Bryan, John G. v. McLean, Charles Sr. 1859 Washington 438/4

Old Box 604/3

O 59
F 59

M sayp B got deed of conveyance through fraud

LC = deed will be declared void after pymt

No opinion

map

State of Missouri } S S
Washington County } Be it Remembered that on the 14th day of January 1857 there was filed in the Office of the Clerk of the Circuit Court for said County a petition which is in the words and figures following to wit

Petition

Charles McLean Sr } In the Circuit Court of
against } Washington County Missouri
John G Bryan } April Term 1857
Plaintiff

States that some time about the year one thousand eight hundred and he engaged or employed Dr Lewis F Linn of St Genevieve Missouri and Dr James H Relfe of Caledonia Mo to procure for him the confirmation of a certain tract of land situate in Washington County Missouri and described as follows Six Hundred and forty acres of land more or less in Section Two three Ten and Eleven in Township thirty Six (36) Range three East of the fifth principal meredian it being the same tract of land that was confirmed to the plaintiff by act of Congress and known as Survey 3329 Situate lying and being on the waters of Big River in the County and State aforesaid Plaintiff further States that pending said negotiation or

Arrangement for the purpose of procuring a confirmation to said land as aforesaid the defendant in this cause practicing & in plaintiff's family who was then his family Physician & had been for many years came to plaintiff and informed him that he (the defendant) would upon himself all the trouble labor and expense of procuring a confirmation of said land and that he would make no charge against plaintiff whatever therefor Plaintiff informed Defendant of the arrangement between him self and the said Linn and Relfe and that they had agreed with plaintiff to obtain a confirmation of said land Defendant insisted upon being allowed to obtain said Confirmation stating that it should cost plaintiff nothing when plaintiff distinctly informed Defendant that if he was willing to obtain a Confirmation to said land on the terms and conditions which he (the Defendant) had offered to do it as aforesaid that he (the Plaintiff) would permit him to obtain said Confirmation but that he (the plaintiff was not able he being at this time a very poor man) nor willing to employ the Defendant on any other terms or conditions than those which the defendant had first offered to obtain said Confirmation

Plaintiff charges that defendant intended to cheat defraud and impose upon him & to extort from Plaintiff a deed to said land did obtain a confirmation of said land and afterwards taking advantage of his confidential relation as aforesaid & in consequence of which Deft has obtained an undue influence over the Plaintiff the ignorance of Plaintiff and for the purpose of extorting and imposing on him Defendant prepared a deed purporting to be for and in consideration of the sum of one thousand dollars to plaintiff and his wife in hand paid by the Defendant all of which will more fully appear by reference to a certified copy of said deed herewith filed marked A the influence which he had obtained over Pltff as aforesaid & in consequence of the extreme age and ignorance of Plaintiff and came to plaintiff and through his false and fraudulent representations did in a champertous and illegal manner induce plaintiff and his wife to sign said deed of conveyance to one half of the above described tract of land containing three hundred and twenty acres of said contrary to the agreement and understanding between Plaintiff and defendant for the procurement of said confirmation when in fact plaintiff never

4 Did recieve one cent for said land or three hundred and twenty acres save Defendants labor ~~labor~~able &c in obtaining said confirmation which Defendant agreed to do for nothing Plaintiff further charges that defendant while acting as attorney for him in obtaining said Confirmation & while in his employ as his (Plff) family Physician as aforesaid did contrary to good faith he knowing plaintiff and his wife to be aged & infirm very ignorant and illiterate persons neither able to wright or read and scarcely able to speak or understand the English Language did through deciet fraud & misrepresentations & by means of the influence which he possessed as aforesaid in consequence of Deft having long been the medical adviser of Plaintiff induce him and his wife as aforesaid to sign an instrument of writing the effect of which in reality amounted to no less than a donation of so much land to this defendant Plaintiff never having recieved any value therefor contrary to good faith Plaintiff further states that on about the 20th day of October in the year of our Lord one thousand eight hundred and fifty Defendant having prior to that time through deceit fraud and misrepresentations &c as shown in plaintiff petition obtained a deed from

Plaintiff to one half of the first described tract of land and not content with that but desiring to obtain the whole tract of land in like manner bought a few old cows and an old horse for a mere trifle and then sold them to the Plaintiff for an exorbitant price and having trumped up certain old Doctor Bills for his (the defendants) attendance on some one of plaintiffs children who at the time the Defendant attended them were over twenty one years of age and having also a Small Bill against this plaintiff for his (the Defts) attendance on him and his family as plaintiffs family Phypician aforesaid repeatedly urged upon the plaintiff for the payment of said Sums and finally plaintiff agreed to give Defendant a lien either by Mortgage or deed of trust or otherwise on the remaining three hundred and twenty acres of land which the plaintiff then owned Plaintiff desiring to keep said 320 acres for a home in his old age & not desiring to sell the Same Defendant consented to take this proposition of Plaintiff and Plaintiff States that in persuance of said understanding as he supposed Defendant come to him with an instrument of writing for his and his wifes acknowledgement which they supposed was something in the nature of a mortgage or deed of

Trust they being very ignorant neither of them able to write or read and scarcely able to speak or understand the English Language and that they signed said instrument believing it to be what they first had agreed to sign and not supposing it to be an absolute conveyance But Plaintiff charges that it was in reality an absolute conveyance in fee simple as he afterwards ascertained as will more fully appear by certified copy herewith filed marked B and that he and his wife had ignorantly and by means of the influence which Deft had over them as aforesaid & by means of the fraud which Defendant had practiced upon them signed away all their right title and interest in and to said land forever Plaintiff further charges that Defendant while employed by him as his family Physician & in whome he placed the utmost confidence did contrary to good faith and throug deceit frauds and misrepresentations procured Plaintiffs and his wife signature to an instrument of writing which they supposed to amount to no more than a lien on the remaining three hundred and twenty acres of land which plaintiff then owned being the remaining one half of the six hundred and forty acres first

Above described when in reality it was an absolute conveyance in fee simple and by taking advantage of Plaintiffs ignorance & of Deft influence as aforesaid and of Plaintiffs destitute circumstances did impose upon him contrary to law & Equity

Plaintiff prays the Court that it may be declared that the said deed of conveyance as above refered to was obtained from Plaintiff by misrepresentation and fraud in violation of good faith and ought to be delivered up to be cancelled and that the same may be delivered up accordingly and that it may be declared that the said deed ought to stand as a security only for what if any thing is really and justly due from Plaintiff to the said Defendant and that the full amount of what if any thing is due from plaintiff to the Defendant may be ascertained and that upon full payment thereof (which Plaintiff hereby offers to make) the said Deeds may be delivered up to be cancelled and that plaintiff may have such further and other relief in the matters aforesaid as the nature and circumstances of this case may require

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And to your Honor shall seem just

Perryman & Carter
Attys for Plaintiff

Charles McLean plaintiff in the above cause being duly sworn makes oath and says he believes the above petition and the matters therein as stated are true

Subscribed and sworn to before me this 14th day of January 1857
William Jenkinson
Justice of the peace

Charles McLean
his + mark

And at the April Term 1857 being the 27th day of said month the defendant filed a demurrer which is in the words and figures following to wit

Demurrer

Charles McLean Senr } In the Circuit Court
vs } of Washington County Mo
John G Bryan } April Term 1857

The defendant comes and demurs to the plaintiffs petition because it does not state facts sufficient to constitute a cause of action in this to wit

1st The petition alleges that the deed of the 4th of September 1849 filed with the petition was obtained by fraud and misrepresentation but does not specify any fraudulent acts or representations which induced plaintiff to execute the said deed

9

2nd The alligation in respect to the second deed executed by plaintiff to defendant are uncertain and ambiguous and do not show a State of facts which would authorize a Court of Equity to interfere in behalf of plaintiff

3 The alligations of the petition in regard to the injustice of defendants claims against Defendant for which the second deed is alleged to have been executed are not specific but the same are vague and uncertain Wherefore Defendant prays Judgement &c

Jno W. Noell atty
for Deft

And at the same Term being the 1st day of May 1857 the following appears of Record in said cause

Demurer sustained in part & overruled in part

Demurer sustained as to the first deed from McLean to Bryan and overruled as to balance and leave given Plaintiff to amend his petition and afterwards on the 24th of October 1857 the plaintiff filed his amended petition which is as follows to wit

