879 subject to a payment of $10,286 70/100 made Oct. 13th 1880 leaving a ballance of $772 00 yet unpaid and due Therefore it is considered ordered and adjudged by the Court that the plaintiff recover of the defendants said sum of seven hundred and seventy two dollars with his costs herein expended taxed to $1 and the Judgment to draw 8 p/c int. until paid. To all of which rulings, orders and Judgments the defendants except and pray the Court to sign and seal his bill of exceptions and by consent of parties 30 days from the rising of this Court are allowed the defendants in which to prepare their bill of exceptions. And for that purpose the Journal is to be kept open 20 days. And thereupon the defendants filed their written motion for a new trial of this cause for reason stated in motion which motion was regularly caused and submitted to the Court. On consideration where of the Court do overrule said motion to which overrulings and decision of the Court the defendants by their attorneys then and there excepted and prayed the Court to sign and seal his bill of exceptions which is accordingly done, And by consent of parties 30 days are allowed from the rising of this Court to the defendants in which to prepare their bill of exceptions and it is ordered that the Journal be kept open for that purpose and the same be entered as of the term.

Entry

Alvah Smith Plaintiff

vs

W. W. Woods, Charles Phellis, & James Fullington Partners in name of Marysville Bank Defts. Now comes the defendants by their attys and present to the Court their certain bill of exceptions herein, which is

being found by the Court to be true, is allowed, signed and sealed and so noation is hereby ordered to be made, and is made part of the record of this cause. June 16th 1881.

The State of Ohio Union County ss.

W. W. Woods, Charles Phellis & James Fullington Partners in name of Marysville Bank

vs

Alvah Smith. In District Court. Petition in Error

The said plaintiffs in error for that the said Alvah Smith at the May term of the Court of Common Pleas, A. D. 1881, for the said County of Union recovered a judgment by the consideration of said Court, against the said plaintiff in Error, in a certain action then pending in said Court in which the said Alvah Smith was plaintiff and the said partners in name of Marysville Bank were defendants, a copy of the record and proceedings of the Judgment in which case and of the bill of exceptions thereto, duly certified and marked respectively "A" & "B" are hereto attached and made a part of this petition and the said plaintiffs in Error aver that there is error in the said record and proceedings in this to-wit:- 1st The finding of the Court upon issue joined between the parties on the question of reformation of the written instruments sued on in this action, is contrary to the weight of the evidence and the law of the case.

2 The decision of the Court was not and is not sustained by sufficient evidence; and the same is contrary to law.

3 The findings of the Court were not sustained by sufficient evidence and said findings and the decision of the Court thereon were were for the plaintiff when said findings and decision should have been in favor of the defendants according to the law of the land and the evidence

4 The said Court erred in overruling the motion of the defendants for a new trial in said cause. The said James Fullington Charles Phellis and W. W. Woods therefore pray that the said judgment may be set aside and reversed, and the said plaintiffs restored to all things they have lost thereby. P. B. Cole & Son Attys for Pltffs in Error

The defendant in error enters his appearance in this cause and waives process on him Robinson and Piper Attorneys for defendants in error

Entry

W. W. Woods et. als Partners

vs

Alvah Smith No 98 In Error

This day came on this cause to be heard by the Court whereupon after full argument by the counsel of the parties do find no error in the Court of Common Pleas. It is therefor considered ordered and adjudged by the Court that said judgment of the Court of Common Pleas be and the same is by the Court affirmed with costs in this Court taxed to $. 10 penalty to be assessed to which ruling and judgment affirming said judgment of the Court of Common Pleas the Plaintiff in Error excepts. And it is ordered that a special mandate issue to the Court of Common Pleas to carry into effect said Judgment.

Attest J. D. Burgner Clerk

81 W. H. Baxter v.s. J. W. Chesney A. Dodge, Jo... and for the 10... and held at ... the County of ... day of June ... 1881 the Gra... the petition ... day of Nov. A.D. ... Clerk of the Co... W. H. Bax... vs Eva L. Chesn... Be it remem... the plaintiff ... which was a... said appeal ... hereof and ... award of ex... Eva L. Che... also the rec... 1879 as an ... obtain a ju... by said ma... in this Cou... of this said ... but that all ... be found on ... Thereupon de... records to p... any part of ... original peti... the defend... said $1500.00 ... excepted and ... ruled and ... trial plain... to which pl... bill of excep... and orders ... case. Witne...

Trans Jan. 20th 1881 ... at east of d... 20 days fro... cause to b... fully advis...

81 W. H. Baxter
v.s
T. W. Chesney et, als } Pleas before the Honorable John L. Price Henry H. Dodge, John McCauley Judges of the Court of Common Pleas within and for the 10th Judicial District in the State of Ohio at a District Court begun and held at the Court House in the town of Marysville within and for the County of Union on the 16th day of March A.D. 1882. Heretofore on the 13th day of June A.D. 1881 bill of exceptions & original papers were filed, on the 25th day of Oct. A.D. 1881 the Transcript was filed and on the 5th day of Jan. A.D. 1882 the petition was filed with the Clerk of said District Court. On the 30th day of Nov. A.D. 1880 the original petition and appeal bond were filed with the Clerk of the Court of Common Pleas.

W. H. Baxter
vs
Eva L. Chesney, T. W. Chesney & A.R. Bigalow } Court of Common Pleas Union County Ohio

Bill of Exceptions.

Be it remembered that at a trial of this cause to the Court a jury being waived the plaintiff to maintain the cause on his part introduced the bond a copy of which was attached to the petition, also a copy of the record of the cause in which said appeal Bond was taken which record is hereto attached and made part hereof and marked "A" Also the record District Court in which an award of execution was made at its March term A.D. 1881 against Eva L. Chesney's separate estate the same as against T. W. Chesney. also the record of the cause of W. H. Baxter brought March 28th A.D. 1879 as an action at Law against Eva L. Chesney and T. W. Chesney to obtain a judgment at Law against her on the said $1500 note secured by said mortgage last to become due, which action at Law is still pending in this Court, also the execution docket of this Court showing that no part of ~~this~~ said sum for which award of execution was made has been paid but that all of said sum and costs remain unpaid and no property can be found on which to levy, and no other evidence was offered.

Thereupon defendant introduced no evidence except he relied upon said records to show that said A.R. Bigelow was not bound or liable to pay any part of said decree based on said $1500 note, not mentioned in plaintiffs original petition to foreclose said mortgage. Whereupon the Court find for the defendant that he is not liable to pay any part of said decree based upon said $1500.00 note last becoming due, to which finding the plaintiff excepted and filed his motion for a new trial which motion the Court overruled and to which ruling of the court overruling said motion for new trial plaintiff excepted and the Court rendered Judgment for the Defendant to which plaintiff excepted and asked the Court to sign and seal this his bill of exceptions which the Court hereby does and signs and seals the same and orders the same to be filed and recorded as part of the record of the case, Witness my hand and seal officially this 18th day of June A.D. 1881

"Signed" John L. Porter, Judge. (Seal)

Trans Jan. 25th 1881 On motion of defendant and on their showing this cause is continued at cost of defendant, with leave to plaintiff to file Amended Petition in 20 days from the rising of the Court. May 20th 1881 This day came on this cause to be heard by the Court a jury being waived and the Court being fully advised in the premises do find for the defendant. to which

plaintiff excepted and thereupon plaintiff filed his motion asking the Court to set aside said finding and grant him a new trial for reasons on file in said motion which motion the Court overruled, to which ruling of the Court plaintiff excepted and asked the Court to sign and seal his bill of exceptions and order the same recorded in this case, and thereupon it is considered, ordered and adjudged by the Court that defendants recover of the plaintiff their costs herein expended taxed to $, and this Court by consent of parties order the Journal to be left open 90 days for the purposes of preparing the bill of exceptions and signing and sealing and filing the same, June 18th 1880 Now comes the Defendants by their attorneys and present to the Court their certain Bill of exceptions herein which being found by the Court to be true is allowed signed and sealed and by motion is hereby ordered to be made and is made part of the record in this case.

W. H. Baxter Plaintiff in Error
vs
T. W. Chesney, A. R. Bigalow and Eva L. Chesney Defts in Error

District Court
Union County Ohio

Petition in Error

The Plaintiff in Error says that on the 20th of May A.D. 1881 at the May term of the Court of Common Pleas of said County of Union and in said Court the Defendants in Error recovered Judgment against the plaintiff for $. costs of suits and dismissing plaintiffs petition on the merits to which plaintiff excepted, which Judgment remains in full force and unpaid as will appear of record as shown by the record of said proceedings hereto attached and made part hereof. The plaintiff says there is error in said record and proceedings and the said Court Erred in rendering said Judgment against said plaintiff and Court should have rendered Judgment for the plaintiff in said cause, wherefore the plaintiff asks Judgment of the said District Court reversing said Judgment in said Court of Common Pleas and Judgment for Plaintiff for new trial of said cause, Robinson & Piper & R. L. Woodburn Attys for Plaintiff

W. H. Baxter Plaintiff in Error
vs
T. W. Chesney et. als Defts in Error

This cause came on for hearing upon the petition in Error, the transcript, the original papers and pleadings from the Court of Common Pleas of Union County and was argued by Counsel, On consideration whereof the Court find there is no Error apparant on the record in said proceedings and Judgment. It is therefor considered by the Court that the Judgment aforesaid braud the same hereby is affirmed, and that the defendants in Error recover from the Plaintiff in Error his cost herein expended taxed to $ To which Judgment of this Court plaintiff excepted, It is further ordered that a special mandate be sent to the Common Pleas Court of Union County for execution upon said Judgment

Robinson & Piper and R. L. Woodburn Attys for Plaintiff

Attest J. D. Burgner
Clerk

Pleas before the Honorable John A. Price, Henry Dodge and John McCauley Judges of the Court of Common Pleas within and for the 10th Judicial District in the State of Ohio at a District Court begun and held at the Court House in the town of Marysville within and for the County of Union, on the 16th day of March A.D. 1882. Heretofore, to wit: on the 12th day of June A.D. 1881 the appeal bond and original papers and on the 25th day of Oct. A.D. 1881 the transcript were filed with the Clerk of said Court and on the 24th day of January A.D. 1881 the following petition was filed with the Clerk of the Court of Common Pleas within and for said County of Union and State of Ohio which reads as follows, to-wit:

William H. Wolford Plaintiff
vs
James F. Mahoffey
James B. Whelpley and
Nathan Howard Commissioners
of Union County Ohio.
William L. Curry Auditor
of Union County Ohio.
Samuel B. Robinson
Robert Ferguson
Samuel D. Robinson
Michael Sager
Samuel Robinson
Samuel Bliss
James Guy Sr
John F. Kilberry
Thomas Kilberry
Asa Kilberry
William Benson and
John Finks Defendants

Court Common Pleas
Union County Ohio

The said Plaintiff William H. Wolford complains of the said Defendants above named and says that he is a citizen and resident of said County of Union and the owner of and seized in fee simple of the following described lands and tenements to-wit: Situate in the township of Darby in said County of Union and bring in surveys nos 3482 and 2682 and containing one hundred and sixty acres (160) and bring the home-stead farm of said Plaintiff in said Township and County aforesaid.

The said Plaintiff further says that the said lands lie and are adjacent to the route proposed to be improved as hereinafter described and within the bounds of the territory which it is claimed ought to be assessed under the law for the purpose of improving the same under the provisions of the statutes in such case provided. The Plaintiff further says that on the 21st day of April A.D. 1880 a petition was presented to the said Commissioners of Union County signed by S. D. Robinson and others praying for the improvement by grading grubbing draining and building culverts the following described roads, to-wit: Commencing near the residence of Mourow Andrews in Darby Township of said County and on the north side of

Darby Creek and past the residence of William and Wolford leaving said
Darby Creek near the residence of William Wolford and extending in
an easterly direction along which is commonly called the School house
road past the residence of Samuel Robinson and terminating where
the school house road intersects with the Sagw Mill road near the
residence of Hunter Robinson. Also beginning where the school house
road leaves said Darby Creek and extending in an Easterly direction
along said Darby Creek and past the residence of S. D. Robinson to its termi-
"nals in the Sagw Mill road near the residence of John Robinson.

Also beginning at a point where the lands of said William N. Wolford
terminates on the said school house road thence in a northerly direction
to a point opposite the residence of S. D. Robinson, And thereupon the said
Commissioners of said County appointed W. C. Henderson William R.
Webb and George D. Hamilton as viewers and F. J. Sagw as Surveyor
and issued their order to them accordingly on said day to proceed on on
the 27th day of May A. D. 1880 to make actual view and examination
of said road and to lay out said road as in their opinion public conve-
"nience and utility required and to make their report in writing to the said
Commissioners at their next regular session in June A. D. 1880 showing the public
necessity of the said contemplated improvement and the estimated expense
thereof and the lots and lands which will be benefited thereby lying within
10 miles of said road and which ought to be assessed for the purpose of
making said improvements which report was to be in compliance of the
law. The said Plaintiff further says that on the 10th day of June A. D. 1880
the said viewers and surveyor made their report and filed the same with
the said Commissioners together with the map of the territory returned
by them which ought to be assessed for the expense of said improvement
together with an abstract of lots and lands which they reported would be
benefited and ought to be assessed for the purpose of making said improve-
"ment. And thereupon on said 10th day of June A. D. 1880 the said
Commissioners after finding that in their in their opinion public utility
required that said improvement be made did order that said report of
said viewers and Surveyor be approved and confirmed and did further
order that said improvements be made as prayed for in said petition
and according to the report of said viewers and Surveyor. And it was further
ordered by said Commissioners that the lots and lands returned in said
report be assessed for the costs and expense of said improvements
and that F. J. Sagw be appointed Engineer and that J. R. Dody be appointed
Superintendant and that they be directed to compleet said improvement
according to law. Plaintiff further says that on the 1st day of Nov. A. D.
1880 W. R. Webb. G. F. Cross and Levi Longbrake were appointed a
committee to apportion the estimated expense and taxes for said improve-
"ments upon the real estate embraced in the order aforesaid according to
the benefits to be derived therefrom and report the same to the auditor of said
County of Union, and afterwards to, wit: on the 12th day of Nov. A. D. 1880
the said viewers and apportioning committee so appointed made their
report in writing and filed the same with the auditor of said County
and that they had apportioned the estimated expense of making the said road
upon the lots and lands lying within two miles thereof and which ought

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to be assessed to pay said costs and expenses. And the said viewers and committee aforesaid apportioned to Plaintiff as his share of the expense and the costs of building said road and assessed upon his lands above described the sum of six hundred and thirty four dollars (634^{00}), and said committee and viewers also apportioned said Defendants Michael Sager, Samuel Robinson, Leonard Bliss, James Guyse, John T. Kilbury, Thomas Kilbury, Asa Kilbury, William Benson and John Funk whose lands are within the neighborhood of said road and within two miles thereof and assessed upon their lands respectively the amounts they had apportioned to each of them respectively. The said Plaintiff further says that the above named Defendants are in fact united in interest with Plaintiff in opposing the making of said improvement and in having the same a free turnpike road and in resisting the collection of the said assessments made by the said committee aforesaid, and in the bringing of this action the said Defendants above named would have joined and united as Plaintiffs in this Petition, were it not for the fact that they have no interest in the lands of the Plaintiff herein before described and in the assessment made upon the same. But Plaintiff avers the said Defendants are the owners of other lands in said County and along the line of said road and which all have been wrongfully assessed in like manner as Plaintiffs in different sums for the costs and expenses of said improvement. The Plaintiff therefore asks that the said Defendants may be permitted to this action to appear by answer and cross petition and set fourth their respective claims and oppose with Plaintiff the orders and proceedings aforesaid, and resist the making of said improvement and the collection of the assessments against each of them respectively in a manner as if they had joined with Plaintiff in this action. The said Plaintiff further says that the said Commissioners in addition to the making of the orders and proceedings hereinbefore mentioned have entered into contracts with the said Defendants Samuel B. Robinson, Robert Ferguson and Samuel D. Robinson for the completion of said improvement and the construction of said roads and are about to carry forward the work of building the same and assess the lands of this Plaintiff and the said Defendants hereinbefore mentioned for the purpose of pay the costs and expenses thereof. The said Plaintiff further says that the said Commissioners had no jurisdiction over the subject matter in the said proceedings and doings in the matter of ordering said improvement and making said assessments are unauthorized, illegal and void because Plaintiffs says.

First. That at the time of the filing of the Petition for the said improvement and at the time of ordering the view of the same and at the time of the confirmation of the said view and at the time of the appointing of said appointioning Committee and of the making of said assessments as well as all other proceedings herein before mentioned and at all times from the filing of said Petition until this date these Commissioners had not the written consent of a majority of the resident land owners within the bounds of said road and who ought to be assessed for the making of said improvement but on the contrary the majority of the resident land owners within the bounds of said road and who will be benefited by making of said improvement and whose lands would be assessed for the expense of the same under

the law in such case made and provided have always been and still are opposed to the said improvement and have protested against the same and requested the said Commissioners to take no further steps in said proceedings and in the construction of said road.

