Lawless, Virginia Execs of Collier, George 1853 St. Louis Co 329/21

570

Covenant / Scott / R&R / Gamble not sat

G.C got Land from Gamble, H.R for $800
$1868

damages should not be limited to the $1000 + interest

Land / New Madrid Certf

The State of Missouri, ss.

The State of Missouri, *To the Honorable the* St Louis Court of Common Pleas *in said State, GREETING:*

WHEREAS, In the record and proceedings in a certain cause lately pending in the St Louis Court of Common Pleas wherein Virginia ~~Law~~ Lawless is plaintiff & George Collins &c are defendants

in an action of Covenant manifest error hath intervened, to the great damage of the said plaintiff as by her complaint, we are informed.

NOW, we being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf, COMMAND YOU, that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said Court, so that we may have them before us at our Supreme Court, to be begun and held in the City of Saint Louis, in the County of Saint Louis, in said State, on the third Monday in October next, so that our Judges of our Supreme Court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right and according to law, ought to be done.

Witness, WILLIAM S. GLANVILLE, Clerk of our said Supreme Court, at office, in the City of Saint Louis, the 29th day of Sept in the year of our Lord one thousand eight hundred and fifty-three

Wm S. Glanville,

CLERK.

State of Missouri
County of St Louis } ss.

In obedience to the command of the within writ I the undersigned Clerk of the St Louis Court of Common Pleas in and for said County herewith transmit a full true and complete transcript of the record and proceedings of the case therein mentioned as fully as the same now remains of record in my office

In Testimony whereof I hereunto set my hand and affix the seal of said Court at office in St Louis this 27th day of September A.D. 1853.

Chas. M. Hicks Clk

State of Missouri } ss.
County of Saint Louis }

Be it remembered that heretofore to wit, on the, 21 day of August 1851 there was filed in the Office of the Clerk of the Saint Louis Court of Common Pleas, a Petition in the words & figures as follows to wit,

Petition } In the Saint Louis Court of Common Pleas, Septem Term 1851

Virginia Lawless. Plaintiff

against

George Collier Defendant.

The Plaintiff States, that on the 29 day of September, in the year 1831, the Defendant executed to Hamilton R. Gamble, his deed of that date, which is hereto annexed, made a part of this Petition & marked A, conveying to the said Hamilton R. Gamble, the land therein described, being Sixteen ¼ acres, for the sum of Eight hundred dollars, which said Gamble then & there paid to said Defendant.

And Plaintiff says that Defendant in & by his deed aforesaid did covenant to & with the said Hamilton R. Gamble that he the said Defendant, was then & there seized of an indefeasible estate in fee simple in said land

Plaintiff further States, that the Defendant on the 8 day of Novem 1834, executed to the said Hamilton R. Gamble, his certain other deed, hereto annexed & made part of this Petition & marked exhibit (C) conveying to said Gamble another piece of land, adjoining to the tract described, in the said first deed, & containing twenty four 91/100 acres for the sum of Eighteen hundred & sixty Eight dollars then & there paid by said Gamble to said Defendant

3rd And Defendant by his said deed, dated ~~Nov~~ 8 November 1834, covenanted with said Gamble that he said Defendant, was seized of an indefeasible estate in fee simple, in & to said land,
And the Plaintiff says that the Defendant, was not seized of an indefeasible estate in fee simple, in said pieces or tracts of land, or either of them, or any part of either of them, but that he was seized of a defeasible estate, therein, being a holder thereof by mesne conveyance under one Eustache Peltier in whose name a larger quantity of land, including the two tracts, embraced in the two deeds before recited from Defendant to said Gamble, had been patented by the United States: said patent having issued upon a location & entry under a New Madrid Certificate, in favour of said Eustache Peltier, & on the 4 Jany 1836 the said United States confirmed to the legal & presentatives of Mordecai Bell, a larger tract of land, embracing all & every part of the lands conveyed as herein before stated by said Defendant to said Gamble & the title of the said Defendant to said tracts of land, & every part thereof & of those claiming the same under him, & the said Gamble was wholly & totally defeated by the said confirmation to the said Mordecai Bell, or his legal representatives
And on the 16 day of March 1842 the said H. R. Gamble by deed assigned to the Plaintiff all his right of action claim & demand against the said Defendant, on account of said covenants, which deed of assignment is herewith filed, & made part of this Petition marked (B)

Fo d Plaintiff says that on the 14 day of March 1886 the said Gamble conveyed to one Adam L Mills, by deed hereto annexed, the lands, which he the said Gamble, had acquired from Defendant as herein before stated

That on the 16 day of March 1842, the said Gamble did purchase to himself one equal undivided fifth part of the whole tract confirmed as afore to the legal representatives of the said Mordecai Bell, (which tract contained three hundred & fifty arpens) & caused the said undivided fifth of said tract of three hundred & fifty arpens to be located so as to cover the tract so as aforesaid by him sold to said Adam L Mills & to render the title thereto good, & perfect; & so the said Defendant is protected & saved from the operation of any of the covenants contained in the said deeds by him executed to the said Gamble, which might be construed to run with the lands, & to be available against said Defendant, to the use of those holding said land under the said Gamble,

But as above stated the said covenants of indefeasible seizin by the said Defendant made to the said Gamble & by the said Gamble assigned to the said Plaintiff, were broken & the ~~said~~ seizin of the said Gamble, & those claiming under him the lands, in said deeds from said Defendant, to said Gamble mentioned, was defeated by the said confirmation to the legal representatives of Mordecai Bell, and no part of the said lands is now held by the said Gamble, nor any person claiming the same, under him by virtue of any title except that discision under the said confirmation & the seizin of the said Gamble, & of all those claiming said lands under him, by virtue of the title derived

4 from said Defendant, has been defeated & wholly destroyed,

Wherefore said Defendant is liable to pay to ~~said~~ Plaintiff assignee of said Gamble the amount of the several sums of money, paid by said Gamble, to said Defendant, as the consideration, for said parcels of land, & interest thereon from the dates of these respective payments.

Plaintiff has repeatedly demanded of said Collier payment of the said sums of money & interest, but the said Collier, has refused to pay the said sum of money, or any part thereof to Plaintiff.

And thereupon the Plaintiff sues & prays judgment, for said sums of money & interest,

~~Vergo~~ V. Gaulds by heratty, T. T. Gantt & A. J. & P. B. Garesche

P. B. Garesche, being duly sworn, on his Oath says that he believes the above Petition, & matters therein as stated, are true,

P. Bandry Garesche

Sworn to & subscribed before me Aug 20 1851

P. Tippetlek,

Deed referred to in Petition marked A, as follows, to wit,

This deed made this twenty ninth day of September, in the year one, thousand eight hundred and thirty one, Witnesseth, that George Collier, & Frances E. Collier, both of the County of Saint Louis in the State of Missouri, for and in consideration of the sum of Eight hundred dollars, secured to be

Deed referred to in Petition marked A,

5 Cts paid, to them by Hamilton R. Gamble of the City of Saint Louis,

have granted bargained & sold, & do by these presents grant bargain & sell, to the said Hamilton R. Gamble, & his heirs a certain tract of or ~~land~~ parcel of land, situate lying and being in the said County of Saint Louis, about a mile & a half west of the City of Saint Louis, being a part of the tract on which the said Collier now resides, which was located by virtue of a New Madrid certificate issued in favour of Eustache Peltier or his legal representatives, and was acquired by said Collier from Alexander McAlister, the part hereby sold being bounded as follows,

Beginning at a point in the line dividing the said Colliers tract ~~of land~~ from the Common field lots of Saint Louis, from which point a line to be run, north seventy five and a quarter degrees, west would pass through the middle of Spring, in the bottom of a sink hole in said Colliers land, thence with the line dividing, the said Common field lots from the said Colliers tract, South twenty five & half degrees, west fourteen chains & thirty nine links, thence North seventy five & a quarter degrees west ten chains to the middle of a road forty feet wide running across the said tract of the said Collier in the direction of North fourteen degrees & three quarters, East thence with the middle of said road north fourteen degrees & three quarters East fourteen chains and thirteen links, thence South seventy five and a quarter degrees, East twelve chains & Eighty nine links, passing through the middle of the Spring in the bottom of the sink hole above mentioned, to the point of Beginning

containing Sixteen Acres, & one Sixth.