Amended Petition

Charles McLean Plaintiff
against
John G Bryan Defendant

In the Circuit Court of Washington County April Term 1857

Amended petition filed by leave of Court

Plaintiff states that some time about the year one thousand Eight hundred and he employed Dr Lewis F Linn of St Genevieve Mo and Dr James C Relfe of Caledonia Mo to procure for him the confirmation of a certain tract of land situate in Washington County Missouri and described as follows to wit Six hundred and forty acres of land more or less in Section two and three ten and eleven in Township thirty Six (36) Range three (3) East of the fifth principal meredian it being the same tract of land that was confirmed to the plaintiff by act of Congress and known as Survey No 3329 situate lying & being on the waters of Big River Plaintiff further states that immediately after the said arrangement with the said Linn & Relf for the procuring of the confirmation of said land as aforesaid the defendant in this cause who was at that time and had been for many years plaintiffs regular practicing family Physician come to him and informed him that he (the defendant would take upon himself all the trouble labor and expense of procuring a confirmation of said tract of land and that he would make no charge against plaintiff whatever therefor but would do it as a

11 Gratuity plaintiff States that he informed Defendant of the arrangement between himself and the said Linn & Relfe as aforesaid but that defendant still insisted on being allowed to obtain said confirmation stating that it should cost plaintiff nothing plaintiff States that he told Defendant at the time that he was very poor & unable to pay him anything for his services Plaintiff charges that after the confirmation of said land by Congress to him that defendent intending to take advantage of and overreach plaintiff by means of the confidential relation which had & did at that time exist between plaintiff and defendant and by means of which defendant had acquired an undue influence over plaintiff & intending to take advantage of the ignorance of Plaintiff and of the confidence which plaintiff reposed in him & intending to extort and impose upon plaintiff prepared a deed purporting to be for and in consideration of the sum of one thousand dollars to plaintiff and his wife in hand paid by the defendant all of which will more fully appear by reference to a certified copy of said deed herewith filed marked "A" and come to plaintiff and through deceit

Misrepresentation by means of the influence which he had over plaintiff as aforesaid & in consequence of the ignorance of plaintiff did in a champertous and illegal manner induce plaintiff and his wife to sign said Deed of conveyance to one half of the above described tract of land containing three hundred and twenty acres contrary to good faith when in fact plaintiff never did as he avers receive one cent for said three hundred and twenty acres of land

Plaintiff states that Defendant was at that time & had been for many years his regular family Phypician that he had the utmost confidence in him and was wholly unsuspecting fully believing that defendant would not under any circumstances take any advantage of or injure him in any way whatever

Plaintiff further charges that the defendant while in his employ as his family Phypician as aforesaid did in the manner aforesaid contrary to good faith he knowing plaintiff & his wife to be very ignorant & illiterate persons neither able to read or write and scarcely able to speak or understand the English language overreach plaintiff and obtain an unconscienceable bargain of plaintiff by inducing him and his wife as

Aforesaid to sign said deed of conveyance Plaintiff further states that defendant not satisfied with having obtained the deed as aforesaid but desiring to obtain the whole tract of land in like manner induced plaintiff to purchase of him an old Gray Horse & a Cow at an exorbitant price and having trumped up certain old Doctor Bills for his (the defendants) attendance on some of plaintiffs children who were at the time defendant attended them over twenty one years of age and having also a Small Doctor Bill against plaintiff for his attendance on some of plaintiffs family as plaintiffs family physician as aforesaid repeatedly urged upon plaintiff for the payment of said sums and finally on or about the 20th day of October 1850 having first prepared a deed of conveyance come to plaintiff and induced plaintiff & his wife through deceit misrepresentation and by means of the confidential relation which existed between plaintiff and Defendant as aforesaid to sign a second deed of conveyance conveying to Defendant the remaining three hundred and twenty acres of land it being the

remaining one half of the tract first above described which conveyance as plaintiff & his wife supposed amounted to nothing more than a security for the sums of money claimed by the defendand they being very ignorant & illiterate persons neither able to read or write as aforesaid & scarcely able to speak or understand the English Language leaving plaintiff and his wife who were then very old & feeble without a house or any means of support
Plaintiff further charges that the Defendant while in his employ as his family Physician as aforesaid did contrary to good faith & through deceit misrepresentation and in violation of the confidence reposed in him as his family Physician as aforesaid overreach and obtain an unconscienceable bargain of plaintiff by inducing him and his wife to sign said instrument of writing as aforesaid conveying away the remaining undivided one half of said tract of land aforesaid a certified copy of which deed of conveyance is herewith filed marked exhibit 'B'
Plaintiff further charges that defendant did by taking advantage of his (the plaintiff) destitute circumstances and of plaintiffs

Ignorance and of the confidence which plaintiff reposed in defendant as aforesaid extort and impose upon ~~defendant as aforesaid~~ plaintiff in violation of good faith and obtained said lands of plaintiff & his wife they never having recieved anything except a mere nominal consideration for the whole tract of land aforesaid
Plaintiff therefore prays the Court that it may be declared that the said deeds of conveyance as above refered to was obtained from plaintiff by deceit misrepresentation and in violation of the trust & confidence reposed in Defendant by Plaintiff & contrary to good faith and ought to be delivered up to be cancelled and that the same may be delivered up accordingly and that it may be declared that the said Deeds ought to stand as a Security only for what if any thing is really and justly due from plaintiff to the said defendant and that the full amount of what if any thing is due from Plaintiff to the Defendant may be ascertained and that upon full payment thereof (which Plaintiff ~~which~~ hereby offers to make) the said deeds may be delivered up to be cancelled and that Plaintiff may have such further & other relief in

The matter aforesaid as the nature and circumstances of this case may require and to the Court may seem just

Perryman & Carter attys for Plaintiff

Charles W Lean Jr agent for the plaintiff in the above entitled cause being duly sworn says that he believes the above and foregoing petition and the matters therein as stated are true

Charles his + mark W Lean Jr

Sworn to before me
Oct 24th 1857
M. A Matthews Clk

And afterwards on the 27th day of October 1857 Defendant filed his answer which is in the words and figures following to wit

Defendants Answer

Charles W Lean Pltff } In the Circuit Court
against } of Washington County Mo
John G Bryan Deft } October Term 1857

And the said Defendant for answer to plaintiffs amended petition says that as to the fact therein stated that the plaintiff had in the year Eighteen hundred & employed Dr L F Linn of St Genevieve and Dr James H Relfe of Caledonia to procure for him the confirmation of the tract of

Land in the petition mentioned he Defendant has no sufficient knowledge to form a belief Defendant denies that immediately after said arrangement or at any other time he went to plaintiff and informed him that he would take upon himself all the trouble labor and expense of procuring the confirmation of said tract of land and would make no charge against plaintiff therefor and denies that he went to plaintiff and made any proposition whatever in relation to said tract or the confirmation thereof as to the fact charged that Defendant was at the time mentioned and had been for many years plaintiffs practicing family physician Defendant says that he was for many years a practicing physician in Washington County and admits that he attended to cases of sickness in the plaintiffs family during that time But utterly denies that any confidential relation existed between Plaintiff and Defendant by reason of the said facts But avers that in this Country the universal custom is that when an individual or member of his family is taken sick he send for some Physician who may be most convenient and who may

Happen to suit his fancy at the time to minister to the disease and when the case is ended all relations between the parties cease Defendant was not the family Physician of Plaintiff but when called on in his general character of Physician by the plaintiff would visit him or his family as the case might require precisely as he did with all who called upon him and when the neccity for his presence in the particular case ceased all relations ceased therewith Defendant denies that plaintiff informed him of any arrangement between plaintiff and Relfe & Linn as stated in the petition and denies that he insisted on being allowed to obtain said Confirmation that it should cost Plaintiff nothing Defendant denies that after the Confirmation of said land that he defendant by ~~any~~ means of any confidential relations which had or did exist at that time by means of which Defendant had acquired an undue influence over plaintiff prepared and obtained a deed from plaintiff & wife as stated in the petition but avers that the Deed aforesaid was fairly and honestly obtained for a good and valuable consideration without any fraud deceit or

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Misrepresentation whatever Defendant for further answer to plaintiffs petition say that as to the facts charged in plaintiffs petition in relation to the manner in which Defendant obtained the deed of the 20th October 1850 therein mentioned this Defendant denies that it was obtained for the consideration and in the manner as in the petition alleged but avers that on said 20th of October 1850 plaintiff being indebted to Defendant in the sum of Two Hundred and ninety dollars and payment thereof having been frequently requested plaintiff and wife come to this defendants house and stated that they had been unable as the desired to sell the said remaining half of said land and requested the defendant to purchase the said remaining half and receive the same in full satisfaction of the said indebtedness this defendant told the plaintiff he would prefer the money to the land but this Defendant finding no better way of collecting his debt than to take the land and as he owned adjoining land finally agreed to purchase and did purchase and receive an absolute conveyance for the same from plaintiff and wife which conveyance it was understood at the time to be an absolute