Second. The Plaintiff further says that in the making of the said view and apportionment the said viewers and apportioning committee have made an unjust and unequitable view of said road and have purpose-
-ly and in violation of law left out of said view and apportionment a large number of land owners whose lands are adjacent to said road and within the bounds thereof and which should have been assessed under the law for making of said improvement. That the same was done for the sole purpose of defrauding this Plaintiff and the said Defendants united in interest with him in the premises as they well knew that if all the land owners within the bounds of said road and whose lands would be benefited thereby had been properly reported and assessed a large majority of the resident land owners would be opposed to the said improvement and the said viewers and apportioning committee purposely and in violation of law omitted to report a large number of lots and lands which were more largely benefited thereby than the lands of Plaintiff and said Defendants and that the sole and only purpose in doing the same was to fraudulently secure a majority of the assessed land owners in favor of said improvement and to defraud this Plaintiff and others united with in the action of their rights in the premises. The Plaintiff further says that the said viewers and surveyor and apportioning Committee purposely omitted to report a large number of lots and tracts of land within the legal territory of said road which were ben-
-efited by and ought to be assessed for the said improvement for the purpose of making another turnpike called the Sager Mill road when no such improvement and turnpike had been commenced. When the effort to secure an order for the building thereof had failed and no order for the same had ever been had in the premises and Plaintiff further says that they also omitted to report and assess large tracts of other lands for various other reasons which are and were illegal and in violation of their duties in the premises and the rights of Plaintiff herein, and the said Commissioners well knowing the premises and that all the said proceedings were illegal and void ~~ratified~~ and confirmed the same. The Plaintiff further says that there were included in said petition and said rules and proceedings hereinbefore named three separate and distinct roads and that two of them were merely useful and not of public convenience or welfare and that all the said proceedings were illegal and void for the reason that the said Commissioners had no authority by Statute or law to improve more than one road in one proceeding or action as has been attempted to be done in this case. The Plaintiff further says that a large number of the signers to the Petition for said road improvement were obtained by false and fraudulent representations and that all proceedings had therein in the matter of building said roads should therefore be declared null and void. The Plaintiff further says that the said petitioners to said improvement agreed with Monroe Andrews before the signing and presenting of the said petition to exempt and release him and his lands from taxation when the same immediately adjoin the said road and owned have borne and under

the law ought to bear a large part of the assessment for the said improvement And that the said viewers and apportioning Committee and the Commissioners well knowing the said agreement had been made and in order to carry out the same also omitted the said lands of the said Monroe Andrews from all assessments for the making of the said improvement when the same was contrary to law and in violation of the right of Plaintiff and the said Defendants herein united interest with him and all proceedings taken and had in the matter of said improvements are therefore illegal null and void. Plaintiff further says that the said Commissioners well knowing the facts aforesaid and that large number of lots and lands benefited by and within the bounds of said road had been purposely omitted from the said view and apportionment and that a large majority of the resident land owners within the bounds of said road and benefited thereby were opposed to the said improvement have still wrongfully fraudulently and in utter disregard of law and their duty in the premises declared that public utility required the said roads and have ordered the same to be made and have ordered the estimated expense of build-ing said turnpike and the expense connected therewith bring the sum of

Dollars to be assessed upon the lands and lots embraced in the report of said viewers and apportioning committee which embraced the lands of Plaintiff herein described and the lands of said Defendants above stated all of which proceedings in said particulars are contrary to law and in violation of the rights of said parties. Plaintiff further says that the said Defendants Commissioners of said County and said William L. Curry Auditor of said County threaten and are about to issue the bonds of the said County for the estimated for making said improvement and deliver the same to the said Samuel B. Robinson Robert Ferguson and Samuel D. Robinson Contractors for said work as they progress with the building of said road and the said assessments against the said Plaintiff and the said Defendants hereinbefore named are about to be placed upon the duplicate of said County by said Auditor for taxation against the lands of said Plaintiff and said Defendants and threaten to collect the same in like manner as other taxes and great and irreparable injury will be done the Plaintiff in the premises and Plaintiff will be wholly without remedy in the matter unless obtained by order of injunction of this Court restraining and enjoining the said parties from taking any further proceedings in the premises. The said Plaintiff therefore prays that the said Michael Sager, Samuel Robinson, Leonard Bliss, James Guy Sr. John H. Kilbury, Thomas Kilbury, aka Kilbury, William Benson and John Trunk, who are united in interest with Plaintiff, in opposing and resisting said improve-ment the issueing of said bonds and the collection of said assessments upon their lands respectively for the building of said roads and also that the said Commissioners and Auditor and the said contractors hereinbefore named for the building of said improvement may all be made Defendants hereto by due process of law that they be required to answer all and sin-gular the allegations of this Petitions and that upon the final hearing hearing thereof they be forever and perpetually enjoined from ~~taking the bonds of said County in payment of said improvement~~ any further steps in the building of said road and improvement and that the Auditor and Commissioners aforesaid be perpetually

enjoined from issueing the bonds of said County in payment of said improvement or any expense connected therwith or from placing the assessments against Plaintiff upon the duplicates of said County from doing anything to collect the said assessments from Plaintiff or making the same of lien upon his lands in any manner whatsoever or from making any assessments whatsoever for paying any portion of the expense or costs of said road and that in the meantime a provision- "al order of injunction be granted by this Court restraining the said parties from doing any of the acts aforesaid. And the said plaintiff further prays the Court that upon the final hearing of this action she may have such other and further relief in the premises as the Court upon the hearing may seem proper just and equitable. By Powell Gill & Fulton
Attorneys for Plaintiff.

Affidavit The State of Ohio.
Union County. SS. William H. Wolford being first duly sworn accor- "ding to law says the facts stated and allegations set forth in his foregoing petition are true Signed "William H. Wolford"
Sworn to by said W. H. Wolford before me and by him signed in my presence this 24th day of January A. D. 1881 W. M. Wright. Clerk.

Pracipe To Clerk, Issue Summons to Sheriff of Union County for James T. Maho- "ffey James D. Whelpley and Nathan Howard Commissioners of Union County Ohio, W. L. Curry Auditor of said County, Samuel D. Robinson, Samuel D. Robinson and Robert Ferguson returnable according to law, Indorse Equitable relief. Powell Gill & Fulton
Attorneys for Plaintiff

Summons The State of Ohio.
Union County, SS. To the Sheriff of Union County, Greeting:
We command you to notify James T. Mahoffey James D. Whelpley and Nathan Howard Commissioners of Union County, W. L. Curry Auditor of Union County, Samuel D. Robinson, Samuel D. Robinson and Robert Ferguson that they have been sued by William H. Wolford in the Court of Common Pleas of Union County and that unless they answer by the 26th day of Feb. A.D. 1881. the petition of the said William H. Wolford against them filed in the Clerk's office of said Court, such petition will be taken as true and Judgment rendered accordingly. You will make due return of this Summons of the 7th day of Feb. A.D. 1881.
Witness my hand and the seal of Court this 27th day of January A.D. 1881
Seal
W. M. Wright, Clerk.
Endorsed, Due action for Equitable relief. Powell Gill & Fulton Pffs Attys.
The State of Ohio.
Union County, SS. Received this writ January 27th A.D. 1881 at 9 o'clock — M. and pursuant to its command I served the same by delivering a certified copy thereof with the endorsements thereon to each of the within named Defendants on the 5th day of Feb. A.D. 1881.
Fees. Service $1.20 Mileage $4.95 Copy $1.40 Total $7.55 John Hobrusack Sheriff
Afterward on the 26th day of Feb. A.D. 1881 the following answer was filed with the Clerk of Said Court which reads as follows, to-wit:

answer William H. Wolford Plaintiff vs James T. Mahoffey et. als Defts
Court of Common Pleas, Union County, Ohio.

Reply The Defendants
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The Defendants the said Commissioners of Union County, the auditor of said County, Samuel B. Robinson Robert Ferguson and Samuel D. Robinson come and for answer to the said Plaintiffs said Petition saying they admit all the allegations of said petition averring that Plaintiffs are citizens of said County and taxpayers and have been assessed as alleged to make said improvements of the roads in said petition described and that the said viewers were appointed and said improvement ordered under their report and that a Committee was appointed as alleged to make said assessments and that they were made as the parties alleged and that their assessments were confirmed and they admit said contracts for making said improvements were made as alleged and said Commissioners have under said contracts commenced said work before this petition was filed and intends to proceed unless by law prevented. They also admit that Monroe Andrews was not assessed and that many others within two miles of said improvement were not assessed but all the other averments of said petition are by Defendants aforesaid denied. Second, The said Defendants say that all of the said proceedings of the said Commissioners and viewers were had in pursuance of a lawful petition for the same duly signed by a majority of the resident landowners liable to be assessed under the law and that the said viewers and assessors and County Commissioners were all duly authorized and in good faith and honestly discharged their duties according to law and all charges and intimations in said petition of bad faith action and false representations in regard to any part of said proceedings are denied. That in regard to Monroe Andrews the Defendants say he paid a very heavy tax and assessment on his land to make the improvement of the pike known as the Unionville and Marysville pike which runs nearly entirely through his land and that about 60 rods of the pike proposed to be made in the petition described was all that remained to complete the said pike through the said Andrews land and that said Andrew agreed to make at his own expense said pike entirely through his land and that in consideration thereof he was not assessed and that is equal and more than the share of said Andrews in making said improvement taking into consideration his former assessment the said Andrews has already arranged to make said pike through his land as aforesaid and the said arrangements is in fact for the benefit of the Plaintiff and all the parties assessed for the making of said improvement. Therefore the said Defendants ask that they may go hence and said petition be dismissed. Robinson & Pipes

Attys for said Dfts.

The State of Ohio.
Union County, S.S. Samuel B. Robinson one of the Defendants being duly sworn deposes and says he believes the allegations of the foregoing answer are all true. Signed "Samuel B. Robinson"
Sworn to before me and signed in my presence by Samuel B. Robinson this 26th day of Feb. A.D. 1881 A. H. Beightler, Notary Public.
Afterward on the 19th day of March A.D. 1881 the following reply was filed with the Clerk of said Court which reads as follows, to-wit:

Reply

William H. Wolford
vs
James T. Mahaffey et. als

State of Ohio, Union County. Common Pleas Court

And now comes the said plaintiff William H.

Wolford and for reply to the answer of the Commissioners of said County, the auditor of said County, and S. B. Robinson. S. D. Robinson and John Ferguson says. That it is not true as alleged therein that agreement made with Monroe Andrews by which he was not assessed as stated in said answer was for the benefit of Plaintiff and all parties assessed, but on the contrary Plaintiff says it was greatly to their detriment and that the lands of said Andrews by said arrangement do not bear this just proportion of said tax or anything near it. Powell & Fulton Attys for Plff

The State of Ohio.
Union County. SS. William H. Wolford being first duly sworn says the facts and allegations of his foregoing reply are true as he verily believes.

Signed "W. H. Wolford"

Sworn to before me and subscribed in my presence this 18th day of March A.D. 1881

W. M. Wright, Clerk.

Afterward, on the 19th day of March A.D. 1881 the following answer, cross-petition was filed with the clerk of said Court which reads as follows, to-wit:

answer, Cross-Petition

William H. Wolford
vs
James T. Mahoffey et. als

State of Ohio. Union County. Court of Common Pleas.

And now come the said Defendants Michael Sager, Samuel Robinson, Leonard Bliss, James Guy Sr, John F. Kilbury, Thomas Kilbury, Asa Kilbury and William Benson & John Funk and for answer and cross-petition herein say. That they are each the owners of lots and tracts of land in the said County of Union which lie and are adjacent to the roads which are proposed to be improved by the Commissioners of said County as set forth in Plaintiffs Petition herein and that their several tracts of land lie within the bounds of the territory which it is claimed ought to be assessed for the purpose of making the said improvements under the provisions of the Statutes in such cases made and provided. These defendants further say that they have each read the allegations of Plaintiffs petition in reference to the filing of the petition with the Commissioners for the said improvement and also the allegations of said Plaintiffs petition in reference to the proceedings, orders and doings taken by the Commissioners thereon and of the proceedings and doings of the said viewers and apportioning committee as set forth therein and of the orders and contracts finally made for the improvement of said roads as also set forth in said Plaintiffs petition and they here aver that all the allegations of said petition are true and they now adopt and make the same a part of their answer and cross-petition herein the same as if said allegations had been fully set fourth herein. These Defendants further say that the said viewers and apportioning committee apportioned to each of them as their share of the expense and cost of making said improvements and assess upon the several tracts of land owned by them respectively the following sums of money, to-wit:

Michael Sager $256.00, Samuel Robinson $342.00, Leonard Bliss $104.00, James Guy Sr $64.00, John F. Kilbury $57.00, Thomas Kilbury $115.00, William Benson $6.00 Asa Kilbury $115.00, John Funk $1034.00

The Defendants further say that they are each in fact united in interest in this action with the Plaintiff in opposing the said road improvements

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and in resisting the collection of the said assessments made by said Commissioners and Commissioners aforesaid and in the bringing of this action, these defendants herein named would have joined with Plaintiff in this petition, were it not for the fact that they had no interest in the lands described in his petition and the assessments made thereon, and they now ask the Court here that they may be permitted to appear in this action by answer and cross-petition to set forth their respective claims and unite with Plaintiff in resisting the orders and proceedings aforesaid, and resist the making of said improvements, and the collection of the said assessments against each of them respectively in as full a manner as if they had been joined as Plaintiffs in this action. The said Defendants further say that the Commissioners, in addition to the making of the orders and proceedings hereinbefore mentioned have entered into contracts with the said Defendants Samuel B. Robinson, Robert Ferguson, Samuel D. Robinson for the completion of said improvements and the construction of said roads and are about to carry forward the work of building the same and assess the lands of these Defendants for the purpose of paying the costs and expenses thereof. The said Defendants further say that the said Commissioners had no jurisdiction over the subject matter in said proceedings, and that all their orders, proceedings and doings in the matter of the ordering of said improvements and making said assessments are unauthorized, illegal and void, because these Defendants say: First. That at the time of the filing of the petition for the said improvements and at the time of ordering the view of the same and at the time of the confirmation of the said view and at the time of the apportioning of said apportioning Committee and of the making of said assessments as well as all other proceedings herein before mentioned and at all times from the filing of said petition until this date these Commissioners had not the written consent of a majority of the resident landowners within the bounds of said road and who ought to be assessed for the making of said road improvements, but on the contrary the majority of the resident landowners within the bounds of said road and who will be benefited by the making of said improvements and whose lands would be assessed for the expense of the same under the law in such case made and provided have and still are opposed to said improvements, and have protested against the same and requested the said Commissioners to take no further steps in said proceedings and in the construction of said road. Second. These Defendants further say that in the making of said view and apportionment the said viewers and apportioning Committee have made an unjust and inequitable view of said road and have purposely and in violation of law left out of said view and apportionment a large number of landowners whose lands are adjacent to said road and within the bounds thereof and which should have been assessed under the law for the making of said improvements. That the same was done for the sole purpose of defrauding these Defendants and said Plaintiff united in interest with them as they well knew that all the landowners within the bounds of said road did whose lands would be benefited thereby had been properly reported and assessed a large majority of the resident landowners would be opposed to the said improvements and said viewers and apportioning Committee purposely and in violation of law omitted to report a large number of lots and lands which were more largely benefited thereby than the lands of these Defendants and said Plaintiff and that the sole and only purpose in doing

the same was to fraudulently secure a majority of the assessed landowners in favor of said improvements and to defraud those Defendants and Plaintiff united with them in interest in this action of their rights in the premises. These Defendants further say that the said Surveyor and apportioning Committee purposely omitted to report a large number of lots and tracts of lands within the legal territory of said road which were benefited by and ought to be assessed for the said improvements for the purpose of making another turnpike called the "Sogers Mill Road," where no such improvement and turnpike has been commenced, when the effort to secure the build- "ing there of had failed and no order for the same had been had in the premi- "ises and these Defendants say also that omitted to report and assess large tracts of other lands for various other reasons which are and were illegal and in violation of their duties in the premises and the rights of Plaintiff herein. And the said Commissioners well knowing the premises and that all the said proceedings were illegal and void ratified and confirmed the same.

The said Defendants further say that there were included in said petitions and in said orders and proceedings hereinbefore named three separate and distinct roads and that two of them were by roads and not of public con- "venience or welfare and that the improvements sought to be made by the peti- "tion filed with the Commissioners as hereinbefore stated and which has been ordered by them is not one continuous road improvement, and that all the said proceedings are illegal and void, for the reason that the Commissioners had no authority by statute or law to improve more than one road in one pro- "ceeding or action or action or that was not one continuous road improve- "ment as has been attempted to be done in this case. These Defendants further say that a large number of the signers to the petition for said road improve- "ments were obtained by false and fraudulent representations and that all pro- "ceedings had therein in the matter of building said roads should therefore be declared null and void. These said Defendants further say that the said peti- "tioners to said improvement agreed with Monroe Andrews before the signing and presenting of the said petition to exempt and release him and his lands from taxation when the same immediately adjoin the said road and would have borne and under the law ought to bear a large part of the assessment for the said improvement. And that the said viewers, apportioning Committee, and Commissioners well knowing the said agreement had been made and in order to carry out the same also omitted the said lands of the said Monroe Andrews from all assessments for the making of the said improvements when the same was contrary to law and in violation of the rights of Plaintiff and these said Defendants herein united in interest with him and all proceed- "ings taken and had in the matter of said improvements are therefore illegal, null and void, These Defendants further say that the said Commissioners well knowing the facts aforesaid and that large number of lots and lands benefited by said within the bounds of said road had been purposely omitted from the said view and apportionment and that a large majority of the resident landowners within the bounds of said road and benefitted thereby were opposed to the said improvement, and that the said roads ordered to be im- "proved were not one continuous road improvement, have still wrongfully, fraudently, and in utter disregard of law and their duty in the premises declared that public utility required the roads and have ordered the same to be made and

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and have ordered the estimated expense of building said turnpike and the expense connected therewith bring the sum of $. to be assessed upon the lands and lots embraced in the report of said viewers and apportioning committee which embraced the lands of these Defendants as before stated and the land of said Plaintiff, all of which proceedings in said particulars are contrary to law and in violation of the rights of parties.

These Defendants further say that the said Commissioners of said County and said William L. Curry Auditor Auditor of said County threaten and are about to issue the bonds of said County for the estimated expense of making said road improvements and deliver the same to the said Samuel D. Robinson, Robert Ferguson, and Samuel D. Robinson Contractors for said work as they progress with the building of said roads and the said assessments against these said Defendants and said Plaintiff are about to be placed upon the duplicate of said County by said Auditor for taxation against the lands of these Defendants and said Plaintiff and threaten to collect the same in like manner as other taxes and great and irreparable injury will be done to these Defendants in the premises and they will be wholly without remedy in the matter unless obtained by order of injunction of this Court restraining and enjoining the said parties from taking any further procedings in the premises. Wherefore these Defendants pray that the said Commissioners and Auditor of said County and said Contractors be required to answer all and singular the allegations of this answer and cross-petition and that upon the final hearing hereof they be forever and perpually enjoined from taking any further steps in the building of said roads and improvements and that the Auditor and Commissioners of said County aforesaid be perpetually enjoined from issueing the bonds of said County in payment of said improvements or any expense connected therewith or from placing the assessments against these said Defendants upon the duplicat of said County, said Plaintiff from doing any thing to collect the said assessments from these Defendants or from making the same a lien upon their lands in any manner whatever, from paying any portion of the expense or costs of said improvements and that in the meantime a provisional order of injunction be granted by this Court restraining the said parties from doing any of the said acts aforesaid. These Defendants further pray the Court that, upon the final hearing of this action they may have such other and further relief in the premises as to the Court upon the final hearing may seem proper just and equitable.

Powell Gill and Fulton Attorneys for said Defendants.

The State of Ohio.
Union County, SS. Michael Sager, Samuel Robinson, Leonard Bliss, James Guy Sr. John F. Kilbury, Thomas Kilbury, and William Benson being first duly sworn according to law say the facts stated and allegations set forth in their foregoing answer and cross-petition are true,

Signed "Michael Sager, Samuel Robinson, Leonard Bliss,
James Guy Sr, John F. Kilbury, William Benson, "

Sworn to before me and subscribed in my presence by the said Cross-petitioners this 18th day of March A.D. 1881. "D. W. Ayers Notary Public"

The State of Ohio.
Union County. SS. T. B. Fulton being first duly sworn according to law says that he is one of the Attorneys for the Defendants Thomas Kilbury and John Funk duly authorized in the premises = That said Defendants are

non residents of the County and now absent therefrom and that he
believes the facts stated and allegations in the foregoing answer and cross-
petition are true Signed J. B. Fulton
Sworn to before me and subscribed in my presence this 19th day of Mch
A.D. 1881 Signed "R. L. Woodburn Notary Public" (Seal)

answer

William H. Wolford
vs
James D. Whelpley et. als
} Court of Common Pleas, Union County, O.