To have and to hold, the above described premises, to the said Hamilton, R. Gamble, & his heirs forever,

And the said Collier for himself & his heirs Covenants, with the said Hamilton, R. Gamble and his heirs & assigns, to warrant & defend the title to the tract of land, hereby conveyed against all claims,

In testimony whereof the said George Collier & Frances E Collier, have hereunto set their hands and seals, the date before written,

Executed in presence of } George Collier (Seal)
} Frances E. Collier (Seal)

State of Missouri } ss
County of St Louis }

Be it remembered that on this Sixth day of December in the Year Eighteen, hundred & Fifty one personally appeared before me the Clerk of the Circuit Court for the County of Saint Louis the within named George Collier & Frances E Collier his wife, both personally known to me as the persons executing the within deed to Hamilton R. Gamble, therein named and severally acknowledged, the same to be their act & deed, hands & seals for the purposes therein mentioned, & the said Frances E. Collier being by me examined privately & apart, from her said husband whether she executed the said deed freely & voluntarily, & without the compulsion or undue influence of her said husband, acknowledges & declared that she did sign & seal the within, with the contents of said deed, & that she executed the same freely & voluntarily & without the compulsion

7 or under influence, of her said husband, & relinquishes her ~~right~~ dower in the said land & premises.

Seal Given under my hand & Seal of Office, the date above written.

Archibald Gamble Clerk

~~The following deed as referred to in Petition & marked as (b)~~

State of Missouri } ss
County of Saint Louis } I Archibald Gamble Clerk of the Circuit Court & ex officio Recorder for the County of Saint Louis, do certify that the within deed is truly recorded in my Office in Book R. page 538 & following,

Seal Given under my hand & Seal of said Circuit Court at Office this 22 day of December A. D. 1851.

Archibald Gamble Recorder

The following deed referred to in Petition & made part thereof, marked as (b)

This deed made this 8 day of Novem in the year of our Lord, One thousand Eight hundred & thirty four witnesseth, that George Collier & Francis E. Collier, his wife of the County of Saint Louis Missouri, for and in consideration of the sum of Eighteen hundred & Sixty Eight dollars to them in hand paid by Hamilton R. Gamble of the same County, have granted bargained & sold & do by these presents grant bargain & sell, to the said Hamilton R. Gamble, & his heirs two certain tracts or parcels of land situate in said County & adjoining the tract on which the said Gamble now resides, the one on the north, & the other on the south of his tract, & having for there West

Deed of &c Marked b

boundary, an extension of the west boundary line, of said Gambles present tract, so that the said line shall extend from the South line of the Methodist, burying ground, as the same is now embraced, to the South line of the location made under a New Madrid Certificate, issued to Eustache Peltier, or his legal representatives,

And on which location the said Collier & Gamble both reside, the two tracts hereby conveyed together, with that on which said Gamble resides (heretofore conveyed to him, by the said Collier & wife, by deed dated the 29 day of ~~December~~ September, in the year 1831,) will form one coven=anted tract, bounded on the North by the Catholic & Methodist burying grounds, on the East by the Common field lots of Saint Louis, on the South by the land formerly belonging to Augustus Chouteau. Senr, and on the west by the land of the said Collier, the said tract thus connected being surv=eyed to begin at the South East corner of the said location under, said New Madrid certificate thence running westwardly, with the South line of said location, seven chains, thence North fourteen degrees, forty five minutes, East to the Methodist burying ground, then with the South line of the Methodist & Catholic burying grounds, nine chains & sixty links, to the line of the Common field lots, & thence with said line (having in it one Angle) to the Beginning the two tracts hereby conveyed containing twenty four acres & ninety one hundredths

To have & to hold the said two tracts of land to the said Hamilton R. Gamble & his heirs forever,

And the said Collier for himself & his heirs, covenants with the said Gamble

14 his heirs & assigns, to warrant & defend the title to the said land above conveyed, against all Claims whatever,

In testimony whereof the said Collier & his wife have hereto, set there hands & seals the date above written, the words line & said Gamble interlined before Execution,

George Collier (SS)
(SS)

Witness
G. W. Cale,
W. Hompertud

State of Missouri } SS
County of St Louis }

Be it remembered, that on this 13 day of Nov 1835, before me D Hough a Justice of the Peace, within & for the County aforesaid appeared George Collier, who is personally known to me, to be the person whose name is subscribed to the foregoing instrument of writing, as having executed the same, and acknowledged the said instrument, to be his act and deed, for the purposes therein mentioned,

Taken & certified the year aforesaid
D. Hough Justice of the Peace, County Saint Louis.

State of Missouri }
County of Saint Louis } I Archibald Gamble Clerk of the Circuit Court, & ex officio Recorder for the County of St Louis, do certify that the foregoing deed, is truly recorded in my Office, in Book V page 188 and following

11 Given under my hand & seal at office, the 28 day of November A. D. 1835.
Archibald Gamble Recorder

The following deed of assignment, also referred to in Petition, as an exhibit marked (B.)

Know all men by these presents, that whereas, George Collier & wife by two deeds, one dated the 29 day of September, in the year 1831 & the other dated the 8 day of November in the year 1834, conveyed to Hamilton R. Gamble several portions of land which together form one tract of forty acres, bounded on the North by the Methodist & Catholic ~~[illegible]~~ grave yards on the East by common field lots of Saint Louis owned by John B. C. Lucas, & others, on the South by Chouteaus Mill, tract & on the West by a road & the said Collier by his said deeds, covenated with the said Gamble for the title to said land; And whereas the said land is embraced, in a tract of three hundred & fifty arpens. Claimed by the heirs of Maj Amos Stoddard, deceased which claim of the heirs of the said Stoddard is adverse to the title conveyed by said Collier to said Gamble,

And whereas the heirs of said Stoddard have conveyed to Luke Edwards Sawless, one undivided fifth part of the said tract of three hundred and fifty arpens, and the said Sawless has conveyed the said undivided fifth part of said tract of three hundred and fifty arpens, to said Gamble.

Now therefore in consideration of the premises, the said Gamble does by these presents

See refer to as marked B

11 assign and transfer unto Edmund H. McCabe in trust for Mrs Virginia Gawless, all recourse which he is entitled to, against the said Collier upon the covenants express or implied, in the said two deeds, if the title held under and derived from the said Maj Amos Stoddard, shall prove to be a better title to said land than that which was conveyed to said Gamble, by said Collier,

And the said Gamble by these presents gives to the said McCabe trustee, as aforesaid full power and authority, to use his name, in any proceeding or suit, which may be necessary to enforce the claim, against the said Collier, if the said title under the said Stoddard, shall prove to be the better title, to said land & any recovery in any such suit or proceeding, shall be for the benefit of the said Virginia Gawless.