Conveyance and intended as such and not as a mortgage Defendant further avers that the price paid for said land ~~was~~ last mentioned to wit Two hundred and ninety dollars was its full value at the time of said purchase

Defendant denies all fraud and unfair dealing on his part in any of the transactions in the petition alleged but avers and is ready to prove that in all his business relations with the plaintiff and particular with reference to the tract of land mentioned in the petition this Defendant acted fairly honestly and openly and that the plaintiff in the execution of the several deeds in the petition mentioned acted with a full knowledge of all his rights in the premises and free from all control or influence of the Defendant

John G Bryan Deft By
Jno A Foell his atty

John G Bryan makes oath and says he believes the above answer and the matters therein as stated are true

John Geo Bryan

Sworn to before me
Oct 27th 1857
W A Matthews CK

And said cause was regularly continued until the May Term 1859 when the following proceeding were had to wit

Trial & Decree

Charles McLean
vs
John G Bryan } And now at this day come the plaintiff as also the defendant by their respective attorneys and proceed to the trial of this cause and after hearing the alligations of the parties the evidence offered by each and the arguments of council the court finds that some time in the month of October 1850 the plaintiff being a feeble minded man entirely incompilent to manage or transact business and reposing entire confidence in the Defendant the said Defendant taking advantage of his said weakness for a very inadequate price or consideration fraudulently procured the plaintiff to make him a deed for three hundred and twenty acres being part of Survey 3329 confirmed to the said plaintiff and that for this cause the said deed of the 20th October 1850 by which the plaintiff conveyed to the Defendant the said three hundred and twenty acres ought to be declared fraudulent and void and the title conveyed thereby to the defendant divested out of him and restored to the plaintiff upon the plaintiff paying to the defendant the amount due him and

Forming the consideration of said deed and all accruing interest thereon to this date which the court now estimates at the sum of three hundred and Seventy five $\frac{32}{100}$ dollars
Therefore it is considered and adjudged by the Court that upon the said plaintiff paying or tendering to the defendant the said sum of three hundred and Seventy five $\frac{32}{100}$ dollars with all interest which shall in the meantime fall due thereon on or before the first day of the next term of this court that he be entitled to have the said deed cancelled and declared fraudulent and void and the title conveyed thereby restored to him as fully as the same existed before the execution thereof and this cause is continued to the next term and also that the plaintiff recover of the said defendant his costs herein expended and have execution therefor
And at the same term the defendant filed his Bill of Exceptions which is as follows to wit

Defendants Bill of Exception

McLean } In Washington Circuit Court
" } May Term 1859
Bryant } Be it remembered that on the trial of this cause the plaintiff gave evidence as follows

Plffs Evidence

Peter Hughes

Peter Hughes stated he has known McLean 15 or 16 years he was said to be a Canadian

Frenchman knew but little of the English Language did not consider him competent to manage any kind of business done nothing but dress deer Skins do not mean to say he was illtually incompetent for business but he was a man hard to make out or understand Saw him in possession of an old gray Horse and an old mule which he told me he got of Doct Bryan occasionally he had a cow but no other property was very poor indolent and weak minded the land at the time McLean sold to Bryan was worth $4,00 per acre was poor

Examined Stated further that he would not have it to live on or at least the part McLean lived this part Bryan bought last on West side of Big River the same conveyed by deed of October 20th 1850 McLean was not crazy he was a man of sound mind though ignorant & uneducated

Pltffs. evidence

Barrows Evidence

Gabriel Barrow States that knows Charles McLean and Doct Bryan for a number of years he was a poor economist to make a living in 1820 was the first time he cleared any land about 3 acres his judgement was poor about business placed unlimited confidence in any person he liked had no idea of the value of property was honest himself and believed all others to be such I once bought half the tract before it was confirmed agreed to get it confirmed and give him 200 $ in a little

While he took a scare afraid I would cheat him and got his land back his friends could do almost any thing with him never lived further from McLean than six miles sometimes nearer Doct Bryan told me he had undertaken to get the claim confirmed for one half and ast the other half that he had an account against McLean & his children amounting to $300 and that when he paid him back that amount he would relinquish the lands back to him he asked me that if I did not recollect being present when the deed was executed I told him in reply that I did not he then said it was strange I was so forgetful that my name was on the deed I told him I was not there and that my name was not on the deed he further told that Firmin Desloge had offered to pay him the money but he thought he might as well make a speculation as Desloge the conversation was about two years ago McLean was not crazy or an idiot his mind was sound though he was ~~sound~~ ignorant and indolent

McQs Evidence

McLeans Evidence

Charles McLean States that Doct Bryan attended my fathers family in case of sickness dont remember of any one else attending in that capacity have seen Bryan often at the place and heard the family say he was giving medicines Bryan once attended on me but I paid him myself

Dont know of Bryan paying any money for the land Saw a horse at my fathers which he told me he got of Bryan. Bryan seemed to be a great favorite of my fathers and he had a great deal of confidence in him at the time I saw Bryan frequently about the place of my father he was the owner of one half of the land never saw him at my fathers when any body was sick heard my father say about fourteen years ago that Doctor Bryan was a great friend of his

Pltff Evidence

Jamison Evidence

John Jamison states that he has known Charles McLean about thirty years lived less than a mile from him about twenty five years never knew of any physician attending the family never saw any one there the old lady seemed to be doctor of the family his capacity intillectually for business was very dificient any man that he had confidence in could easily cheat him saw two horses and and a bow which he said he got of Doctor Bryan dont think he had any other property never saw him have as much as five dollars has been a very poor man ever since I knew him seemed to have a poor idea of the value of property was a weak minded man though he was not insane heard Bryan say it cost him one thousand dollars to get the land confirmed examined states that spoke the

English Language very bad the old lady was rather sharp. dont mean to say that he was crazy the tract of land is poor land adjoining has been entered at 75 cents per acre nearly as good as the McLean tract the old lady seemed to be afraid of physicians that their medicine would poison her children Bryans half of the tract was worth a great deal most understood that Bryan made the division and gave McLean the choice McLean would have taken the West half if it contained only one hundred acres if it covered his house or shanty and improvements

Plff. Evidence

Eatons Evidence

William Eaton states that he had known Charles McLean since 1817 lived close neighbor for ten years and never more than eight miles from him his mental capacity for business was very limited he would generally call on his friends for a advise in any business he placed great reliance in his friends thinks he would be led by his friends even against his interest dont think he could have counted much money seemed to have no idea of the value of property he traded some and in the general was always the loser the tract of land was worth five dollars per acre in 1850 McLean had but little property and seemed to be no better off in 1849 and 1850 than formerly in one of those hard years he come to my house for corn and

Had a half a dollar he Spoke english badly he knew how to hunt was idle inattentive to business and careless about gaining any information dont know his capacity in his own language the french. I coned not Speak French

Pffs Evidence

Highly's Evidence

Robert Highley States has known McBean about twenty two years lived about two miles from him for seven years he is not mentally competent to transact his own business a man he had confidence in coned lead him very far he seemed to have a very good judgement as to what men to place confidence in had but little property never coned collect any taxes of him his condition was not improved in 1849 or 1850 the whole tract at the last named date was worth about five dollars per acre he spoke once of Bryan getting his land confirmed and placed a great deal of confidence in him he had very little idea of the value of property I did not think him capable of determining whether a map was deserving of confidence dont think he knew the difference between 25 & 50 cents generally consulted with his wife who was tolerably Sharp dont think he ever had more than one horse at a time the men he would select as friends he coned be generally acquainted well with

Pltffs Evidence

Jas Highleys evidence

James Highley States he has known M Lean twenty years dont think he was calculated to do any business had a poor judgement of property could be very easily swindled Bryan told me he had bought M Leans land that he had let them have medicines a little after the sale I saw M Lean have a gray horse worth about $20 he got me in Town to buy him some tobacco that he had no money this was about one year after the sale the whole tract is worth $4 or $5 per acre

Examined I could understand him well although he spoke the language badly I have often given him money 5 cents 25 cents &c & he did not seem to know its value and would ask me what its value was he was not crazy but very ignorant

Here plaintiff closed

Defendants Evidence

Evidence of the Defendant

Misplay Evidence

B Misplay States that he knew M Lean cas called over by Doctor Bryan to interpret between him and M Lean there was a good many papers produced dont know how much M Lean owed him Defts but there was a balance due him M Lean was present I Explained to M Lean the deed in as plain a manner as I could dont remember whether it was the deed or the mortgage shown witness ~~it~~