The Defendants for answer to the Plaintiffs
petition say that they admit that the allegations of said petition are true
so far as they state the proceedings before said Commissioners except they
say the three said pieces of road are all joined together but not all
in one continuous piece of road but they say the said roads consti-
tute one continuous road improvement as authorized by law
and they deny the allegations that a majority of the lawful and bona fide
voters interested in said improvement did not sign the petition for
said improvement and deny that said procedings were void & of no
effect and deny that any tracts of land within the bounds of said improvement
and benefited thereby ought to have been assessed were omitted in making
said assessment and they deny that the said viewers, Commissioners or either of them
fraudulently omitted to report any tract of land within said bounds
which should have been assessed and deny that any act of any of the said
parties was done with any fraudulent purpose but they say they all
acted in good faith and to the best of their judgment in the premises and
they deny that said improvement was not of public necessity and utility
but say the same is and was in their judgment of such necessity and
utility. They admit that Monroe Andrews was interested in said im-
provement and was liable to be assessed therefor and that in lieu of an assess-
ment he bound himself to make and construct through his own lands, #80
said improvement which they are informed and believe and therefore charge, in D.C.
was more than he would have been liable to be assessed after taking into
the account according to law the assessment made on the same lands
for other road improvements made by the Commissioners of this County
and therefore no wrong has been done in that regard to said Plaintiff and
the others interested with him in this cause. The Defendants further say that
the Plaintiff and those filing cross-petition in this cause all knew of all said
proceedings and the sale of the job of making said improvements and
that said contractors with said board of County Commissioners entered into
a written contract to make said improvement and entered upon his work
to make said improvement and did a large part of the work thereon before
they filed the said petition or took any legal steps to prevent the said board
from completing the same and they further say that before said petition
was filed they had issued bond to said Contractors for a part of said work
and which they are informed was sold before said petition was filed and therefore
the plaintiff should from now now enjoining said assessment having received the ben-
efit of the work so done and therefore they ask that they be so estopped.
This answer to apply to the cross-petition as well as the original petition.
Defendants ask the Court by reason of these premises to dismiss said
petition and cross-petition Signed Robinson & Peters Atty's for Defts.

affidavit

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William H
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The State of Ohio.
Union County. SS. S. B. Robinson one of the Defendants being duly sworn says he believes the allegations of the foregoing answer are true. "S. B. Robinson"
Sworn to before me and signed in my presence this day of April A.D. 1881
W. M. Winget. Clerk,

"The above is a copy as near as we can recollect. Robinson & Piper"
Afterword on the 21st day of May A.D. 1882 the following Entry was made on the Journal by the Clerk of said Court which reads as follows, to-wit:

Entry

This day came on this cause to be heard by the Court and thereupon the Court find for the Plaintiffs and those filing the Cross-petition and therefore it consid-ered, ordered and decreed that the said Commissioners be enjoined from issuing and further bonds and the Auditor from placing on the tax duplicate of the County any assessments on the lands of said Petition and Cross-Petition and that all of said Defendants be and they are enjoined from doing any of said acts under the said orders of the Commissioners, in regard to said road improve-ments, And thereupon the Defendants each and all give notice of their intention to appeal this cause to the District Court and the Court at their request fix the bond for appeal at $200.00

Afterward and on the same day as above the following entry was made upon the Journal by the Clerk of said Court which reads as follows:
This day leave was granted to all parties to supply pleadings in this action heretofore last, And thereupon came the said parties and supplied the said pleadings accordingly.

Afterword on the 25th day of Oct. A.D. 1881. the following transcript was filed with the Clerk of the District Court within & for said County of Union which reads as follows, to-wit:

William H. Walford
vs
James B. Whelpley et.als
#80
in D.C.

The State of Ohio, Union County, SS.
In the Court of Common Pleas.
Certified Copy of Journal Entry,

Saturday May 21st 1881. This day came on this cause to be heard by the Court and thereupon the Court find for the Plaintiff and those filing the Cross-petition and therefore it is considered ordered and decreed that the said Commissioners be enjoined from issueing any further bonds and the Auditor from placing on the tax duplicate of said County any assessments on the lands of said Petition and said Cross-Petition and that all of said Defendants be and they are enjoined from doing any of said acts under said orders of the Commissioners in regards to said road improvements. And thereupon the Defendants each and all give notice of their intention to appeal this cause to the District Court and the Court at their request fix the bond for appeal at $200.00 Saturday May 21st A.D. 1881. This day leave was given to all parties to supply pleadings in this action heretofore last. And there-upon came the said parties and supplied the said pleadings accordingly.

The State of Ohio.
Union County. SS. I. W. M. Winget. Clerk of the Court of Common Pleas, within and for said County, and in whose custody the files, Journals, and Records of said Court are required by the laws of the State of Ohio to be Kept, hereby certify that the foregoing is taken and copied from the Journal of the proceedings of the said Court, within and for said

County, and that the foregoing Copy has been compared by me with the original Entry on said Journal, and that the same is a correct transcript thereof. In testimony whereof, I do hereto subscribe my name officially, and affix the seal of said Court, at the Court House in Marysville, in said County, this 7th day of Sept. A.D. 1881.

Seal. W. M. Winget, Clerk. By W. E. Winget Deputy.

Afterwards on the 18th day of March A.D. 1882 the following Entry was filed and made on the Journal of the District Court by the Clerk thereof which reads as follows, to-wit:

Entry #80

William H. Wolford
vs
James B. Whelpley et. als

} District Court, Union County, Ohio.

This day this cause came on to be heard upon the pleadings and testimony and was argued by counsel and submitted to the Court upon consideration whereof the Court do find the allegations of the said Petition are true, That the three roads or parts of roads described in the pleadings and herein do not form one continuous road improvement and that the said Commissioners had no jurisdiction or power to order the improvement under one petition or in one proceeding. It is further found by the Court that the said Plaintiff and the said Defendants who are united with him in the prosecution of this case and who have filed their answer and Cross-Petition have done no acts or omitted to do anything by reason of which they are estopped from asking for relief in the premises, whereupon the Defendants filed their motion for a new trial, which motion was overruled by the Court to which Defendants excepted and asked the Court to sign and seal their bill of exceptions, which is done and the Court orders the same to be recorded as a part of the record of this cause, It is therefore considered ordered and decreed that the said Defendants be each and all perpetually enjoined from proceeding any further steps in the matter of making said roads And that the said Commissioners and Auditor of said County be forever enjoined from issueing the bonds of said County in payment of said improvement and also from placing upon the duplicates of said County the assessments made upon the lands of Plaintiff and the said Defendants who have been united with him in their action and filed their Cross-petition herein. It is further ordered that said Defendants the Commissioners of said County pay all the costs of this action taxed at $. and if the same is not paid execution issue therefor. To all of which Judgment and finding of the Court the Defendants the Commissioners of Union County and Samuel B. Robinson then and there excepted.

Afterwards on the 18th day of March A.D. 1882 the following motion was filed with the Clerk of said Court which reads as follows, to-wit:

motion 80

William H. Wolford
vs
James Whelpley et. als

} In District Court of Union County. O.

Now comes James B. Whelpley and others Commissioners of Union County and Samuel B. Robinson and move the Court to set aside its findings and Judgment and grant a new trial and hearing herein for the following reasons. 1st That the finding of said Court that the said

Commissioners
made one petition
2nd That the fi
authority to mak
in finding that
improvement and
the proceedings o
6th The Court
by reason of th
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and the Judgme
case. 9th The
have been in
Whereupon th
Samuel B.
finding and
Signed

Attest

Commissioners of Union County had not power to improve three parts of roads
under one petition, unless the same made a single line of road is contrary to law.
2nd" That the finding of this Court that the Commissioners aforesaid had not
authority to make this improvement is contrary to law. 3rd" That the Court erred
in finding that the said Commissioners were not authorized by law to make said
improvement and had no jurisdiction in the case. 4th" The Court erred in finding
the proceedings of said Commissioners void for want of jurisdiction.
5th" The Court erred in finding and ruling that the said Plaintiff was not estopped
by reason of his failure to prosecute his suit until after the work had been con-
"tracted and partly done. 6th" The Court erred in finding against the Defendants
on the question of estoppel. 7th" The judgment and finding of the Court
in favor of the Plaintiff and against the Defendants upon the question of
estoppel, was and is contrary to the evidence and law of the case. 8th" The finding
and the Judgment of the Court is against the evidence and contrary to the law of the
case. 9th" The finding and Judgment was in favor of the Plaintiff when it should
have been in favor of the Defendant according to the law of the land.
Whereupon these Defendants the Commissioners of said County and said
Samuel B. Robinson move the Court to set aside its Judgment and
finding and grant a new trial and rehearing hereof.
Signed Robinson & Piper and J. L. Cameron Attys for the Commissioners
of Union County, Ohio.

Attest. J. D. Burgner, Clerk.

85

Richard Brewster et al.
vs.
Nathan Bell et al.

Plea before the Honorable John A. Price Henry Dodge and Luther M. Strong Judges of the Court of Common Pleas within and for the Third Judicial District in the State of Ohio at a District Court begun and held at the Court House in the Town of Marysville within and for the County of Union in the State aforesaid, on the 9th day of July A. D. 1883 in accordance with the provisions of an act of the General Assembly of Ohio entitled: An act, To authorize a special term of District Court in the Tenth Judicial District of Ohio passed April 19th 1883 Volume 80 page 193 Ohio laws.

Heretofore, on the 30th day of Sept. A. D. 1881 an appeal Bond, together with the original papers and depositions in the above entitled case, was filed with the Clerk of said District Court.

Said Appeal Bond reads in the words and figures following, to-wit:

Appeal Bond

Know all men by these presents, That we, P. P. Cole and D. M. McCloud are held and firmly bound unto Richard Brewster and others in the penal sum of Two hundred Dollars, to the payment of which, well and truly to be made, we do hereby jointly and severally bind ourselves, our heirs, Executors and Administrators. Signed by us, and dated this 30th day of September A. D. 1881.

The condition of the above obligation is such, that whereas, the said defendants W. H. Taylor, Susan Taylor, George L. Talbot, Sarah L. Davis, Enos Broome, George Widger, Felix Broome, Margaret Chapman, Charles L. Bell, Robert Bell, Nettie Noland, Lillie Noland, Cecil Amos, Ellen Amos, Stephen Noland and Elizabeth Noland have taken an appeal from a certain decree rendered against them in favor of the said Plaintiffs in the Court of Common Pleas within and for the County of Union in the State of Ohio, at the Sept. Term thereof, A. D. 1881, for the sum of ___ costs in said suit to the District Court within and for the County aforesaid.

Now if the said defendants above named shall abide and perform the order and judgment of said District Court, and shall pay all moneys, cost and damages, which may be required of or awarded against them by said District Court, then this obligation to be void: otherwise to remain in full force and virtue in law. signed P. P. Cole
D. M. McCloud.

I approve the above bond with the sureties thereto this 30th day of Sept. A. D. 1881. W. H. Winget. Clerk.

Afterward on the 25th day Oct. A. D. 1881 the following transcript was filed with the clerk of said District Court which reads as follows, to-wit:

Transcript 85

Nathan Bell and Others
vs.
Richard Brewster and Others

Journal entries in Union County Com. Pleas.

On the 1st day of Oct. 1875 the following entries were made upon the Journal of said Court, to-wit:

Transcript Continued

Nathan Bell
vs.
John V. Case
and
Richard Brewster
vs.
Nathan Bell

moved the Court [illegible] Plaintiffs Na[illegible] to said consoli[illegible] cause should [illegible] same to be [illegible] cause is con[illegible] Afterward on [illegible] on the journa[illegible] Richard [illegible] vs. Nathan B[illegible] ordered that [illegible] the plaintiff[illegible] and the Co[illegible] to file any[illegible] On the 18th [illegible] Journal of [illegible] Richard B[illegible] vs. Nathan [illegible] and Nathan [illegible] vs. John V. [illegible] Attorneys [illegible] that there w[illegible] at the Janu[illegible] entry show[illegible] No. 1717 was [illegible] was to conso[illegible] are plaintiff[illegible] It is [illegible] that said Ja[illegible] this Court [illegible] to appear thi[illegible] and not with[illegible] On the 20th [illegible] of said Cou[illegible]

Transcript Continued

Nathan Bell et al.
vs
John V. Case et al. 1717

and

Richard Brewster et al.
vs
Nathan Bell et al. 1839

This day came the Plaintiffs in said case no. 1839 and moved the Court to consolidate with said cause no. 1717 and thereupon the Plaintiffs Nathan Bell and others in cause no. 1717 by their Attorneys consent to said consolidation. It therefore appearing just and proper that said two causes should be consolidated into one cause the Court do hereby order the same to be so consolidated and carried as one cause, and such consolidated cause is continued.

Afterward on the 24th day of January 1876 the following entry was made on the journal of said Court.

Richard Brewster et al.
vs
Nathan Bell and others 1839

In the consolidated cases aforesaid it is ordered that all of the defendants claiming the lands in said petition of the plaintiffs and the defendants file their answer within thirty days and the consolidated case is continued with leave to all parties to file any amended pleadings in fifteen days.

On the 18th day of April 1876 the following entry was made on the Journal of said Court, to-wit=

Richard Brewster et al.
vs
Nathan Bell et al.
and
Nathan Bell et al.
vs
John V. Case et al. 1839 1717

This day came the said parties by their Attorneys and the Court being fully advised in the premises do find that there was a clerical error in the journal entry in these cases at the January Term of this Court 1876, in this, to-wit= that said entry shows that the case of Nathan Bell et al. vs John V. Case et al. No. 1717 was consolidated with No. 1798, when in fact the order of this Court was to consolidate No. 1717 with No. 1839 wherein Richard Brewster et al, are plaintiffs and Nathan Bell et al are defendants.

It is therefore considered ordered and adjudged by the Court that said journal entry be made to conform to the said order of this Court and that said error be corrected and that it shall be made to appear this case no. 1717 was consolidated with case no. 1839 and not with case no. 1898

On the 20th day of April 1876 the following entry was made on the Journal of said Court.

over

Richard Brewster et al,
vs
Nathan Bell et al,

1717 & 1839

This day came the said parties into Court and thereupon the defendants Nathan Bell and others by their attorneys Reid and Powell and D. W. Ayers and submitted their motion to the Court for a continuance in this case and the Court being fully advised in the premises do find that there is no good and sufficient reason assigned for a continuance of the case and that said motion ought to be overruled. It is therefore considered, ordered and adjudged by the Court that said motion be overruled. Thereupon said Nathan Bell and others by their attorneys moved the Court to assign this case for hearing on Monday the 1st day of May 1876 and no parties objecting; it is ordered and adjudged by the Court that this cause stand for hearing on Monday the 1st day of May 1876.

On the 2nd day of May 1876 the following entry was made on the Journal of said Court, viz:

Richard Brewster et al,
vs
Nathan Bell et al,
and
Nathan Bell et al,
vs
John V. Case et al,

1839

1717

This day came the said plaintiffs Richard Brewster and others by their Attorneys Robinson and Piper and Nathan Bell and others heirs of John Broome deceased by their attorneys Reid and Powell and D. W. Ayers and Theodore S. Fay and others defendants heirs of George Washington Broome deceased by their attorneys Carpenter and Pudney. And it appearing to the Court that these cases have heretofore been consolidated as one case and no party objecting thereto it is ordered by the Court that these two cases be consolidated as one case, and that the said consolidated cases be numbered "No. 1839." That the title of the consolidated cases shall be Richard Brewster and others against Nathan Bell and others.

And thereupon this cause came on to be heard and the said plaintiffs were ready for trial and pressed the case for trial and all said defendants moved for a continuance of this case, and whereas it was made to appear to said Court that part of the said defendants the heirs of John Broome deceased are not residents of the State of Ohio, and whereas said defendants the heirs of John Broome deceased did then agree to waive any and all rights they might have to remove said case to the Circuit Court of the United States, and whereas the question was raised whether notice by publication was properly made and all defendants did then agree to waive all objections on that account and did then agree to enter their appearance herein without any further notice or delay and whereas all said defendants the heirs of John Broome deceased and the heirs of George Washington Broome deceased did then and there declare and agree that they would be ready for trial

of this case at the next Term of this Court.

Thereupon the said Plaintiffs consented that this case may be continued to the next Term of this Court. It is therefore considered, ordered and adjudged by the Court that this case be continued to the next Term of this Court.

Thereupon said plaintiffs obtained leave to make additional parties defendant hereto, no party objecting. It is further ordered that Plaintiffs give notice by publication of the pendency of this suit to all persons who claim any interest in this controversy and who have been or may be made parties defendant to this action. It is further agreed by all the parties that all the depositions which have been taken or which may hereafter be taken in this case or in the case of Richard Brewster Brewster and others against James C. Wilkins and others No. 1798 shall be admitted as evidence in all cases now pending or may hereafter arise between said parties so far as competent.

On the 18th day of Sept. A.D. 1876, the following entry was made on the Journal of said Court.

Richard Brewster and others
vs
Nathan Bell and others
1839

This day this cause came on to be heard on the motion of defendants to the Court to direct an issue in this case to be tried by a Jury, to-wit = Whether either the Plaintiffs or Defendants are the heirs of the R. L. Broome Estate of said County of Union deceased and if either of them, which of them are such heirs.

Whereupon the Court sustained said motion and ordered said issues to be tried to a Jury and thereupon the defendants demanded a struck jury to try said issue and thereupon said struck jury was drawn by the parties and a venire issued returnable on Wednesday of this week.

On the 18th day of Sept. A. D. 1876. the following entry was made on the Journal of said Court.

Richard Brewster et al.
vs
Nathan Bell et al.
1839

This day came the said parties and thereupon came the struck jury, to-wit= J. F. Tilton. John Morrow. J. M. Andrews. Robert Paris. Warren Owen. Jefferson Richey. W. H. Crary. Aaron Shirk. Thomas Brannon. William Perkins. John Carey. John McAllister. Jonas Cline. Richard Tyler. Luther Turner. Ralph Bonnett, and the said William Perkins requested to be excused from said Jury and by consent of all parties he was excused, and thereupon, upon the motion of defendants this cause was continued to Tuesday the 26th day of Sept. 1876, at one o'clock P.M.

On the 26th day of September 1876 the following entry was made on the Journal of said Court. viz=

Richard Brewster et al.
vs
Nathan Bell et al.
1839

This day this cause came on to be heard by the Court and thereupon the Court direct and order the following issues be submitted and tried, to the Jury hereinbefore struck to be

duly impannelled, to-wit=

1st Are Richard Brewster et al, claiming to be the legal descendants of Levi Brewster deceased the legal heirs of Robson L. Broome, late of Union County Ohio, deceased, or are they not such heirs?