In testimony where of the said Hamilton R. Gamble has hereto set his hand and seal, this 16 day of March 1843

The erasure at the bottom of the other page was made by me, H. R. Gamble, } H. R. Gamble (Seal)

And if any suit should become necessary to collect from said Collier, the damages recoverable, on the covenants in the said deeds according to the foregoing assignment,

I will act as counsel in such suit without charge, to said trustee or said Virginia Gawless witness my hand & seal, the day before written

H. R. Gamble (Seal)

I consent to be held responsible to Dr McCabe trustee &c or my covenants before mentioned, if the title under Stoddard heirs, shall

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Answer of Defendant

The following answer was filed the 18 day of Octo 1851, Saint Louis Court of Common Pleas

Septem Term 1851, County of St Louis, SS.

The said Defendant for answer, to said petition filed in this cause says, that by the conveyance of the land in said Petition described to Adam G. Mills, as set forth in said Petition, the said Gamble did thereby assign & transfer all the covenants contained, in the said deed of said Defendant to said Gamble, the covenant of indefeasible estate in fee simple, as well as other covenants, in said deed contained and that the said deed from said Gamble to said Peff dated the 16 day of March 1842, did not operate to transfer & did not transfer to said Peffs any rights of action, claim or demand upon said Defendant, which said Gamble ever had or might have on account of said covenants, said Defendant further answering denies, that said Gamble ever did cause the undivided fifth part of the said tract confirmed to the legal representatives of Mordecai Bell, so purchased by him as mentioned in said Petition, to be located so as to cover the sold tract so sold by said Gamble to said Mills, but on the contrary the said Defent states, that said Gamble by his deed dated the day of Eighteen hundred & fifty did convey the said undivided fifth to the said Adam G. Mills, a copy of which deed, the original not being in the possession, or under the control of said Defendant is herewith filed.

The said Defendant for a further answer to said Petition says, that even if said deed ~~from~~ of said Gamble, to her did operate to assign to her any right of action, upon said covenants, or any of them against said Defendant, & said Gamble did cause the said undivided fifth part of the tract, confirmed to the legal representatives of Mordecai Bell, to be located upon the land

14 sold by said Gamble, to said Niles (all of which he denies), that then the said Defendant, if liable at all (which he denies) is liable to pay to said Defendant only so much money as said Gamble, himself paid for the purchase, of the said undivided fifth part of said land confirmed to the legal representatives of Mordecai Bell, with int thereon from the time of said payment, which sum so paid by said Gamble, the said Defendant avers was one thousand dollars

the said Defendant for further ans to said Petition States, that neither said Gamble, nor any one claiming under said Gamble, immediately or immediately, have ever been ejected from the occupation or possession of said land, described in said deeds from said Defendant to said Gamble or from any part of said lands by due process of law, or otherwise, & that if said Defnt is or can be liable, to pay said Defendant any sum of money, in this action (which he altogether denies) he is liable to pay the said Defendant only nominal damages,

said Defendant, denies that he is liable to pay, to said Plaintiff, as assigns of said Gamble, or otherwise, the amt of the several sums of money paid by said Gamble, to said Defendant, as the consideration for said parcels of land, & inst thereon from the dates of there respective payment, or any sum of money whatsoever,

Spalding & Shepley
Attys for Defendant

State of Missouri } ss
County of St Louis }

George Collier being duly sworn on his oath States, that the foregoing ans & matters & things as therein stated he believes to be true,

George Collier

Sworn to & subscribed before me this 18 day of Octo 1851.

P. Tippett Clerk

15th And at a Court of Common Pleas held in for the County & City of Saint Louis, on the third day of June 1853,

Now at this day come the parties by their attorneys, and the death of the Defendant is suggested, to the Court, whereupon Sarah A. Collier Edward Bucklo & Alfred Chadwick, by their attorneys enter their appearance as Executors of George Collier, decd & thereupon the parties submit this cause to the Court, upon the agreed case herein, which being heard & the Court being sufficiently advised of & concerning the premises, do the find in favour of the Plaintiff and assess her damages by reason of the premises, in the Petition at the sum of, Sixteen hundred & seventy three dollars

It is therefore considered by the Court that the Plaintiff, recover of the Defendant the damages aforesaid in form aforesaid, by the Court found & assessed, & also her costs herein expended,

Bill of Exceptions filed, — filed on the 3rd June 1853,

Bill of Exceptions

Be it remembered that the trial of this cause, the parties agreed upon the following case, (~~[illegible]~~)

In the Saint Louis Court of Common Pleas,

In this case it is agreed that the Court shall decide upon the following facts,

On the 29 September 1831, George Collier made the following deed to, Hamilton R. Gamble (~~[illegible]~~) Said deed referred to & made a part of, the ~~foregoing~~ Plaintiff Petition, rentered, see Pages. 4 & following.

Agreed Case

16 On the 8 day of November 1834, George Collier executed to said Gamble, the following other deed, (~~[illegible]~~), (said deed also referred to in the ~~foregoing~~ Plaintiff Petition & made part thereof, & entered see Pages, 7 & following —

The said Hamilton R. Gamble paid to said Collier the sums respectively named in said deed as the purchase money thereof,

The land embraced in said deeds was parcel of the New Madrid location, in favour of Eustache Pettin, & was also embraced in the survey of the confirmation, to Mordecai Bells legal representatives, which confirmation was made on the 4 July 1836,

The title to the ~~said~~ land conveyed by said Collier to Gamble was defeated by the said confirmation, as was finally determined in the case of Mills agst Stoddard, 8 Howard W. S. R. in 1850.

On the 14 March 1836, the said Gamble made to Adams S. Mills the following deed (~~[illegible]~~),

This Indenture deed made this fourteenth day of March, in the year 1836, witnesseth that Hamilton R. Gamble & Caroline C. Gamble his wife of the County of Saint Louis in the State of Missouri, for and in consideration of the sum of twelve thousand dollars, to them in hand paid, the receipt whereof is hereby acknowledged, have granted bargained and sold, & do by these presents grant bargain & sell, to Adam S. Mills of the City of Saint Louis in the State aforesaid, and his heirs, a certain tract or parcel of land, situate lying & being in the said County of Saint Louis,

Deed referred to in a good lease
Gamble to Mills

17 and bounded as follows,

Beginning at the South East corner of the location, under a New Madrid certificate, issued to Eustache Peltier, or his legal representatives, where the said corner is fixed upon the line of a tract, formerly the Mill tract of Auguste Chouteau dec^d, thence with the Southern line of said location, as the same runs westwardly seven chains, thence North fourteen degrees, forty five minutes, East to the Methodist burying ground, thence with the South line of the Methodist & Catholic burying ground, nine chains, & sixty links to the to the line of the Common field lots, & thence with the line of the Commonfield lots (having in it one angle) to the place of Beginning. the tract hereby conveyed being bounded on the South by the land, formerly of Auguste Chouteau which was called the Mill tract, and on the West by the land of John F Darby on the North by the Methodist & Catholic grave yards & on the East by the Common field lots of Saint Louis, being the same tract on which the said Gamble now resides, containing forty acres from which is reserved twenty feet, in width, along the whole of the Western line, which reservation is for the purposes of forming one half of a road, between the tract herein described, and the land of John F Darby,

the land hereby conveyed being the same, which the said Gamble acquired from George Collier by two deeds recorded in the Recorders office, of Saint Louis County in Book R, page 528 & following & Book V, Page 188 & following,