Which he read to him & explained to McLean
it was understood at the time that McLean
was selling his undivided half of the land
dont remember anything about Bryans having
said that if he McLean could get more from
any body else they could do so they seemed
to be pretty well satisfied he was not a man
of common intelligence very ignorant
McLeans wife was present at the trade here
witness identifies the papers & notes forming
the basis settlement
Examined I am sure I explained the
mortgage to McLean one of the notes settled
was against John Fleming a Son in law
living apart from the old man I am not
certain that I explained the deed produced
the indebtedness against McLean included
the whole family Sons & Sons in law &c
as shown by the memorandum here produced
I explained to him the deed signed on that day
a man who McLean had confidence in
could easily impose on him he seemed to
have great confidence in Doctor Bryan

Deft Evidence

Flemings Evidence

John Fleming has known McLean for twenty
five years am the Son in law of McLean
heard McLean say after the sale that he had
sold to Bryan and had done well that Bryan
was a gentleman there was enough good land on

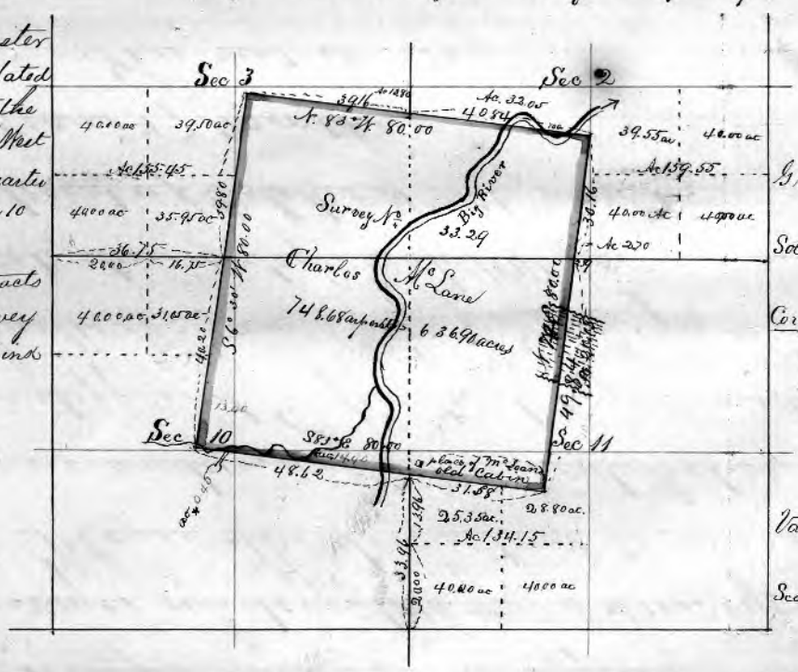
The McLean half to make a pretty good farm
McLean remained on the farm until 1856
McLean settled ten dollars for me in his sale
against my wishes I afterwards paid McLean
by building him a chimney for the amoun[illegible]d
Bryan desired me to be present at the sal[illegible]
I told him I wanted to have nothing to do w[illegible]d
it he was a man of ordinary mind but
simple uneducated and incompetent to do
business at one time heard McLean & Bryan
talking about dividing the land Bryan told
him to divide & he to take choice or he would
divide and they might take choice it was
finally agreed to that Bryan should divide
and McLean chose the half west of Big River
after 1856 McLean removed off the tract to his
sons close by Mrs McLean died in 1855 and
leaving no other members of the family with
McLean he told me that Bryan was one of
the best men he ever saw and had done
fo[illegible]r more for him than if he had been his brother
the Defendant then read a duly certified
copy of the plat of survey of the tract of
land showing the valid interferences
of entries prior to the confirmation as
follows to wit

Township No 36. North of the baseline Range No 3 East of the 5th principal Meredian

Note. From a letter of the Register of the Land office at Jackson dated October 8th 1849 it appears that the South East quarter of the South West quarter and the South East quarter of the North West quarter of Sec 10 have been sold; the acres of so much of those tracts sold as interfere with Survey No 3329 are set down in red ink on this plat

Reference

* Sold 13.40 acres
* " 14.40 "
* " 0.45 "
28.25 acres



Office of the Surveyor General St Louis February 25th 1856

The above plat of Survey No 3329 in Township 36 N. R 3 E of the 5th pl. Mdn is correctly copied from the approved plat of said Survey at page 13 of Record Book "S" in this office. The land embraced therein is in satisfaction of the claim of Charles McLane confirmed by the act of Congress of the 3d March 1849 entitled an act for the relief of Charles McLane of Missouri" to the extent of 748.68 arpents according to the former Survey of said claim in 1806 excepting such parts as had been disposed of by the US previous to the retracing in 1849 aft[illegible] lines of said former Survey which parts thus excluded are described in the note on the left margin of the plat

Jno Loughborough
Surveyor General

Harrisons Evidence

Saml Harrison States that he took the acknowledge-ment of the deed from McLean to Bryan it was in Town in Doct Bryans office B. Misplay was present Mrs McLean was present they acknowled-ged the deed in my presence Misplay explained in french I did not understand what he said to them as he spoke in french I often take the acknowledge of Deeds without reading & explaining the contents to the grantor just ask them if he acknowledge

Omara Evidence

Eugene O'Mara States that he surveyed the whole tract the part or the East side of the river was the best considerably the best that on the West side was perhaps worth $1.25 per acre in 1849 or 1850 there was plenty of land in Washington County at that time to enter at congress price the running of the Rail Road through the land since 1850 has greatly enhanced its value I surveyed the land as Deputy United States Surveyor under orders from Surveyors office at St Louis The defendant then read the memorandum of settlement between plaintiff and Defendant as follows to wit

Memorandum of Settlement

Charles McLean Dr To J. G. Bryan

1 Note due 14th day March 1840 for	54.83
Interest up. October 15th 1850 10 per cent	
10 year & 7 months	58.00
This not is Day	$112.83

1 Obligation due 4th Nov 1847 for	41.25
Interest up to 15th October 1850 at 10 per ct	12.37½
	166.32½
1 Note Due 1st May 1842 for for son Alexander	13.75
Interest up to 15th October 1850	11.62
	191.99½
1 Note Due 25th December 1842 for	2.68¾
Int up to October 15th 1850 (for son Charles	1.81
	196.49¼
1 Note Due 15th Aug 1849 for John Fleming	10.00
Interest up to 15th October 1850	1.16
	$207.65¼
1 Note due 6th May 1850 for	28.52¾
Int up to October 15th 1850	.76
	$236.93¾
Cash Lent	1.20
	$238.13¾
His Taxes for year 1850	.10
	$238.23¾
To 1 Bay Horse at	40.00
To Black Spotted Cow & Calf	10.00
	$288.23¾
Cash Lent	2.00
	$290.23¾
By a deed for 320 acres of land where he resides upon for the above debt	$290
	0000

Charles McLean Dr To I G Bryan

1 Teapot 5.75 3rd Solvent $185 To 3 yrd Jones $185 To 1 pair shoes $135 To 3 yds Flannel 135 To Bowl 138. 5 yds Sonnty 1 Cap 135 To Sugar & Coffee Total

	$16.45
	.90
	$17.35

And this was all the evidence given in the case thereupon the Defendant asked of the Court the following instructions to wit

Defendants Instructions

If the Court finds from the evidence that the plaintiff at the date of the deed of October 20th 1850 was of sound mind and that the nature of the instrument was explained to him and he executed the same with a knowledge of its provisions and that no fraudulent or false representations were made to him to induce him so to execute it then it is a valid instrument and he is not entitled to have the same set aside

Given

2 Although plaintiff may have been at the date of this deed of October 20th 1850 to Bryan an ignorant and illiterate man and the land have been worth more than Bryan gave him for it yet those facts are not sufficient to invalidate the deed or render the same fraudulent

Given

3 If plaintiff agreed with Defendant to give him one half of his claim for procuring a confirmation thereof and Defendant did procure the said confirmation and afterwards in persuance of said agreement the land was divided between plaintiff and defendant and plaintiff with a full knowledge of his rights and when of sound mind conveyed the one half of the tract to Defendant then such conveyance is valid and the plaintiff as to such conveyance is entitled to no relief

given

4th Inadequacy of consideration in the absence of fraud is not in law or equity sufficient to invalidate a conveyance of real Estate or to entitle a party to have the same set aside

4th Although the Defendant may have given the plaintiff the privilege of selling the land conveyed to Defendant by the deed of October 20th 1850 and paying defendant back the consideration money specified in the deed yet the granting of such privilege does not constitute the instrument a mortgage unless so agreed to and understood at the time it was executed