2nd Are Maria Bell and others claiming to be the legal descendants of John Broome deceased the legal heirs of Robson L. Broome late of Union County Ohio deceased, or are they not such heirs?

3rd Are Elizabeth P. Gould and others claiming to be the legal descendants of George Washington Broome the legal heirs of Robson L. Broome late of Union County, Ohio, deceased, or are they not such heirs?

4th Are Maria L. Jones and others claiming to be the legal descendants of Elisha Case deceased the legal heirs of Robson L. Broome late of Union County Ohio deceased, or are they not such heirs?

It is further ordered by the consent of said parties that in the trial of the said issues each sett of claimants first introduce their evidence in chief, in turn, in the order above stated, and then evidence in defense by each sett of claimants in the same order, and then each give evidence in rebuttal in the same order.

This submission however is confined to the question as to who are the heirs of said Broome as far as the real estate is concerned described in the pleadings herein and to no other property whatever.

5th Did the said Robson L. Broome die intestate or not?

Afterward on the same day, to-wit= Sept. 26th 1876 the following entry was made on the Journal of said Court. viz=

Richard Brewster et al,

vs 1839

Nathan Bell et al,

This day came the parties and thereupon this cause came on to be heard and thereupon came the jurymen hereinbefore selected under the Statute for Struck Juries, and thereupon a jury of twelve good and true men having the qualifications of jurymen was duly impannelled and sworn to try the issues herein before directed and ordered to be tried by a Jury, to wit=

Said jury so impannelled and sworn as aforesaid are as follows, viz: John F. Tilton. John A. Morrow. J. M. Andrews. Robert Paris Warrett Owen. Jefferson Richey. Thomas Brannon. John Curry. John McAllister. Richard Tyler. Luther Turner. Ralph Bonnett. and the Court having made some progress in the trial of said issues adjourned Court until tomorrow morning at 8½ o'clock A.M.

On the 5th day of Oct. 1876 the following entry was made on the Journal of said Court, viz:

Richard Brewster et al,

vs 1839

Nathan Bell et al,

This day came the parties and thereupon came the Jury hereinbefore impannelled in this case, who having from day to day since the impannelling thereof, heard the evidence, arguments of Counsel and the charge of the Court, this day return their

3rd Was also to find that Elizabeth P. Gould et al claiming to be the legal descendants of George Washington Broome are not the legal heirs of Robson L. Broome late of Union County, Ohio, deceased.

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Verdict in the words and figures following which the Court ordered to be recorded and the Jury discharged: And the Court being of the opinion that this is a proper case, justifying the calling of a struck Jury do order that the Jury fees be paid by the County and charged in the bill of costs in this case.

The verdict so returned is as follows, viz:

1st We the Jury in this case being duly impannelled and sworn do find and say that Richard Brewster and others claiming to be the legal descendants of Levi Brewster deceased are the heirs of Robson L. Broome late of Union County Ohio deceased.

2nd We also find that Maria Bell and others claiming to be the legal de=scendants of John Broome deceased are not the legal heirs of Robson L. Broome late of Union County, Ohio, deceased. ## 3rd

4th We also find that Maria L. Jones and others claiming to be the legal descendants of Elisha Case deceased are not the legal heirs of Robson L. Broome dec'd.

Warrett Curry, Foreman.

On the 11th day of Oct. 1876, the following entry was made on the Journal of said Court which reads as follows, viz:

Richard Brewster and others

vs. 1839

Nathan Bell and others

This day came the parties and thereupon this cause came on to be heard by the Court upon the petition, cross-petition and answers of the defendants respectively and the plaintiffs replies thereto and the verdict of the Jury and exhibits, evidence and arguments of the Counsel,

Whereupon the Court being fully advised in the premises do find the several allegations of the Plaintiffs petition to be true and that said plaintiffs are the legal heirs of Robson L. Broome deceased entitled to the peaceable and quiet possession of the said real estate in said petition described and that the said several claimants thereto, named as defendants are not the legal heirs of said Robson L. Broome deceased and the said claim of the Plaintiffs shall be in equity be quieted against their said unlawful claim.

Therefor it is considered ordered and adjudged by the Court here that the said plaintiffs be and they are hereby declared to be the legal heirs of said Robson L. Broome deceased, as against all of the defendants and their right, title, possession and control of said real estate be, and the same is hereby quieted against the said claim or claims of the said several defendants, who in the said pleadings are described as the descendants of John Broome deceased, and said defendants so claiming are enjoined from interfering with or claiming any interest, right, or title to or in said real estate and further that the said defendants who, in the pleadings are described as the descendants of Elisha Case deceased and holding under him and his descendants be enjoined from interfering with or claiming any interest title or use of said real estate and the title, possession and control of the same is hereby quieted in the plaintiffs as against the said claimants under the said Elisha Case deceased, and further that the title, possession and use

3rd We also find that Elizabeth Plaines and descendants of George Washington Broome and Robson L. Broome late of Union County

of the Plaintiffs in and to said real estate & and the same is quieted as against the claims of the said defendants who in said pleadings are described as the legal heirs of George Washington Broome decd. and they are enjoined from interfering with or claiming said real estate and further it is ordered and decreed by the Court that the Plaintiffs recover of the said defendants claiming as the heirs of Elisha Case the costs herein expended by Plaintiffs so far as it relates to that branch of the case and that the Plaintiffs recover of the defendants described as the heirs of George Washington Broome decased their costs expended so far as it relates to that branch of the case and that the plaintiffs recover of the defendants described as the descendants of John Broome decased, the costs herein expended so far as it relates to that branch of the case, and the last mentioned parties having demanded the struck Jury, it is ordered that the Jury fees be taxed to the said last above mentioned branch of the case, and further it is ordered that if either of the said set of claimants shall fail for forty days from the rising of the Court to pay their costs so as aforesaid adjudged to be taxed by the Clerk as aforesaid according to law that Execution issue therefor as upon judgments at law, and further by consent the question as to the claim of Harrison Saunsdown and his wife to the lot on which they reside described as such in the pleadings so far as they claim said property was given to them by said R.L. Broome deceased is hereby dismissed without prejudice and the rights of the parties in that regard are left for future settlement or adjudication and thereupon notice of appeal is given by and on behalf of the said defendants claiming as descendants of John Broome decased by their attorneys and notice of appeal is given by and on behalf of said defendants claiming as descendants of George Washington Broome decased, and notice of appeal is given by and on behalf of the defendants claiming as the descendants of Elisha Case decased, and thereupon the Court fix the bond for the perfecting of the appeal on behalf of each of the said claimants at the sum of Five Hundred Dollars.

And further it is ordered and adjudged that the right, title and possession of the plaintiffs be and the same is hereby quieted against the claim or claims of all other defendants in this cause.

On the 16th day of Oct. 1876, the following entry was made on the journal of said Court, viz:

Richard Brewster and others
v.
Nathan Bell and others
1839

By consent of all parties Edward E. Cole is hereby appointed Receiver for the purpose of taking care of the real estate described in this case, and collecting back rents and future rents and paying the taxes on the same and exercising such acts as may be proper and necessary to protect & preserve and use said premises and if any persons have unlawfully taken or hold possession of any part of the same the said Receiver by consent of all parties and the decree of this Court is authorized and empowered to bring and maintain

in his name as said Receiver any suit or action necessary and proper to protect preserve or use said premises and to require possession thereof. And said Receiver is required to give bond in the sum of One Thousand Dollars with surety satisfactory to the Clerk of this Court for the faithful performance of his duty and properly accounting to the Court for the same. Afterward on the 28th day of Feb. A. D. 1878 the following entry was made on the Journal of said Court, to-wit =

Richard Brewster et al.

vs 1839

Nathan Bell et al

This cause coming on to be heard upon the final report of the Receiver herein and the Court finding the said report correct and that the said Receiver has fully obeyed the orders of the Court to him issued, which is paid to the plaintiffs Attorney A. B. Robinson.

It is therefor ordered that all acts and things done by him as well as his said report be, and they are hereby approved and confirmed and that he be allowed and paid the sum of Three Hundred Dollars out of the money in his hands in full for his services herein:

And that the said Edward E. Cole be discharged from his duties, liabilities and responsibilities as such Receiver and his under= =taking therefor vacated and cancelled and that his possession of the premises as such Receiver be, and the same is transfered to the plaintiffs with the right to recover all arrears of rent.

On Tuesday Oct. 5th 1880 the following entry was made on the Journal of said Court. viz:

Richard Brewster et al.

vs 1839

Nathan Bell et al.

This day came William H. Taylor, George L. Talbott, Sarah L. Davis, Susan Taylor, George Widger, Margaret Chapman, Felix Broome, Charles L. Bell, Robert Bell, Nettie Noland and Lillie Noland, Cecil Aman and Ellen Aman his wife, Stephen Noland and Elizabeth Noland his wife, by their counsel, and this cause came on for hearing upon their motion to open the decree herefore made, and let them in to answer and defend. And the said plaintiffs appeared to said motion by Messrs Robinson and Robinson their Counsel and the Court having heard said motion and the affidavits and evidence thereupon and the arguments of counsel, are of the opinion that said motion is well taken and ought to be sustained. It is therfore ordered that said judgment and decree be so far opened as that said moving defendants shall be let in to defend and that they have leave to file their answer in said original action, which is done accord= =ingly. It is further ordered that said moving defendants be and they are required to secure the costs to be hereafter made in the case on or before December 1st 1880 and that said plaintiffs have leave to reply or otherwise plead within the same time. And all questions as to past cost the question is reserved for future action.

And the plaintiff excepts to said ruling and judgment of the Court and the parties to said cause in open Court now agree that in the

future hearing of this cause the depositions heretofore taken by any and all parties so far as competent may be read, and as to the testimony of any deceased witnesses who may have testified in this cause the same rule shall apply as if said persons had originally all been personally served with process in this case.

On the 14th day of Sept. 1881, the following entry was made on the Journal of said Court.

Richard Brewster et al,

vs 1839

Nathan Bell et al

This day came the plaintiffs and withdrew their motion to make defendants answer more certain and the cause came on to be heard upon the motion for bond to secure costs. Whereupon the Court find the bond filed for that purpose defective in form. It is ordered that defendants file new bond to secure the costs in accordance with former order herein, and thereupon the bond is filed instanter, and this cause is reassigned for hearing on Tuesday, September 27th 1881.

On Sept. 28th 1881 the following entry was made on the Journal of said Court, viz:

Richard Brewster et al,

vs 1839 Evidence taken, Trial progressing.

Nathan Bell et al,

On Sept. 29th 1881, the following entry was made on the Journal of said Court, viz:

Richard Brewster et al,

vs 1839

Nathan Bell et al,

This day came on this cause to be heard by the Court on the pleadings and evidence between the plaintiffs and defendants W. N. Taylor and others who filed their answer herein on the 5th day of Oct. 1880, Whereupon the Court find from the evidence in favor of the Plaintiffs and against said defendants and that the allegations of the plaintiffs amended petition and supplemental petition are true, and the allegations of said answer are not proven. It is therefore considered, ordered and adjudged by the Court that the title and possession of said Real Estate in said petition described be quieted in the said plaintiffs as prayed for in said petition, and that the Plaintiffs recover of the said defendants the costs herein expended taxed to $—

Thereupon said defendants gave notice of their intention to appeal this cause to the District Court and the Court fix the appeal bond at $200.00

The State of Ohio, Union County ss. I, W. H. H. Winget Clerk of the Com. Pleas Court within and for said County, and in whose custody the files, Journals & Records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of the proceedings of the Com. Pleas Court within and for said County, and that the foregoing copy has been compared by me with the original entries on said Journal and that the same is a correct transcript thereof. In testimony whereof, I do hereto subscribe my name officially and affix the seal of said Court, at the Court House in Marysville, in said County this 24th day of Oct. A. D. 1881. W. H. H. Winget Clerk By W. E. Winget Deputy. (Seal)

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motion for New Trial.

Afterward on
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Richard B
vs
Nathan Be

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Richard B
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Richard B
v
Nathan B

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appellants

Afterward on the 10th day of July A.D. 1883 an entry was made on the Journal of said District Court which reads as follows, to-wit=

Richard Brewster & others

vs

Nathan Bell & others

85 Union County, O. SS: In the District Court.

In this cause, on motion duly made to the Court, and by the consent of all parties, Charles A. Shinkwin is appointed Official Stenographer to take the testimony and proceedings in said cause. And said Charles A. Shinkwin appeared in open Court and took an oath to faithfully and impartially discharge the duties of such reporter according to law and the best of his ability.

Richard Brewster et al. Sept. 4th 1883 this entry was made on the Journal in D. C.

vs

Nathan Bell et al

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This day came on this cause to be heard by the Court on the pleadings and evidence. After arguments of Counsel for the parties the Court find for the Plaintiffs Richard Brewster and others and against the defendants for whose benefit the former decree in this cause was opened up. Whereupon it is decreed by the Court that the said defendants are enjoined from further attempting to disturb the possession of the plaintiffs in the real estate in said petition described and the plaintiffs are quieted in their said possession of said lands as against said defendants. And the Court order and decree that the said defendants who appealed this cause from the Court of Common Pleas to this District Court pay the cost of this proceeding since said former decree was opened up, as aforesaid within Thirty days and in default thereof that execution issue therefor as upon Judgments at law.

To which findings and Judgments of the Court and to its admission of testimony against their objection said appellant defendants excepted. And thereupon came said appellant defendants and moved the Court for a new trial, for reasons on file, which motion was heard and overruled by the Court, and to such overruling the said defendants also excepted. And thereupon said appellant defendants wishing to present a bill of exceptions and desiring further time for the preparation of the same it is with their consent ordered that the Journal of this Court be kept open for Thirty days, for that purpose, and that if such bill of exceptions is within that time allowed, signed, sealed and filed it shall be so entered as of this Term, and shall be made a part of the record in this case.

And it is further ordered by the Court that a special mandate be sent to the Court of Common Pleas of Union County Ohio to carry this Judgment and decree into effect.

Also on the same day, to-wit: Sept. 4th 1883, a motion was filed with the Clerk of said Court which reads as follows, to-wit=

Richard Brewster et al

vs

Nathan Bell et al

85 Union County. SS. In District Court.

motion for New Trial.

And now come the answering defendants (the appellants in this case), and move the Court here for a new trial herein

and for reasons alleged,

1st That the Court erred in admitting and considering the testimony of the witnesses produced as experts as to the comparison of hand writing found on documents claimed to have been written by Levi Brewster with writing, claimed to have been written by Robson L. Broome; and also erred in permitting said experts to use as a basis of comparison the writings known as the "academy letter of date 1810" and "the pay roll" to the admission of all which said defendants objected at the time.

2nd The finding and Judgment of the Court was and is not sustained by the evidence.

3rd The finding and Judgment of the Court was and is against the clear weight of the testimony and the law of the case.

Wherefore said appellants ask that on said finding Judgment be not entered but they be awarded a new trial herein.

By Charles A Grasmuck & W B Loomis.
this Attorneys.

Afterward on the 28th day of Sept. A.D. 1883 the following entry was made on the Journal of said Court, to-wit=

Richard Brewster et al.

85 v.s

Nathan Bell et al

And now on this 28th day of Sept A.D. 1883 came said defendants and filed their bill of exceptions duly signed and sealed by a majority of the Judges of this Court, and the same is now ordered to be made a part of the record in this cause.

Afterward on the 28th day of September A.D. 1883 a Bill of Exceptions was filed with the clerk of said District Court which reads as follows, to-wit=

Richard Brewster et al. Plaintiffs.

85 against

Nathan Bell et al. Defendants.

State of Ohio. Union County SS.
District Court.

Bill of Exceptions. Be it remembered that at the Special Term of said District Court begun and held in said County of Union on the 9th day of July A.D. 1883, and adjourned on the 4th day of Sept. A.D. 1883, on the trial of said cause, which came into said Court by appeal, it became and was material for said plaintiffs to show that Robson L. Broome the decedent in the pleadings named was not in fact Robson L. Broome but that he was in fact, and that his true name was, Levi Brewster, and that he was the son of one Seabury Brewster late of Norwich in the State of Connecticut: that for the purpose of establishing that fact said plaintiffs put in evidence certain books and writings which were either admitted or duly proven to have been in the genuine hand-writing of the decedent and written by him while living at Marysville, Union County, Ohio, Under the name of Robson Lovett Broome; that to further maintain the issue on their part the said plaintiffs offered, and against the objection of the answering defendants, were permitted to put in evidence certain writings purporting to have been written by Levi Brewster, viz: a letter purporting to have been written from an Academy in Plainfield, Conn: to one Elisha Brewster in Vermont, in the

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year of our Lord 1810, and purporting to have been written by Levi Brewster but without further proff of its genuineness as his writing than testimony tending to show that it was found in its proper place among the family papers of the Elisha Brewster to whom it was addressed and showing that said Elisha Brewster now deceased was a brother of the Levi Brewster whose writing the letter purported to be; and also at the same time produced and offered and against the objection of the said defendants were permitted to introduce in evidence a certain pay-roll of the war of 1812, found in the archives at Washington, which purported to bear the signature of Levi Brewster as receipting for pay due him as a Soldier in said service, without other proof of its genuineness as his signature than some evidence tending to show that said Levi Brewster was engaged in said service in the Company of which said paper purported to be the pay roll, and evidence showing that said pay roll was found in its proper place and in the proper custody among the archives of the Government of the United States in the War Department at Washington, D. C. And also as tending to show the connection of said R. L. Broome with said pay-roll said plaintiffs gave in evidence hand-books in the admitted hand-writing of said R. L. Broome giving the number of the Regiment and the Officers thereof and the Company Officers, which are named as the Co. Officers of the Co. in which Levi Brewster was a Soldier corresponding with the pay-roll, to the admission of which letter and pay-roll said defendants at the time excepted. And to further maintain the issue on their part said plaintiffs offered and against the objections of said defendants were permitted to introduce the testimony of expert witnesses based upon a comparison by them of the said admitted and duly proven genuine writings of said decedent Rabzon L. Broome written while he as aforesaid lived at Marysville under the latter name with the said letter and pay-roll so as aforesaid purporting to have been respectively written and signed by said Levi Brewster for the purpose of showing the identity of said Broome with said Brewster and so showing that the man who professed to be Broome was in fact Levi Brewster. And against the objection of said defendants said expert witnesses were permitted to make said comparison between said writings and upon and from said comparison to testify that in their opinion the said genuine writings of said Rabzon L. Broome and said letter and signature to pay-roll purporting to have been written by Levi Brewster were in the same hand-writing and written by the same person to the admission and consideration of which testimony said defendants by their Counsel at the time excepted; but that said testimony was admitted and considered by the Court. A photograph copy of said pay-roll & of said letter is hereto attached marked "A & B." and the original leaves of two of said hand-books and the original of one of said books under said comparison by the experts and the Court are hereto attached marked "C" "D" & "E" and made part of this bill of exceptions.