To have and to hold the said tract above

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Conveyed, with all the rights privileges & appurtenances, thereunto belonging, unto the said Adam L. Miles, & his heirs forever,

And the said Gamble for himself & his heirs covenants, to & with the said Miles, & his heirs to warrant and defend the title, to the land above conveyed, against the claims of all persons whatsoever,

In testimony where of the said Gamble & wife, have hereto set their hand & seals the date above written. H. R. Gamble Seal
Caroline C. Gamble Seal

State of Missouri } ss
County of St Louis }

Be it remembered that on the 17th day of March, in the year of our Lord One thousand Eight hundred & thirty six, before me Peter Ferguson, a Justice of the Peace, within & for the county aforesaid personally appeared, Hamilton R. Gamble, who is personally known to me, to be the same person, whose name is subscribed to the foregoing deed as a party thereto, & acknowledged the same to be his act and deed for the purposes therein named, mentioned,
And on the 18 day of March in the year aforesaid also appeared Caroline C. Gamble, wife of said Hamilton R. who is personally known to me, to be the person, whose name is subscribed to the foregoing instrument of writing, as a party thereto, and acknowledged the same to be her act and deed for the purposes therein mentioned, She the said Caroline being by me first duly examined, separately & apart from her said husband,

19 whether she executed the said deed & relinquishes her Dower, to the lands & tenements therein, mentioned voluntarily freely & without compulsion or under influence of her, said husband, acknowledged & declared that she executed the said deed, & relinquishes her Dower to the lands & tenements, therein mentioned, voluntarily freely & without compulsion or under influence of her said husband,

In testimony whereof, I have hereunto set my hand, at St Louis aforesaid, this 18 day of March, 1836

Peter Ferguson Justice of the Peace, St Louis County

Filed for Record March 28" 1836, & recorded 7 April 1836

John Ruland Recorder,

State of Missouri } ss
County of St Louis, } I the undersigned Recorder in & for the said County do hereby certify the foregoing to be a full & complete copy of an instrument of writing & also of the certificate of acknowledgement & of the date of filing & recording thereof, as fully as the same remains of record in my Office in Book V Pages, 116-27.

Witness my hand & Official Seal at St Louis the 20 day of August 1851. S. D. Barlow, Recorder

Case continued

On the 16 March 1842, said Gamble purchased to himself, the undivided fifth part of the confirmation, to the legal representatives of Mordecai Bell, by the following deed (~~[illegible]~~)

20
Landesprwfe
to
Gamble.

Other and Ref. to
in a good hand

Know all men by these presents that we Luke Edward Sawless, of the City of Saint Louis, & State of Missouri & Virginia wife of said Luke E. Sawless, for and in consideration of the sum of one thousand dollars to us in hand paid, by Hamilton R. Gamble of the same place, the receipt whereof is hereby acknowledged have bargained sold and quit claimed, and by these presents do bargain sell & quit claim, unto said Gamble & his heirs the following described real estate situate in the County of Saint Louis & State afd, to wit, One undivided fifth part of a certain tract of land containing three hundred & fifty arpens more or less confirmed by act of Congress approved on the 4 July 1836 to Mordecai Bell or his legal representatives, which tract is bounded on the East by the common field lots of Saint Louis, and on the South by the tract of land formerly belonging to Auguste Chouteau decd & known as Chouteaus Mill tract,

the tract so confirmed has been surveyed under the Authority of the United States, & embraces what has long been known as Stoddards Mound, the undivided fifth hereby conveyed is that which was conveyed, to said Luke E. Sawless by Amos A Stoddard & Daniel Stoddard for themselves & as attorneys in fact for the other heirs of Maj Amos Stoddard, decd by deed dated 15 Nov 1836

To have and to hold, the said undivided fifth part of the said tract of land, unto the said Hamilton R Gamble & his heirs forever, and the said Luke Edward Sawless for himself & his heirs covenants with said Hamilton R Gamble his heirs & assigns, to warrant & defend the title, to the said undivided fifth part of the said tract of land, against the claim of all and every person who may claim the same, either under the said Luke Sawless

31 & the said Maj Amos Stradard dec^d

In testimony whereof the said Luke Edward Lawless & Virginia his wife, have hereto set there hands & seals, this 16 day of March in the year 1843, the words "the deed dated 15 Nov 1836" interlined before signing

L. E. Lawless (Seal)
Virginia Lawless (Seal)

State of Missouri } ss
County of St Louis }

Be it remembered that on this 17 day of March 1843, before me the undersigned Clerk of the Circuit Court, within & for the County aforesaid, came Luke E Lawless & Virginia his wife, who are known to me to be the real persons whose names are subscribed to the foregoing instrument of writing as parties thereto, & severally acknowledged the same to be there act & deed hands & seals for the purposes therein mentioned, She the said Virginia Lawless being by me first made acquainted, with the contents of said instrument of writing acknowledged & declared on an examination seperate & apart from her husband that she executed the same freely & voluntarily & relinquishes her right of dower, to the property therein conveyed, without any compulsion or influence of her said husband.

In testimony whereof I hereto set my hand & affix the seal of said Court at Office in the City of Saint Louis, the day & year last aforesaid

Filed for record March 18 1842, Recorded April 4 1843,

John Ruland Clerk
Julius De Munn Recorder

22 State of Missouri } ss
County of St Louis }

I, the undersigned Recorder in & for said County, certify the foregoing to be a full & compete copy of an instrument of writing & also of the certificate of acknowledgement, & of the date of filing & recording thereof, as fully as the same remains recorded in my office, in Book V. No 2. Pages 349 & following. Witness my hand & Official Seal at St Louis the 22nd day of March 1851

S. D. Barlow. Recorder.

A good Case continued,

That said Gamble paid to said Lawless the sum named in said deed, as the consideration thereof, that Luke Edward Lawless died in 1846. On the same day as the date of above deed said Gamble made the following assignment to the Plaintiffs trustees ~~[illegible]~~ (said assignment made a part of Petition aforesaid, called for & entered accordingly, See Pages 10 & following.)

That said Gamble on the 12 May 1848, conveyed to said Mills & Beaumont, who had purchased a part of said 42 acres from Mills, the title, he acquired from Lawless by the following deed, ~~[illegible]~~

This deed made this 12 day of May in the year of our Lord 1848, witnesseth that Hamilton R. Gamble, & Caroline C. Gamble his wife of the County of Saint Louis & the State of Missouri for and in considiration of the sum of one dollar to them in hand paid by Adam L Mills & William Beaumont of the same County the receipt whereof is hereby acknowledged

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have remised released & quit claimed, & do by these presents remise release & forever quit claim unto the said Adam L. Mills & William Beaumont & their heirs, all their right title & interest & claim to one undivided fifth part of the tract of land containing three hundred & fifty arpens, confirmed to Mordecai Bills or his legal representatives by the act of Congress of the 4 July day of Dec in the year 1836, & being claim number two hundred and sixty one, in the report of claims made by the recorder, & commissioners to Congress, which report is the basis of the said act of Congress which said tract of land has been surveyed, under the authority of the United States, so as to be bounded on its Eastern side by the Common fields of Saint Louis, & on its Southern side by the tract known as the Mills tract of the late Auguste Chouteau, dec^d the undivided fifth above released being all the interest as stated by said Gamble from Luke E Sawyer & wife by deed recorded in the Recorders Office of Saint Louis County in Book R No 3 Pages 319 & 320, which said tract of three hundred & fifty arpens includes as surveyed a tract of about forty one acres, conveyed by said Gamble & wife to the said Mills by deed recorded in the Recorders Office in Book H, pages 116, & 117.

