Slowey, John v McMurray, William A. et al 1858 St. Louis 390/12

591/23 Filed 57/March 58

Slowey - plan Glover, ST. & Wingate, A.D.
et al McMurray - def - Smith, I.Z.

Ackerman, William A
" , Ebenezer P
" , Abby Sophia

Jamison, William C

Gen
deed of Trust

Slowey claims land on alg - ~~also~~ though a deed of trust to ~~secure~~ 2 prom. notes
McMurray loaned money to help pay notes
plaintiff would keep control of premises but McMurray would bid in his own name for the premises so that when all was over & done & he could be paid back
McMurray involves Ackermans - sells it to them
"transaction did not cease to be a ~~mortgage~~ mortgage simply because Slowey did not ~~cease to be a mortgage~~ ~~mortgage~~ pay the debt"

Judge Scott agreed
Slowey didn't follow the terms - was a conditional sale, not a mortgage
Affirmed - Rich not sitting

DEED OF TRUST WITH INSURANCE CLAUSE.—Printed by Benj. Charles, 67 Main Street.

This Deed, Made and entered into this Thirtieth day of October eighteen hundred and fifty-five by and between Abby Sophia Ackerman and William C Jamison her trustee of the County of Saint Louis State of Missouri parties of the first part Henry W Williams of the same County and State party of the second part, and THE CITIZENS' MUTUAL SAVING FUND AND LOAN ASSOCIATION OF ST. LOUIS, MO., party of the third part, **Witnesseth:** That the said parties of the first part in consideration of the debt and trust hereinafter mentioned and created, and of the sum of one dollar to them paid by the said party of the second part, the receipt of which is hereby acknowledged, do, by these presents, grant, bargain, sell, convey and confirm unto the said party of the second part the following described real estate to wit A certain piece of ground situate in the County of Saint Louis in said State containing fifty feet in part by one hundred and fifty feet in depth, bounded north by owners unknown East by Rene Paul Lands by Cozens Street and West by Rene Paul the said Lot to be measured as follows, beginning at a point in the North edge of Cozens Street exactly one hundred and seventy five feet from the Western edge of a prolonged line of Coole Street, Northwardly and extending Northwardly and parallel with said line, one hundred and fifty feet thence Westwardly fifty feet thence Southwardly one hundred and fifty feet to Cozens Street thence fifty feet Eastwardly, along the North edge of Cozens Street to the point of beginning according to the plan and survey made by Coole and Cozens in Eighteen hundred and forty five a Copy of which is on file in the Recorders Office of said County and being the same premises acquired by Wm A McMurray of the trustee of James Smith and wife by deed dated August 1855 and recorded in the Recorders Office of said County in Book 165 page 418

TO HAVE AND TO HOLD the same together with the appurtenances to the said party of the second part, and to his heirs, executors, administrators and assigns forever. IN TRUST, however, for the following purpose: *WHEREAS* the said first parties in and by their certain Bond, or writing obligatory, under their hand and seal duly executed, bearing even date herewith, stands bound unto the said Association in the sum of One thousand four hundred Dollars, lawful money of the United States of America, loaned by said Association to said first parties on Seven Shares of Stock owned by them in said Association being at the rate of Two Hundred Dollars on each Share, conditioned that the said first parties heirs, executors or administrators shall and do well and truly pay or cause to be paid unto the said Association, their treasurer, attorney, successors or assigns in lawful money, the interest to accrue on said sum of one thousand four hundred Dollars at the rate of six per cent, per annum, payable on the last Monday of each and every month thereafter, and shall also well and truly pay or cause to be paid unto the said Association, their successors and assigns, the sum of Seven Dollars on the said last Monday of each and every month thereafter, as and for the monthly contribution on Seven Shares of the Capital Stock of said Association now owned by the said first parties until the value of said stock shall be sufficient to divide to each and every share thereof the sum of Two Hundred Dollars, and fully indemnify and save said Association from all losses by reason of said loan according to the By-Laws, Rules and Regulations that are or may be made by the said Association.

And also that they will promptly pay all taxes, of whatsoever nature, lawfully levied or assessed upon the real estate described in this Deed of Trust within the time limited by law for the payment thereof, to the proper collecting officers. **And also** that they will keep the buildings upon said real estate as

herein described, constantly insured in some responsible Insurance Company, to be approved by the President of said Association, in the sum of Two hundred Dollars, and the policy of such insurance duly assigned to said Association, which bond contains an express covenant and agreement on the part of said first parties to and with said Association, that, if at any time, default shall be made in the payment of the said interest on the said sum of one thousand four hundred Dollars, or the monthly contribution or dues on said stock, and the same shall remain unpaid for the space of three months after any payment thereof shall fall due, then, and in such case, the whole principal debt aforesaid shall, at the option of the said Association, their successors and assigns, immediately thereupon become due and payable, and recoverable, and payment of said principal sum and all interest thereon, as well as any contribution on said seven Shares of Stock then due, may be enforced and recovered at once, by sale under this Deed of Trust of the property herein described according to the terms and provisions in this Deed of Trust contained.

And also that if said tax, or any tax or taxes whatsoever, lawfully levied or assessed upon said real estate, remain unpaid until said real estate is advertised for sale for the payment of said taxes, the said Association may, at their option, proceed to sell said real estate as herein provided, or may redeem said real estate from such sale, and the amount paid by said Association therefor shall be added to and be regarded as a part of the amount secured by this Deed of Trust, and the same shall bear interest at the rate of ten per cent. per annum until the repayment thereof to said Association.

And also that if the said first parties shall fail or neglect to keep said buildings constantly insured and the policy of insurance duly assigned to said Association, the said Association may, at their option, proceed to sell said real estate as herein provided, or may cause said buildings to be insured to their own use and benefit in the sum above provided, and the amount of premium or premiums paid for such insurance shall be added to and regarded as a part of the amount secured by this Deed of Trust, and the same shall bear interest at the rate of ten per cent. per annum until the repayment thereof to said Association.

NOW, if the conditions, provisions and agreements contained in said bond shall be well and truly fulfilled kept and complied with, according to the terms, tenor and effect of said bond, then this deed shall be void and the property hereinbefore conveyed shall be released at the cost of said part of the first part, but if the said first parties or their legal representatives shall fail or neglect to pay or cause to be paid unto the said Association, their attorney, successors or assigns, the interest on the said sum of one thousand four hundred Dollars at the rate of six per cent. per annum, payable on the last Monday of each and every month hereafter, or shall fail or neglect to pay or cause to be paid unto the said Association, their successors or assigns, the sum of seven Dollars on the said last Monday of each and every month hereafter as and for the monthly contribution or dues on Seven Shares of the Capital Stock of said Association until the value of said stock shall be sufficient to divide to each and every share thereof the sum of Two Hundred Dollars, agreeably to the Constitution, By-Laws, Rules and Regulations of said Association; or if said first parties shall fail or neglect to keep the buildings upon said real estate constantly insured in some responsible Insurance Company, to be approved by the President of said Association, in the sum of not less than Two hundred Dollars and the policy of such insurance duly assigned to said Association, and the premiums on the same regularly paid as they become due and payable, or shall fail or neglect to pay the taxes lawfully assessed upon said real estate, as above provided and according to the terms, tenor and effect of ~~his~~ the said bond, then this deed shall remain in force and the said party of the second part, or his legal representatives, or in case of his death or absence from the State, the sheriff of the county may proceed to sell the property hereinbefore described, or any part thereof, at public vendue, to the highest bidder at the north front door of the court house in the city of Saint Louis for cash, first giving twenty days public notice of the time, terms and place of such sale, and of the property to be sold, by advertisement in some newspaper printed in the city of Saint Louis, and upon such sale shall execute and deliver a deed in fee simple of the property sold to the purchaser or purchasers thereof and receive

the proceeds of such sale, out of which shall be paid first, the cost and expenses of this trust, and next the amount of the principal debt as secured hereby, with all interest in arrear thereon, together with the amount of the monthly contribution or dues remaining due and unpaid upon said Shares of the Capital Stock of said Association, and also all sums of money paid by said Association for taxes and insurance premiums, and interest thereon, as hereinbefore provided, and the remainder, if any, shall be paid to the said party of the first part or their legal representatives.

And the said party of the second part covenants faithfully to perform and fulfill the trust herein created.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hand and seals the day and year first above written. It is understood by and between the parties hereto that the said Jamison is bound by the Covenants herein only so far as he is the trustee of said Abby S. Ackerman, and not individually liable.—

Abby S. Ackerman (SEAL)

William C. Jamison (SEAL)
as trustee of Abby S. Ackerman

(SEAL)

I hereby authorize my trustee William C. Jamison to execute the foregoing deed of trust. Witness my hand and seal
October 30th 1855

Abby S. Ackerman (Seal)

State of Missouri }
County of St Louis }

Be it Remembered that on this the eighteenth day of November Eighteen hundred and fifty four before me the undersigned a Notary Public in and for the County and State aforesaid came Abby S. Ackerman and William C. Jamison as her trustee who are both personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto and severally acknowledged the same to be their act and deed for the purposes therein written and the said Abby S. Ackerman after having first been made acquainted with the contents of this deed acknowledged the same on an examination separate and apart from her husband that she executed the same freely and without compulsion or undue influence of her said husband.

In testimony whereof I have hereunto set my hand and notarial seal the day and year last aforesaid

(Seal)

Richard O. Nabb
Notary Public
St Louis Co Mo

DEED OF TRUST

OF

Mrs Abby S Ackerman
&c &c

The Citizens Mutual Saving
Fund & Land Association

168,379

Filed November 8th 1855
C Kemble Recorder

State of Missouri
County of St Louis
and County Certify
for record in my office
in book No 168 page 379

I the undersigned Recorder
that the foregoing Deed was filed
on the 8th 1855 & is duly recorded
Witness my hand & official
seal the date aforesaid
C Kemble Recorder

Seal

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Page 1 State of Missouri }
County of St. Louis } S. S.

Be it remembered that on the Twelfth day of September in the year of our Lord one thousand Eight hundred and fifty six, there was filed in the Office of the St. Louis Land Court a petition in the words and figures following, to wit:

In the Land Court of St. Louis County.
October Term A.D. 1856.

John Slowey, plaintiff
against.
William A. McMurray.
Ebenezer P. Ackerman
Abby Sophia Ackerman &
William C. Garrison.
Defendants.

To the Honorable Chas B. Lord, presiding Judge of the St. Louis County Land Court. Humbly complaining unto your

Petition

Hon. the plaintiff respectfully states - That on the 14th day of August A.D. 1855. he was and had been for a long time prior thereto the owner in fee simple, and in the possession of the following described lot of ground together with the improvements thereon situate, to wit: a certain Lot or parcel of ground situated in the City and County of St. Louis and State of Missouri containing fifty feet in front by one hundred and fifty feet in depth. Bounded North by owners unknown East by Rene Paul, South by Cozens street and West by Rene Paul, the same located and measured as follows, that is to say, Beginning at a point on the North Edge of Cozens street, Exactly one hundred and Seventy five feet from the western Edge of a prolonged line of Coote street. Northward

and Extending Northwardly parallel with said line one hundred and fifty feet, thence Westwardly fifty feet, to Bogens street, thence fifty feet Eastwardly along the North edges of Bogens street, to the point of beginning, according to the plan and Survey made by Coste and Bogens, in 1845, which will more fully appear by reference to Exhibit marked with the letter (A) and herewith filed.