Be it remembered also that upon the finding by said Court, upon said trial, against said defendants, said defendants at once filed their motion for a new trial in said District Court for reasons in said motion set forth, which said motion for new trial said Court overruled

and proceeded to render final Judgment and decree in favor of said plaintiffs and against said defendants, to which overruling of said motion for new trial and to which final judgment said defendants then and there excepted. And said defendants prayed that this their bill of Exceptions might be signed and sealed by the Court and duly ordered to be made a part of the record in this cause which is accordingly done. Marysville Union County. Ohio. Sept. 24th 1883.

Judges— John A. Price. (Seal)
Luther M. Strong. (Seal)

Attest J. D. Bingner. Clerk.

Henry Fo
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Henry Fox Plaintiff
vs
John Liggett Defendant

Plea before the Honorable John A. Price, John McCleardey and Henry Dodge Judges of the Court of Common Pleas within and for the Tenth Judicial District of the State of Ohio, at a Term of District Court begun and held at the Court House in the town of Marysville, within and for the County of Union on the 6th day of March in the year of our Lord One Thousand eight hundred and eighty three.

The transcript and Petition in error, together with the original papers and bill of exceptions were filed with the Clerk of said District Court on or about the 21st day of Feb. A. D. 1882.

Said transcript reads as follows, to wit=

State of Ohio, Union County, ss. In the Court of Common Pleas, Jan. Term 1882.

Henry Fox Plaintiff
against
John Liggett Defendant

Monday Jan. 9th 1882.

This cause came on to be heard on motion of Pltff to strike out, and said motion is sustained.

Tuesday Jan. 12th 1882.

This day came this cause to be heard on the plaintiffs demurrer to the 3rd defense in the answer. Whereupon the Court sustains said demurrer. To which ruling and judgment of the Court defendants except.

Jan. 17th 1882.

Now came the parties herein by their Attorneys; also came the following named persons as Jurors, to wit= John Kilbury, Joseph Price, Frank Skidmore, Wm Goff, George Beecher, Wm Jolliff, Phillip Ruperight, William Howard, David Burr, Wm Hall, G. S. Baldwin Talisman, and Isaac Bowersmith Talisman, who were duly impannelled and sworn according to Law, and said Jury having heard the testimony adduced in part, said cause was continued until tomorrow morning at 9 o'clock.

Wednesday Jan. 18th 1882.

This day again came the parties, by their Attorneys; and also came the jury heretofore impannelled and sworn and the trial proceeded, and the said jury having heard the remaining testimony, and the hour of adjournment having arrived the Court discharged the jury until tomorrow morning at 8½ o'clock.

Thursday Jan. 19th 1882.

This day came said parties by their Attorneys and also came the jury heretofore impannelled and sworn and the trial proceeded, and the said jury having heard the arguments and charge of the Court, returned to their room in charge of the Sheriff for deliberation and now came the said jury into open Court with their Verdict in writing signed by their Foreman and say; The State of Ohio, Union County, ss. Jan. Term a.d. 1882, to wit= Jan. 12th 1882.

Henry Fox
vs
John Liggett

We the jury in this cause being duly impannelled and sworn do find and say that we find for the defendants.

Isaac Bowersmith Foreman.

Saturday, Feb. 4th 1882.

This day came on this cause to be further heard on the motion of the plaintiff to set aside the verdict of the jury and grant a new trial in this cause. Whereupon the Court being fully advised in the premises do overrule said motion, to which ruling the plaintiff excepts. Thereupon on motion of defendant for judgment on said verdict it is considered ordered and adjudged by the Court that the defendants go hence without day and recover of plaintiff their costs in this cause taxed to $.

To all which rulings and judgments plaintiff excepts and asks the Court to allow sign and seal his bill of exceptions which is accordingly done and the same are ordered to be recorded as a part of the record of this case.

Monday Feb. 6th 1882.

Now comes the said Henry Fox and presents to the Court his certain bill of exceptions herein which being found by the Court to be true, is allowed signed and sealed, and on motion is hereby made a part of the record of this case.

The State of Ohio,
Union County, ss. I, J. L. Bryner, Clerk of the Court of Common Pleas within and for said County, and in whose custody the Files, Journals and Records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the journal of the proceedings of the said Court within and for the said County, and that said foregoing copy has been compared by me with the original entries said journal, and that the same is a correct transcript therefrom.

In testimony whereof I do hereto subscribe my name officially, and affix the seal of said Court, at the Court House in Marysville, in said County, this 21st day of Feb. A.D. 1882.

J. L. Bryner. Clerk. (Seal)

Said Petition in Error reads as follows, to-wit:

Henry Fox, Plaintiff,
vs
John Liggett & Mary Ann Fry and Wm Fry Defendants

Union County ss. District Court.
Petition in Error.

The Henry Fox plaintiff complains of the said John Liggett, William Fry and Mary A. Fry defendants for that the said defendants John Liggett, Mary A. and Wm Fry at the January Term of the Court of Common Pleas A.D. 1882 for said County of Union recovered a judgement by the consideration of said Court against said plaintiff in a certain action then pending in said Court wherein the said Henry Fox was plaintiff and the said John Liggett, Mary A. Fry and Wm Fry were defendants, a copy of the record of the judgments and proceedings including Journal entries bill of exceptions in which case duly certified is here to attached marked "Exhibit A" also original pleadings and papers and made a part of said petition: and the said Henry Fox avers there is error in the said record and proceedings in this to-wit:

1st The said Court erred in their instructions given to the jury by writing those prayed for by plaintiff to those prayed for by the defendants.

2nd The said Court erred in refusing to give the instruction which the said Henry Fox plaintiff requested in writing the said Court to give

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3rd. The said Court erred by giving the instructions prayed for by the defendants John Liggett, Mary A. and Wm Fry.

4th. The said Court erred in adding the instructions requested by said defendants to those instructions requested by the Plaintiff.

5th. The Court erred in overruling the plaintiffs motion for a new trial in this case

6th. That the said judgment was given for the said John Liggett, Mary A. Fry and William Fry which ought to have been given for the said Henry Fox according to the law of the land.

The said plaintiff Henry Fox therefor prays that said judgment may be reversed and the said plaintiff restored to all things he has lost by reason thereof.

P. B. Cole and Sam Carpenter and Vanderman Attys for Pltff.

The defendants in error enter their appearance hereto and waive process on them Feb. 18, 1882.

Robinson and Piper Attys for John Liggett, Mary Ann Fry and William Fry.

Afterwards on the day of A.D. 1883 an entry was made on the journal of said District Court by the Clerk thereof which reads as follows, to-wit-

Henry Fox Plaintiff.
vs
John Liggett Defendant

This cause came on for hearing upon the petition in Error, the transcript and original papers and pleadings from the Court of Common Pleas of Union County and was argued by counsel. On consideration thereof the Court find that there is error therein upon the record to the prejudice of the plaintiff in error.

It is considered that the judgment aforesaid be reversed and held for naught, and that the plaintiff in error recover from John Liggett defendant in error his costs herein expended taxed to $.

It is further ordered that this cause be remanded to the Court of Common Pleas of Union County Ohio for a new trial; and that a special mandate be sent to said Court to carry this judgment into execution.

Attest J. D. Brugger, Clerk.

Transcript

Stephen Cranston Jr. et als. vs Orson Benton et als } For record in Com. Pleas - See Vol. 23. Page 600

Pleas before the Honorable John A. Price, John McCauley & Henry Dodge Judges of the Court of Common Pleas within & for the 10th Judicial District of the State of Ohio, at a Term of the District Court begun and held at the Court House in the town of Marysville within & for the County of Union on the 6th day of March in the year of our Lord One Thousand Eight Hundred & Eighty three.

Heretofore, on the 25th day of October 1881 the following Transcript was filed with the clerk of said District Court, to-wit:

The State of Ohio Union County ss. In the Court of Common Pleas.

Stephen Cranston Jr et als vs Orson Benton et. als. } Friday February 13th 1880.

This day this cause came on to be heard and leave was granted the defendants, Orson Benton, Mary Pennington, Lewis Benton, Mary A. Jenkins, Lewis Jenkins, M.S. Benton et. als to plead within 30 days from the rising of the Court and this cause is continued.

Saturday February 21st 1880.

On motion to the Court by the said, Stephen Cranston by his attorneys and it appearing to the Court by the oath of said Stephen Cranston Jr attached to his petition that the names and residences of the heirs of Arminda Huston are unknown to the said Plaintiff.

It is therefore ordered that the said plaintiff cause a notice containing the substance & prayer of said Petition and of the pendency of this action be published for six consecutive weeks in the Marysville Tribune a newspaper printed in Marysville, Ohio. in this County, informing the said heirs of the said Arminda Huston, that they must appear and answer said petition on or before the third Saturday next after the day of the last or sixth publication.

Saturday February 21st 1880.

And now this cause came on to be heard on motion for the appointment of a Receiver herein, And thereupon the Court find that the land hereinafter mentioned is in the possession of a tenant who rented the same of Phoebe Benton since deceased and that there is a question as to the right of the parties in the partition thereof; And that pending the suit neither party has a right to the possession or control of the said premises or to rent or collect the rents thereof whereby there is danger of loss. It is therefore by consent of the parties ordered that Stephen Cranston Jr. and Lewis Benton be & they are hereby appointed receivers of said lands, to-wit.

The land described in the petition and situated in Union County Ohio. and containing Two Hundred & Twenty one acres, and the rents & profits thereof. That said Receivers or either of them upon being qualified by giving Bond in the sum of $1000. conditioned according to law, proceed to take possession of said farm and rent the same and collect all rents now due or that

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shall become due therefor. And the said Parties here. and all other persons having any of said property in their possession or under their control are hereby ordered to deliver the possession of the same, and all persons owing any such money or account of rents of said premises are hereby directed to pay over the same to the said Stephen Cranston Jr. and Lewis Benton as such receivers on their demand. And it is ordered that before entering upon their duties, such Receivers execute to the State of Ohio, an undertaking conditioned according to law in the sum of $

And now come the said Stephen Cranston Jr. & Lewis Benton with and as sureties to the approval of the Court and were duly sworn as such receivers.

Friday January 14th 1881.

This day came the Parties and thereupon this cause came on to be heard on the demurrer of Orson Benton & others to the Petition of the Plaintiff as amended. On consideration whereof the same is overruled and said Demurrer except thereto

Thereupon said Orson Benton, Lewis Benton and Daniel Benton ask leave moved the Court to strike from said Amended Petition all that portion thereof which purports to set forth an agreement entered into between said Orson Benton and others on the one part and the Plaintiffs on the other part, subsequent to the death of said Phoebe Benton, and all matters relative to said subsequent agreement. On consideration whereof said motion is sustained and all said matter is stricken therefrom

Saturday, February 5th 1881

This day came on to be heard the motion of the Plaintiffs to require the Defendants, Orson, Daniel & Lewis Benton to make their answer herein more definite & certain. Upon consideration said motion was sustained by the Court, as prayed for in Plaintiffs motion, and the Defendants have time to amend their answer in 20 days from the rising of the Court and the Plaintiffs 10 days after to plead.

Tuesday April 26th 1881.

By leave of the Court the Plaintiffs withdraw their motion to strike out part of Defendants answer and reply instanter to the new matter inserted in said answer.

Friday, May 13th 1881.

This day this cause came on to be heard and Thereupon came the parties by their attorneys and the said cause was heard upon the pleadings & evidence and argued by counsel and submitted to the Court, and the Court having carefully considered the same and being fully advised in the premises do find that the allegations of said Plaintiffs petition are not true and that the answer of the said Defendants Orson Benton, Lewis Benton & Daniel Benton and the allegations thereof are true. It is therefore considered by the Court herein that the equities of the case are with the said Defendants Orson Benton, Lewis Benton and Daniel Benton and that the said Plaintiffs Petition be dismissed at their cost and thereupon the

said Plaintiffs and the said Defendants Mary Pennington and the heirs of Arminda Huston did each and all give notice of their intention to appeal their case to the District Court and the Court do allow said appeal and do fix the amount of the Bond to be given by the said parties jointly & severally to perfect their appeal at the sum of $500.00 and it is further ordered by the Court herein by consent of all parties that the said Plaintiffs have leave to amend their petition and the said Defendants Mary Pennington and the heirs of Arminda Huston have leave to file answer and cross petition herein within 40 days from the rising of the Court.

The State of Ohio Union County ss. I. W. M. Stringet Clerk of the Court of Common Pleas, within and for said County and in whose custody the files, Journals and Records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of the Proceedings of said Court, within and for said County, and that said foregoing copy has been compared by me with the original entry on said Journal and that the same is a correct transcript thereof.

In testimony whereof, I do hereby subscribe my name officially and affix the seal of said Court at the Court House in Marysville, in said County, this 7th day of September A.D. 1881

Seal

W. M. Stringet, Clerk.
By W. E. Stringet Deputy

Afterward on the 11th day of June 1881 An Appeal Bond was filed with the Clerk of the District Court, which reads, as follows, viz:

Appeal Bond

Know all men by these Presents, That we. Stephen Cranston and Geo. Wilber are held and firmly bound unto Orson Benton, Lewis Benton & Daniel Benton in the penal sum of Five hundred Dollars, to the payment of which, well and truly to be made, we do hereby jointly and severally bind ourselves our heirs, executors and administrators. Signed by us and dated this 11th day of June A.D. 1881

The condition of the above obligation is such, that. whereas, the said Stephen Cranston & others Plaintiffs have taken an appeal from a certain decree & judgment rendered against said Stephen Cranston & others Plaintiffs in favor of the said Orson, Lewis & Daniel Benton in the Court of Common Pleas within and for the County of Union in the State of Ohio. at the April term thereof. A.D. 1881, for the sum of $57.65 costs, to the District Court within & for the County aforesaid.

Now if the said Stephen Cranston Jr. et als Plaintiffs shall abide and perform the order & judgment of said District Court, and shall pay all moneys, costs and damages, which may be required of or awarded against them by said District Court, then this obligation to be void; otherwise to remain in full force and virtue in law.

(Signed) Stephen Cranston Jr.
Geo. Wilber

I approve the above Bond, with the sureties, thereto, this 11th day of June A.D. 1881

W. M. Stringet, Clerk.

Afterward on
filed with the
District Court
Stephen Cran
George A. Cran
Edmond Cran
Melissa Cran

Amended Petition

Orson Bento
Lewis Bento
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Afterward on the 30th day of July 1881 the following Amended Petition was filed with the Clerk of said District Court, which reads as follows, to-wit:

District Court, Union County

Stephen Teranston Jr. John D. Teranston,
George A. Teranston, Julius Teranston
Edmond Teranston James Teranston.
Melissa Teranston and Lulu Teranston

vs.

Amended Petition

Orson Benton, Mary Pennington
Lewis Benton Amy A. Jenkins, Lewis.
Jenkins, Minerva S. Benton B. Eugenbill guardian of said Minerva S Benton
Emma A. Benton Ann. M. Benton.
Elba L. Benton, Alice E. Benton, Lydia.
B. Hill, James M. Hill, John H. Huston
Minerva Dixon, Mary Bailey,
Sarah Houder and Daniel Houder
Hugh Huston & John Dixon, Defendants.

And now come the said Plaintiffs and for their amended petition herein complain of the said defendants and say that the said Plaintiffs are the surviving brothers and sisters of Phoebe Benton late of said County deceased, except Lulu Teranston who is the only surviving legal representative of William R. Teranston deceased, the only deceased brother of said Phoebe Benton. The said Plaintiffs further say that the said Phoebe Benton was the widow of said Hiram Benton late of Delaware County, Ohio. who deceased on the 7th day of January A.D. 1878, intestate, seized in fee simple of the several tracts of land hereinafter described, together with a large amount of personal property That the said Hiram Benton died leaving no child or children or their legal representatives and that the said real estate came not by decent, devise, or deed of gift to the said Hiram and it therefore all passed to and vested in the said Phoebe Benton as relict of Hiram Benton in fee simple. The Plaintiffs further say that the defendants herein named to-wit; Orson Benton and Mary Pennington are the only surviving brother & sister of said Hiram, and Lewis, Daniel and Minerva S. Benton and Amy A. Jenkins are the only surviving children of Merlin Benton brother of said Hiram, who is now deceased. That Emma A Benton aged 15 years. Anna M. Benton aged 13 years, Elba L. Benton aged 11 years, Alice E. Benton aged 9 years are the grand children of Merlin Benton deceased, by his son Judson Benton deceased. and the said Lydia B. Hill aged 11 years, James M. Hill aged 7 years are the grand children of said Merlin Benton by his daughter Mary Hill deceased, and that these are all the heirs at law and legal representatives of said Merlin Benton deceased. The Plaintiffs further say that Arminda Huston another sister to said Hiram has also deceased leaving Sarah Houder and Daniel Houder, Hugh Huston, Minerva Dixon and John Dixon as her only heirs at law; and the Plaintiffs further say that the several tracts of land are described as follows, to-wit--

Tract No 1 Situate in Delaware County, Ohio. Being part of Va Military District in Surveys Nos 2546 & 2897. Beginning at a stone in the N.E. corner of Rebecca Wallams land in the line of said survey; thence N. 90 W. 14 14/100 poles thence with the survey line to a stone; thence N. 81. E. 18 16/100 poles along the line of Jonah Mashes N. line to 3 small stones at the N.E. corner of Marshes land; thence N. 90 W 90 48/100 poles along the west line of A. Dipps land to a stone and post in the center of the county road, (witness elm 8 inches in diameter N. 14½ E. 21 links; thence S. 8. W 108 16/100 poles along said road to a stone and post in the center of the road running N. & S. thence N. 90 W 39 17/100 poles to a stone in the south line of George Harriotts land (witness a sugar tree 21 inches in diameter) S. 5¼ E. 117 links (witness an elm 17 inches in diam) S. 46½ E. 61 links; thence S. 81. W. 60½ poles on the S. line of said Harriotts land and Jacob Wallams land to a stone and post in the center of the road N.E. corner of David Bowersmiths land S. 8¼ S. 151 17/100 poles along said David Bowersmiths line to a stone and post (witness a sugar tree 12 inches in diameter) N. 7 1¾ E. 5⅓ links to a dogwood 4 inches in diameter) N. 14½ E 11⅓ poles. N. 81 E. 61 8/100 poles on Rebecca Wallams line. Also ¾ of an acre bought of A Dole deed dated June 18th 1869 and on record, except 2⅔ acres sold to George Harriott on the north side of the county road, containing One Hundred and twenty Two & ¾ acres.

Tract No 2. The following premises situated in the county of Union in the State of Ohio, and bounded as follows, a part of Virginia Military Survey No 4404, described as follows: Beginning in the center of the road leading from Newton to Woodstock at the S.W. corner of J. W. Lockwood's land. Thence N. 81° E. 204¾ poles to a stake, witness a beech & sugar tree, thence S. 9° E. 95 poles & 6 links to a small forked dogwood; thence 81° W. 204¾ poles to a stake in the center of the Woodstock road, thence with said road N. 9° W. 95 poles and six links to a stake thence N. 9° W. continuing with said road 78 14/100 poles to the place of beginning, containing 221 acres, 3 roods and 22 poles, be the same more or less.