To have and to hold, the said undivided fifth, above conveyed, unto the said Adam L Mills & William Beaumont & their heirs forever subject to this & action, & observation to wit,

That if upon a partition of the said three hundred & fifty arpens tract between the said Mills & Beaumont & the other persons who

24 sea, under the said Mordecai Bell, there shall be assigned to the said Miles & Beaumont & there heirs or assigns, a larger portion of said land, than the forty one acres conveyed, as above mentioned by said Gamble & wife to said Miles.
then one half of said excess above the forty one acres, shall be held for the use & benefit of the said Hamilton R. Gamble, his heirs & assigns forever, & shall be conveyed & disposed of as he or they may direct

In testimony whereof the said Hamilton R. Gamble & wife have hereunto set there hands and seals, the date above written

H. R. Gamble (Seal)
Caroline C. Gamble (Seal)

State of Missouri } ss
County of St Louis. } Be it remembered that on this 23 day of June in the year 1848, personally appeared before me the undersigned Presiding Justice of the County Court of the County of Saint Louis, the above named Hamilton R. Gamble & Caroline C Gamble his wife both personally known to me to be the persons whose names are subscribed to the foregoing deed as parties thereto, & severally acknowledged the same to be ~~their~~ act and deed for the purposes therein mentioned,
And the said Caroline C being by me examined separate and apart from her said husband & the contents of said deed being by me explained to her, made her acknowledgement that she executed said deed & relinquishes her right of Dower in this property therein described freely & voluntary, & without the compulsion or under influence of said her husband.
Taken & certified the day & year above

35 written, Archibald Gamble Pr I C C
Filed & recorded
June 26. 1848.

State of Missouri } SS
County of St Louis }

I the undesigned Recorder in & for said County, Certify that the foregoing is a full & complete copy of a deed from H.R. Gamble to Mills & Beaumont, also of the Certificate of Acknowledgement & of the date of filing & recording, as fully as the same remains of record in my Office, in Book 54 Pages 548.

Witness my hand & Official Seal
at St Louis May 27 1853,
S. D. Barton Recorder

Agreed Case continued,
And that said Mills & Beaumont, did by arrangement, with the other parties interested in the said land, as holding under the confirmation to Mordecai Bell procure the conveyance to them of that title, to all the land thereto fore conveyed, by said Gamble to said Mills, on the 14 March 1836,

And thereby the title so conveyed by said Gamble, to said Mills became perfect & indefeasible, by the following deed (~~[illegible]~~)

Stoddard & Murdock to Mills & Beaumont

This Indenture tri party viz between Adam S. Mills, William Beaumont of the City of Saint Louis in the County of Saint Louis, in the State of Missouri, of the first part, & John J. Murdock of the same City of the second part, & Henry Stoddard of the City of Dayton in the State of Ohio of the third part, Witnesseth,

36 whereas, a tract of land, situated at said Saint Louis County, near said City of Saint Louis, west of & and bounding on the forty arpent, or common field lots of said City, was surveyed by James Malcay on the 21 day of January 1806, for Maj Stoddard then & lately, an Officer in the Army of the United States, claiming the same in virtue of a grant to Mordecai Bell, from the Spanish Government, as will be seen by plat thereof, recorded by Antoine Soulard Surveyor General of the Territory of Louisiana, on the 27 day of January 1806, in Book D. on page 363. & whereas also by an act of Congress of the United States approved July 4 1836, entitled an act confirming claims to land in the State of Missouri & for other purposes, there was confirmed to said Mordecai Bell, or his legal representatives, the same tract of land so surveyed as aforesaid containing three hundred & fifty arpens, equal to two hundred & ninety seven acres & seventy four hundredths of an acre of land situated as aforesaid, in Township 45, North range 7 East of the fifth P.M. which tract of land was afterwards surveyed by Samertius M Eiler deputy surveyor, between the 21st day of Octo. & the 8 day of December 1836 & a plat & field notes ~~made~~ thereof, made & recorded in the Office of the Surveyor General of the United States, at Saint Louis, in Book C. on page 134, 5, 6 & 7 May, 26, 1837, & said plat & field notes in Survey No 3 & 26, on said record,

And whereas said Amos Stoddard died intestate, seized in fee simple of said land & the same descended to his heirs at law,
And they afterwards conveyed, to Luke E. Lawless an undivided fifth part, of said land, by deed

37 dated, November 15, 1836, which is recorded in the deed records of said Saint Louis County in Book V. No 3. on page 347. and said Sawkes, after=wards, conveyed said undivided fifth to Hamilton R. Gamble, by deed dated March 16. 1843, recorded in the same deed Records in Book. V. No 3 on page 349, & said Gamble afterwards conveyed said undivi=ded fifth, to said Adam. S. Miles, & William Beaumont, (said parties of the first part) by deed dated May 13. 1848. recorded in said deed records Book S. No. 4 on pages, 518 & 519, so that said parties of the first part, by virtue of said several conveyances, are seized of an undivided fifth part of said tract of land, & whereas Anthony Stoddard & William Stoddard, two of the four heirs at law of Philo Stoddard, dec^d, who was a Brother & one of the six heirs at law, of said Maj Amos Stoddard dec^d, conveyed to Henry. G. Colton all their undivided interest, in said tract of land, being one twelfth of four fifth thereof, by deed dated September the 10 1840, which is recorded in the deed records aforesaid, in Book S. No 3, on page 7, and said Colton afterwards conveyed the said undivided interest, to George. C. Walker, by deed dated October the 3rd 1845, recorded in the same deed records, in Book U No 3, on page 453, & said Walker afterwards conveyed, the same undivided interest, to John. C. Bredell, by deed dated December 20 1845, recorded in the same deed records in Book X No 3 page 113, & said Bredell afterwards conveyed the same undivided interest, to John. J. Murdock said party of the second part by deed dated November 29. 1850, recorded in the same deed records, in Book S. No 5. page 193,

28 so that said party of the second part, by virtue of said several conveyances, is seized of an undivided twelfth part, of four undivided fifth parts of said tract of land, & whereas said heirs at law of said Amos Stoddard, dec^d, by sundry deeds of conveyances recorded, in said deed records of Saint Louis County, in Book I. No 4, on pages 242, & following & in Book K. No 4, on pages 285 & following & on pages 288 & following, & in Book L. No 4, on pages 34 & following, & in Book S. No 5, on page 356 & following conveyed, all their inst in said tract of land to Henry Stoddard, said party of the third part by virtue of said several deeds of conveyance is seized in fee simple of eleven undivided twelfth parts of four undivided fifth parts of said tract of land, & for the purpose of making partition of said tract of land, so that said parties of the first part may have & hold, their one fifth of the same, inseverately, the parties have & do hereby agree, that said Miles & Beaumont, said parties of the first part, shall have & hold the following described parcel part of said tract of land, inseverately discharged of & from, all claim of them the said Murdock, the said party of the second part & said Henry Stoddard, the said party of the third part, & for boundaries & description,

Beginning at a stone planted for the South East corner, of said two hundred, & ninety seven $\frac{24}{100}$ acres on the South side of Laclede Avenue, otherwise called the Manchester road, which is a Macadamized road, & said stone is so planted, about three poles south of the grade, of said road & running thence north 75 degrees, 30 seconds west, along the south line of said tract, twenty