That one James Smith (his wife Mary Ann joining with him therein) who conveyed said land to your petitioner on the 19th day of July A.D. 1853 on the said 19th day of July A.D. 1853, and previous to making the conveyance thereof to your petitioner as aforesaid, made Executed and delivered to John C. Vogel, as trustee for one Walter Shea, for a deed of trust upon said land to secure the payment of two certain promisory notes, mentioned in said deed of trust, and bearing the same date therewith, one of which notes was for the sum of six hundred and sixteen dollars payable twelve months after date, and the other for the sum of six hundred and Eighty two dollars payable twenty four months after date, a copy of which deed of trust is herewith filed marked with the letter (B) that it was understood and agreed by and between the said James Smith, And your petitioner, at the time your petitioner purchased, and took a conveyance of said land from him as aforesaid, that your petitioner should pay off and discharge the said notes, to secure the payment of which said deed of trust was made and Executed as above stated.

That when the said note first above mentioned

became due and payable. your petitioner had not a sufficient sum of money to wholly pay the same, and thereupon applied to the said defendant Mc Murray, for a loan of such sum of money, as would when added to the amount your petitioner then had, be sufficient to pay off and discharge the said first note, whereupon said Mc Murray, loaned your petitioner, as near as your petitioner now recal= lects the sum of three hundred dollars, your peti= tioner agreeing to give said Mc Murray, for the same interest at the rate of two and a half per cent per month for the period of six months, and then and there on the 19th day of July A.D. 1854. the day said first mentioned note became due

Petition

and payable made and delivered to the said Mc Murray, his your petitioners, four several prom= isson notes, three of which were for the sum of one hundred dollars each and one for the sum of fifty dollars, said notes so made to the said Mc Murray, being for the whole sum of money loan= ed to your petitioner by him as above stated together with the interest that would accrue upon the same at the rate aforesaid for the period of six months, the same being put into the amount of said notes so made, to said Mc Murray. (and all of which notes were made payable six months after the dates thereof) that your petitioner then and there delivered to said Mc Murray, as near as he can now recollect, and believes the sum of three hundred, and sixteen dollars, with which sum of three hundred and sixteen dollars so delivered to said Mc Murray, by your petitioner as aforesaid (of money which your petitioner had

over and above the amount borrowed from said Mc Murray) and the said sum of three hundred dollars so loaned by said Mc Murray. to your petitioner the said Mc Murray. paid off and discharged and took up the said first note mentioned in said deed of trust ~~of trust~~, for your petitioner. and kept the possession of the same and never has delivered the same to your petitioner.

That your petitioner at or about the time said notes so made by him and delweied to said Mc Murray. became due and payable, paid said Mc Murray. the sum of two hundred dollars. in four seperate payments. one payment of one hundred dollars. one of eighty dollars. and two of ten dollars each, which paid off and discharged two of the said one hundred dollar notes so made to said Mc Murray. and which the said Mc Murray. delweied to your petitioner.

Your petitioner woued further state unto your Hon. that he failed to pay off and discharge the said note for six hundred and eighty two dollars. in the said deed of trust mentioned, when the same became due, whereupon the said John C. Vogel. as such trustee in pursuance of Notice given to him by virtue of said deed of trust. proceeded to sell the said premises on the 14th day of August A. D. 1855. at which time and before the sale thereof, it was agreed by and between said Mc Murray. and your petitioner that your petitioner shoued remain in possession of said premises. and that he the said Mc Murray. shoued bid in the said premises in his own name for

page 5

the benefit of your petitioner, and pay said note of six hundred and Eighty two dollars, and that if your petitioner, remembered and paid back to said Mc Murray, said sum of six hundred and Eighty two dollars, the amount of said note last mentioned in said deed of trust, and also pay said Mc Murray, the sum of one hundred and fifty dollars, the the balance remaining due and unpaid of said notes so made and delivered to said Mc Murray, by your petitioner as aforesaid together with ten per cent interest on the two last mentioned sums of money, within one year from the date of said sale, that on the payment of the same the said Mc Murray, would

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carvey said premises by good and sufficient deed in fee simple to your petitioner, in pursuance of which agreement so made by and between your petitioner, and the said Mc Murray, on the said 14th day of August, A.D. 1855, when the said premises were sold as aforesaid, said Mc Murray, bid for the same the sum of one thousand and five dollars, and he became the purchaser, of the same at and for that sum whereupon the said trustee made and executed to the said Mc Murray, a deed to the same, a copy of which is herewith filed marked with the letter (C). In pursuance of which agreement so made between said Mc Murray, and your petitioner, your petitioner remained in possession of said premises, and intending in all things, in all things on his part in good faith to fulfill and perform his said agreement with said Mc Murray, after the said Sale, and on or about the 11th day of October A.D. 1855, paid

to the said Mc Murray, the sum of forty dollars in part discharged of the sum of money which he agreed to pay to said Mc Murray, as above stated which sum of forty dollars, was received and accepted by said Mc Murray, in part discharge thereof.

But so it is may it please your Hon. the said Mc Murray, not regarding the agreement so made in relation to said premises, between him and your petitioner as above stated, but contriving and wickedly intending to injure cheat and defraud your petitioner in that behalf, on the 17th day of November A. D. 1855 (shortly after your petitioner had paid him the said sum of forty dollars as above stated, and long before the expiration of the time in which your petitioner by said agreement was to pay and reembuse to him the money so to be paid and reembursed by your petition to him by the terms of said agreement) bargained and sold the said land to the said Ebenezer P. Ackerman, at and for the sum of Eleven hundred dollars, as your petitioner has been informed (he the said Ackerman, then and there well knowing and having full notice of the agreement so made and existing between your petitioner and said Mc Murray, and that your petitioners was then in the quiet possession of said premises under said agreement) but that when said Mc Murray, come to execute a deed to said land in pursuance of the purchase thereof by the said Ackerman, he made and executed the same to the said William L. Jamison, as the trustee of the said Abby Sophia Ackerman, wife of the said Ebenezer P. Ackerman, which was

done as your petitioner charges, more effectually to prevent your petitioners from acquiring a title to said land in pursuance of the aforesaid agreement between said McMurray, and your petitioner in relation thereto; a copy of which last mentioned deed is herewith filed marked with the letter (D)

Your petitioner would again state, that the only sum or sums of money remaining unpaid, and for which said deed of trust to said Vogel, was made to secure at the time said land was sold by the said Vogel, as aforesaid, was the sum of six hundred and eighty two dollars, with interest thereon from the 19th day of July 1855. to the 14th day of August 1855.

Petition

and that the whole sum of money your petitioner owed said McMurray, at the time of the Sale of said land by said Vogel (on which said McMurray held your petitioners notes as above stated) was $150. with interest thereon from the 19th day of January A.D. 1855. to said 14th day of August A.D. 1855. making in all of principal to be paid and reembursed to said McMurray under the agreement above mentioned between said McMurray, and your petitioner the sum of $840.36. upon which sum also by said agreement, your petitioner was to pay said McMurray, ten per cent interest, which being added makes the sum of $924.70 from which last mentioned sum should be subtracted the said sum of $40. paid to said McMurray, by your petitioner as above stated-which would leave the sum of $884.72. and which sum of $884.72 was the whole sum both principal

and interest, as your petitioner verily believes (and therefore charges for the fact) due and owing to said Mc Murray by ~~your~~ petitioner on the 14th day of August A.D. 1856.

And in this connection your petitioner would further state that on said 14th day of August A.D. 1856. he went to the residence and place of business of the said Mc Murray in the said City of St. Louis to pay to him the amount of money to be paid to him by your petitioner and demand a deed from the said Mc Murray in pursuance of ~~and~~ in accordance with their said agreement, but that said Mc Murray was then absent from his residence and place of business and beyond this State, whereupon your petitioner tendered and offered to pay to Catharine L. Mc Murray, the wife of said Mc Murray the sum of $1,000 00/100 (the same being a much larger sum as your petitioner then and still believes than was due and owing to said Mc Murray as aforesaid, but your petitioner not then knowing the Exact amount and wishing to pay or tender certainly as much as he was bound to pay.) and your petitioner offers to bring now here into Court the said sum of $1000 00/100 and holds himself ready at any and all times, whenever ordered by the Court herein, to pay the same to the said Mc Murray, on his complying with his part of said agreement by conveying said land to your petitioner.

Petition

Your petitioner ~~also~~ would further state, that the said lot or parcel of ground together with the improvements thereon, at the time the same was so sold and bid in by said Mc Murray, as aforesaid were of the value of $2,000.00 and upwards. and

that your petitioner had made an arrangement with one Charles Peck, whereby he the said Peck, was to pay the balance of the sum of money secured by said deed of trust to said Vogel, and prevent said lands from being sold by virtue of said deed of trust, on the day of the Sale thereof, aforesaid in pursuance of which arrangement he the said Peck, actually got Charles Gibson, Esq. to attend at the time and place that said land was to be sold o was sold as aforesaid by said Vogel, for the express purpose of preventing a sale thereof all of which the said Mc Murray, well knowing (professedly for the purpose of securing said land to your petitioner, your petitioner being an unlettered man, and wholly inexperienced in such transactions, and believing at the time that said Mc Murray, came forward meaely as his friend to enable him to save his said property from sacrifice) induced your petitioner to enter into the agreement so made with him as above stated, he your petitioner not then having the most remote idea or suspicion of the said Mc Murrays, intention to over-reach and defraud him in the premises as he has.

Your petitioner would further state, that although the said Mc Murray, bid off said land at the sum of $1,005.00 as aforesaid yet the fact is, he did not pay to the said Vogel - your petitioner or any one else at that time, or at any other time before or subsequent thereto any other or greater sum of money than the said sum of $682.00 with perhaps some two or three dollars interest, but kept and still keeps and retains the over pluss.

Yet May it please your Hon. not withstand=

ing the premises the said Mc Murray, conveyed the said land to the said Jamison, in trust for the said wife, of the said Ackerman, as hereinbefore stated, and has wholly failed neglected and refused to convey said land to your petitioner as he was and is in good conscience bound to do.

Wherefore and in tender considerations of the premises, and in as much as your petitioner is wholly without remedy save in this Hon'ble Court.

Your petitioner therefore prays that by the order and judgment of the Court herein said deed so executed by the said William A. Mc Murray, to the said William C. Jamison, in trust for the benefit of Abby Sophia Ackerman, wife of the said Ebenezer P. Ackerman, may be delivered up and cancelled,

Petition

and that the said defendants required to make and execute a good and sufficient deed in fee simple to the said ~~said~~ to your petitioner upon your petitioner paying such sum of money as may be justly due and owing by Peff under and by virtue of the said agreement between Peff and said Mc Murray, and that in case said they should fail to make such deed, that a Commissioner may be appointed for that purpose, or that in the event your Hon upon a final trial of this cause should not deem it meet to order said deed to Jamison to be delivered up and ~~cancelled~~ & that the said said defendants convey said land to your petitioner. your petitioner asks Judgment against the said William A. Mc Murray, for the sum of $323.00 (and the interest thereon) the same being the amount of the over pluss of said Mc Murrays bid after paying the said sum of $682.00 mentioned in

said deed of trust, and also for the sum of $995,00 what the said land and improvements were really worth, at the time the same were bid off by the said Mc Murray, over and above the sum of $1005.00/100 so bid by him as aforesaid, or in case your Hon does not deem this meet, in stead thereof judgment for the sum of $250.00/100 dollars, which is the amount of the difference between the sum for which the said Mc Murray sold said land, and the sum of $850.00/100 the amount owing by your petitioner to said Mc Murray, under their said agreement up to and at the time he conveyed said land to the said Jamison, as aforesaid.

Petition

Your petitioner also prays that an injunction may issue herein, for biding and restraining the said Abby Sophia with her said husband or through and by her said trustee from selling or conveying said land untill a final hearing herein, and for such other further and general relief as to your Hon may seem just and legal- and your petitioner will ever pray as in duty bound &c

R. F. Wingate, Atty.
for the plaintiff.

John Slowey, the plaintiff makes oath and says he believes the above petition and the matters therein, as stated, are true.

John his X mark Slowey.

Subscribed, and Sworn to before me this 12th day of Sept. A.D. 1856.