Plaintiffs further say that soon after the death of said Hiram Benton the said Lewis, Daniel & Orson Benton applied to said Phoebe to convey to them the said Tract No 1 of 122¾ acres and also a portion of said personal & real property & effects claiming the same on account of the near relationship to the said Hiram; to which application said Phoebe replied that she intended to give the Bentons the defendants heirs, as the relatives of her late husband a certain share of the said estate which had descended to her from her said husband. But the said Orson, Lewis & Daniel Benton insisted on having the conveyance made immediately. Whereupon the said Phoebe agreed to convey them the said tract No 1. of 122¾ acres and on the 9th day of August 1878 did convey to the said Orson one undivided half and to the said Lewis & Daniel the other undivided half of said tract No 1. She also gave them other real and personal estate amounting to twelve hundred Dollars more and she did on the day of August 1878 convey to said Orson Lewis & Daniel Benton said Tract No 1 in fee simple, and she did at the same time say to them the said twelve hundred Dollars more on the following terms. The said Bentons were to immediate possession of the same and to enjoy the rents and profits thereof as well as the said twelve hundred dollars; And the said Orson, Daniel & Lewis Benton

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were to give to the other Bentons, Defendants, their equal shares of said property real and personal so conveyed & delivered to them as aforesaid or otherwise satisfy said other defendants therefor; so that no other or further claim was to be made on said Phoebe or her estate on the part of said Bentons, defendants. And the Plaintiffs say that there was no other or further consideration for said conveyance to the said Orson, Daniel & Lewis Benton by the said Phoebe Benton, and the Plaintiffs charge they the said Orson, Lewis & Daniel Benton received the said property and means in trust for the purpose of satisfying all the said defendants including themselves, which said agreement was verbally made and not reduced to writing. And the said Plaintiffs further say that at the time of the said conveyance the said Phoebe was induced to believe and did believe that by executing said deed and transferring said money and notes aforesaid to said Orson Daniel & Lewis Benton she was satisfying and discharging all the claims and demands which any and all the heirs of said Hiram Benton had or might under any circumstances have upon the estate which come to her from her said husband, and the said Phoebe was by the representations made by said grantees at said time induced to believe that said conveyances would satify and discharge all said claims and demands which might thereafter be made on the part of any of the Benton heirs. And the Plaintiffs therefore say that if upon the final hearing of the cause, the Court should find that the said conveyances were not made in trust to the said Grantees as hereinbefore stated and that the court cannot under the circumstances require and order the Defendants to execute and carry the said trust, so as to complete the intention of the parties that then the said conveyances aforesaid be set aside and cancelled as made by and through the mutual mistake of both of the said parties thereto as the Plaintiffs here aver and say that all the parties at the time to satisfy and discharge all the claims by heirship or otherwise of all the heirs of Hiram Benton upon said estate and if said conveyances do not in fact execute and carry out said intention that it is a mistake by both parties to said agreement and should be set aside & cancelled for that reason. The said Plaintiffs further say that after said conveyances and payments by said Phoebe to said Orson, Lewis & Daniel Benton, to-wit: on the 26th day of August 1879 the said Phoebe Benton did die intestate and without issue leaving the Plaintiffs her surviving brothers & sisters and that the said Lulp Cranston is the only legal representative of Wm R Cranston as aforesaid the only deceased brother of the said Phoebe

The Plaintiffs therefore pray that the said Contract so made with the said Phoebe Benton by the said Orson, Lewis & Daniel Benton be ordered to be specifically performed and that the property real and personal so conveyed and delivered to them by the said Phoebe Benton be declared to be held by them in trust for themselves and the other defendants to the amount of Six Thousand One hundred & ten Dollars the sum that was agreed upon that the real estate was worth and the other sums so delivered to them was at that time estimated at. And the Plaintiffs ask that the said Orson, Lewis

& Daniel be required to pay reasonable rents and interest thereon from August 8/8. and that the said Orson, Lewis & Daniel be ordered & decreed to accept the same and account to and satisfy the other defendants in full for their claim on said estate. But if the Court should be of the opinion that this cannot be done. Then the Plaintiffs pray that the said conveyances & contracts with the said Phoebe Benton be set aside and held for naught. That the whole estate real & personal be restored to its condition before the said conveyances to Orson, Lewis & Daniel Benton.

And that on final hearing said estate be partitioned and equally divided giving to the Plaintiffs one equal half part and to the Defendants, the other half. and that the Plaintiffs have such other and further relief as may be equitable.

P. Beole, J. H. Robinson and F. E. Powell, Attys for Pltffs

State of Ohio Union County s.s. Stephen Cranston Jr. Plaintiff being sworn says that the facts stated and the allegations in his foregoing Amended Petition are true as he believes.

Stephen Cranston.

Sworn to before me and subscribed in my presence this 26th day July 1881.

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James S. McCampbell. Notary Public

On the 18th day of August 1881. An answer & Cross Petition was filed with the Clerk of said Court to-wit:

Answer & Cross Pet.

Stephen Cranston Jr. and others, Plaintiffs. vs Orson Benton and others, Defendants. } District Court, Union County, Ohio.

Now comes David Houden, Sarah Houden, Mary Bailey, Hugh Huston, Minerva Dixon and John Dixon, and by leave of the Court, file their answer to the Amended Petition, And by way of Answer & Cross Petition say that Arminda Huston was a full sister of Hiram Benton dec'd and that she died intestate leaving said Persons, together with John A. Huston and David Riley Huston minor children of John Wesley Huston dec'd her sole children & heirs at law and they are through her the heirs at law of the undivided one fourth part of his entire estate real and personal which is as they believe correctly stated in said petition.

The said defendants say that Hiram Benton died intestate and seized of said estate, the proceeds of the labor and savings of himself and his wife Phoebe and that they both died so intestate without issue and the said estate descended under the laws of Ohio to said Phoebe conditionally and then she having failed to dispose of it, the same descended the one half to the plaintiffs, (who are the legal heirs of Phoebe) and one half to said heirs of Hiram Benton, and that thereby the said Defendants the heirs of Arminda Huston (nee Benton) are the heirs at law of said Hiram and Phoebe and entitled to the one undivided eighth of said Hiram Benton estate as aforesaid. The defendants say they have no personal knowledge of the contract mentioned in said amended

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Petition or the conveyances therein mentioned and yet they are informed and believe and aver that said conveyances were signed but they deny that they in fact were the legal contracts or conveyances of said Phoebe for they say the same were wholly without considerations, valuable, or for love or affection and the same were procured from her at a time of mental weakness and anxiety, and by the importunities and threats of legal prosecution by said Orson Benton, Daniel Benton and Lewis Benton and other persons asking for said grantees at and prior to the time she signed the same and who deceived her as to the law and as to the facts and as to her rights in the premises, and as to the effect of said conveyances and the said Phoebe was in such feeble state of mind at the time the same was made as to be incapable of transacting such business and she did not execute the same of desposing mind and she executed the same when in said condition of mind in order to obtain peace & rest from the importunities and threats of prosecution of suits and being then also led by their representations to believe that the effect of said conveyances & contracts would be to satisfy all the claims of the Bentons in said estate, to-wit: Orson and Merlin Benton and their heirs and Mary Pennington and Armanda Huston and their heirs and that thereby the other two thirds of her estate would go to the Plaintiffs, who were of her blood, and these defendants say they were not a party to said contract or conveyance, and know nothing about it, and they ought not to be affected thereby; That by reason of the mistake of the facts as to the heirs of Hiram Benton dec'd as aforesaid and by reason of the mutual mistake of said parties as to the heirs of Hiram Benton and as to the legal effect of said conveyance, and by reason of the unlawful importunities and threats of said grantees and by reason of her weak and feeble condution of mind and the unconscionable character of the whole transaction the said contracts and conveyances are void and of no effect in law or equity.

The said defendants say they claim and are entitled to have the eighth of said estate of Hiram Benton dec'd and in order to obtain their full rights in the premises, they ask that this answere be taken as their petition and whatever may be the result of the issue between the plaintiffs and the other defendants, these defendants may have partition in equity of said estate and their share set off to them in severalty and that in order to make said partition that said conveyances may be set aside as void and the wholes estate divided the same as though said conveyances had not been made, and that such other and further relief may be granted to them as the Court may deem just and legal.

J.H. Kinkade Atty for heirs of Armanda Huston.

The State of Ohio Union County ss. J.H. Kinkade being duly sworn deposes and says he is attorney for the above named Defendants the heirs of Armanda Huston dec'd duly authorized to act for them and they are absent from said County of Union

and now residents thereof and he believes the allegations of the foregoing answer and cross petition are all true.

J.H. Kinkade

Sworn to before me and signed in my presence by J.H. Kinkade, this 18th day of August A.D. 1881

W.W. Knight, Clerk.
By W.E. Knight Deputy.

Demurrer

On the 24th day of November 1881 a Demurrer was filed with the clerk of said Court, to-wit:

Stephen Cranston, et.al
vs.
Orson Benton et.al
} District Court of Union County.

The Defendants, Orson Benton, Lewis Benton & Daniel Benton now come and demur to the Plaintiffs Amended Petition filed in this Court for the following reasons.

1st Said Amended Petition shows no grounds or facts on which this action can be maintained at the suit or in the name of the Plaintiffs.

2d Said Amended Petition does not set forth facts sufficient to constitute a cause of action; and the said pretended cause of action cannot be maintained by or at the suit of the Plaintiffs.

3d Several causes of action are improperly joined.

4th The several pretended causes and grounds of action are inconsistent.

5th The Plaintiffs show no title or right in them to maintain this action. Wherefore these defendants pray that the Plaintiffs said action be dismissed and that they go hence with their costs.

West. Walker & West. Attys for Defts.

Answer to Amended Petition

On the 3d day of March 1882 the following answer was filed with the clerk of said Court, to-wit:

Stephen Cranston Jr. et.al
vs
Orson Benton et.als
} Union County, District Court.

Now comes Samuel H. Pennington son and only heir of Polly Pennington now deceased, who being one of the original defendants to this action, And for his amended answer do hereby enter his appearance in this case as defendant in place of his said mother. And does hereby ask the Court to set off and assign to him his share of said estate to decend to him being the two fifths of the undivided one half of said entire estate as described in said Petition

A.L. Woodburn Attorney for said Defendant

State of Ohio Union County ss. Samuel H. Pennington being sworn says that the facts stated and allegations in his foregoing petition are true as he verily believes.

Samuel H. Pennington

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Sworn to before me and signed in my presence this 3rd day of March 1882.

J.B. Burgner, Clerk.
By W.W. Knight Deputy.

On the 9th day of March 1882 a Demurrer was filed with the Clerk of said Court, to-wit:

Demurrer

Stephen Cranston Jr. et al
vs
Orson Benton et al
} District Court, Union County.

The Defendants Orson Benton, Lewis Benton & Daniel Benton now come and demur to the answer & cross petition of David Houder, Sarah Houder Mary Bailey, Hugh Huston, Minerva Dixon and John Dixon filed in this Court, for the following reasons. 1st Said Answer does not state facts sufficient to constitute a defense and entitle said Defendants to the affirmative relief sought by them

West, Walker & West. &
Porter & Porter Attys

On the 30th day of May 1882 an Answer was filed with the Clerk of said Court, which reads as follows, to-wit:

Answer to Amended Petition

Stephen Cranston Jr. et al
vs
Orson Benton et als
} District Court, Union County, Ohio.

The defendants Orson Benton, Lewis Benton and Daniel Benton answer to the Amended Petition of plaintiffs, and admit that plaintiffs are the surviving brothers and sisters of said Phoebe Benton, except Lulu Cranston who is the child of W.R. Cranston deceased, who was a brother of said Phoebe Benton. The answering Defendants admit that the defendants named in said petition are the heirs at law of said Hiram Benton and defendants admit that said Phoebe was the widow and relict of said Hiram. Defendants admit the death and intestacy of said Hiram & Phoebe as alleged, that Hiram died seized of the lands described in the petition, and personal property to a large amount without having any child or children or their legal representatives. And defendants admit that said real estate come not by decent, devise or deed of gift to the said Hiram and that on the death of said Hiram it passed to and vested in said Phoebe in fee simple. Defendants also admit the conveyances made by the said Phoebe to the said Orson by deed and to the said Lewis & Daniel, by a separate deed of the first tract in the petition described and of all the lands therein alleged to have been conveyed to them and that said Phoebe gave to each of these answering defendants a small amount in promissory notes as a gift or advancement, but deny that the same amounted in the aggregate to Twelve Hundred Dollars and deny that the property real and personal so given and conveyed to them was of the value in the petition described.

And defendants admit that they were to have immediate possession and did take immediate possession of said real

property as well as said personal property so given.

But defendants deny that said conveyances were made to them upon their application, but were made by said Phoebe voluntarily upon her own proposition, and her own free act, and they deny that the said conveyances were made upon the consideration or upon the trust in said petition alleged, and they deny the said alleged consideration and trust and deny that they took any part of said property in trust either real or personal, for either or any of the other defendants or in discharge of any interest, or claim that any of the other defendants may have had in the estate of the said Phoebe Benton, but on the contrary they say that the said conveyances were made and said personal property given alone to these defendants as a gift or advancement. And these defendants deny each and every allegation of said petition not herein admitted.

West, Porter & Porter Attys for said Defts

State of Ohio Union County ss. Lewis Benton one of the defendants being sworn make oath that the facts stated in the foregoing answer are true as he believes.

Lewis Benton.

Sworn to and subscribed in my presence this 30th day of May 1882 by said Lewis Benton.

J.Q. Burgner Clerk.

On the 30th day of May 1882 An answer was filed with the Clerk of said Court which reads as follows, to-wit:

Answer to Cross Petition

Stephen Branston Jr. etal. vs Orson Benton et al } District Court, Union County, Ohio.

The defendants Orson Benton, Lewis Benton, and Daniel Benton answer to the Cross Petition of David Houder Sarah Houder, Mary Bailey, Hugh Huston, Minerva Dixon and John Dixon and admit that said David Houder Sarah Houder Mary Bailey, Hugh Huston, Minerva Dixon and John Dixon are heirs at law of Hiram Benton deceased. And defendants admit the death and intestacy of Hiram & Phoebe Benton and that they died without children or their legal representatives, and the estate which it is admitted Hiram died seized of, passed under the laws of Ohio to said Phoebe in fee simple. And they admit that on the death of said Phoebe so much of the estate of said Hiram as remained undisposed of by said Phoebe would pass under the law, one half to the heirs of Phoebe, and one half to the heirs of Hiram, except where said Phoebe in her life time made gifts or advancements to certain of the Benton heirs and obtained their release from further claim on, or from her estate.

And they admit that said conveyances to Orson, Lewis, and Daniel Benton were signed, and that said Houder and others joined in said Cross Petition were not parties thereto.

And defendants deny each and every other allegation contained in said Answer and Cross Petition of said

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David Houder and others, not herein specifically admitted.

West. Porter & Porter, Attys for Defendants.

State of Ohio. Union County s.s. Lewis Benton one of the defendants in this action, being sworn makes oath that the facts stated in the foregoing answer are true as he believes.

Lewis Benton.

Sworn to by Lewis Benton and subscribed in my presence by him this 30th day of May 1882.

J.D. Burgner, Clerk.

On the 18th day of March, 1883 An Answer was filed with the Clerk of said Court, to-wit:

Answer of Guar. Ad Litem

Stephen Granston Jr. et al
vs
Orson Benton et als.
} District Court. Union County, Ohio.

Now comes A.J. Carpenter the Guardian Ad Litem of Emma A. Benton, Anna M. Benton, Elba L. Benton and Alice E Benton, Lydia B. Hill & James M. Hill and for answer for his said Wards says he denies the allegations of said petition & of the cross Petition of the heirs of Amanda Huston and demands proof thereof

A.J. Carpenter

On the 18th day of March 1882 the following entry was made on the Journal of said Court, to-wit:

Entry

Stephen Granston Jr. et als.
vs
Orson Benton et als.
} District Court. Union County. Ohio.

This cause coming on for hearing was argued by counsel & submitted to the Court upon the demurrer of Orson, Daniel & Lewis Benton, some of defendants to the amended petition of plaintiffs and to the cross petition of Houder & others

On consideration whereof said demurrers are overruled. To said overruling the said defendants excepted. Thereupon leave was granted to all parties to plead by June 1st 1882.

On the 15th day of March 1883 the following entry was made on the Journal of said Court, which reads as follows, to-wit:

Entry

Stephen Granston Jr. John D. Granston, George A. Granston, John Granston, Julius Granston Edmond Granston James Granston, Melissa Granston and Lulu Granston, Plaintiffs.
vs.
Orson Benton, Mary Pennington, Lewis Benton, Daniel Benton, Amy A. Jenkins Louis Jenkins. Minerva S. Benton, B. Bergenbill, guar of said Minerva Emma A. Benton, Ann M Benton, Elba L Benton. Alice E. Benton Lydia B. Hill, John M. Huston, James M. Hill Minerva Dixon, Mary Bailey, Sarah Houder, David Houder, Hugh Huston, John Dixon and Samuel H. Pennington. Defendants
} District Court. Union County, Ohio

This day came the

said plaintiffs by their attorneys and the defendants Orson Benton, Lewis Benton, Daniel Benton by their attorneys, Samuel H Pennington by his attorney and the said David Houder, Sarah Houder, Mary Bailey, Hugh Huston, Minerva Dixon & John Dixon, Emma A. Benton, Ann M. Benton, Elba L. Benton, Alice E Benton, Lydia B. Hill & James M. Hill, by their attorneys and the other said defendants though duly & legally notified of the pendency and prayer of the petition & cross petition come not, but made default for answer & demurrer. And thereupon this cause came on to be heard upon the original & amended petitions of the plaintiffs, the answer of Orson Benton, Lewis Benton & Daniel Benton to the amended petition of plaintiffs and the answers of Samuel H Pennington, Emma A. Benton, Ann M. Benton, Elba L. Benton Alice E. Benton, Lydia B Hill, James M. Hill, and the answers & cross petition of the defendants, David Houder, Sarah Houder Mary Bailey Hugh Huston, Minerva Dixon & John Dixon and the answers of Orson Benton, Lewis Benton and Daniel Benton thereto and the answers of Emma Benton, Ann M. Benton Elba L. Benton Alice E. Benton, Lydia B. Hill & James M. Hill. to said cross petition to gether with the exhibits & evidence and was argued by counsel.

Our consideration whereof the Court do find that the equity of the case is with the plaintiffs and cross petitioners and that the deeds of conveyance mentioned in the pleadings from Phoebe Benton to Orson Benton, Lewis Benton and Daniel Benton dated August 9 1878 should be set aside and held for naught.