29 Eight (28) poles, to a stone set for corner on the side, & just at the edge of the grade of said road opposite the centre of a forty foot street called Beaumont street, running north & south, across part of said tract of land, thence north 14 degrees 30 seconds, East in the center of said Beaumont street, one hundred & sixty six & seven hundredths poles to the south line of the Methodist graveyard to a stone set for corner on the north side of & near the edge of the Macadamized ~~road~~, grade of the St Charles road, thence East along the south line of said Methodist & of the Catholic Graveyard, thirty Eight poles & ten links, to the East line of said tract of land, which is the west line of the forty arpent, or common field lots of said city of Saint Louis, & thence South along the East line of said tract, which is the west line of said common field lots to the place of Beginning, containing forty two acres & seventy hundredths of an acre, be the same more or less,

And the said parties of the second & third parts, in consideration of the releases herein after contained, on the part of said parties of the first part, hereby release to said parties of the first part, their heirs & assigns forever all claim of in & to, said parcel or tract of 42 $\frac{70}{100}$ acres of land above described, and we the said Adam L. Miles & William Beaumont said parties of the first part in consideration of the partition & severance above made, & had by which said parcel of forty two acres & $\frac{70}{100}$ of an acre, of said land has been set off, & apportioned to them in severately as an for there undivided

30 fifth part of said tract of three hundred & fifty arpents, tract, have resigned and released and by these presents do ~~remise~~ remise & release & forever quit claim, to them the said Murdock, party of the second part, & said Henry Stoddard said party of the third part, & to their heirs & assigns forever all the right title interest & claim, which they the said parties of the first part or either of them, have of in & to the said tract of three hundred & fifty arpents of land & ~~every~~ every part thereof except that parcel thereof, containing forty two $\frac{70}{100}$ acres above described & apportioned to us as aforesaid and Deborah Beaumont wife of said William Beaumont, hereby releases to Murdock & Henry Stoddard, all claim to dower in all & every part of said three hundred & fifty arpents of land except in that parcel of forty two, $\frac{70}{100}$ acres above described & apportioned to said Adam L. Mills & William Beaumont, as aforesaid & Susan C. Stoddard wife of said Henry Stoddard, hereby releases to said Adam L Mills & William Beaumont, all claim to dower in that parcel of 42 $\frac{70}{100}$ acres of land, as above described, which has been apportioned to said Mills & Beaumont as aforesaid.

It is understood by all the parties to this Indenture, that they do not, nor do any or either of them, make any covenant or assurance of title or right, but they only release & convey so as to make partition, that the parties may hold in severally.

In testimony, that the foregoing is ouvded, we the said Adam L. Mills & William Beaumont & Deborah Beaumont wife

of said William Beaumont, parties of the first part, & John D. Murdock, party of the second part, & Henry Stoddard & Susan. C. Stoddard his wife, parties of the third part, have hereunto set their hands & seals, this first day of April 1851

Adam. D. Mills
William Beaumont
Deborah Beaumont
J. J. Murdock
Henry Stoddard
Susan. C. Stoddard

State of Missouri } ss
County of Saint Louis }

Be it remembered that on the first day of April 1851 before me the undersigned Recorder within & for the County aforesaid, came Adam. D. Mills — William Beaumont, & Deborah his wife, Henry Stoddard & Susan. C. his wife, & on this 30 day of June in the same year aforesaid, also came, John D. Murdock, all of whom are personally known to me, to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto & severally acknowledged, the same to be their act & deed for the purposes therein mentioned the said Deborah Beaumont & Susan. C. Stoddard being first made acquainted with the contents of the foregoing Conveyance, acknowledge, on an examination apart from their respective husbands that they executed the same & relinquished their dower, in & to the real estate, therein conveyed freely & without compulsion, or undue influence of their respective husbands.

In witness whereof I have hereto set my hand & official seal at Office in

53 9mo Saint Louis, the date last aforesaid

Stephen D. Barlow Recorder

Agreed Case continued

That said Miles & those claiming under him never were evicted from the land, so by him sold to them, nor has the said Gamble nor any one claiming said land under him been obliged to pay any money on account of any covenants in relation to said land, nor has the said Collier, or his representatives paid any money on account of his covenant contained in his said deed to said Gamble,

Either party may appeal or prosecute a writ of Error, to the Supreme Court,

Thos. J. Gantt with
A & P. B. Gareschi for Plaintiff
Haight & Shepley Attys for Defendant

Bill of Exceptions continued

And on the facts therein stated, the Plaintiff contended for Judgement, for the amount of the purchase money paid by said Gamble to Collier & interest from the date of payment, to the time of trial, & Defendant contended that the Plaintiff was ~~not~~ entitled to recover, only nominal damages,

And the Court was of opinion that the said Plaintiff was only entitled to recover the sum of one thousand dollars, being the amount paid by Gamble to Tawless, & interest, and gave Judgement accordingly, & Plaintiff excepted to said Judgement, & ruling, & filed this Bill of Exceptions, & prayed that it be made part of the record, which is done

33rd And afterwards to wit, on the day of the rendition of said Judgement, the Plaintiff filed his motion to the Court to review its Judgement in this case & to increase the amt of the damages by her sustained by reason of the breach of the covenants alledged in her Petition, by computing the said damages at the sum of, twenty six hundred & seventy six $\frac{33}{100}$ dollars, and interest from the time of the payment thereof, which motion the Court overruled, to which Judgement of the Court overruling said motion, the Plaintiff at the time excepted, & presented this Bill of Exceptions & prayed that it be signed & made a part of the record, which is done

Samuel Treat Judge

State of Missouri } ss
County of St Louis }

I, C. H. Hicks Clerk of the Saint Louis Court of Common Pleas, within & for the County aforesaid do hereby certify that the foregoing contains a full true & complete transcript of the record & proceedings had in the case of Virginia Sawless against George Collier's Exec, as the same remains of record in my Office.

In testimony whereof I have hereunto set my hand & affixed the seal of said Court hereto at Office in the City of Saint Louis this 22nd day of August A.D. 1853,

Clerk

SEAL OF THE ST. LOUIS COURT OF COMMON PLEAS MISSOURI

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October. T. 1853

Virginia Lawless
Pltf. in Error
vs } Transcript.
George Colliers Exors
Dept in Error

Error to Common Pleas

Virginia Lawless
agst
George Collier Exr

Fee for Rec

$1240

Exd

exd
$12.40 paid by.

Virginia Lawless, plaintiff in error

v

Adm^rs of George Collier, defendants in error.

Error to the St Louis Court of Common Pleas. The plaintiff in error comes and assigns the following as the errors committed by the Court of Common Pleas. to wit:

1° Upon the facts agreed on by the parties the judgment of the Court should have been for the plaintiff, and the amount thereof should have been the purchase money paid by the said Gamble to said Collier as shown by the agreed case, and interest thereon from the time of such payments: whereas the court only allowed by way of damages to the plaintiff the money paid by said Gamble to Mrs Lawless at the time of making the assignment of said Covenants together with interest which is error.

2° The court also erred in this to wit. In refusing to review its judgment on motion of the plaintiff and increase the amount of the damages as prayed in said motion. which is error.

Wherefore the said plaintiff in error prays that said judgment be reversed.

Garesches & Gantt
for plaintiff in error

And the defendant joins in error
Knight & Shepley
Atty's for Deft.

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Virginia Lawless
v
Collier's Executor
Assignment of Errors.

Filed 20th October 1853
Wm. L. Glanville
Clerk

Virginia Lawless ~~App^t~~ Plaintiff in Error
vs
George Collier's Ex^tors

In the Supreme Court. Oct. Term 1853

For a statement of the facts, the court is Respectfully referred to the agreed case as set forth in the bill of Exceptions, commencing on the 15th page of the Transcript.