Liberty Waite,
Justice of the peace.

Upon which petition a writ was issued which is in the words and figures as follows, to wit:

County of St. Louis, S.S.

The State of Missouri.

Summons. To the Sheriff of St. Louis County — Greeting: We command you to summon, William A. Mc-Murray, Ebenezer P. Ackerman, Abby Sophia Ackerman, and William C. Jamison, to appear before the Judge of our St. Louis Land Court, on the first day of the next term thereof, to be held in the City of St. Louis, within and for the County of St. Louis, on the Second Monday of October next, then and there to answer the complaint of John Slovey, as set forth in the annexed petition: and have you then and there this writ.

Seal

Witness, Charles A. Mantz, Clerk of our said Court, with the seal thereof hereto affixed, at office in the City of St. Louis, this Thirteenth day of September in the year of our Lord eighteen hundred and fifty six.

Charles A. Mantz, Clerk.

Upon which summons the Sheriff made his return in the words and figures as follows, to wit:

Sheriffs Return. Executed this writ in the County of St. Louis, on the 13th day of September 1856, by delivering at the usual place of abode of the within named defendant, Wm A. Mc Murray, a certified copy

of the within writ and petition as furnised by the Clerk, with a white person of the family over the age of fifteen years. Further executed the same day by leaving at the usual place of the within named defendants, Ebenezer P. Ackerman, and Abby Sophia Ackerman, with a white person of the family over the age of fifteen years, a certified copy of the writ as furnished by the Clerk. Further executed on the same day by delivering to Wm C. Jamison, the within named defendant, a certified copy of the writ and by offering to read the petition to him which he refused to hear.

James Castello. Shff.
by G. P. Bornstein. Dpy.

Fees $4.00

And afterwards to wit: on the Eighteenth day of October A.D. 1856. a motion for Security for Costs, was filed in this cause which was in the words and figure as follows. to wit:

John Slowey, plaintiff
Against
William A. McMurray,
& others. defendants.

In the Land Court of St. Louis County October Term A.D. 1856.

And now comes the defendant McMurray, by his Attorney and moves the Court to order the plaintiff to file security for the costs of the above named suit for the following reasons.

1st Because plaintiff is entirely insolvent.

2nd Because plaintiff has no property or

effects from which a fee bill could be collected.

Irwin Z. Smith.
Atty for Mc Murray

And afterwards the following proceedings were had in this cause, to wit:
October Term 1856.

Saturday October 25d 1856.

John Shower
vs
William A. Mc Murray,
Ebenezer P. Ackerman,
Abby Sophia Ackerman,
and William C. Garrison

Now at this day, the motion of said defendants hereinbefore filed, coming on to be heard, for security for costs, and the Court having duly considered the evidence adduced and being fully advised of and concerning the premises doth order and adjudged that said motion be sustained, and Ten days time given plaintiff to file security for costs.

And afterwards on the same day the following motion was filed in this cause, which is in the words and figures as follows, to wit:

John Shower,
vs
Mc A. Mc Murray.

In Land Court. No 109.
October Term A.D. 1856.

And now comes defendant Mc Murray, and moves the Court (by his Attorney) to stay proceedings in this cause until the order of this Court for plaintiff to file secu=

rity for costs be complied with.

Irwin & Smith.
Atty for Mc Murray.

And afterwards the following further proceedings were had in this cause, to wit:
October Term 1856.

Monday November 3d 1856.

John Slowey.
vs
William A. Mc Murray.
Ebenezer P. Ackerman et al } Security for costs filed.
R. F. Wingate. Security.

And afterwards the following further proceedings were had in this cause, to wit:
October Term 1856.

Friday November 7th 1856.

John Slowey.
vs
William A. Mc Murray, et al. } Answer of William A. Mc Murray. filed.

Which Answer is in the words and figures as follows, to wit:

Defts Answer

John Slowey, plaintiff,
Against
William A. Mc Murray,
Ebenezer P. Ackerman,
Abbey Sophia Ackerman,
and William C. Garrison, } In the Land Court of St. Louis County Missouri.
October Term, A.D. 1856.

Defendant Mc Murray for himself in answer to the matters stated in plaintiffs petition states, that it is true that plaintiff on the 14th day of August

A. D. 1856. had possession of the tract of land or lots mentioned in his petition, and that he was the owner thereof in fee simple, and that one James Smith of whom plaintiff purchased said lots had executed a deed of trust, conveying said lot to John C. Vogel, Trustee of Walter Schaeffer, to secure the payment of the notes given by said Smith and described in plaintiffs petition.

Defendant Mc Murray further answering for himself states that after the first named of the said two notes became due, he purchased it of the holder thereof, at the request of John Slowey, the plaintiff, said plaintiff furnishing a part of the money to wit: the sum of two hundred and twenty three dollars, and no more, and said note became the property of this defendant, entitled, however to the credits of the above named sum so paid by plaintiff, and this defendant, further states that he this defendant was by the agreement between himself and plaintiff to hold said note and be secured by the deed of trust mentioned in plaintiffs petition.

Defts Answer.

Defendant further states, that in addition to the security of the deed of trust mentioned, plaintiff executed his own individual notes, four in number, payable six months after the date thereof, for an amount covering the principal sum deed or balance due on said note, and interest for six months. This defendant denies that plaintiff furnished him the sum of three hundred and sixteen dollars, and denies that he paid him that sum, but admits that he paid him or furnished to him the sum of two hundred and twenty three dollars, and no more.

This defendant further states that some time after

the execution of the said notes by the said plaintiff, and previous to the 14th day of August, A.D. 1855, he the said plaintiff paid a part of the balance due on said first mentioned note of six hundred and sixteen dollars, but left a balance of three hundred dollars due to this defendant for which this defendant retained the note of said Smith, and two notes executed by plaintiff as aforesaid each for the sum of one hundred and fifty dollars, and that when the said note of James Smith for the sum of six hundred and eighty two dollars became due and payable, default was made in the payment thereof, and John C. Vogel, trustee as aforesaid, gave notice and proceeded to sell the property so conveyed, as well to pay the balance due on the note held by this defendant as the other note for the sum of six hundred and eighty two dollars, and that at said sale, which was made on the 14th day of August, A.D. 1855, this defendant, was the highest bidder and became the purchaser of the said property, at the price and sum of $1005, and that John C. Vogel, trustee as aforesaid, executed a deed in fee simple to this defendant, conveying said property, and that out of the proceeds of said sale, were paid, first, the costs of sale and trustees charges, Second, the interest principal and costs of protest on the said two notes of James Smith to Walter Schaeffer, plaintiff at the time agreeing and consenting at the time, that said money should be appropriated, as well to the payment of the balance of the note held by him, as the other note for six hundred and eighty two dollars. This defendant further states that upon the execu-

Defts Answer

tion of the deed conveying the said property to him he delivered over the said note of six hundred and sixteen dollars, and two notes held by him executed by said Slawey, each for the sum of one hundred and fifty dollars, to said Vogel trustee &c. and that there was a full satisfaction of the indebtedness of plaintiff on said notes & that they were delivered to said Vogel, to be given to said Slawey by the consent of Slawey.

That after paying the amount due on said notes & interest, charges of trustee & costs of protest there was remaining of the $100.5, bid by this defendant & that said Slawey consented that defendant should retain the amount retained by him to satisfy the amount then still due on the note for six

Deft's Answer

hundred and sixteen dollars.

This defendant further states that on the day of sale, to wit: on the 14th day of August A.D. 1855, he the said plaintiff entered into an agreement by which it was agreed & stipulated that said Slawey, should pay to this defendant the sum of twenty five dollars each and every month for one year, the first payment, to be made on the 14th day of September, A.D. 1855, and the like sum of twenty five on the 14th day of every succeeding month for one year, at which time to wit: on the 14th day of August, A.D. 1856, said Slawey was to pay the balance of the $100.5, with interest for which this defendant was to execute a deed in fee simple conveying the real Estate described in plaintiffs petition to said Slawey.

This defendant avers that this was the only

contract, agreement, or promise in regard to the conveyance of the said property to plaintiff.

His defendant further states that plaintiff did not comply with the terms of his agreement aforesaid, but failed to make the payments as he had agreed, and forfeited all his right under said agreement, and that during the first three months, to wit: up to the 14th day of November A.D. 1855. plaintiff had paid only the sum of forty dollars, and that is the only sum that plaintiff has paid or offered to pay since that time.

Deft's Answer.

His defendant states that he has no knowledge or information sufficient to form a belief as to whether plaintiff offered to Catharine McMurray this defendant's wife, on the 14th day of August 1866. the sum of one thousand dollars, and demanded a deed, and requires strict proof thereof and avers, that even had plaintiff then had the liberty to purchase, more than $1000, was due as principal, and interest, on the $1000, which plaintiff agreed to pay.

His defendant admits that on or after the 9th day of November A.D. 1855., he conveyed said Real Estate to William L. Garrison, trustee, of Abbey Sophia Ackerman, wife of Ebenezer P. Ackerman, but denies that he conveyed the same with the intent or in order to defraud said plaintiff.

His defendant denies, that the only sum of money remaining due and for which said deed of trust was executed to said Vogel, was the said note for $682. but avers that there was still

due on a balance of three hundred dollars on the said note for six hundred and sixteen dollars, so that the balance due on the two notes mentioned, with interest, costs of protest & costs of sale was the sum of $1000. the amount bid by this defendant at trustees sale.

This defendant avers that plaintiff has described the amounts of the four notes executed by him to defendant erroneously, two of said notes being for the sum of one hundred and fifty dollars each and not for one hundred, as stated in plaintiffs petition.

Defts Answer.

Defendant states there was no sum of money due to him by plaintiff after the 14th day of August 1856, and avers that on that day there was a full settlement of the indebtedness before mentioned this defendant then giving up to said Vogel, trustee, all evidences of indebtedness held against said plaintiff to be delivered to said plaintiff.

This defendant denies that said lot and improvements, at the time he purchased the same were worth the sum of two thousand dollars and avers that they were worth only the sum of $1000.

Defendant denies that plaintiff had made any engagement or arrangement with Charles Peck, by which said Peck was to pay of the balance due on the notes for which said deed of trust was given to secure, but that the arrangement which plaintiff sought to enter into with said Peck was intended to defraud this defendant out of the balance due on the note held by him as aforesaid.

This defendant denies that he purchased said

property, or pretended to purchase it, to secure it to plaintiff, and denies that he held it in capacity of trustee for plaintiff, but that his sole reason for purchasing it was to secure the amount due to him on said note, there being no other person at said sale, who bid so great an amount as this defendant, and that he, this defendant never pretended to purchase it for any other reason than to secure himself.

Defts

Answer

This defendant denies that plaintiff is entitled to any of the remedies, Judgments, orders or decrees that he seeks and denies that he owes plaintiff any sum whatever, and denies that he is accountable to plaintiff in the premises in any manner, whatever and avers, that plaintiff forfeited all rights under said contract before mentioned, & he therefore asks for Judgment & for his costs expended in the the defence of this action.

Irwin G Smith.
Attz for defendant
McMurray.

State of Missouri }
County of St. Louis } ss. William A. McMurray.

the above named defendant being duly sworn upon his oath says he believes the foregoing Answer and the matters therein as stated are true.

Wm A. McMurray.

Sworn to and Subscribed before me this 17th day of October. A. D. 1856.

Thomas J. Denley.
Justice of the peace.

And afterwards the following further proceedings were had in this cause, to wit.
October Term 1856.

Wednesday November 19th 1856.

Ans. of Ebenezer & Sophia Abby filed

John Slowey
vs
William A. Mc Murray, et. al. } Answer of Ebenezer, and Sophia Abby. Ackerman, filed.

Which Answer is in the words and figures as follows, to wit:

Deft Ackermans answer

John Slowey, plaintiff
vs.
William A. Mc Murray, et. al. defendants } In the St. Louis Land Court. October Term 1856. No. 109.