Motion for New Trial.

And thereupon it is ordered, adjudged and decreed by the Court that the said deeds of conveyance be and they are hereby set aside & cancelled and said estate of Hiram Benton and Phoebe Benton is hereby ordered to be partitioned and settled the same as if the said deeds had never been made, and the same as if none of said pretended advancements had been made. Giving one half of the said estate to the brothers and sisters and their legal representatives of Hiram Benton dec'd and the other half to the brothers & sisters and their legal representatives of Phoebe Benton dec'd

And thereupon the Court find the respective shares of said estate are as follows. The said plaintiffs share is one undivided half thereof. and the share of each of the plaintiffs is one undivided 160/2880 th part. The share of Orson Benton is one undivided 360/2880 th part. and the share of Samuel Pennington is the one undivided 360/2880 th part. and the shares of Sarah Huston, Hugh Huston, Minerva Dixon and Mary Bailey are each one undivided 72/2880 th part. And of John H. Houston & David R Houston each one undivided 36/2880 th part. And the shares of Lewis Benton Daniel Benton, Amy Jenkins and Minerva Benton are each one undivided 60/2880 th part. And the shares of Emma A. Benton, Anna M. Benton, Elba L. Benton and Alice E. Benton are each one undivided 10/2880 th parts. And the shares of Lydia B Hill & James M. Hill are each one undivided 30/2880 th part thereof.

And it is ordered adjudged and decreed that an order issue

to the Sheriff of said County of Union commanding him that by the oaths of A.S. Mowry, Wm. M. Robinson and W.K. Robb, three judicious and disinterested freeholders of the vacinity who are not of kin to either party and who are hereby apponited commissioners for that purpose he cause to be set off and divided to the said Plaintiffs and to each of the said defendants the part & proportion of the said Estate to which they are hereinbefore severally found entitled.

And it is ordered that if in the opinion of the said Commissioners, said premises cannot be divided by metes & bounds without injury to the value thereof, they appraise the same. And of his proceedings herein the said Sheriff is ordered to make due return without neccessary delay.

To which finding, decree, judgment and order of the Court the said Orson Benton, Daniel Benton & Lewis Benton then & there at the time excepted. And it is further ordered that a special mandate issue to the Court of Common Pleas of this County to carry this order into execution

On the 13th day of March 1883 a Motion was filed with the Clerk of said Court which reads as follows, to-wit:

Motion for New Trial.

Stephen Cranston Jr. etals
Plaintiffs
vs
Orson Benton etals
Defendants
} District Court, Union County, Ohio.

And now comes the said Orson Benton Lewis Benton and Daniel Benton by West, Porter & Porter their attorneys and move the Court here for a new trial in this action for the following reasons, to-wit:

I. The Court erred in overruling the demurrer of said Defendants to the Amended Petition of the Plaintiffs.

II. The Court erred in overruling the demurrer of said Defendants to the answer and Cross-Petition of David Houder, Sarah Houder, et.al.

III. The Court erred in admitting the evedence offered by the Plaintiffs, and objected to by said defendants.

IV. The Court erred in admitting the evedence against the objection of said defendants, as to the statements made by Phoebe Benton deceased.

V. The Court erred in allowing the Plaintiffs to introduce the statements of Phoebe Benton as evidence in the case in support of the issues made by Plaintiffs and the said David Houder et.al. in their Cross-petition against the objection of said Defendants.

VI. The finding and judgment of the Court was against the law of the case.

VII The finding and judgment of the Court was contrary to and not sustained by the evidence.

VIII The judgment and decree of the Court was given for the Plaintiffs and said David Houder et.al, whereas by the law of the

land it should have been given for said Defendants Orson Benton, Lewis Benton and Daniel Benton.
The said Orson Benton, Lewis Benton and Daniel Benton therefore pray that said judgment and decree may be set aside and a new trial granted in said action for the reasons above set forth.

West, Porter & Porter Attorneys for
Orson Benton, Lewis Benton & Daniel Benton

Entry

On the 10th day of March 1883 the following entry was made on the Journal of said Court, to-wit:

Stephen Cranston Jr. et als.
vs
Orson Benton et als.

And thereupon said Orson, Lewis & Daniel Benton presented their true bill of exceptions which was duly signed by all the judges on the 10th day of March 1883 & filed as of said date.

Afterward on the 10th day of March 1883 the following Bill of Exceptions was filed with the Clerk of said District Court, to-wit:

Bill of Exceptions

Stephen Cranston Jr. et al
vs
Orson Benton et al.

} In the District Court, Union County, Ohio

Be it remembered that on the hearing and trial of this cause, in the District Court, within and for the County of Union and State of Ohio, begun on the 5th day of March A.D. 1883 before Hon. John A. Price, Hon. John McCauley, and Hon H.H. Dodge Judges of said Court, and during said term the plaintiffs in the above entitled action, to maintain the issue on their part offered to prove to the Court, and did introduce in evidence to said Court the deposition and evidence of A.J. Leonard, and for the purpose of proving all the facts testified to by said A.J. Leonard, which deposition of the said A.J. Leonard is hereto attached marked "Exhibit A" and made a part of this Bill of Exceptions. Whereupon the defendants, Orson Benton, Lewis Benton and Daniel Benton objected to the admission of the testimony of said A.J. Leonard and to each and every part thereof and especially to that part of said deposition and testimony in which he testifies to the statements of Phoebe Benton deceased, which testimony the Court decided to hear under objections, and the testimony was so heard under objections, to which decision of the Court said defendant then & there excepted.
The plaintiffs further to maintain the issue on their parts offered in evidence to the Court the deposition and testimony of Elizabeth Leonard for the purpose of proving all the facts testified to by said Elizabeth Leonard in said deposition, which deposition is hereto attached and made a part of said "Exhibit A" and made a part of this Bill of Exceptions, to which testimony and deposition of Elizabeth Leonard the said defendants Orson Benton, Lewis Benton and Daniel Benton objected and moved the Court to rule out the same, and each and every

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part thereof. and especially so much of said deposition wherein said Elizabeth Leonard testified to the statements of Phoebe Benton deceased. which testimony the Court decided to hear under objections and said testimony was so heard under objections. to which ruling said defendants then and there excepted. The plaintiffs further to maintain the issue on their part offered in evidence to the court the deposition and testimony of Angeline Leonard for the purpose of proving all the facts testified to by said Angeline Leonard in said deposition. which deposition is hereto attached and made a part of said "Exhibit A" and made a part of this Bill of Exceptions to which testimony of Angeline Leonard the said Defendants Orson Benton, Lewis Benton and Daniel Benton objected and moved the court to rule out the same, and each and every part thereof, and especially so much of said deposition wherein said Angeline Leonard testifies to the statements of Phoebe Benton deceased, which testimony, the Court decided to hear under objections, and said testimony was so heard. under objections, to which rulings the said defendants then and there excepted. Thereupon the plaintiffs to further maintain the issue on their part offered in evidence to the court the deposition and testimony of George Harriott for the purpose of proving all the facts testified to by said George Harriott in said deposition, which deposition is hereto attached marked "Exhibit B." and made a part of this Bill of Exceptions, to which testimony of George Harriott the said excepting defendants objected and moved the Court to rule out the same and each and every part thereof. and especially so much of said deposition wherein said George Harriott testifies to the statements of Phoebe Benton deceased, which testimony the Court decided to hear under objections and said testimony was so heard, to which ruling said defendants then & there excepted.

The plaintiffs further to maintain the issue on their part offered in evidence to the court the deposition & testimony of Mary S. Roloson for the purpose of proving all the facts testified to by said Mary S. Roloson in said deposition, which deposition is hereto attached and marked "Exhibit C" and made a part of this Bill of Exceptions to which testimony of Mary S. Roloson the said excepting defendants excepted and moved the Court to rule out the same, and each and every part thereof. and especially so much of the said deposition wherein said Mary S. Roloson testifies to the statements of Phoebe Benton deceased which testimony the court decided to hear under objections, and said testimony was so heard by the court, to which ruling said defendants then and there excepted

Plaintiffs further to maintain the issue on their parts called as a witness Henrietta Campbell. who testified as follows.

I live in Delaware, Delaware County, Ohio. and am the daughter of Squire Lugenbeal. Merlin Benton was my brother-in-law.

and he left one child by my sister, by the name of Minerva, who now lives with me. My father, Squire Lugenbell is Minerva's Guardian My sister who married Merlin Benton died last May. I was at my sister's visiting and had just started home when Phoebe drove up and told me to wait awhile as she wanted to have a private talk with me, We then walked into the orchard when she told me that the Bentons were plaguing her to death for her property and she wanted to know what to do about it. I told her emphatically to keep it herself. She then said she had one comfort, and that was that if she deeded the Bentons the lower farm they then would have no further claim upon her.

To all of said testimony of said Henrietta Campbell the excepting defendants objected and especially that part of her testimony, relating to the statements of Phoebe Benton deceased, which testimony of said witness the Court decided to hear under objections, and did so hear it. to which ruling of the court the defendants then and there excepted Said Henrietta Campbell then on cross-examination by said defendants, testified as follows: I was not a witness when this case was tried before, I presumed talked about the case when at home at the time. I was living at Delaware, two & a half miles from my fathers, Phoebe said that she had one consolation and that was that if she deeded them the lower farm, they would have no further claim upon her. Plaintiffs further to maintain the issue on their part, called as a witness Bazzel Lugenbell who testified as follows: I live near Stratford, Delaware County, Ohio. Minerva lives in the town of Delaware with my daughter. I am Minerva's Guardian, and was her guardian in August A.D. 1878 when the deeds were made. The Bentons gave me a note for $204 00. That is I have Lewis' note for that amount. I also hold Daniel's note for $204 00 The notes were given shortly after the deeds were made I signed no release as guardian. Daniel told me that I ought to be satisfied with that amount, as Minerva would not have received anything if Phoebe had gone up to Evanstons and that Minerva would not have got what she did if we had not Bulldozed aunt Phoebe. To all of which testimony of said Bazzel Lugenbell the said defendants then and there objected, but the Court decided to hear said testimony under objections and did so hear it, to which ruling of the court said defendants then and there excepted. Said Bazzel Lugenbell on cross examination by said Defendants testified as follows: Daniel said they were under no legal obligations to give Minerva anything. The sale of the 20 acres to Lewis & Daniel was a different & fair transaction

Plaintiffs further to maintain the issue on their part called as a witness Henry Kayler who testified as follows: I live in Delaware County, Ohio. A few days after the conveyances were made, Phoebe was at my house. It was the same day, and stayed all night. After supper she

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told me she had deeded the lower farm to the Bentons, and that she had done it for peace, as they kept a continual dogging until she agreed to do it. She said she told Orson that the Benton tribe would not get another dollar. She said nothing about there being any other Bentons except three. Orson, Lewis & Daniel.

To all of which testimony of said Henry Kaylor said defendants then and there objected, especially to so much of the testimony of said witness relative to the statements of Phoebe Benton dec'd and particularly to those statements made by witness after the deeds were made by her to Orson Benton and to Daniel & Lewis Benton, which testimony the Court decided to hear under objections, and did so hear it. And the testimony of said witness admitted under said objection, to which ruling of the Court said defendants then and there objected.

Said plaintiffs to further maintain the issue on their part called as a witness William Crowder who testified as follows:

I live in Liberty Township, Union County, Ohio. I knew Phoebe Benton and I was one of the appraisers of the land in Union County 220 acres. Orson told me as we rode down together that Phoebe was going to divide her property with the Benton heirs. Afterward I said to Orson, when his sister had come to life again, What about the property now in regard to her? Orson replied that she was to get nothing as she did not deserve much. He said Phoebe was going to give the Benton heirs 1/3 of the property and that he would prefer one third then, than have 1/2 at her death. To all of which testimony of said William Crowder the said defendants then and there objected, but the Court decided to hear and did hear said testimony under objections, to which ruling of the Court said Defendants then and there excepted.

Said Plaintiffs to further maintain the issue on their part called as a witness Mrs S. Cranston, who testified as follows:

I live in Union County, Ohio. I knew Phoebe Benton and saw her about the time these deeds were made. She was living at Father Cranstons, I saw her the morning of the appraisment and she said she had concluded to give Merlin's heirs one third of the property and am going over to do it. Daniel came for her and she was gone about a week, I heard her frequently speak about the Bentons teasing her for one half of the property. She said she had asked Orson, Daniel & Lewis if they would not wait until her death and be content with it her will. The morning of the appraisment she said that the Bentons must be satisfied with one third of the property or get nothing at all. Previous to Merlin's funeral she appeared sad. To all of which testimony of the said Mrs S. Cranston the excepting defendents, objected. and especially to all that part of her testimony relating to the statements of Phoebe Benton deceased. which testimony the Court decided to hear under objection, and the testimony of said witness was admitted under

objection, to which ruling of the Court the defendant then and
then excepted. Said Mrs S. Branston then on Cross-exam-
ination by said defendants, testified as follows:
Hiram Benton died in January 1878. Phoebe was not as
cheerful after that but was a little melancholy and sad.
Merlin died in July following. After Merlin's death Phoebe said
that Lewis & Daniel were willing to wait and be mentioned
in her will, but Orson objected.
Plaintiffs further to maintain the issue on their part called as
a witness, Stephen Branston, who testified as follows:
Early in the morning Phoebe came to my house and she told
me that she had concluded to give the Benton heirs 1/3 of her prop-
erty. She said she was doing it for peace, as they had threat
ened her with the law. She died in August 1879. A short time
after the deeds were made Orson asked me what Phoebe intend-
ed to do with the sugar kettles on the place. I told him that
she intended to hold them. Lewis & Orson said that what-
ever they did would be all right with all the other heirs.
I proposed that the property be thrown to-gether into hotch potch,
pay all the debts, and then divide the property equally between
the Benton and Branston heirs. Lewis & Orson agreed to this and
we met in Marysville to have papers drawn up for the purpose.
Orson said while in Judge Coles office that he had forgotten that
there were any Houston heirs; I was administrator of Phoebe
Benton's estate, paid off a mortgage of $530.00 on the Delaware
County farm of 122 Acres before the conveyance of the same to
Orson, Lewis & Daniel. To all of which testimony of said
Stephen Branston the excepting defendants objected, and
especially to all that part of his testimony relating to the state-
ments of Phoebe Benton deceased, and as to the statement of facts
contained only in the original petition relative to paying off
said mortgage and the proposed compromise at Cole's office, but
the Court decided to hear said testimony under objections
and the testimony of said witness was so heard, to which
ruling of the Court the Defendants then & there excepted
Said Stephen Branston on cross-examination testified as
follows: Phoebe was administator of the estate of Merlin
Benton. The agreement as to the compromise was not
made Plaintiff further to maintain the issue
on their part, called as a witness Margaret Burgess, who testified
as follows; I live at Mrs Branstons Sr. and have lived there
over 25 years. Saw Phoebe a short time before the deeds were
made. In the evening Phoebe said that the Bentons wanted
1/2 of her property, but that she had decided to give them
but one third and that would be all she would give them
She seemed to be nervous, and said that if she did
not let them have it, she could have no peace, I dont
know about Sammy Pennington, Polly Benton's child or
the widow Bentons children. Phoebe said they must settle

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about them, among themselves. After the settlement they seemed happy. To all of which testimony of said Margaret Burgess, said defendants then and there objected, especially to so much of the testimony of said witness relative to the statements of Phoebe Benton made to witness after the deeds were made by her to Orson Benton, and to Lewis & Daniel Benton which testimony the Court decided to hear under objections, and the testimony of said witness was so heard, to which ruling of the court the defendants then and there excepted.

Said Margaret Burgess on cross-examination by said defendants testified as follows: Phoebe lived at our house most of the time until her death, and always thought she had a strong mind. I know that she attended to all her own business.

Said witness on re-examination by plaintiffs testified as follows: Afterward when Phoebe heard from Polly asking her for help, she said she had given them all she was going to.

Plaintiffs further to maintain the issue on their part called as a witness J.D. Cranston. who testified as follows:

Phoebe was about sixty years old when she died. Her health had not been good. Phoebe was at my house in Champaign County, Ohio, after the transaction but not at the time. Had not talk with her at the time the deeds were made, but had before and after. She said the Bentons wanted one half of her property.

After Phoebe had made the conveyance she was at my house again, when she said that she had conveyed 1/3 of the property to Orson, Lewis and Daniel and that they were to make it right with the other Benton heirs. She did not know whether Polly was alive or not. Phoebe said that Orson told her that there was a way to get that property, and they were going to get it.

I think that three of us brothers were here to close up the arrangment, when I asked Orson if it was as they understood it, and he answered that Lewis was doing the business.

To all of which testimony of said J.D. Cranston the excepting defendants objected, and especially to all that part of his testimony relating to the statements of Phoebe Benton deceased, but the Court decided to hear said testimony under objections, and did so hear the same, to which ruling of the Court the defendants then and there excepted.

Said J.D. Cranston on cross-examination testified as follows: I dont know whether I testified in the Common Pleas Court about a conversation with Phoebe Benton in Champaign County or not.

Plaintiffs further to maintain the issue on their part called as a witness Mrs C.A. Alexander who testified as follows:

I knew Phoeba Benton. She was at my house in Marysville once, with Daniel on their way to Delaware County, to appraise the property there when I had a conversation with her. Phoebe was indignant at the treatment she had received from the Bentons

She said that the Bentons wanted 1/2 of her property, but that

she had decided to give them but ⅓ of it. She said she did it for the sake of peace. On her return from Delaware County she stopped again at my house, when she told me, that she had made a division of the property so that there would be no further trouble. I think that there was to be an instrument of writing between them, providing that there was to be no further trouble by the Benton heirs. The Benton heirs, Phoebe said, were to be responsible for the minors. To all of which testimony of said C.A. Alexander the excepting defendants objected, and especially to all that part of her testimony relating to the statements of Phoebe Benton deceased, which testimony the Court decided to hear under objections, and the testimony of said witness was so heard by the Court, to which ruling of the Court the defendants then and there excepted. Said C.A. Alexander on cross-examination testified as follows: No names of minors were mentioned. It was after she had made the deeds when this conversation took place. Phoebe was absent over at Delaware nearly a week.

Plaintiffs further to maintain the issue on their part called as a witness J. Smith Alexander who testified as follows:

I remember when Phoebe & Daniel were at my house on their way to appraise the Delaware County farm. They were there about two hours. Phoebe said she was going to make a division of the property as they had been threatening her with the law. She was to give the Bentons ⅓ of the property and they were to release all claims to her property. Daniel told me that they prefered to know what they were going to have that to wait until Phoebe died. Phoebe said she was troubled and annoyed. She said the Bentons were to be responsible for the minor heirs- one a minor, and one an absent heir that was supposed to be dead. To all of which testimony of J. Smith Alexander the excepting defendants objected, and especially to all that part of his testimony relating to the statements of Phoebe Benton deceased, which testimony the Court decided to hear under objections, and the testimony of the said witness was so heard, to which ruling of the Court the defendants then and there excepted.