Gantt & Garesché for App^t

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Virginia Lawless ~~App~~ Plaintiff in Error

vs

George Collier's Exctors ~~Deft~~

Statement of the Case

Filed 27th October 1853
Wm. L. Glanville
Clerk.

Virginia Lawless
vs.
Geo. Collier Exectr

Error to the
St. Louis court of
Common Pleas

On the 29th day of Sep
tember 1831 Geo. Collier for the sum of $800
conveyed to A. R. Gamble a fee sixteen & a frac
tion acres of land with a covenant that he was
seized ~~of~~ ~~entaile~~ an undefeasible estate
therein. On the 8th Nov. 1834 Collier conveyed
to Gamble twenty four & 9/100 acres of land for
the sum of $1868 with a like covenant as
in the first deed. These two tracts were contig
uous and made one parcel and on the 14th
day of March 1836 were conveyed by Gam
ble to Adam L. Mills for the sum of —
twelve thousand dollars by a deed contain
ing the covenants ~~implied~~ ~~or~~ expressed by
the words "grant bargain & sell" and a
general warranty. Afterwards doubts began
to be entertained about the validity of the title
of Collier to the land conveyed to Gam
ble and by Gamble to Mills, and Gamble
on the 16th day of March 1842 purchased
from Luke E. Lawless, who claimed under the
heirs of Amos Stoddard one undivided fifth
of a tract of 350 arpens, which entirely covered
the land conveyed by Collier to Gamble.
In a conflict between the titles of Collier and
the heirs of Stoddard, the latter prevailed,
Collier claiming under a new Madrid
location, and Stoddard's Heirs under a
concession by the Spanish Government

confirmed by the act of Congress of July 4th 1836
The consideration of the conveyance, from Lawless to Gamble was one thousand dollars and an agreement of the covenants contained in the deeds of Collier to Gamble in trust for Virginia Lawless the plaintiff, and wife of Luke E. Lawless. The title of Collier having been defeated by that of the heirs of Stoddard, Gamble by means of the 1/5 part of the ~~land~~ claim of the said heirs which he had purchased from Lawless, was enabled to perfect the title to the land he had conveyed to Mills, and by suitable conveyances between all interested Mills & those to whom he had conveyed were made secure in the possession of the land they had purchased from Gamble. Neither Mills nor those claiming under him have been actually evicted, nor has Gamble been compelled to pay any damages by reason of any covenants contained in his deed to Mills

On this State of facts, Virginia Lawless the beneficiary assignee of Gamble institutes an action for a breach of the covenants of seizin contained in the deeds from Collier to Gamble, claiming damages to an amount equal to the purchase money received by Collier with interest from the time of payment.

The defendant maintained that the plaintiff was only entitled to nominal

damages

The court directed the jury, that the measure of damages was the sum paid by Gamble to Lawless for the interest he acquired in the claim of Stoddard's heirs together with interest. Then was a verdict accordingly:

As the title under which Collier held the land, has been defeated, and as Mills and those claiming under him, no longer hold by the title originally obtained from Gamble, but by means of the purchase made by Gamble from Lawless of an interest in an adverse title, the rule which limits the recovery in an action on a covenant of seizin, to a nominal sum, until there has been an eviction, has no application under the circumstances of this case. When the title conveyed has been defeated and the ~~covenantee~~ grantee or his assigns hold by a title adverse to that acquired from their grantor, there can be no necessity for submitting to the form of an eviction in order to be entitled to a recovery of full damages for a breach of the covenant of seizin. The reason of the rule as laid down in the case of Collier vs. Gamble 10 Mo. 473, shows that it is inapplicable to the circumstances of this case as now presented. Rawle speaking on this subject, says, cases may of course occur, in which, although, the purchaser may have paid nothing to buy in the para mount title, and may still be in possession, yet

when the failure of title is so complete, and the loss so morally certain to happen, that a court might feel authorized in directing the jury to apply the damages by the consideration money. 83.

The weight of American authority has determined, that the covenant for seizin is broken, if broken at all, so soon as it is made and thereby an immediate right of action accrues to him who has received it. But in such case, the grantee is not entitled as a matter of course to recover back, the consideration money. The damages to be recovered are measured by the actual loss at that time sustained. If the purchaser has bought in the adverse right, the measure of his damages, is the amount paid. If he has been actually deprived of the whole subject of his bargain or of a part of it, they are measured by the whole consideration money in the one case & a corresponding part of it in the other. Rawle 44.

Under the peculiar circumstances of this case, what is the measure of damages? Can it be said, that the purchase money paid by Gamble to Lawless is the just measure? Was it by the payment of the sum of $1000 only that Gamble was enabled to secure the title or possession of his vendee and thereby prevent a recourse against him or his covenant. Such an assertion is not warranted by the facts. We cannot say

that Lawlep in making a sale of his land did not regard the covenants of Collier as worth the full sum, which they were given to secure. He did not convey to Gamble the identical land, that Gamble had conveyed to Mills. His conveyance of itself did operate but partially to secure Gamble and thereby destroy his recourse against Collier for his purchase money. It was # by the acts of Gamble subsequent to Lawlep's conveyance, that his vendee's title was perfected. What right had Gamble then, to adopt a course of conduct which would have impaired the recourse of Lawlep's trustee on the covenants which had been assigned to him for the benefit of Virginia Lawlep. In so doing, he would have injured the plaintiff and have destroyed a part of the consideration he had given to Lawlep for his interest in the Stoddard claim. Would not Gamble then have been liable to Virginia Lawlep for the destruction of the right which he had assigned for her benefit. This is the consequence, flowing from holding, that the $1000 paid by Gamble to Lawlep, should be the measure of damages in this action. This would be unjust to Gamble. It would be placing him, in the attitude of a wrongdoer to the plaintiff, whilst performing an act dictated by considerations of justice to himself and to those to whom he was under obligations to indemnify. Is it not more just, that Collier should refund the money he has received

from Gamble, the consideration of which has entirely failed, than that Gamble should be placed in the condition of enriching himself at the expense of another. No one can say, that without the agreement of the covenants in Collier's deed, that Gamble ever would have been enabled to obtain Landes' interest in the Stoddard claim. We know not how those covenants were estimated. No rule is known, by which their value can be reduced below the sums they were given to secure.

It was maintained, that before there could be a recovery ~~in this case~~ of the entire consideration money received by Collier, there should be a reconveyance of the title derived from him. The want of such a reconveyance is no bar to the action. This matter rests in the discretion of the Court. Under the circumstances of this case, a court would impose no terms to prevent a recovery of the entire consideration money. A reconveyance here would be a nugatory act and totally unavailing for any purpose. Rawle. 84.

As to the question of interest, we are unable from the state of the record in relation to that matter, to express any opinion which should govern this case. Our law maintains that a valid contract may be made respecting a settlement on the public lands. A settler on the land of the government, may have his action for the sum promised him in consideration of his yielding up his improvement. A vendor possessed of land

in good faith, on a contract of sale will frequently sustain considerable loss & be subject to great inconvenience by giving up possession to his vendee. We can almost feel the injustice of telling that vendor, when he is sued for the purchase money he has received, that he shall pay interest, and yet be allowed nothing for the rents & profits the vendee has derived from the possession, for the reason, that the vendor had no title and his vendee is ~~bad~~ liable over to the true owner. We know that nine times in ten this liability over to the real owner is a mere bug bear. When unproved lands are sold, the rent of the land and the interest of the money ~~are~~ supposed to counterpoise each other. The one is supposed to be an equivalent for the other. In this state, many invest ~~their~~ their money in unimproved lands, relying on the increasing value of the land, as an equivalent for the interest of the money invested. Purchases ~~may~~ may also be made, in which this latter inducement may be blended with a desire to obtain land but partially improved. In case therefore of an unproved land it would be unjust to say in this State as has been said elsewhere, that whether the vendee turned his purchase to a profit or a loss was no concern of the vendor since if a person purchase real estate it is to be presumed that he does so because its rents will be equivalent to the interest of the money he may be content to pay for it."