The joint & several answer of Ebenezer P. Ackerman, Abby Sophia Ackerman & William C. Garrison, three of the Defendants in the above entitled cause,
These defendants for Answer, say, that on the Seventh day of November 1855, the said Abby Sophia Ackerman, purchased of said William A. Mc Murray, the real Estate described in the said plaintiffs petition, at & for the price & sum of eleven hundred Dollars, which said sums was paid in cash to the said Mc Murray on the day & year last aforesaid & on said day the said Mc Murray, Catharine L. his wife, by deed, containing the words, grant bargain, & sell & also a general warranty, conveyed

the said real estate unto the said William C. Jamison, as trustee for the sole, separate and exclusive use & benefit of the said Abby Sophia Ackerman, which said deed is dated Nov 7. 1855. & recorded in the Recorders office of St. Louis County. in book 166. page 302.

Ackerman's Defts answer

These defendants further say, that they nor any one of them, nor either of them knew of any agreement between the said Mc Murray, & said plaintiff relative or concerning the said real Estate aft or before the said purchase, or when the said purchase money was paid & the execution of said deed as aforesaid, to the said Abby Sophia, Ackermans trustee as aforesaid that the said purchase was made in good faith & bona fide and without any knowledge by these defendants or any one of them, of any equity of said plaintiffs in and to the said real Estate, and that they are innocent purchasers for a value considerations as aforesaid - they deny that the said deed to said Abby Sophia Ackerman, as trustee, was made to prevent said plaintiff from acquiring title to said real Estate, in pursuance of any agreement between said plaintiff & said Mc Murray, & these defendants deny that said plaintiff is entitled to any relief against them or any one of them, wherefore they asks for Judgment and also for their costs in this behalf expended &c &c.

Blair & Jamison,
Attys. for said Defts.

Ebenezer P. Ackerman, & Abby Sophia Acker-

man, makes oath and say that they believe the foregoing Answer, and the matters & things therein as stated are true.

Sworn to and Subscribed before me this 19th day of November 1856.
C. A. McAuly. Clk

E. P. Ackerman.
Abby S. Ackerman.

And afterwards the following further proceedings were had in this cause, to wit:
October Term 1856.

Wednesday January 14th 1857.

John Slovey.
vs
William A McMurray.
Ebenezer P. Ackerman.
Abby Sophia Ackerman.
and William C. Jamison.

Cause sub, placed on Law Docket

Now at this day comes said plaintiff John Slovey, by his attorney and also come said defendants William A. McMurray, Ebenezer P. Ackerman, Abby Sophia Ackerman, and William C. Jamison, who are also represented by attorney no Jury being required, this cause is submitted to the Court upon the petition, answers, and evidence and the Court having heard and not being fully advised of and concerning the premises, by consent of counsel it is ordered by the Court that this cause be placed on the Law Docket. Exhibit filed.

And afterwards the following further proceedings were had in this cause to wit:

Saturday January 31st 1857

John Slowey.
vs
William A. Mc Murray.
Ebenezer P. Ackerman.
Abby Sophia Ackerman
and William C. Jamison.

Judgment.

Judgment.

And now again at this day come said plaintiff John Slowey and said defendants William A. Mc Murray, Ebenezer P. Ackerman, Abby Sophia Ackerman, and William C. Jamison, by their respective attorneys, and the Court having heard and being fully advised of and concerning the premises, doth find the issues herein joined in favor of the defendants. Wherefore it is considered by the Court that the plaintiff take nothing by his said suit, but that the defendants go hence without day, and recover of said plaintiff their costs and charges herein expended and have execution therefor.

And afterwards the following further proceeding were had in this cause, to wit:
October Term 1856.

Monday February 2nd 1857.

John Slowey.
vs
William A. Mc Murray, et al. } Motion for a New Trial filed.

Which Motion is in the words and figures as follows, to wit:

Slowey, Plff.
vs.
Mc Murray et al. deft. } In the Land Court of St. Louis County.

The deft moves the Court to

Mo for New Trial

set aside the verdict in this cause and grant a new trial for the following reasons.

1. The verdict is against the weight of evidence and contrary to all the evidence and without evidence to support it.

2. The verdict is against the rules of law and equity.

3. The court gave a wrong instruction for the defendants.

4. The court refused proper instructions asked by the plaintiff.

Weingate & Glover & Richardson. for the peff.

And afterwards the following further proceedings were had in this cause. to wit:
October Term 1856.

Monday February 9th 1856.

John Slower,
vs.
William A. McMurray,
Ebenezer P. Ackerman,
Abby Sophia Ackerman,
and William C. Jamison,

Now at this day come said parties by their respective attorneys, and submit to the court the motion and reasons, hereinbefore filed, for a New Trial, and the court having heard, and being fully advised of and concerning the premises, doth order and adjudge that said motion be overruled.

And afterwards the following further proceedings were had in this cause. to wit:
October Term. 1856.

Saturday February. 14th 1857.

John Slavey.
vs
William A. Mc Murray. } Bill of Exceptions filed.
and others.

Which Bill of Exceptions is in the word and figures as follows. to wit:

Bill of Exceptions

In the St. Louis Land Court. of St. Louis County. October Term 1856.

John Slavey. Plaintiff
vs
William A. Mc Murray.
Ebenezer P. Ackerman.
Abby Sophia Ackerman. and
William C. Jamison. defendants

Be it remembered that on the Trial of the above styled cause. the plaintiff read in evidence the deposition of John Herring which was, as follows.

Notice to take depositions.

In the St. Louis Land Court. of St. Louis County. October Term. A.D. 1856.

John Slavey. plaintiff.
Against
William A. Mc Murray.
Ebenezer P. Ackerman.
Abby Sophia Ackerman.
William C. Jamison. defendants

To William A Mc Murray. Ebenezer. P. Ackerman. Abby Sophia Ackerman, and William C. Jamison.

You are hereby notified that depositions of Witnesses to be read in evidence in the above entitled cause, on the part of the plaintiff will be taken at the Office of Joseph L. Stephens, a Notary Public in the Town of Booneville in the County of Cooper, and State of Missouri on the 22d day of December A.D. 1856. between the hours of eight o'clock in the forenoon and six o'clock, in the afternoon, and the taking of said depositions if not completed on that day will be continued from day to day at the same place, and between the same hours till completed.

John Slavey.
by R. H. Wingate
his Atty.

Sheriffs Return.

Executed this notice in the County of St. Louis on the 9th day of December 1856. by delivering true copies of the same to the within named to Wm A. McMurray. E. P. Ackerman, Sophia Ackerman and Wm C. Jamison.

James Castello, Sheriff.
by Ed J. Castello, Deply.

fee $2.00
Paid by R. H. Wingate. Atty.

Depositions of J. H. Kenning

John. H. Kenning. of Lawful age. being produced sworn and examined on the part of the Plaintiff. deposeth and saith: I reside in the city of Boonville. in Missouri - I resided in the city of St. Louis. and practiced law there from the summer of 1852. to the fall of 1855. I Know the plaintiff and William A. McMurray, one of the defendants. The plaintiff Slavey was a client of mine.

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I know that sometime in the summer of 1853 the plaintiff purchased of James Smith and wife the land in question. At the time that Smith sold the land in question to plaintiff, he (Smith) had not made all the payments upon it, and a loan was negotiated, through Vogel, with Schaeffer for an amount suffi-cient to meet the sum due on the land, at the time Smith, sold to plaintiff.- Schaeffer was secured by deed of trust upon the land and the understanding between all parties was that plain-tiff was to take the land and lift Schaffer's claims as they shared mature. Walter Schaf-fer, was the man who loaned the money, and and John L. Vogel, was the trustee. The notes were respectively for six hundred and sixteen dollars, due at twelve months, and six hundred and eighty two dollars, due at twenty four months, to the best of my recollection an when the first note to Schaffer became, due, Slavey (if I recollect rightly) lacked a good deal of having money enough to meet it and was forced to borrow money, which he did, from Dr William A. Mc Murray, amounting in all, I believe to three hundred dollars, for six months. A portion of this money was paid back by plain-tiff to Dr Mc Murray, but how much, I am unable accurately to State, my impression how-ever is that Slavey had paid Dr Mc Murray back, the major portion of the money borrowed from him prior to the sale by the trustee Vogel- Afterwards sometime in the summer of 1855, the last note to Schaffer, became due and Slavey.

was unable to meet it - He again had recourse to Dr McMurray, both personally and through myself, and there was an understanding between Slowey and McMurray, that the latter was to attend at the trustee's sale and bid the land in, in his (McMurray's) own name, and hold the same, subject to the payment by Slowey to him of the balance of the borrowed money, and the amount of the last note to Schaffer, within a certain time, I think, twelve months; in which case McMurray was to convey the land to Slowey. The land described in the petition is the same land which was conveyed by Smith and wife to Slowey, and which was afterwards sold by Vogel under deed of trust, to secure Schaffer's debt - It was a valuable piece of property, and was worth in the estimation of judges of real estate, thrice the money that McMurray paid for it - My knowledge of the facts in relation to this property was gathered from the parties to the transaction, while acting as attorney and conveyancer for Smith, and wife, and Slowey, and in conversation with McMurray while acting as agent for Slowey.

John H. Kenning.

Sworn and Subscribed to before me and in my presence on the day & the place and within the hours in that behalf aforesaid.

Joseph L. Stevens.
Notary Public.

Edwards H. Gibson, witness for plaintiff testified: That he was acquainted with the

Testimony of C. Gibson

plaintiff and defendant William A. McMurray. That he went to the sale, made by John C. Vogel, under the Deed of Trust, at the request of Slavey and Peck;- Saw McMurray there who stated the amount due to him from Slavey. I went there to stop the sale- if I could- I do not recollect on what grounds- But I thought there was a flaw somewhere. When I got there I found that some arrangement was made by which McMurray was to buy the property and was to let Slavey have it upon repayment within a time agreed upon, of the money due from Slavey to McMurray. and the amount paid by McMurray to Schaffer's Trustee- Have no recollection of the particulars of the arrangement. I only went there to stop the sale, if I could, and when I found an arrangement had been made, I left. I think interest was to be paid on the amount due from Slavey to McMurray.

On his Cross Examination he said. "He understood that the money was to be paid by instalments; all that I know is that McMurray said how he would take it and Slavey seemed to agree to it. Cannot recollect the amount or when to be paid.

Charles Peck,- said that Slavey wanted to borrow money from him to pay up the notes, which he could not lend to him & took him to Gibson for legal advice- Gibson thought he could stop the sale for some informality; afterwards I furnished Slavey with $1000. in gold, and went with him to McMurray's house:- a lady came to the door- said McMurray was

not there - that she was Mc Murray's wife - Slowey told her that he came to pay what he owed Mc Murray, and would pay all he owed if he could get deed of property - he offered to pay all that was due Mc Murray - property was well worth $1600 - value of building $1000 ground $25 - per foot.

Slottery = witness for Plaintiff:-
Testified that he knew pltff. and the defendant Ackerman, and his wife, and Mc Murray; and in November 1855 - Ackerman, and his wife lived near witness: the property in dispute was near where witness at that time resided: was at that time acquainted with the property and had known it for some time previous: the property is now worth $2250.00 ground $22. per foot; house $1000.00, well and stable $150.00: understood Slowey paid $1600.00 for the property in November 1853. the property was worth $2,000.00; in August and November of 1855. Slowey lived in the house in August and November (and sometime there after) of 1855. and the defendants Ackerman's lived on the lot adjoining the property in dispute while Slowey lived, there in 1855.