Said J. Smith Alexander on cross examination by said defendants testified as follows: Phoebe showed me the release and I read it. I think I would recognize it. That is not the paper; I dont recolect that a question was asked me before about an absent heir. I think it was within four or five days that Phoebe came from Delaware County again. I think that Daniel was not present at the conversation.

Plaintiffs further to maintain the issue on their part called as a witness Amiza Judy who testified as follows:

Had a talk in 1879 with Orson Benton in which he said he was going down to Delaware County, and he said that Phoebe did not want to deed the property to us, but we stuck to her until we got it. To all of which testimony of said Amiza Judy the excepting defendants objected, which testimony

the Court decided to hear under objections, and the testimony of said witness was so heard under objections, to which ruling of the Court the defendants then and there excepted.

Plaintiffs further to maintain this issue on their part called as a witness P.B. Cole. who testified as follows: Stephen Branston came to my office and consulted me about the case and informed me about the meeting both sides were to have at my office. When they all came, Orson and Lewis Benton were there and they undertook to compromise by throwing all the property together and having it divided equally. Orson said he thought Mrs Huston and Mrs Pennington were dead. but that there would be no trouble about the absent heirs, Orson said to Stephen Branston. "I warn you not to pay those notes for the Colleges, He was excited and talked loud.

To all of which testimony of said P.B. Cole the excepting defendants objected and particularly to so much of said testimony as tended to prove matters and facts set up in the original petition, and not contained in the amended petition, which objection was overruled, and the defendants then and there excepted.

Said P.B. Cole on cross-examination testified as follows: Stephen Branston was the administrator of Phoebe Benton, The Branstons wanted the property thrown into hotch potch. Lewis said he was guardian for some of the minor heirs, there would be no trouble with them, as to the compromise.

Plaintiffs to further maintain the issue on their part. recalled Stephen Branston who further testified as follows:

I gave $500 & and some odd dollars to Lewis Benton to pay off a debt in Delaware County and to have the mortgage cancelled on the Delaware County place of One Hundred & Twenty two Acres. I went to Delaware to see whether it was paid, and Lewis said the agreement should be lived up to. When Phoebe came back from Delaware, she said she had fixed it up so that the Bentons could not bother her.

To all of which testimony of said Stephen Branston, the said defendants objected on the ground that it was outside the issues of the case, which objection was overruled, and also because it contained statements of Phoebe Benton &c which last objection was taken under advisement by the Court, and the testimony heard under objections, to which ruling the defendants then and there excepted

Said Stephen Branston on cross-examination testified as follows, Mr Bowersmith gave the mortgage which was something over Five Hundred dollars. I did not hand it to Lewis Benton before any thing was said about a compromise. It was generally understood that Polly Pennington was dead.

Here the Plaintiffs rested their case.

And thereupon the defendants Orson, Lewis & Daniel Benton moved the Court to rule out all the declarations of the

said Phoebe Benton deceased, made in the absence of said defendants and tending to prove that importunities, under influence of fraud, were used in procuring said deeds of conveyance, on the 9th day of August 1878. And also to rule out all evidence tending to prove facts set up in the original petition, and which were not set up in the amended petition, which motion was overruled by the court and the said defendants then and there excepted.

The defendants Orson Benton, Lewis Benton and Daniel Benton to maintain their defense, and the issues on their part introduced the evidence of the deed of conveyance executed by said Phoebe Benton to Orson Benton (who signs the deed under the name of Phoebe Benton) on the 9th day of August A.D. 1878. for said 122 3/4 Acre tract a copy of which deed of conveyance so introduced in evidence is hereto attached and made "Exhibit D" and made a part of this Bill of Exceptions. Said deed of conveyance to Orson Benton being for the one undivided 1/2 of said 122 3/4 acres of land.

Said defendants further to maintain the issue on their part offered in evidence the deed of conveyance of Phoebe Benton (who signed said deed as Phoebe A Benton) and executed by her on the 9th day of August A.D. 1878 to Lewis Benton and Daniel Benton, the estate thereby conveyed being the other one undivided 1/2 of said 122 3/4 acres of land to Lewis Benton and Daniel Benton together A copy of said last named deed of conveyance is hereto attached and marked "Exhibit E" and made a part of this Bill of Exceptions.

The said defendants further to maintain the issue on their parts offered in evidence a written release executed by Orson Benton as "O Benton" and Lewis Benton and Daniel Benton as Daniel S. Benton and Amy A. Jenkins and which was executed on the 9th day of August A.D. 1878 to said Phoebe Benton, a copy of said written release is hereto attached and marked "Exhibit F" and made a part of this Bill of Exceptions

Said defendants further to maintain the issue on their part called William G. Gannon as a witness who testified as follows: "I was present at Delaware when the deeds and release were executed on August 9th 1878 at O. Cowgill's Office. This is my signature as a witness to the deeds and release (The deeds and release hereto attached marked respectively "Exhibits "D" "E" & "F") When these papers were executed I saw them signed, the deeds being executed first. Phoebe said "now boys I have done well by you and I dont think I will ever do anything more for you" and the boys then thanked her. There was good feeling shown and nothing was said about Amy Bentons except those that signed the release and Minerva Benton.

On cross-examination said (William G. Gannon testified as follows: "I was not called in as a witness the execution of the papers, but I just happened to drop in. One of the men think said they would sign a paper releasing all further claims upon her.

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Said defendants to further maintain the issue on their part offered in evidence the deposition and testimony of Otway C. Cowgill which deposition of said Otway C. Cowgill is hereto attached Marked "G" and made a part of this Bill of Exceptions

The defendants further to maintain the issue on their part offered in evidence the deposition and testimony of Mollie Benton which deposition and evidence of said Mollie Benton is hereto attached marked "H" and made a part of this Bill of Exceptions

The defendants further to maintain the issue on their part called as a witness Lewis Jenkins who testified as follows:

"My wife's name before marriage was Amy Benton and she is the daughter of Merlin Benton. Phoebe Benton was at my house on the day that the deeds were executed. I found her there when I went home to dinner from my place of business. Phoebe told me that she was deeding the Delaware county place to Orson, Lewis & Daniel, and Daniel was to give Amy $600 Cr and if the boys would give Minerva $400 Cr she, Phoebe, would be satisfied. I did not see the note given to Minerva. There was nothing said about giving any thing to any other Benton heirs. Nothing at all said about the other Benton heirs. Nothing was said about Orson, Lewis or Daniel paying any thing to any of the Bentons except Amy, my wife, and Minerva.

On Cross-examination said Lewis Jenkins testified as follows: "I did not know before that day that my wife was to get any thing. Merlin Benton left six children. Dont know why Phoebe wanted my wife to have $600 Cr It was talked of that the $400 Cr with interest would make Minerva's share equal to my wifes share. Lewis and Daniel said they would pay Minerva. Nothing whatever was said about heirs in the west. Phoebe seemed to want the Bentons to have so much of her property.

Defendants further to maintain the issue on their part called, Amy A. Jenkins, who testified as follows:

"I am a sister of Lewis and Daniel Benton, and a half sister to Minerva, both of us having the same father. I went to Mr Cowgill's Office with Phoebe, Orson, Lewis and Daniel. They came to our house at about 11 oclock in the forenoon. $600 Cr was given me that day by note of Lewis and Daniel. $400 Cr was given to Minerva and deeds made to Orson, Lewis and Daniel Benton. Nothing was said about anything being said to any other Benton heirs. The parties were all friendly and pleasant. The release was signed just after the deeds were made. All this was done within two hours. Nothing was said about any of the other Bentons, or of giving anything to the Bentons except myself and Minerva

On Cross-examination said Amy A. Jenkins testified as follows: "Phoebe did not seem to be troubled in any way. I cannot tell how the amounts was fixed. There was no discussion as to how much I was to receive. My brothers were to pay

the money, Daniel $300 Cts and Lewis $300 Cts. They thought Minerva would be on the same basis with me by giving her $400 Cts with the interest. Phoebe Benton did not know the other Grand Children and had no attachment for them.

Defendants further to maintain the issue on their part called as a witness Eliza Benton who testified as follows:

"I heard the same conversation spoken of by my daughter Mollie Benton in her deposition. It was in August 1878 instead of 1879

On Cross-examination said Eliza Benton testified as follows:

"Nothing was said about any other heirs in that conversation".

Defendants further to maintain the issue on their part, called as a witness James Herd, who testified as follows:

"I knew Phoebe Benton about 40 years. In May or June of 1878 she asked me if my son - Squire Herd - was at home. She then said she wanted to see him on business as she had offered Orson, and Merlin Benton's heirs - Lewis & Daniel - the farm in Delaware County and that they ought to be satisfied with that. I told her that the property was hers and that she could do as she pleased with it. She answered that she knew that the property was wholly hers. On Cross examination said James Herd testified as follows. "Phoebe said she had offered besides a mortgage of $600 Cts to Merlin's heirs and to Orson. She said she could not say that Orson was suited with the offer. I dont think she said any thing about any body else except Orson and the two heirs of Merlin.

Defendants further to maintain the issue on their part called as a witness William R. Parsons who testified as follows:

I live in Worthington, Franklin County, Ohio. I knew Phoebe Benton in 1878. In a conversation I had with Phoebe in the fall of the year, she commenced by relating some of their family history. She said she had made a proposition to Orson, Lewis and Daniel Benton and they had accepted it. The estate was now to be divided between the Braustons and Bentons; That Orson, Lewis and Daniel had received their full share and the other Bentons were to get whatever she felt inclined to give them.

Defendants further to maintain the issue on their part called as a witness LeRoy Nash who testified as follows:

I knew Phoebe Benton. She told me she intended the Delaware county farm for Merlin and his heirs but the most of it was to go to Lewis. I took care of Hiram when he died. Merlin was living at the time. On Cross examination said Leroy Nash testified as follows.

Defendants further to maintain the issue on their part called as a witness Jary Nash who testified as follows.

I am a son of Leroy Nash. During sugar making in 1878 I think. She told me that she intended to give the Delaware farm to Merlin and his heirs. Lewis to have the greater share.

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Defendants further to maintain the issue on their part called Lewis Benton as a witness who testified as follows: "After Phoebes death Stephen Cranston asked me to go with him to Mr Kidwells at Powell on the C.&T.R.R. to pay the $550 note. Mr Kidwell would not take the note at 6% but demanded 10%. We left without paying it and on the way home Cranston gave me the money to pay Kidwell and I gave him my receipt. I afterward paid Kidwell the $550 at 6%. in Postpletons Office in Delaware. I gave Mr Cranston the receipt at the Hotel nearly opposite Cole's Office and he retained my receipt.

On cross-examination said Lewis Benton testified as follows: I was at Cranstons when the settlement was spoken of. She wanted us to put the land back again, but we did not propose to do it. Phoebe did not know whether Mary Pennington was dead or not at the time the deeds were made. We gave Minerva $400 because we thought she ought to have it.

On reexamination said Lewis Benton testified as follows: The talk about the $400 and the $500. was at Mrs Jenkins' before the deeds were made. Mrs Jenkins said she wanted $600 and we agreed to it. I spoke to Phoebe on the way to Delware about the other heirs, and she said I could give Minerva $200. Phoebe was at my house a week at a time.

On recross-examination said Lewis Benton testified as follows: We gave Amy & Minerva what we thought was right.

The foregoing testimony together with the exhibits attached is all the testimony offered on the trial and hearing of said case and no further or other testimony was offered by either party at the hearing and trial of said cause.

And thereupon after the arguments of counsel said cause was submitted to the Court for its decision, and the Court after considering said cause, made the following finding and rendered therein the following judgment and decree to-wit:

District Court, Union County Ohio.

Stephen Cranston Jr. John D. Cranston, George A. Cranston. John Cranston, Julius Cranston, Edmond Cranston James Cranston. Melissa Cranston and Lulu Cranston. Plaintiffs

against.

Orson Benton, Mary Pennington, Lewis Benton, Daniel Benton. Amy A. Jenkins, Lewis Jenkins, Minerva S. Benton, B. Lugenbell guardian of said Minerva S Benton, Emma A. Benton, Ann M. Benton, Elba L. Benton, Alice E. Benton, Lydia B. Hill. John W. Houston, James M. Hill Minerva Dixon, Mary Bailey, Sarah Houder, David Houder, Hugh Houston, John Dixon and Samuel H. Pennington. Defendants.

This day came the said plaintiffs by their attorneys, and the defendants, Orson Benton, Lewis Benton and Daniel Benton by their attorneys, and Samuel H Pennington by his attorney and the said David Houder, Sarah Houder, Mary Bailey. Hugh Huston, Minerva Dixon and John Dixon, Emma A. Benton, Ann M. Benton, Elba L. Benton, Alice E. Benton Lydia B. Hill and

James M. Hill by their attorneys and the other said defendants though duly and legally notified of the pendency and prayer of the petition and cross-petition come not but made default for answer and demurrer And thereupon the cause came on to be heard upon the original and amended petitions of plaintiffs, the answer of Orson Benton, Lewis Benton and Daniel Benton, to the amended petition of plaintiffs and the answer of Samuel H Pennington Emma A Benton, Ann M Benton, Elba L. Benton Alice E. Benton, Lydia B. Hill, James M. Hill and the answers and cross petition of the defendants David Houder, Sarah Houder Mary Bailey, Hugh Huston, Minerva Dixon and John Dixon and the answer of Orson, Lewis & Daniel Benton thereto, and the answer of Emma Benton, Ann M. Benton, Elba L. Benton, Alice E Benton, Lydia B. Hill, and James M. Hill. to said cross-petition together with the exhibits and evidents, and was argued by counsel. On consideration whereof the Court do find that the equity of the case is with the plaintiffs and cross-petitioners and that the deeds of conveyance mentioned in the pleadings from Phoebe Benton to. Orson, Lewis & Daniel Benton dated August 9th 1878 should be set aside and held for naught.

And thereupon it is ordered and adyudged and decreed by the Court that said deeds of conveyance be and they are hereby set aside and cancelled, and said estate of Hiram Benton and Phoebe Benton is henby ordered to be partitioned and settled the same as if said deeds had never been made. and the same as if none of said pretended advancments had been made, giving one half of said estate to the brothers and sisters and their legal representatives of Hiram Benton dec^{d} and the other half to the brothers & sisters and their legal representatives of Phoebe Benton deceased.

And thereupon the Court find that the respective shares of said estate are as follows: The said plaintiffs share is one undivided half thereof, and the share of each of the plaintiffs is one undivided 160/2880th part. The share of Orson Benton is one undivided 360/2880 part. and the share of Samuel H. Pennington is the one undivided 360/2880 part. and the share of Sarah Houston, Hugh Houston, Minerva Dixon and Mary Bailey are each one undivided 72/2880th parts, and of John H. Huston and David A Houston each one undivided 36/2880th part. And the shares of Lewis Benton, Daniel Benton, Amy Jenkins and Minerva Benton are each one undivided 68/2880th parts, and the shares of Emma A. Benton, Ann M. Benton, Elba L. Benton and Alice E. Benton are each one undivided 15/2880th part. and the shares of Lydia B. Hill and James M. Hill are each one undivided 36/2880th part thereof.

And it is ordered adyudged and decred that an order issue to the Sheriff of said County of Union commanding him that by the oaths of A.S. Mowry, William M. Robinson, and T.H.R Sabb. three judicious and disinterested freeholders of the vacinity who are not of kin to either party and who are hereby appointed

Commissioners for that purpose, he cause to be set off and divided to the said plaintiffs and to each of the said defendants the part and proportion of the said estate to which they are hereinbefore severally found entitled.
And it is ordered that if in the opinion of the said commissioners said premises cannot be divided by metes and bounds, without injury to the value thereof, they appraise the same. And of his proceedings herein the sheriff is ordered to make due return without unnecessary delay. To which finding and decree, judgment and order of the court the said Orson, Daniel & Lewis Benton then and there and at the time excepted

The foregoing findings, judgment and decree of the court, were all the findings, judgments, decrees, rulings and decisions made and rendered by the court during the trial of said cause, and the court failed to decide or pass upon any of the objections made by the defendants, Orson, Lewis and Daniel Benton to the said evidence offered by the plaintiffs, and did not decide as to what portion of said testimony was competent or what portion of said testimony was not competent, but the court did find that the testimony would warrant the judgment decree and order by it rendered as above set forth. To all of which said Orson Benton, Lewis Benton and Daniel Benton then and there and at the time excepted And thereupon said Orson Benton, Lewis Benton and Daniel Benton moved the court for a new trial in said cause and filed the following motion for a new trial, to-wit:

Stephen Cranston Jr. et al
Plaintiffs
vs
Orson Benton et als
Defendants
} District Court, Union County, Ohio.

And now comes the said Orson Benton, Lewis Benton & Daniel Benton by West, Porter & Porter their attorneys and move the court here for a new trial in this action, for the following reasons to-wit:

I The court erred in overruling the demurrer of said Defendants to the amended petition of plaintiffs.

II The court erred in overruling the demurrer of said defendants to the answer & cross petition of David Hounder, Sarah Hounder et al.

III The court erred in admitting the evidence offered by the plaintiffs, and objected to by the defendants.

IV The court erred in admitting the evidence against the objection of said defendants, as to the statements made by Phoebe Benton deceased.

V The court erred in allowing plaintiffs to introduce the statements of Phoebe Benton as evidence in the case in support of the issues made by plaintiffs and the said David Hounder et al, in their cross-petition against the objection of the said defendants.

VII. The finding and judgment of the Court was against the law of the case

VIII. The finding and judgment of the Court was contrary to and not sustained by the evidence.

VIIII. The judgment and decree of the Court was given for the plaintiffs and said David Hoarder et al. whereas by the law of the land it should have been given for the defendants Orson Benton, Lewis Benton and Daniel Benton.

The said Orson Benton, Lewis Benton and Daniel Benton therefore pray that said judgment and decree may be set aside and a new trial granted in said action for the reasons above set forth.

Hest, Porter & Porter Attys for Orson Benton
Lewis Benton and Daniel Benton.

Which motion for a new trial the Court then and there overruled and to all the said rulings and decissions of the Court and failures to decide during the trial and hearing of said cause the said Orson Benton, Lewis Benton and Daniel Benton at the time excepted. And to said ruling and decission of the Court on said motion for a new trial the said Orson Benton, Lewis Benton and Daniel Benton then and there and at the time excepted. And said defendents then and there and at the time excepted to the finding and to the order, judgment and decree of the Court, made and rendered in said cause and pray the Court here to sign and seal this their Bill of Exceptions and order the same to be made a part of the record in this case. all of which, and during said term of Court, is ordered to be done as prayed for.

This 10th day of March A.D. 1883.

John A. Price (Seal)
John McCauley (Seal)
Henry H. Dodge. (Seal)
Judges of said Court.

Attest: J. L. Burgner, Clerk.

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