5th Before a deed absolute on its face can be construed to be a mortgage the burden of proof devolves on the party alleging the instrument to be different from what appears on its face and unless he ~~to~~ so proves it must be held to be what its terms purport it to be

But the Court did not at the time either give or refuse said instructions that it was to uniform habit of the Court to reserve the opinion on the instructions asked by the parties in cases tried by the Court until at the time of rendering its decission on the case that course was adopted on this occasion without any objections by defendants counsel at the time but after hearing the arguments of counsel entering up the following finding and decree to wit

Which is copied on page 21 and following of this transcript

Afterwards the decision of the Court and the decree rendered the Court then gave all the instructions asked by Defendant and to the opinion of the Court to give such instructions before the decree rendered and the giving them afterwards the Defendant excepted thereupon the defendant filed his motion to set aside the finding of the Court and its judgement of which motion the following is a copy to wit

Motion to set aside decree

Charles M Lane }
vs } In Washington Circuit Court
John G Bryan } May Term 1859

Defendant comes and moves the Court to set aside its finding and Decree in reference to the deed of October 20th 1850 and grant him a new trial therefor for the following reasons

1st The finding of the Court is against the evidence

2 The judgement is contrary to law and the evidence in the case

3 The Court decreed contrary to its own instructions given at defts instance

4 The Court by its decree failed and refused to reinstate the Defendant in the same position he occupied before the purchase

5 Part of the consideration paid by Defendant for the land is with held from him by the decree

6 The Court by its decree decides in effect that ignorance is sufficient to invalidate a contract unlesp it turn out to be favorable to the ignorant party

7 The Court admitted incompetent irrelevant and improper evidence on the part of plaintiff and excluded proper evidence on the part of Defts

8 The Court failed to pass upon the instructions asked by Defendant until after its decree was made when all asked by Defendant were given and thereby Defendant council were deprived of all opportunity of applying the law as laid down to the facts in evidence

9 The notes which were surrendered to plaintiff as part of the consideration of the deed of 20th October 1850 bare interest at the rate of ten per cent per annum and the Court calculated the interest at six per cent

10 The Decree is not supported by the finding of the Court

Tripell & Noell
For Defts

Which motion was overruled and Defendant excepted Thereupon Defendant filed his motion to arrest the Judgement herein which motion is as follows

Motion in arrest of Judgement

John G Bryan }
vs } In Washington Circuit Court
Charles W Lane } May Term 1859

Defendant moves the Court to arrest the judgement herein for the following reasons

1 The petition is not sufficient in law or equity to entitle the plaintiff to the relief prayed or to support the decree

2 The finding of the Court is not sufficient to support the Decree

Tripell & Noell
For Deft

Thereupon the Court made the following orders to wit

Motion for new trial overruled

Now at this day come the defendant by his attorney and filed a motion for a new trial in this cause which motion is by the Court overruled

Motion in arrest of Judgt. overruled

Now at this day come the defendant and filed a motion in arrest of Judgement in this cause which motion is by the Court overruled

Which motion is by the Court over ruled and Defendant excepted and to which Several opinions and decisions the Defendant objected and excepted at the time and now here objects and excepts and tenders here to the Court this his Bill of Exceptions which is signed Sealed and made part of the Record herein

John M. Stone (Seal)

And at the Same term being 31st day of May 1859 The following order appears of Record in said cause

Appeal granted

Appeal Bond filed and approved affidavit for appeal filed appeal prayed and granted

And thereupon the plaintiff filed a motion for a new trial which motion is as follows towit

Pltffs motion for new trial

Charles W Lane vs John G Bryan } In the Washington County Circuit Court May Term 1859

Plaintiff comes and moves the Court to set aside its finding & decree in reference to the deed of September 4th 1849 and grant him a new trial therein for the following reasons towit

1 The decree and Judgement of the Court is Contrary to law & the evidence in the case

2 The Court refused to give proper declara=tions of law asked by the plaintiff
3 The Court admitted incompetent irrelevant and improper evidence on the part of Defendant & excluded proper evidence on the part of plaintiff
4th the decree as to deed of September 4th 1849 is not justified by the evidence & pleading in the case

Perryman & Carter attys
For Plaintiff

And the Court made the following order overruling said motion

Pltffs Motion for new trial overruled

Plaintiffs motion for a new trial in this cause is by the court overruled thereupon the plaintiff filed a motion in arrest of judgement as follows to wit

Pltffs motion in arrest of judgement

Charles McLane
v
John G Bryan
} In Washington Circuit Court May Term 1859

Plaintiff comes & moves the Court to arrest the judgement herein for the following reasons
1 The judgement & decree of the Court dont give the plaintiff the relief to which he is entitled under the facts of the case
2 The Court ought to have given plaintiff a trial by jury

Perryman & Carter attys for Plaintiff

Whereupon the Court made the following order

Pltffs motion in arrest overruled appeal granted

Plaintiffs motion in arrest of judgement is by the Court over ruled thereupon the plaintiff filed his Bill of Exceptions and affidavit for appeal which appeal is granted Said Bill of Exceptions is in the words and figures following to wit

Pltffs Bill of Exceptions

Charles McLane } In the Circuit Court of
vs } Washington County
John G Bryan } May Term 1859

Be it Remembered that at the May Term of the Circuit Court 1859 both parties announcing themselves ready for trial the plaintiff demand a Jury for the trial of this cause and the Court refused to give the plaintiff a trial by Jury to which ruling & deciding of the Court in refusing to give plaintiff a Jury to try said cause plaintiff excepted and objected and thereupon the plaintiff & defendant to sustain their issue on their respective parts offered their evidence as set out in the Bill of Exceptions filed in this cause by the Defendant and that was all the evidence given in the cause Thereupon the ~~Court as~~ plaintiff asked the Court to give the following instruction (or declaration of law) to wit

Pltfs instructions or declarations 42

If the Court finds from the evidence that the at the time Defendant procured from plaintiff the deed of the 20th of October 1850 that the plaintiff was a feeble minded man entirely incapable of managing or transacting his own business and reposing entire confidence in the defendant & that the defendant took advantage of that confidence & of plaintiff said weakness in procuring said deed & procured the same for an inadequate price or consid-eration or that the defendant fraudulently procured said deed for said Three hundred and twenty acres of land described in plaintiffs petition then plaintiff is entitled to have the same set aside upon the payment of the purchase money with interest

Given

2 If the Court finds from the evidence that at the time the defendant procured the deed of the 4th September 1849 or at the time the Defendant made the contract for the procuring of said confirmation that the plaintiff was a feeble minded man entirely incapable of managing or transacting his own business and took advantage of that confidence & procured an unconscienceable bargain then the plaintiff is entitled to have said Deed set aside upon the payment of whatever amount the defendant showed he had expended in the

Refused

Procuring said confi~~rma~~tion together with the value of his services

3 If the Court finds from the evidence that at the time the Defendant procured the bargain for the confirmation of said land while the relation of Physician & patient existed then it devolves upon the Defendant to show entire fairness in the whole transaction and that his services in procuring the same are reasonably worth or equivolent to the value of the tract of land conveyed by plaintiff to Defendant by deed dated 4th September 1849 or otherwise the plaintiff is entitled to have said deed set aside also upon the payment of whatever amount Defendant may prove he expended in procuring the same & for value of his services & that the declaration of the defendant as to the cost of procuring said confirmation is no criterion as to the actual costs in procuring the same but the same must be proved "Aliunde"

Refused

4 If the Court finds from the evidence that the relation of Physician & Patient existed between plaintiff & defendant at the time of the procuring of the two deeds refered to & that the plaintiff was a feeble minded man & ignorant as alleged in plaintiffs petition then it devolves on the defendant to show entire fairness in both transactions & adequacy of consideration & if

Refused

The Said Defendant fails to show such facts then the plaintiff is entitled to have said deeds set aside upon the terms set forth in plaintiffs petition

5th If the Court finds from the evidence that the plaintiff was a weak minded & ignorant man & incapable of transacting his own busineſs & that Defendant procured said deed from plaintiff by fraudulent or false representations then the plaintiff is entitled to have said deeds set aside upon the terms aforesaid

Given

6 In a case like this the Court may presume fraud from the relations of the parties and it must not be charged & proven as in cases of actual fraud & it devolves on Defendant to show entire fairneſs in all the transactions refered to & & adequacy of Consideration