John Hart. witness for Plaintiff -
Testified, that in 1855, he lived in the property, and that in August and November 1855. it was in the possession, of Slowey; he lived there until 1856. don't know the value of the property, not acquainted with the value of property:- that Ackerman told him, that Mc Murray & wife come to his Ackerman's house, and that Mc Murray,

said to Luin, Ackerman, that Slowey's place was for sale now, that there was a contract between Luin and Slowey, about the house, but that Slowey, had not fullfilled it and he saw no prospect of his fullfilling it; said he would sell the house & name a price.

Francis M. Stephenson, witness for Plff.
Testified, that the ground in dispute was now worth $25.00 per foot, the house $1000.00 and the Stable cistern & well on the same $150.00; land in cash worth $22. to $23 per foot and that in August and November 1855. the improvements were worth more than they are now, and that at that time the ground was worth $20 to $21.00 per foot.

Cawell, witness for plaintiff.
Testified that Slowey was in possession of the property in dispute in Oct. 1855. and after that, but couldent say how long; and that about the time Ackerman, went into possession of the property Plff was put in jail: that he, witness, was acquainted with the property; lived in the same vicinity; that in August & November of 1855. the property was worth $2.000.00.

Plaintiff introduced and read in evidence the following Exhibits.

1st. A deed from James Smith & wife to Slowey, dated July, 19th 1853.

2nd A deed of trust of Smith & wife to John C. Vogel, as trustee, for the use of Wm Alter Schaffer, dated, July 19th 1853.

3. A deed from John C. Vogel, as trustee to William A. Mc Murray - dated August 16th 1853 -

4th A deed from Mc Murray, & wife to William C. Jamison, trustee, for Abby Sophia Ackerman, dated 7th November 1855.

Deed from Smith wife to Slavey.

This Deed, made and entered into this 19th day of July, eighteen hundred and fifty three by and between James Smith, and Mary Ann Smith, his wife, of the City & County of St. Louis, and State of Missouri, parties of the first part, and John Slavey, of said City County and State, party of the second part, Witnesseth, That the said parties of the first part, in consideration of the sum of Five Hundred dollars, to them paid by the said party of the second part, the receipt of which is hereby acknowledged, do- by these presents, grant, bargain & sell, convey & confirm, unto the said party of the second part, his heirs and assigns forever, a certain piece of ground situated in said County of St. Louis, containing fifty feet in front by one hundred and fifty feet in depth, Bounded, North by Owners unknown, East by Rene Paul, South by Cozens street, and West by Rene Paul, The above lot of ground to be measured as follows, Beginning at a point on the North edge of Cozens street, exactly one hundred & seventy five feet from the western edge of a prolonged line of Coote street, Northward and extending Northwardly parallel with said line, One hundred and fifty feet, thence westwardly fifty feet, thence Southwardly one hundred and fifty feet to Cozens street fifty feet, eastwardly along the North Edge of Cozens street, to the point of beginning accor-

ding to the plan & Survey, made by Coote & Cozens, in 1845, a copy of which plan is filed with the Recorder for the County of St. Louis and another is filed with the Engineer of the City. To have, and to hold the same, together with all the rights, immunities, privileges and appurtenances to the same belonging, unto the said party of the Second part, and to his heirs and assigns forever; the said parties of the first part hereby covenanting that they, their heirs, executors, and administrators, shall and will Warrant and Defend, the title to the premises to the said party, of the second part and to his heirs and assigns forever, against the lawful claims of all persons whomsoever, claiming or to claim the same.

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

Executed in presence of:

James Smith (Seal)
Mary Ann Smith (Seal)

State of Missouri }
County of St. Louis } S.S.

Be it remembered, that on this 19th day of July, A.D. eighteen hundred and fifty three, before me, the undersigned a Notary Public of said County and State came James Smith, and Mary Ann, his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing, as parties thereto and they acknowledged the same to be their act and deed, for the purposes

therein mentioned. And the said Mary Ann being by me first made acquainted with the contents of said instrument of writing acknowledged on an examination apart from her said husband that she executed the same and relinquishes her dower in the real Estate therein mentioned truely, fully, and without compulsion or undue influence of her said husband.

Seal

Taken and certified this 19th. day of July 1853.

John H. Herring.
Notary Public.

State of Missouri }
St. Louis County } s.s. I the undersigned Recorder for said County certify that the foregoing Deed was filed for record in my office July 20th 1853. & is truely recorded in Book S 6 p. 255.

Seal

Witness my hand and official Seal the date aforesaid.

S. D. Barlow. Recorder.

(The Deed of Smith & wife To Walter Schaeffer trustee is in the words and figures as follows to wit)

Deed of Smith wife to Schaeffer trustee

This Deed made and entered into this Nineteenth day of July. Eighteen hundred and fifty three by and between James Smith, and Mary Ann, his wife, of the County and City of St. Louis, State of Missouri, party of the first part, and John C. Vogel of said City County and State party of the Second part and Walter Schaeffer, of said City County and

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State part of the third part. Witnesseth that the said parties of the first part in consideration of the debt and trust hereinafter mentioned and created and of the sum of one Dollar to them paid by the said parties of the Second part the receipt of which is hereby acknowledged do by these presents grant, bargain & sell, convey & confirm unto the said party of the Second part his heirs and assigns forever. a certain piece of ground situated in said County of St. Louis. containing fifty feet in front by one hundred and fifty feet in depth bounded North by owners unknown East by Rene Paul. South by Cozens street. and West by Rene Paul, the above lot of ground to be measured as follows, beginning at a point on the North edge of Cozens street exactly one hundred and Seventy five feet. from the western edge of a prolonged line of Coote street, Northward and extending Northwardly parallel with said line one hundred & fifty feet. thence Westwardly fifty feet thence Southwardly one hundred & fifty feet to Cozens street. thence fifty feet eastwardly along the North edge of Cozens street to the point of beginning according to the plan and Survey, made by Coote and Cozens, in 1845. a copy of which plan is filed with the Recorder for the County of St. Louis and another is filed with the Engineer of the City. To Have and to hold the same together with the appurtenances to the said party of the Second part. and to his heirs and assigns forever. In Trust however for the following purpose: Whereas. James Smith. one of the parties of the first part has this day executed and delivered unto Walter Schaefer. his two negotiable promissory notes of even date herewith one for the sum of six hundred and sixteen dollars. due twelve months

after the date thereof, and the other for six hundred and eighty two dollars, due twenty four months after the date thereof; Now if when the said promissory notes executed and delivered as aforesaid shall become respectively due and payable the said Smith, the maker thereof shall well and truly pay and discharge the same according to the tenor and effect thereof then this Deed shall be vird and the property hereinbefore conveyed shall be released at the cost of the said parties, of the first part, but if when the said Notes executed as aforesaid shall become due and payable the said Smith shall fail and neglect to pay and discharge the same according to the tenor and effect then this Deed shall remain in force, and the said party of the second part or in case of his death absence or refusal to act the Sheriff of St. Louis County may proceed to sell the property hereinbefore described or any part thereof at public vendue, to the highest bidder at the North front door of the Court House in said City for cash first giving twenty days public notice of the time terms and place of said Sale and of the property to be sold by advertisement in some newspaper printed in the City of St. Louis and upon such sale shall execute and deliver a deed in fee simple of the property sold to the purchaser or purchasers thereof and receive the proceeds of said Sale, out of which he shall pay, first the Costs and expenses of this trust and next the amount of said notes or so much thereof as shall remain due & unpaid and the Remainder if any shall be paid to the said parties of the first part or to their legal Representatives and the said party of the second part covenant faithfully to perform and fulfill the

trust herein created.

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

James Smith (Seal)
Mary Ann Smith (Seal)
Executed in presence of John C. Vogel. (Seal)

State of Missouri
County of St. Louis } S.S. Be it remembered that on this Nineteenth day of July eighteen hundred and fifty three before me the undersigned, a Notary Public of said County and State came James Smith, and Mary Ann, his wife, and John C. Vogel, who are personally known to me to be the same persons whose names are subscribed to the foregoing Instrument of writing as parties thereto, and severally acknowledged the same to be their act and deed for the purposes therein mentioned and the said Mary Ann, being by me first made acquainted with the contents of said Instrument of writing acknowledged on an examination apart from her said husband, that she executed the same and relinquished her dower in the Real Estate therein mentioned freely and without compulsion or undue influence of her said husband.

(Seal) Taken and certified this 19th day of July 1853.

John H. Hoening,
Notary Public.

Filed & Recorded. July 19th. 1853.
S. D. Barlow. Recorder.

State of Missouri }
County of St. Louis } ss. I, the undersigned Recorder for said County certify that the foregoing is a true copy of an Instrument of writing executed by James Smith & wife, to Walter Schaefer's tr & of the certificate of acknowledgement as also of the date of filing & recording thereof, as fully as the same remains of Record in my office in book R. No 6 page 306.

Seal

Witness my hand & official Seal this the 1st day of September 1856.

C. Keemle Recorder.
By Benj B. Hicks Dep.

The Deed of John C. Vogel, trustee to William A. McMurray is in the words and figures as follows, to wit:

Deed of Vogel trustee to McMurray

Whereas, James Smith, and Mary Ann his wife by their deed of Trust bearing date July the Nineteenth Eighteen hundred and fifty three, did convey unto the undersigned trustee of Walter Schaeffer, a certain piece or parcel of land with the appurtenances lying and being in the County of St. Louis, and State of Missouri, and bounded and described as follows to wit: A certain piece of ground situated in the said County of Saint Louis containing fifty feet in front by one hundred and fifty feet in depth bounded North by owners unknown East by Rene Paul, South by Cozens street, and West by Rene Paul, the above lot of ground to be measured as follows: Beginning at a point on the North edge of Cozens street exactly one hundred and Seventy five feet from the western edge

of a prolonged line of Coote street, Northwardly and extending Northwardly and parallel with said line one hundred and fifty feet, thence westwardly fifty - thence Southwardly one hundred and fifty - to Bozens street, thence fifty feet, Eastwardly along the North edge of Bozens street, to the point of beginning according to the plan and Survey made by Coote and Bozens in 1845, a copy of which is on file in the Recorders office of St. Louis County, and another filed with the Engineer of the City. In Trust among other things that if said James Smith, should fail and neglect to pay and discharge the amount of two negotiable promissory notes of even date with said Deed and therein described when they should respectively become due and payable to said Walter Schaefer, then it should and might be lawful for the undersigned and he was fully authorized the time of payment being fully expired and twenty days previous public notice being given by advertisement in some news paper printed in the City of St. Louis of the time place and terms of sale and of the property to be sold, to sell for cash at public vendue at the North front door of the Court House, in said City of St. Louis, to the highest Bidder the piece of ground and appurtenances, herein before described and out of the proceeds of such sale, which the undersigned was authorized to perfect after deducting therefrom the expenses and charges attending the execution of said deed of trust to pay to said Walter Schaefer, the amount of said notes or so much thereof as should remain due and unpaid by reason of the premises and the balance if any to be paid to said James Smith, and wife or to their legal Representatives, which said negotiable promissory notes were

executed by said James Smith, to said Walter Schaefer, one of which was for six hundred and sixteen dollars, payable twelve months after date and the other for six hundred and eighty two dollars payable twenty four months after date, all of which will more fully appear by reference to said Deed of Trust duly recorded in the Recorders office of St. Louis county in Book R. No 6 page 306. and said negotiable promissory notes having both become due and remaining unpaid and the said John C. Vogel, the undersigned, having given at least twenty day previous notice in the "Missouri Democrat" one of the newspapers printed in the City of Saint Louis, of the time and place of sale and of the ~~terms~~ and property to be sold as will more fully appear by reference to the copy of said advertisement hereto attached together with the proof of the publication thereof did on the fourteenth day of August 1855. between the hours of ten O'clock, A.M. and five O'clock P.M. at the North front door of the court house in said City of St. Louis, sell for cash at public Vendue the above described piece of ground and the appurtenances to William Mc Murray, who was then and there the highest bidder therefor at the price of One Thousand and five dollars. and therefore in consideration of the premises and of the sum of one Thousand and five dollars paid to the undersigned by said William Mc Murray, the receipt of which is hereby acknowledge the undersigned hereby bargains, sells, carveys and confirms unto said William Mc Murray his heirs and assigns all such right, title, interest claim and Estate of in and to the above described piece of ground with the appurtenances which under and by virtue of

said deed of trust advertisement and sale I can bargain sell and convey.