These considerations show the difficulty

of prescribing any fixed rule, in relation to the interest, that is to be recovered in suits on covenants for seizin. When the possession obtained by the vendee by reason of his purchase has been beneficial, and he has not been, and it can be seen with certainty, that he will not be liable over to the real owner for the rents and profits, it would be unjust to allow him full interest on the purchase money. When the possession has not been beneficial and it may be supposed, that it was ~~contrb~~ contemplated by the parties that it would not be so justice requires that interest should be allowed from the time of the payment of the purchase money. Our statute regulating the action of ejectment, ~~under no circ~~ does not allow a recovery of the rents against an occupant under any circumstances for more than ten years next preceding the commencement of the action: If the real owner is thus restrained in his recovery of the rents & profits against the occupant, no reason is seen, why the recovery of interest should not be limited to the same period in cases in which the possession has been beneficial.

These views are sustained by authority, and it is supposed, that they will furnish a rule for the allowance of interest, when the facts of the case are disclosed. Rawle. 91. 94.

Judge Rylands concurring, the judgment will be reversed and the cause remanded.

Judge Gamble did not sit in the cause

Wm Scott

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Virginia Lawless
vs
Collier's adm'r.

Opinion

Filed 4 April 1854.
Wm L Glanville
Clk

Virginia Lawless
appellant
v
Executors of George
Collier, respondent,

From St Louis Court of Common Pleas.

The appellant upon the agreed case Submits.
1st That in this Cause the measure of damages against the Estate of Collier is the principal and interest of the purchase money called for by the two deeds from Collier to Gamble. and should not be limited to the sum of one thousand dollars and interest paid by Gamble for the outstanding title: because

1st Gamble was not put in any condition, by reason of the deeds from Collier, enabling him to perfect the title conveyed to him by Collier. The title which Collier pumpated to convey to him was utterly defeated. The defect did not consist in an encumbrance which it was competent for him at will, to extinguish, and the extinction of which perfected the title as small conveyed. The title which Collier assumed to convey was a nullity. The covenant was broken the moment it was made: Mr Gamble was not one whit benefitted by the conveyances from Collier - and his damage arising therefrom is accurately & precisely measured by the amount of the principal & interest by him paid therefor.
Collier v Gamble. use &c. 10. McR. 466. & Cases there cited by the Court

2d. By the case agreed, Collier & Colliers estate are liable to no one else but the appellant on account of the Covenants.

3d. The title derived to Gamble from Collier being a nullity he abandons it, and finding the person clothed with the real title purchases it from them. But he obtains no facility for making this purchase from Collier's deed, to him. Suppose he had sued Collier on the covenant, before buying the real title; would not his rights as against Collier be just what they are now? and yet under such circumstances what defence could be made to the action?

4°. The money paid by McGamble to McLawler for the one undivided share of the Stoddard tract. Should not be the limit of damages in this case for the further reason, that the title to the tract of forty acres was not quieted by that purchase, but only by the location of this claim so as to cover this tract of forty acres, sold by Collier to McGamble. Who will measure or estimate for the value of the services rendered in effecting this location?

5°. It is not necessary that there should be an eviction in order to entitle the plaintiff to more than nominal damages.

Rawle on Covenants for title. 83 & Cases there cited.

Thos J. Gantt
of Counsel with P.B. & A.J. Garesche
for appellant

Virginia Lawless.
vs
Geo. Collier's Exrs

Points made by appellants. authorities cited

Collier v Gamble, use &c 10. Mo R 466.
2 Mass. R. 439-456
4 Do 108
Rawle on Covenants 83.

Virginia Lawless
vs
George Colliers
Executors.

In the Supreme Court for the State of Missouri

The defendants & appellees submit the following points

I The plaintiff stands here in precisely the same position and having the same rights, as Gamble himself would have, were he plaintiff and none other.

Gamble could make no assignment of his covenants that would give his assignee a better position than Gamble himself held and indeed the assignment in its very words, gives him under the covenant those rights that Gamble himself would have and limits it to that.

II Gamble having made the title of land sold by him good in his grantees by the purchase of the paramount title, there can be a recovery either by Gamble or his assignee only for the amount paid by Gamble for the paramount title.

a This is decided to be the measure of damages under such circumstances in a suit upon covenant of Seizin.

Spring vs Chase. 22. Maine 505
Rawle on Covenants of title 92.
Sedgwick on Damages 175.

b Such has also been the decisions upon covenants of warranty

Leffingwell & al vs Elliott 8. Pick 457
Loomis vs Bedel 11 New H. 87
Rawle on Covenants of Title 280

c. Repeated decisions have established this to be the correct rule upon in suits upon the covenants against incumbrances provided it does not exceed the consideration money & interest

Tufts vs Adams 8. Pick 550.
Cole vs Lee 30 Maine 398.
Batchelder vs Sturges 3 Cushing 201
Rawles on Covenants of Title 131 &
Cases there cited & 241

This rule of damages has been recognized by the decisions of our own State,

In the case of Collier vs Gamble 10 Mo R. 473 the court says "This avoids the manifest injustice of permitting the plaintiff to recover the value of the land and at the same time retain possession of the land under a title which may never be disturbed or whose defects may be remedied by the payment of an inconsiderable sum".

In the case of Reese vs Smith 12 Mo R. 344. when the Executor of the grantor had purchased in the paramount title after a suit commenced by the grantee upon the covenant of seizin contained in the deed to him. the judgment at Law was arrested and the grantee compelled to accept the title thus acquired

III. If a recovery could be had in this suit for the whole consideration money & interest then the plaintiff must be in a position to restore to Collier or his heirs the title that he conveyed by the deed to Gamble. and the agreed case shows she is no such condition the two titles being merged in Wells & Beaumont.

Bellin vs Hurlburt 3 Ver 409.
Rawle on Covenants of Title. 3 83
4 Dallas 436. note

In answer to the suggestion that if Lawless had conveyed his title of the Stoddard title to Gamble in consideration only for the transfer of the covenant of Collier to him. it is sufficient to say 1st that no one would make such an agreement without the payment of something certain. beside the covenant became if of the person holding the title was also put into a contingency only. he had much better have the land than the recourse upon the covenant. and 2d That it is not the policy of the law to encourage a grantee who can purchase out an opposing title for an inconsiderable sum. to make a transfer of his covenants upon his grantor rather than to advance that sum // and 3d. if the purchase of the assignee of such a covenant takes it with its legal incidents and of one of them is that nominal damages can only be recovered in such case

he has only to blame himself for the bargain he has made.

Haight & Shepley
for Defendants

In the Supreme Court
Oct T. 1853.

Lawless

v

Colliers Exrs

Brief for appellees

Haight & Shepley

Rawle on Covenants of title

Sedgwick on Measure of Dgs

22. Maine 585

8 Pick 457

11 New H. 87

30 Maine

10. Mes R

13. Mes R

3 Cushing