Refused

The 2. 3. 4 & 6th of which were by the court refused to the refusing of which the plaintiff excepted & objected & thereupon the plaintiff filed his motion to set aside the findings of the Court & its Judgement & decree as to the Deed of the 4th of Sept 1849

Which is copied on page 29 of this Transcript

Which motion was overruled and the plaintiff excepted & objected Thereupon Plaintiff

Filed his motion to arrest the judgement herein which is copied on page 40 of this Transcript which motion is by the Court overruled and plaintiff excepted and to which several opinions and decisions of the Court the Plaintiff objected and excepted at the time and now here objects and excepts and tenders here to the Court this his bill of exceptions which is signed seal and made part of the Record herein

John H. Stone (seal)

Thereupon the Court made the following order to wit

Pff appeal granted

The plaintiff filed his affidavit for an appeal which appeal is granted by the Court

State of Missouri } SS
Washington County } I the undersigned Clerk of the Circuit Court in and for the County aforesaid hereby certify that the foregoing forty five pages contains a true and perfect Transcript of the Record and proceedings had in the case of Charles M Lane Sr against John G Bryan as fully as the same remains of Record and on file in my office

In Testimony whereof I hereunto set my hand and affix the seal of said Court at office this 20th day of September 1859

W A. Matthews Clk

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W. A. Matthews, Clerk Cir Ct
This Transcript $24.80

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(3)

Oct 1859

Charles McLean Sr.
respondent

vs.

John G. Bryan
appellant

Appeal Washington Cr. Ct.

Filed September 30. 1859

Wm. S. Glanville

Clk

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$10.00 pd. Ct. Glanville by Dr. Jno. G. Bryan on his appeal in this cause, & not on plaintiffs appeal.

Spigt of errors by respt./ mere clerk & [illegible]/ mo. to dismiss/ stat. for deft/

Spigt. by appet./ Nulls paints/ defts. arg./

Affirmed 22 Dec. 1859 - C. p. 32.

1st deed

This deed made and concluded at the County of Washington & State of Missouri on this 4th day Sept in the year of our Lord one thousand Eight Hundred and forty nine between Charles McLane and Julia his wife of the said County of first part and John Gano Bryan of the aforesaid County of Washington & State of Missouri of Second part Witnesseth that the said party of first part Charles McLean & Julia his wife for and in consideration of the sum one thousand dollars good & lawful money of United States to them in hand paid by the said party of the Second part before the sealing & delivering of these presents the receipt whereof is hereby acknowledged have granted Bargained & Sold & by these presents they do grant bargain & Sell unto the said party of the second part his heirs & assigns a certain tract or parcel of Land situate lying and being in County of Washington & State of Missouri on the Waters of Big River it being the East half of Six hundred & forty acres of land confirmed to Sd McLean to wit S W¼ 2 T 36 N 3 E 160 acres S E qr 3 T 36 N 3 E 160 acres N E qr 10 T 36 N 3 E 160 acres N W qr T 11: 36 N 3 E 160 acres containing Six hundred and forty acres & the said

Party of the first part sells the East half of Sd confirmation to Sd I G Bryan his heirs & assigns forever & the said party of the first part for themselves their heirs executors and administrators do covenant and agree with the party of second part that they will warrant and forever defend the premises hereingranted to him the said party of the second part

In Witness Whereof the said party of the first part have hereunto set their hand and affixed their seals at the County afore Said on the day and date first above written

Witness } Charles his mark M Lane seal
Sam Harrison } Julia her mark M Lane seal

State of Missouri } S S
Washington County } Be it remembered that on this fourth day of September in the year of our Lord Eighteen hundred and forty nine before me the undersigned Clerk of the County Court within and for the County aforesaid came Charles M Lane and Julia M Lane his wife who are personally known to me to be the 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

She the Said Julia M Lane being by me first made acquainted with the contents of said conveyance acknowledged on due examination separate and apart from her husband that she executed the same and relinquishes her dower to the Real Estate therein conveyed freely and without force or undue influence of her said husband

In Testimony whereof I hereunto set my Hand and Official seal at Office in the Town of Potosi this 4th day of September 1849 Sam'l Harrison Clerk

Filed Sept 5th 1849 A. A Matthews Recr

2nd

This Deed made and Concluded at the County of Washington and State of Missouri on the 20th day of October in the year of our Lord Eighteen hundred & fifty between Charles M Lane and Julia his wife of the sd County of Washington of the first ~~part~~ and John Gano Bryan of aforesaid County & State of Missouri of Second part Witnesseth that said party of the first Charles M Lean & Julia his wife for an in consideration of the Sum of Two Hundred & ninty Dollars good & lawful money of the United States to them in

5

Hand paid by the party of the Second part before the sealing and delivering of these presents the reciept where of is hereby acknowledged have granted bargained and sold & by these presents do grant bargain and sell unto the party of the second part his heirs and assigns forever a certain tract or parcel of land Situated lying and being in the County of Washington & State of Missouri on the waters of Big River it being the West half of my Confirmation of Six hundred & forty acres of land in Sections Two & Three Ten & Eleven in Township 36 thirty Six three East of fifth principal meredian we having sold him the East half of said Confirmation on the 4th of September in the year Eighteen hundred & forty nine (1849) and our deed being on Record in said County of Washington for the Same Now we sell the remaining Three Hundred & Twenty acres be the same more or less where we now reside to the said J G Bryan his heirs & assigns forever & we the party of first part do warrant and defend the title of sd land forever unto the said party of second part In testimony where of we have hereunto set our hands & seals the day & date above written

Charles his + mark M Lane (Seal)

Julia her + mark M Lane (Seal)

Test Sam Harrison

State of Missouri }
Washington County } Be it Remembered
that on this twenty first day of October
in the year of our Lord Eighteen hundred
and fifty before me the undersigned Clerk
of the County Court within & for the County
aforesaid came Charles M. Lane and
Julia M. Lane his wife who are personally
known to me to be the persons whose name
are subscribed to the foregoing instrument
of writing as having executed the same
and they acknowledged said instrument
of writing to be their act and deed for the
purposes therein contained
She the said Julia M. Lane being by me
first made acquainted with said
instrument of writing on due 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 here
unto set my hand and
Official Seal at Office in
the Town of Potosi this 21st day
of October 1850

Sam Garrison Clerk

Filed Oct 21st 1850 W. A. Matthews Recr

A True Copy of the Original
Deed from Chas McClain to J. G. Bryan
Witness My Hand and
Official Seal at Office
this 27 day of September
A.D. 1859
W. A. Matthews
Recorder

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Charles M Lane
To } Deeds
J. G. Ryan

A Copy

Filed 30 Sept. 1859.
M L Stanville
Clk

Charles McLean Resp^t
John F. Bryan appellant

IN SUPREME COURT,
October TERM, 1859

AND now comes the said Respondent & appellant and says, that in the record and proceedings of the Court below, in the above entitled cause, there is manifest error, and for error said McLean assigns the following, to wit:

1. That said Court admitted improper and illegal testimony offered by Defendant
2. ~~That said Court rejected proper and legal testimony offered by~~
3. That the Court gave to the Jury improper and illegal instructions. asked by defendant
4. That the Court refused to give to the Jury proper and legal instructions offered by Plaintiff
5. That the verdict was against the evidence.
6. That the verdict was against law.
7. That the verdict was against both law and evidence, and against the law under the evidence.
8. That the verdict was against the weight of evidence.
9. That the judgment was rendered in favor of the Defendant for 1/2 of said tract of land in controversy when it should have been rendered for the Plaintiff for the whole of said tract
10. That said Court overruled the motion for a new trial, made by Plaintiff

" The court refused the Plaintiff a trial by jury

Wherefore for the Errors aforesaid and other Errors in said record and proceedings he prays said Judgment rendered in favor of Defendant for the one half of said tract of land in controversy may be reversed annulled and for naught held and that he may be restored in all things that he has lost by reason thereof

Perryman & Carter for McLean Resp^t & appe

And now comes the said Respondent and for joinder in error says, that there is no error in the record and proceedings of said

in said cause, as assigned by said

50

Charles McLean Respt.
vs
John G. Bryan appellant

Assignment of Errors by
Respondent on Cross
appeal

Filed 19 Oct. 1859.
Wm. S. Glanville Cl.