In witness whereof I have hereunto set my hand and seal this - day of August Eighteen hundred and fifty five.

John C. Vogel (Seal)

Signed sealed and delivered in presence of
Aug W. Lewis.

State of Missouri }
County of St. Louis } S.S. Be it remembered that on this sixteenth day of August A.D. Eighteen hundred and fifty five before me the undersigned a Justice of the Peace within and for the County aforesaid came John C. Vogel, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing as party thereto and acknowledged the same to be his act and deed for the purposes therein mentioned.

Taken and certified by me the day and year last aforesaid.

Jeremiah Langton. J.P.

Trustee's Sale, Whereas James Smith and Mary Ann, his wife, by deed dated 19th July 1853 recorded in the Recorders office of St. Louis County in Book R. No 6. page 506, conveyed to the undersigned certain Real Estate therein described, to wit: A certain piece of ground situated in the said County of St. Louis containing fifty feet in front by one hundred and fifty feet in depth bounded North by owners unknown east by Rene Paul, South by Cozens street, and west by Rene Paul. The above lot of ground to be measured as follows, beginning at a point on the

North edge of Cozens edge of Cozens street exactly one hundred and Seventy five feet from the western edge of a prolonged line of Coote street northwardly and extending Northwardly and parallel with said line one hundred and fifty feet, thence Westwardly fifty feet, thence Southwardly one hundred and fifty feet to Cozens street, thence fifty feet, Eastwardly along the North edge of Cozens street to the point of beginning, according to the plan and Survey made by Coote and Cozens, in 1845, a copy of which is on file in the Recorders office of St. Louis County and another filed with the Engineer of the City which said Conveyance was made to secure the payment of two certain negotiable promissory notes described in said Deed one for the sum of six hundred and sixteen Dollars payable twelve months after date and the other for the sum of six hundred and eight two dollars payable twenty four months after date both executed by said James Smith in favor of Walter Schaefer, and both of which said Notes are now due and remain unpaid. Now therefore at the request of the holder of said notes. I will in accordance with the terms of said deed of trust on the 14th day of August 1855. At the North front door of the Court House, in said City of St. Louis proceed to sell at public sale the property above described to the highest bidder for cash and apply the proceeds of said Sale as directed in said Deed of trust.

John C. Vogel. trustee.

State of Missouri }
County of St. Louis } Personally appeared before the undersigned Justice of the peace within and for the County of St. Louis William

McKee, who being duly sworn, deposeth and saith that the annexed advertisement was published in the "Missouri Democrat (printed in this State, the newspaper of which he is the printer) for twenty days, the first Insertion being on the twenty fourth day of July and the last insertion on the fourteenth day of August 1855, inclusive. Printers fee 750 affidavit 25. $7.75.

Sworn to and subscribed before me this sixteenth day of August 1855.

Liberty Waite. Justice of the Peace.

Filed & Recorded August 17th 1855.

C. Keemle. Recorded.

State of Missouri }
County of St. Louis } S.S. I the undersigned Recorder for said County certify that the foregoing is a true copy of an instrument of writing executed by the trustee of James Smith to Wm McMurray & of the certificate of Acknowledgement and also of the date of filing & recording thereof as fully as the same remains of Record in my office in book No 165 page 418 & fol.

Seal

Witness my hand & official seal this the 2nd day of Sept 1856.

C. Keemle Recorder.
By Benj B. Hicks. Dep.

(The Deed from McMurray & wife, to William C. Jamison, trustee of Abby Sophia Ackerman, is in the words and figures as follows, to wit:)

This Deed made and entered into on this Seventh day of November eighteen hundred and fifty five

McMurray & wife to Garrison trustee.

by and between William A. McMurray and Catharine L. his wife, parties of the first part, William C. Garrison party of the second part & Abby Sophia Ackerman wife of Ebenezer P. Ackerman, party of the third part, all of St. Louis in the State of Missouri, witnesseth: that the said parties of the first part for & in consideration of the sum of eleven hundred dollars cash in hand paid the receipt of which is hereby acknowledged do by these presents grant bargain & sell, alien transfer convey and confirm unto the said party of the second part, the following described Real Estate to wit: a certain piece of ground situated in the County of St. Louis in said State containing fifty feet in front by one hundred & fifty feet in depth bounded North by owners unknown East by Rene Paul, South by Cozens street, & West by Rene Paul, the said lot to be surveyed as follows, Beginning at a point on the North edge of Cozens street exactly one hundred & Seventy five feet from the western edge of a prolonged line of Coote street, Northwardly and extending Northwardly and parallel with said line one hundred and fifty feet thence westwardly fifty feet thence Southwardly one hundred & fifty feet to Cozens street, thence fifty feet Eastwardly along the North edge of Cozens street, to the place beginning, according to the plan and Survey made by Coote & Cozens in 1845. a copy of which is on file in the Recorders office of said County & being the same premises acquired by said William A. McMurray of the trustee of James Smith & wife, by Deed dated August 1855, and recorded in the Recorders office of said County in book 165 page 417. To

Have and to Hold: the said premises with the appurtenances unto the said party of the second part his heirs & assigns forever. In trust however and to the express use and intent, that said premises shall be forever held for the sole separate & exclusive use benefit & behoof of said Abby Sophia Ackerman. party of the third part without any account to her said husband or to his assigns or any liability in any manner for his debts or liabilities. And in further trust. that said party of the third part shall forever have & fully enjoy the rents, profits and issues of the said premises for which her receipt & acquittances shall forever be a sufficient discharge. that said party of the second part shall always mortgage or in any other manner encumber sell and dispose of & execute and deliver said assurance and conveyances. to said premises or any part thereof or any interest or estate therein as may at any time be required by the said party of the third part her heirs or assigns and the said William A. Mc Murray covenanting that he his heirs executors and administrators will warrant and forever defend the title to the said Real Estate and every part thereof unto the said party of the second part as trustee as aforesaid his heirs and assigns against the lawful claims or claim of all and every person or persons whatsoever. and the said party of the second part covenanting that he will faithfully to do and perform the trust herein reposed in him as aforesaid.

In testimony whereof the said parties have hereto set their hands and seal_ on the day

and year first herein written.

Wm A. McMurray. (Seal)
C. L. McMurray. (Seal)

alterations made before acknowledging.

State of Missouri }
County of St. Louis } ss. Be it remembered that on this Seventh day of November eighteen hundred and fifty five, before me the undersigned a Justice of the Peace within and for the County aforesaid, came William A. Mc Murray, and Catharine L. his wife, who are both personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto and they each acknowledged the same to be their act and deed for the uses and purposes therein mentioned, and she the said Catharine L. wife of the said William A. Mc Murray, having been by me first made acquainted with the contents of a conveyance acknowledged on an Examination separate and apart from her said husband that she executed the same and relinquished her dower in the real Estate therein conveyed freely and without compulsion or undue influence of her said husband.

Taken and certified by me the day and year last aforesaid.

John C. Vogel.
Justice of the Peace.

The word "October." stricken out in the second line from the top of 1st page and the word "November" intereined over the same in lieu thereof in the original.

Filed & Recorded November 8th 1855

C. Keemle. Recorder.

49 State of Missouri }
County of St. Louis } S.S. I the undersigned Recorder for said County certify that the foregoing is a true copy of an Instrument of writing executed by Wm A. McMurray, to Ably Sophia Ackerman's tr & of the certificate of acknowledgement & also of the date of filing & Recording thereof as fully as the same remains of Record in my Office in book No 166. page 302.

Seal

Witness my hand & official seal this the 2nd day of September 1856.

C. Keemle. Recorder.
By Benj B. Hicks, Dept.

Testimony of J. C. Vogel

The plaintiff here closed his evidence and the defendants called John C. Vogel, - who testified that the amount due on the sale made by him was $1012 20/100 and testified, that Mc Murray gave up to him two notes with Slavey's name signed to them, and payable to William A. Mc Murray, each for the sum of $100.00 also a note signed by Smith & the same mentioned in the deed of trust for $616.00 and a note for $682. and that all these notes were given up to Slavey: do not remember any bidder at the sale but Mc Murray.

On Cross Examination witness testified.- that the papers were handed to him by Mc Murray at the time, he, witness made the deed to Mc Murray, in pursuance of his purchase of the property: that he does not know if Slavey was present: when Mc Murray handed him, witness, the papers; or when he witness made out the account produced by him: does not know

that Slowey made the notes ~~made the notes~~ which appears to be signed by him, but witnesses recollection is McMurray handed him the papers, as above stated; understood at the time of the sale Slowey was to get the property back, if he paid so & so, but does not recollect how he Slowey was to pay; there was something said at the sale about Slowey getting the land back, but do not recollect the conditions, made up the amount due before the Sale & added the expenses afterwards.

Doc O'Reely, as witness for the defends— Testified, that William O'Brien, the attesting witness to the two notes refered to by the witness Vogel, as being signed by the pl~~ff Slowey told him, he had paid $40.00 got for a hors he had sold. Slowey tried~~ is dead, and that his signature as attesting witness on the said notes was in the hand writing of said O'Brien, that Slowey told him witness that McMurray, purchased the place for him Slowey, and that he was to pay him McMurray, in instalments, the amount of instalments does not know all not to be paid to McMurray, in ~~one~~ year had seen the property— property dear at $15.00 per foot— in November 1855, witnesses opinion of the value of the property was $1000. or $1200.00.

On Cross Examination.

Testified, that he buried O'Brien, and that when the note first mentioned in the deed of trust became due, Slowey applied to him witness for a loan of money to assist him to pay off the same and witness took him to McMurray to get

the money and that Slavey told him that McMurray let him have the money - Slavey wanted in all $350.00 witness that day paid Slavey $100.00. Defendants here read in evidence the two notes made by pltff to McMurray, both of the same date dated the 19th day of July 1854. and each for the sum of $150.00 and drawn due six months after date.

$150.00 St. Louis July 25th 1854.

Two promissory notes

Six months after date I promise to pay to the order of Wm A. McMurray one hundred and fifty dollars for value received negotiable and payable without any defalcation or discount at the Bank of the State of Missouri

Attest. William O'Brien.

John his X mark Slavey

$150.00 St. Louis July 25th 1854.

Six months after date I promise to pay to the order of Wm A. McMurray. one hundred and fifty dollars. for value received negotiable and payable without any defalcation or discount at the Bank of the State of Missouri.

Attest William O'Brien

John his X mark Slavey

Patrick McCabe. witness for defts.

Testified. that Slavey told him. that he Slavey was to pay $25.00 per month at the end of the month. at ten per cent interest until he paid for the property. had many conversations with Slavey. about the matter. between him and McMurray. always told him Slavey he would loose the property. that he had better pay at the end of the month.

that if he did not he would lose the property. Slavey told him. he had paid $40.00 got for a hors he had sold Slavey tried to borrow from me to pay him costs of $8. I refused to loan it to him.

Cross Examined.

Never lived in Mc Murrays house - property was worth $12,000 on three years, and 3 payments.

Caldwell witness for defts.

Testified. that Slavey said he. had to pay the Dec Mc Murray $25.00 per month.

Dings witness for defts.