Charles McLean Respt } Appeal from
vs } Washington Circuit
John G. Bryan Appl } Court

Jno W Noell for Appellant John G Bryan makes the following points

1. The Judgment and decree of the Court is founded upon a finding of facts not set forth in the pleadings

2. The Evidence in the Case discloses no grounds upon which the plaintiff is entitled to any relief. It does not appear that plaintiff and defendant stood in any Confidential relations to Each other. Nor that Defendant sought or took any undue advantage of plaintiff in the purchase which the Court by its decree sets aside

3. The plaintiff is proven to be a man of Sound mind. Mere weakness of intellect is not good Cause for setting aside a sale where no undue advantage has been taken

Storys Equity 265 & following top paging as also the authorities cited

4 The motion in arrest should have been sustained The petition does not support the decree, The petition alleges the deed to be a mortgage and the Court finds it a fraudulent deed. The decree is in conflict with the instructions of the Court

5. It will be seen from the evidence that the Court did not allow the Defendant the amount he was entitled to. 1st his debts bore ten per cent interest. The Court calculated it at 6 per cent. Some of the debts which McLean took in, that were debts against other members of McLeans family were excluded by the Court on the ground that McLean was not bound for them this is error Bryan has lost his debts. notwithstanding McLean has collected at least a part of them. See Flemings evidence

6. The Plffs appeal should not be sustained nor the judgment as to the first half of the land sold by McLean to Bryan reversed. The refusal of a jury trial in such a case as this is no error. The Statute under the head of Practice settles this collateral question

7. The Court had no right to give time to pay the money. A tender in Court was necessary to entitle him to a decree.

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Charles McLean Respt

vs

John G. Bryan, appltt

Filed 27 Oct. 1855
W S Gearwell Ct

Charles McLean Respd. } In the Supreme
} Court October
John G. Bryan Appellant } Term 1859

Statement of the Case & Points by the Counsel for the Respd McLean

This was an action instituted by the Respondent and appellant McLean ~~in~~ against the appellant in the Circuit Court of Washington County the object of which was to recover certain tracts of land described in the petition which had been conveyed by the said McLean to the said appellant by two different deeds one of which bears date September the 4th 1849 the other October 20th 1850. There are two Counts in the petition. The first States in Substance; that Sometime in the year 18— the plaintiff engaged or employed Dr Sinn & Relf to procure the Confirmation to the whole tract of land in Controversy Situate in Washington County Mo. that pending the negotiations between the plaintiff & the said Sinn & Relf; the defendant in this cause; who was at that time his practising family physician came to him & offered to take the trouble & Expence of procuring a Confirmation upon himself & that he would procure the said Confirmation for nothing & that plaintiff informed him of the Arrangement between himself & the said Sinn & Relf & that he was very poor & unable to pay him any thing

~~by deceit misrepresentation and in violation of the trust & confidence reposed in deft by plaintiff &c and that they be cancelled and that they ought to stand as a security only for what if any thing was due from plaintiff to defendant & that the court ascertain that amount of any thing & that upon the full payment thereof which plaintiff avers his readiness to make the deeds be cancelled &c~~

The defendant in his answer sets up a general denial of the facts ~~in the~~ set forth in the petition. Avers that he acted in good faith in procuring the said deeds &c admits that he was for many years ~~plaintiff~~ a practicing physician in Washington County & admits that he attended to cases of sickness in the plaintiff family during that time. but denies that any confidential relation existed between plaintiff and defendant by reason of the said facts — Avers that it is the universal custom when an individual or a member of his family is taken sick to send for some physician who may be most convenient & who may happen to suit his fancy at the time to minister to the disease & when the case is ended all relations between the parties cease — Defendant denies that he was the family physician of plaintiff except when called on in his general character of physician

by the plaintiff that then he would visit plaintiff or his family as the case might be require precisely as he did with others & that when the necessity for his presence ceased all relations ceased, and derives the existance of all confidential relations between him and plaintiff. In relation to the deed of the 20th of October 1850 Dept alledges that plaintiff was indebted to him in the sum of about $290.00 and the plaintiff failing to pay said amount although repeatedly requested & being unable to pay the same. the defendant obtained said deed to meet said indebtedness

The defendant does not alledge in what manner or for what consideration he procured the deed of the 4th of September 1849 but merely alledges that it was for a good and valuable consideration

On the trial of this cause in the court below the plaintiff gave evidence in substance as follows to wit

Peter Hughes stated that he had known McLean 15 or 16 years that he was said to be a Canadian Frenchman that he knew but little of the English language did not consider him competent to manage any kind of of business did nothing but drop deer skins saw him in possession of an old gray horse & an old mule which he told me he got of

Dr Bryan he was very poor indolent & weak minded the land at the time McLean sold to Bryan was worth $4.00 per acre. Says he would not have it to lie on or at least the part McLean lived on — McLean was not crazy he was a man of sound mind though ignorant & uneducated

Gabriel Pinnow states that he had know Charles McLean & Dr Bryan for a number of years he was a poor economist to make a living in 1820 was the first time he cleared any land he cleared then about 3 acres his judgment was poor about burnings placed unlimited confidence in any person he liked had no idea of the value of property was honest & believed all others to be the same I once bought ½ the track before it was confined agreed to get it confirmed & give him 200$ in a little while he took a scare & afraid I would cheat him and got his land back his friends could almost any thing with him I were lived further from McLean than six miles sometimes near Dr Bryan told me he had undertaken to get the claim confirmed for ½ & as for the other half that he had an account against him & his children amounting to $300, & that when he paid him back that amount he would relinquish the land back to him ~~Firman Desloge had~~ Dr Bryan told me that Firman Desloge

had offered to pay him the money but he thought he might as well make a speculation as Desloge this conversation was about two years ago McLean was not crazy or an idiot his mind was sound though he was ignorant & uneducated

Charles McLean for Staty that Dr Bryan attended my fathers family in case of sickness dont remember of anyone else have seen Bryan often at the place & heard the family say he was giving medicine dont know of Bryans paying any money for the land saw a horse at my fathers which he said he got of Bryan - Bryan seemed to be a great favorite of my fathers & he had a great deal of confidence in him - at the time I saw Dr Bryan frequently about the place of my father he owned 1/2 the land, never saw him at my fathers when any body was sick, heard my father say about 14 years ago that Dr Bryan was a great friend of his

John Jamison Stated knew McLean about 30 years lived less than a mile from about 25 years never knew of any physician attending the family the old lady seemed to be doctor of the family, his capacity intellectually for business was very deficient any man that he had confidence in could easily cheat him, saw 2 horses & a cow which he said

he got of Dr Bryan dont think he have any other property never saw him have as much as fin dollars always a very poor man seem to have a very poor idea of the value of property was a weak minded man though he was not insane McLean spoke the English Language very badly, the old lady was rather sharp dont mean to say that he was crazy the tract of land is poor land has been entered adjoining it at 75 cts per ac nearly as good as the McLean tract. Bryans 1/2 of the land was worth a great deal the most understood Bryan made the division & gave McLean choice McLean would have taken the West 1/2 of it contained 100 acres if it covered his house or shanty & improvements

Wm Eaton stated have known McLean since 1817 lived close neighbor for ten years & never more than 8 miles from him, his mental capacity for business was very limited generally called on his friends for advice in any business he placed great reliance in his friends would be led by them even against his interests dont think he could have counted much money, seemed to have no idea of the value of property in his trades he was generally ~~[illegible]~~ the loser; the tract of land was worth fin dollars per acre in 1850, he spoke English

badly was idle & inattentive to business &
careless about gaining any information
dont know his capacity in his own language
the french I could not speak it
French

Robert Keighly states that his Known
McLean about 22 years lived about
2 miles from him for 7 years he is not
mentally competent to transact his own
business a man he had confidence in
could lead him very far; he seemed
to have a very good judgment as to
what men to place confidence in had
but little property his condition was
not improved in 1849 & 1850 the whole
tract of land in 1830 was worth about
fifty dollars per acre had very little idea
of property did not think him capable
of determining whether a man was deserving
of confidence; dont think he knew
the difference between 25 & 50 cts generally
consulted with his wife she was tolerably
sharp dont think he would have more
than one horse at any time

James Keighly states he had known
McLean for 20 years dont think he
calculated to do any business had
a poor judgment of of property
could be very easily swindled
Bryson told me that he had bought
McLeans land that he had let them
have mules a little after the sale

law McLean has a gray horse worth
about 30$ he got me to buy him some
tobacco he had no money this was
about one year after the sale; the whole
tract of land is worth 4$ or 5$ per
acre - Spoke English badly - I have often
given him money 25 cts & 50 cts he did not
seem to know its value would ask me