Testified, that he knew the property in Nov 1855 it was worth $1600.00 Examined the property at the time with a view of seeing what it was worth. as one of the examining committee. of the German association of St. Louis. Ebenezer P. Ackerman. the deft. wanted a loan of money from the association a give a deed of trust on the property this why he witness Examined the property, the association loaned him $ which was paid to Mc Murray. for the property, and William C. Jamison, and Mrs Ackerman. wife. of Ebenezer P. Ackerman. Executed a deed of trust on said property together with another lot to secure the payment to said association. of the money so loaned the defts. here read in evidence the deed refered to by the witness. which was executed ~~executed~~ by abby Sophia Ackerman, & William C. Jamison. and dated of November 1855.

(The Deed of Ackerman to to. the Citizens Mutual Saving Fund & Land association is in the words and figures as follows, to wit:)

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On Cross Examination.

Testified, that the association knew of no claim of plff to the property, at the time the deed was taken:- here the defendants closed, which was all the evidence produced upon the trial of said cause.

Whereupon the plaintiff asked of the Court the following instructions (

Slavery } Land Court. St. Louis Co
&
McMurray } Mo

(1) The plaintiff moves the Court to declare the law to be that if the purchase from Vogel by McMurray, was in pursuance of an agreement between McMurray & plaintiff whereby said McMurray, was to bid off the property in his own name. and hold the same as a security for monies which McMurray. had loaned plff and also as security for the sum bid at the sale made by said Vogel, by McMurray and that said McMurray took the deed from said Vogel, in pursuance of said agreement with plff then the effect of said deed was merely to give McMurray a lien on said property for the money so loaned and bid by McMurray and interest thereon and tho' it shall appear from the evidence in the course that plff failed to pay said monies to McMurray, according to stipulations between himself & McMurray; said McMurray could acquire thereby no greater rights to said property that he had before. That after such failure it was the right of the plaintiff to redeem said property and if McMurray without legally foreclosing such right of redemption sold and conveyed said property away

Instructions Refused

from pltff said plaintiff is entitled to recover from said McMurray the value of said right of redemption which the Court ought to fix at the defference between the value of said property and the amount owing from the plaintiff to McMurray. at the time he so sold and conveyed away said property.

(2) That on fixing the amount so due from plaintiff to McMurray. the principal sums loaned to or paid by McMurray. for plaintiff ought to be first

Refused ascertained and interest computed thereon at six per cent per annum only which principal and interest less credits computing interest thereon at the same rate will constitute said amount so due from plaintiff.

Wingate & Glover
for pltff.

And the defendants asked the Court for the following instructions

Given. A. No 1 upon the evidence in this case the plaintiff is not entitled to recover. to the giving of which the pltff by his Counsel objected. which objections the Court overruled and gave the instructions as asked for by the defts. to which ruling of the Court the pltff by his Counsel then & there excepted. And the cause having been finally submitted to the Court. the Court returned a verdict in favor of the defendants. and against the plaintiff. Whereupon the plaintiff by his attorney entered his motion for a New Trial. for the following reasons which were then and there filed. (see said motion on page 25) which motion for a New Trial, was then and there overruled by the Court. and Judgment rendered upon the

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verdict so returned by the Court against the pl'ff. To which ruling of the Court, in overruling the plaintiff motion for a New Trial, and rendering Judgment, against the plaintiff said pl'ff by his Counsel then and there in open Court excepted and prays that this his bill of Exceptions may be allowed signed & Sealed by the Court, which is now here done.

C. B. Lord.

State of Missouri }
County of St. Louis } S. S.

I, Charles A. Mantz, Clerk of the St. Louis Land Court, within and for the County aforesaid certify that the foregoing Transcript to be a true and correct copy of the Record and proceedings had in the Case of John Slowey, plaintiff, and William A McMurray, and others Defendants as fully as the same remains of Record in my Office.

In testimony whereof, I hereto set my hand and affix the Seal of our said Court at office in the City of St. Louis this Twenty Third day of February, A. D. 1857.

Charles A. Mantz, Clerk.

SEAL OF THE ST. LOUIS LAND COURT

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The State of Missouri, ss.

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

WHEREAS, In the record and proceedings in a certain cause lately pending in the Land Court held in and for the County of St. Louis

wherein John Slowey was plaintiff and William A. McMurray & others were defendants

in ~~an action of~~ a civil Action manifest error hath intervened, to the great damage of said plaintiff as by his 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 March 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 twenty fourth day of February in the year of our Lord one thousand eight hundred and fifty seven.

$1.50 paid by R. F. Wingate atty. W. S. Glanville,

CLERK.

We acknowledge service of the above writ on this 25 of February, 1857,

E. P. Ackerman
Abby S. Ackerman &
William C. Jamison
Per Cline & Jamison their atty

[signature]
Atty for W. A. McMurray

State of Missouri,
County of St. Louis, } S.S.

In obedience to the Command of the Within Writ, I, Charles A. Mantz, Clerk of the St. Louis Land Court, within and for the County of St. Louis and State aforesaid, certify the foregoing to be a true and correct transcript of the Record and Proceedings in the Case wherein John Slowey is plaintiff and William A. Mc Murray, Ebenezer T. Ackerman Abby S. Ackerman and William C. Jamison are defendants, as fully as the same remains in my Office,

In Testimony Whereof I hereto set my hand and affix the seal of the St. Louis Land Court, at office in the City of St. Louis this Twenty, fifth (25th) day of February, A.D. 1857.

Charles A. Mantz, Clk,

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March T. 1858

John Slowey, Pl. Piff

vs.

William A. McMurray and others

Df.

From the St. Louis Land Court

Wingate, Glover & Richardson for Piff

Knox & Kellog, J. Z. Smith & Cline & Jamison for Defts.

Filed 28 Febry. 1857

W. L. Hamilton [illegible]

Rec. Transcript $38.53 Pd by Wingate Co. —

57 [illegible] 92

John Slowey

vs In error

Wm A McMurray
deft

In the Supr Court
mo.
Octo T 1857

The pltff in error John Slowey comes here into the supreme court and says the judgement rendered in the court below ought to be reversed set aside and annulled and said plaintiff assigns the following as errors

1. The admitted improper testimony agst plaintiff
2. The court refused proper evidence offered for pltff
3. The court refused a proper instruction offered by pltff
4. The court gave an improper instruction asked by deft
5. The judgement was for the wrong party

Glover & Wingate
for plaintiff

37 ~~123~~

John Slowey

vs

Wm A McMurray

assignment of errors —

Glover & Wing ate — for pltff

Filed 10 Novr. 1857

Wm S. Glanville Ck

John Slowey, Plaintiff
Against
William A. McMurray et al
Defendants

In Supreme Court —

There was no indebtedness from Slowey to McMurray, after the purchase, by McMurray — Had the property been of less value than the purchase money, McMurray could not enforce payment of the balance by Slowey —

There is no proof that the Plaintiff Slowey ever promised to pay the amount paid by McMurray at the Trustees sale — The only thing that is proved, is, that McMurray promised to convey to him, provided the money was paid, but the fact that McMurray gave up the notes and all other evidences of indebtedness, proves that the debt was cancelled —

In this case the requisites of a mortgage are wanting —

The remedies are not mutual and reciprocal — McMurray was not in a situation to enforce the payment of any deficiency and he cannot therefore be held to answer as mortgagee —

He had no remedy against Slowey — as Slowey was under no obligation to him He might exercise his own pleasure as to whether he would repurchase or not — The only agreement was that if he complied with certain

terms, he would have the privilege of repurchasing. It was only a privilege and not a contract --

The court below, found that the proof did not support plaintiffs allegation that it was a mortgage and it was the only judge of the facts

See Galt vs Johnson 9 Geo 156
" 4 Kent 5 Ed. p 145 note -
" Payne vs Foster 7 N. H. p 392
" Glover vs Payne 19 Mendell 518

The failure of Storey to comply with the terms on which his privilege of repurchase was founded, was a bar to all his rights

Benj. Smith

37 ~~123~~

John Slowey
v
William A. McMurray
et al

In the Supreme
Court. October Term
A D 1857

Defendant McMurray's
Brief

[illegible]
Atty for defts
McMurray

Filed 14 Nov. 1857
W S Glarville
Ch

John Slowey, Plaintiff
Against
William A. McMurray et al
Defendant

On writ of error from the Land Court —

On the 19th day of July AD 1853, James Smith, the owner in fee simple of the lot described in plaintiffs petition executed two promissory notes, one for $616 payable in one year and one for $682 payable in two years from date, both to the order of Walter Schaefer, and to secure the payment of said notes, executed a deed of trust, conveying said lot to John C. Vogel Trustee, and on the same day, but after the execution of the deed of trust to Vogel, said Smith conveyed the said lot to plaintiff Slowey, the said lot being subject to the payment of the said notes & the deed of trust to Vogel, said Slowey agreeing to pay said notes —

When the first of said notes became due, Slowey had not the money to take it up, and made application to defendant McMurray to assist him —

McMurray received from Slowey the sum of $223 and with that sum and a balance advanced by himself, he took up the said note, holding the same as security for the amount advanced by him and as further security or evidence of indebtedness, said Slowey executed four notes to defendant McMurray, two for $150 each, one for $100 and one for $52

Each of said notes being payable in six months.

Subsequently plaintiff paid off and took

up, and took possession of the notes for $100 and $52 respectively, the balance the sum of $300 - two notes of $150 each remaining unpaid -

When the second note secured by deed of trust became due (the note for $682), default was made in the payment thereof, and the trustee in said deed of trust advertised the lot for sale, to pay off the second note and the balance still due on the first note, viz the sum of $300-

The sale under the deed of trust took place on the 14th day of August AD 1855, and said defendant McMurray, in order to secure himself, bid upon said lot at Trustees sale, the sum of $1005, the amount or nearly so, still due upon the two notes secured by deed of trust, together with the costs of trustees sale, and there being no higher bidder, the same was struck off to said ~~Vogl~~ McMurray and the said Trustee Vogl, executed a deed in fee simple, conveying said lot to defendant McMurray - at the same time said McMurray delivered up to said Trustee the two notes held by him against said Slowey, and the note of $616 secured by deed of trust on said lot to be given up to said Slowey the note for $682, not being held by defendant McMurray

At the time of the conveyance there was no indebtedness owing from said Slowey to said McMurray -

On the same day, said Slevey and said Mc Murray entered into an agreement, to the effect that Slevey was to have the liberty of repurchasing the lot in question upon the payment of $25 on the 14th day of each month, until the expiration of one year, the first payment to be made on the 14th day of September, and the like sum of $25 on the 14th day of each succeeding month, and at the end of the year a sum sufficient to make $1005 and interest — and the said McMurray promised verbally, that upon the payment of the $1005 and interest at the times and in the sums agreed upon, he would, he would convey said lot to said Slevey

After the conveyance of said lot to said defendant McMurray, he had no evidence of indebtedness against said Slevey, said indebtedness having been cancelled by the purchase of said lot by said McMurray and the delivery by him of the notes to be given up to said Slevey

Thus after having the note for $682 and interest and costs and commission of sale, the defendant by consent of plaintiff retained the balance of his bid to satisfy the note in his hands

Said Slevey failed to pay to said McMurray the installments as agreed upon, by which he forfeited all right, under the verbal promise of defendant McMurray to reconvey, and said McMurray conveyed said lot in November AD 1855 to Mrs.

Jamison, trustee for Abbe Sophia Ackerman wife of Ebenezer P. Ackerman for the sum of $1100, and in the same month, said Jamison conveyed said lot to the Trustees of the St. Louis Building and Loan Association, to secure the payment of a bond executed by said Jamison, and at the time when this suit was commenced, said bond had not been paid, nor the deed of trust satisfied—

Plaintiff then commenced his suit, alleging that defendant McMurray held the said lot under a mortgage

Wm Smith
for McMurray

John Slowey Plaintiff
Appellee
vs
William A. McMurray
Defendant
In the Supreme Court
on writ of Error to the
Court
Respondents McMurray's
statement

Wm Smith
for McMurray

Filed 14 Nov. 1857
W S Lawrence
Cl

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Slowey
vs
McMurray et al } Supreme Court

And now comes defendant McMurray and says there is no error in the judgment and proceedings of the court below as alleged by plaintiff in his assignments of error

Smith & Smith
for McMurray

87 ~~[illegible]~~

Slowey
v
McMurray et al

Defendant McMurray's pinder in error

[illegible]
Atty for McMurray —

Filed 14 Nov. 1857
W. S. Flannigan
C.P.

John Slowey
pleff in error
vs
Wm A McMurray
& al -

In the Supreme Court.
— March T 1858

Statement of the case by
S T & A D Glover
& Wingate for
Pleff in error.

Slowey filed his petition in the Sand Court St Louis to the effect that he was the owner of the premises in dispute subject to an incumbrance by deed of trust to secure two notes one for $616 and the other for $682 payable respectively 12 & 24 months from date. These notes he had assumed to pay. When the note at 12 months fell due he was not able to pay the same without borrowing $300, McMurray loaned him this amount at 2½ per centum per month. Slowey placed ~~his money~~ the whole sum thus made in McMurrays hands who was to take up the note, McMurray paid off the note took possession of it & held it as a demand against Slowey: while he also held several notes securing the loaned money. These last-named notes were payable six months from date. About the time they fell due Slowey paid McMurray

two hundred dollars.
When the note of $582 was due the
pltff was not able to pay it: but
he found a friend once more in Mc
Murray who prior to the sale verbally
agreed ~~with Slowey to purchase the~~
~~premises, let Slowey remain in possession~~
with Slowey to purchase the premises
pay the remaining incumbrance on it
Slowey to remain in possession the
purchase of Mc Murray to be for Slow
eys benefit and only as a security to
Mc Murray for what Slowey owed him
including the sum to be bid & when
Slowey should pay the amount & ten
per cent interest thereon which he was
allowed to do in 12 months Mc Mur-
ray to convey to Slowey That Mc,
Murray in pursuance of this arange
ment purchased the premises for $1005
took the trustees deed, That $40
was paid Mc Murray by Slowey in
part performance of his agreement
& said Mc Murray violated the agree
ment and sold the property to deft
Ackerman who caused it to be conveyed
deft Jamison trustee for Mr Acker
man, paying Mc Murray $1100
The premises at the time of this sale
being of the value of $2000. There
was a prayer that Mc Murray should ac
~~The deft~~ count for the value of the
equity of redemption

The deft Mc Murray answered like a money lender; but it may be conceded that he put in issue all the pltffs allegations.

The proofs on the trial tended to prove the case made by the petition.

At the close of the testimony the court instructed the jury as follows

"On the evidence in this cause the pltff can not recover"

Points & authorities for the plaintiff in error.

1- The evidence tended strongly to prove that McMurray bid off the property for Slovey & under a previous agreement with him to hold the same merely as a security for what he paid & other "monies" which he had kindly lent him at "usances" of two & a half per centum per month, that Slovey by the agreement had the right to redeem, having failed in time, McMurray sacrificed the equity of redemption by forced sale & reimbursed himself

2 We shall insist on these facts the transaction was a mortgage valid in equity between the parties. 12 Mo R p 30

1 Hoff. ch. 31

8 Paige 243
1 How 118
17 Mo 61

3 That the transaction did not cease to be a mortgage; and the property did not become McMurray's simply because Slowey did not pay the debt as by agreement

6 Gill & J 275
12 Howard 151
8 Paige 243

4 That McMurray had no right to sell the land without foreclosure

2 ~~Dev~~ Dev. Eq 234
6 Iredell Eq 39.49
1 Paige ~~[illegible]~~ 618.617

But having done so he must account for the value of plffs interest in it 1 Littell 84
~~3 Dana 595~~

5 The usurious interest paid by Clowey was a lawful credit on his debt – 3 Dana 595 –

Jno Slowey

vs

McMurray
et al – Defts

Plaintiffs state
ment points an-
thorities by S T.
& A D Glover &
Wingate –

Filed 20 March 1858
Wm S Glanville
Ck

John Slowey – P.E. } ~~Appeal~~ Error to the
Wm. A. McMurray & al } St. Louis Land Court

As the light in which this, and contracts similar to that involved in this suit is a matter of some importance and as cases of this kind are not of unusual occurrence it may be as well to look a little into this matter.

We do not well see, how the transaction between these parties can be regarded as a mortgage or quasi mortgage or how the law of mortgages is applicable to it. It may be premised, that contracts of this kind are narrowly watched and courts lean strongly in favor of the right of redemption. Chancellor Kent says, that the distinction between a mortgage and a bill of sale, is, that if the relation of debtor ~~&~~ and creditor remains, and a debt still subsists, it is a mortgage; but if the debt is extinguished by the agreement of the parties, or the money advanced was not by way of loan & the grantor has the privilege of repurchasing if he pleases by a given time & thereby entitling himself to a reconveyance it is a conditional sale. 4 Kent. 145. In the case before us, we conceive that the relation of debtor and creditor had ceased to exist between

the parties. The debt between them was extin guished: After the execution of the deed by the trustee to Mc Murray, there was no evidence of any debt due by Slowey to Mc Murray: The witness Bogel proves that he delivered all indebtedness on the part of Slow ey to ~~him~~ Mc Murray to Slowey. Mc Murray then no longer had any remedy against Slowey. No remedy existed nor was it reserved in terms. If the property had proved insufficient to pay the debt which it is maintained existed between the parties & Mc Murray had brought a suit for a foreclosure with a view to obtain the balance of his debt after exhausting the mortgaged premises, how would he have stood in a court, with the denial of Slowey that the transaction was a mortgage, backed by an absolute deed and with no evidence of any indebtedness on the part of Slowey. Can we suppose a mortgage was contempla ted under such circumstances: In the case of Brant vs Robert~~son~~son 16 Mc 146 the point of enquiry was, whether Brant held the notes of Robertson by assignment from Ford & if he did not, whether he advanced the money to Ford on payment of the notes upon any ex press undertaking of Robertson to pay the money, otherwise, than by forfeiting his in

terest in the property. Here the notes were given up to Slovey and it is not claimed in the petition that the payment & reimbursement of the money was to be made with any other view than to obtain a recovery ance. Under our law, which as it is understood allows an absolute deed to be converted into a mortgage without the averment of any ~~oth~~ accident fraud or mistake, what security for titles would there be, if such verbal promises should be maintained to ~~be~~ convert absolute deeds into mortgages? Glover vs Payne 19 Wend. 518. Robinson vs Gropsey 2 Edwards Ch. 138.

The case of Russell vs Geyer & al 4 Mc. Rep. did not arise between the ~~of~~ debtor or owner of the property sold & the purchaser. That was a bill by a creditor to subject the interest it was alleged his debtor had acquired by reason of a promise to him that he should redeem: The court held that after the expiration of the time agreed upon for the redemption there was no interest in the debtor which could be subjected to an execution. In the case of Flowers vs Sproule ~~&~~ 2 A. K. Marshall 509. it was held, that a purchaser at a sheriffs sale, promising to return the property to the debtor if the money given is repaid

by a certain day, cannot be obliged to do so, if the money is not punctually paid. It was also held that such a promise was without consideration. In the case of Getman vs. Getman 1 Barb. Ch Rp 499 real estate was sold under an execution & the purchaser at the sheriffs sale, sold his bid to two other persons, who advanced the money therefor upon an agreement between them & the wife of the judgment-debtor that her children should have six years, to refund the purchase money and interest & have a conveyance of the property; it was held that this was a mere agreement with the mother to sell the property to her children at any time within the six years for the purchase money and interest & that as there was no agreement on the part of the mother or children to take the property & pay for it within that time it was an agreement without any consideration to support it & was therefore invalid & it was held that it was an agreement, required to be in writing within the statute of frauds even if there had been sufficient consideration to support it. We do not regard the case of Dexter vs. Madeira 3 Watts & Serg 384 as conflicting with those above cited. In that case there was a mutual agreement in wri

ting signed by the parties before the sale, in which among other things, it was stipulated, that the creditor in the execution should buy & hold the land of the debtor in the execution, at the sheriffs sale and a small sum in comparison with the value of the estate was agreed upon as that at which it should be bid in. There was an unadjusted account between the parties, which was to be settled within three months & the balance due was to be paid within that time. The greater portion of the debt due on the execution was paid and a receipt for it was endorsed on the agreement. The money not having been paid within the time, the creditor claimed that the deed was absolute: the court regarded the transaction as a mortgage or deed of trust & permitted the heirs of the debtor in the execution to recover the value in money of the interest of their ancestor in the land, as it had been conveyed away by the creditor. As the sum was fixed by the parties at which the land should be bought in, as that sum was greatly below the value of the land as was shown by the debtor's payment at the time of the agreement, causing a great disparity between the value of the land & the sum for which it was sought to be held & as there was a stipulation in the agreement by the debtor to pay the balance, we can see nothing

in the case which impairs the force of those stated in this opinion.

There is another class of cases growing out of ~~purchasers & debtors~~ the conduct of debtors & purchasers at public sales. This is where, the purchaser becomes such under such a state of facts as would make it a fraud to permit him to hold on to his bargain: As if a purchaser by ~~a pr~~ means of a promise to reconvey to his debtor should induce a relaxation of the efforts on ~~the~~ his part ~~of the debtor~~ to prevent a sacrifice of his property and thereby obtain it at an under price, or if the purchaser taking advantage of that reluctance invariably manifested by those attending public sales to interfere with any arrangement a debtor makes to save his property, should create an impression that he was buying for the debtor, thereby preventing competition or by any other improper means obtains the property of a debtor at a sacrifice, such conduct would convert the purchaser into a trustee for the benefit of those who were defrauded by his conduct. Such cases go upon the ground of fraud and courts will give relief without regard to the circumstance whether the agreement was a written or a verbal one, or whether it was supported by a conside

ration or not :: Such as the cases of Rose vs Bates 12 Mo. 30. Estill vs Miller & Estill 3 Bibb 177.

The cases seem to establish these principles; that a promise by one purchasing the property of a debtor at a public sale to reconvey to him must be supported by a sufficient consideration & if the subject of the sale is real estate, the promise must be in writing to take it out of the provisions of the statute of frauds :: That such promises when made under circumstances like those in this case, even when valid & binding are regarded as conditional sales & not as mortgages & the party insisting on their performance must himself comply with the conditions imposed on him.

Making an application of these principles to the case before us, it will be seen that the contract or promise ~~if~~ made by the Murray even if binding in law constituted the transaction a conditional sale and not a mortgage: That the party plaintiff not having complied with the terms of the sale, he cannot insist on a reconveyance of the lot. That the instruction asked by the plaintiff was tantamount to a request to decide the cause in his favor and as there

was no jury, the court itself hearing the cause we are not of the opinion that the court erred in refusing the request: We are not of the opinion that the pleadings & evidence in the cause warranted any such construction. The instruction given was nothing more than the judgment of the court upon the whole case after it had been submitted. No instructions were asked seeking the opinion of the court as to the effect of any fraud in the transaction. The sum at which Mr. Murray resold the lot is a strong circumstance in this case: It is not pretended, that the sale was a feigned one.

The question of usury was not raised by the pleadings and the petition is not framed with a view to obtain any relief under the statute against usury.

As the contract to reconvey was rescinded, the plaintiff should have restored the forty dollars received under it: There is no error complained of on the score of this omission, but as the plaintiff says that he was to remain in the house & pay interest on the money, & the defendant says he was to pay $25 a month for the privilege of redeeming & remaining in the house, we may take it that the forty dollars was received as

as rent. Affirmed

J. Richardson not sitting

J Napton concurs

W. Scott

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Slowey
vs.
McMurray

Opinion

Affirmd.

Filed 24 June 1858
Wm L Glanville
Ch.

x x