The Defendant gave Evidence in substance
as follows to wit

B Wispley states that he knew
McLean was called over by Dr Bryan
to interpret between him & McLean there
was a good many papers produced don't
know how much McLean owed
Bryan McLean has present Explained
to him the deed in as plain a manner
as I could don't remember whether it
was the deed or the mortgage shown
writing which I explained to McLean - it was
understood at the time that McLean
was selling his undivided ½ of the
land - McLean was not a man of
common intelligence very ignorant
I am sure I explained the mortgage
to McLean one of the notes sellers was
against John Fleming a son in law living
apart from the plaintiff - I am not certain
what I explained the indebtedness against
McLean included the whole family
sons & sons in law &c as shown by the
memorandum he produced. I Explained

to McLean the Deed signed on that day a man that McLean had confidence in could easily impose upon him he seemed to have great confidence in Dr Bryan

John Flemmy stated known McLean for 20 years am a son-in-law heard McLean say after the sale that he had sold to Bryan & done well that Bryan was a gentleman there was enough good land on the McLean 1/2 to a pretty good farm McLean remained on the land since 1856 - McLean was a man of ordinary mind but simple and incompetent to do business - Bryan told McLean to divide the land & he would take choice or he would divide & they might take choice - finally it was agreed that Bryan would divide the land & McLean take choice McLean told me that Bryan was one of the best men he ever ~~knew~~ saw & had done for more for him than if he had been his brother - The defendant then read a duly certified copy of the plat of survey of the tract of land showing the said interferences of entries prior to the confirmation which will be seen by reference page 31 of the transcript

It was upon this state of facts that the Court made out its finding & rendered a decree for 1/2 of said tract of land the half conveyed away by the

Plaintiff by deed dated 20th of October 1850 in favor of the plaintiff and leaving the half conveyed by plaintiff to defendant by deed dated Sept 4th 1849 mentioned as will appear by reference to pages 21 & 22 of the transcript

It is the action of the court below in refusing plaintiff a trial by jury and in admitting incompetent & irrelevant evidence & in refusing the 2nd 3rd 4th & 6th instructions asked by the plaintiff & in giving the instructions asked by the defendant and in overruling plaintiff's motion to set aside its finding and grant him a new trial that is complained of by the plaintiff & Respondent in this court

Charles McLean Resp. } to the Supreme
John [illegible] Appellant } Court Oct. Term 1859

Points by the Counsel for the Respondent

The Court Erred in admitting the Memorandum of the Settlement purporting to have been made in 1850 without some proof of the identity of said papers and the they were the same papers that formed the bases of the settlement of 1850 there was no proof to this effect we contend that the plaintiff was prejudiced thereby

We contend that the instructions asked by the defendant and given by the Court were improperly given that they do not contain the law of this case that they are inapplicable to this case under the Evidence
The 3rd instruction is not based upon any Evidence in the Case save the declarations of the defendant which are wholly incompetent to prove the facts of an agreement between plaintiff & defendant of the nature referred to in said instruction
We admit that the doctrine laid down in those instructions would be correct if the facts were applicable to them

The motion by defendant in arrest of judgment was not well taken

We hold that the facts stated in the petition were not only sufficient to warrant the finding & decree of the Court for one half of said tract of land but sufficient under the fact to warrant the Court ~~for~~ had it made the decree for the whole and in support of this point
See 1 Story's Equity paragraph 314 Billings vs Southern 10 English Law & Equity Rep. 37
Crispell vs Dubois 4 Barbour W S 393
Dent vs Bennett 4 Mylne & Craig 269

The Court Erred in refusing the 2nd 3, 4 & 6th instructions asked by the plaintiff they were property the law of this case under the testimony as will appear by reference to the above recited authorities

The Court Erred in refusing the plaintiff a trial by jury
See Rev S 1855 page 1261 Sec 12

We contend that in as much as the defendant admits that he did practice in plaintiff family & upon plaintiff by his answer that the law will presume the relation of Physician & patient ~~is presumed~~ to exist & that it was not necessary ~~that we have~~ for the plaintiff to have adduced any ~~any~~ testimony in support of that point. Although Charles McLean jr. does testify that

the defendant was the family physician of the plaintiff for many years & at the time of these several transactions. Then it having been both admitted and shown ~~that~~ by testimony that the ~~def~~ relation of Physician & patient did exist between the plaintiff and defendant, it devolves on the defendant to show entire fairness in both these transactions by affirmative testimony that is to say the "Onus probandi" is on the defendant 1 Story: Equity paragraph 218 3 Greenleaf on Evidence page 249 paragraph 253. Hence the 4th instruction asked by the plaintiff & which was enormously refused by the Court

The ~~plaintiff~~ Defendant has wholly failed to explain ~~the transaction~~ the nature of the transaction in procuring the deed of the 4th of September 1849 he has not shown anything in relation to it but simply relies on his deed as he would have done in an action at common law. Now we hold that under the alligations in the petition & the proof in this case that it devolved on him to show adequacy of consideration & fairness in procuring said conveyance. The petitions admit that the defendant procured the confirmation to said land but was his sincere

worth $1300.00 or $1600.00 which the witnesses testify that tract of land to which he obtained the deed of the 4th of Sept 1849 was worth
But it seems that the plaintiff rests himself upon his own declarations in regard to this transaction this is showing "Uberrima fides" with a "Vengance" is there no way to reach this transaction This proceeding is in the nature of a bill in Equity to set aside their several conveyances & the law is that the defendant can not introduce his deed & leave the matter at that but he must show entire fairness in the whole transaction See
1 Story's Equity paragraph 218
3 Greenleaf on Evidence page 249 paragraph 253

And again upon the point of the motion to arrest the judgment by the defendant there can be no doubt of the fact that the bill shows Equity amply sufficient to support the judgment rendered and to warrant the court in its finding even farther than it went and if the court has any doubts on this point we would refer them to 1 Story's Equity paragraph 314 & the preceding paragraphs
~~We admit that this is not~~

The Court below did not seem to understand the distinction between Case of Construction fraud and actual fraud and although this was a case of Construction fraud he seems to have treated it as one of actual fraud,

The proof as to the value of the land is conflicting and the evidence as to the amount the defendant paid for it shows an utter inadequacy of consideration as to both tracts which is certainly fatal to both the deeds and this conclusion becomes inevitable when we refer to the testimony of the witnesses. The witnesses almost with one ~~accord~~ accord state that the plaintiff was not capable of managing his own affairs that he knew nothing of the value of property did not know the difference between 25 cts and 50 cts that he was very ignorant & illiterate and that he placed implicit confidence in those whom he took to be his friends and we learn from the testimony that the plaintiff always looked upon the defendant as a reliable friend The proof is that the tract of land at the time the defendant purchased it was worth $4 or $5 per acre then at $4 per acre 640 acres would amount to $2,560 & at $5 per acre it would

amount to $3,200.00 The defendant admits ~~the~~ or rather alledges that he paid $300.00 for the half he purchased last & declines to state what he gave for the other. Now this is too monstrous to be sustained by a Court of Equity See Newland on Contracts pages 358 & 9 & the authorities there cited

The petition charges that the plaintiff never did receive one cent in money for the whole tract of land conveyed away by Deed dated Sept. 4th 1849. Notwithstanding the Deed recites a consideration of one thousand dollars in cash received by the plaintiff! The petition states that the only consideration that ever passed for said tract of land was simply the defendants services in procuring the confirmation to the whole tract & that he agreed to do that for nothing - Now how does the defendant explain this matter! he says that he paid a good and valuable consideration for said tract of land; Is this showing adequacy of consideration & fairness in the whole transaction and beside is not this false recital a circumstance against the defendant when left unexplained

Again when the defendant introduces Kirkpatrick to explain the nature of the transaction in procuring the deed of the

20th of October 1850 & to show fairness in that transaction! how does he do it? he says he explains a deed or a mortgage & he is not positive which and he says that the defendant in that settlement charged the plaintiff with the notes & accounts of his son and sons in law the whole family and in this way he made his account against the plaintiff amount up to about $290.00 Will any Court say that there was fairness in this transaction - Will let us see as to the adequacy of consideration; the witnesses say that that tract of land was worth at that time from $4.00 per acre well then 320 acres would be worth $1280.00 the defendant puts in the way above stated the sum of about $290.00 Now we ask is there any fairness in this transaction

Certainly the Respondent is entitled to the relief asked in his petition & that too just as it is asked as we have the amendment petition charges every thing that is necessary to be charged & certainly enough to make out a very strong case

D. E. Pennyman &
Wm Carter for
Respondent

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Charles McLean
Respt.

v

John G. Bryan
Appelt.

Statement &

Brief

Submitted

Jenyman & Carter

for Respondent

Filed 21 Oct. 1859

Wm. J. Glanville
Ck.

Charles McLean Respt

vs

John E Bryan appellant

IN SUPREME COURT,
Oct. TERM, 1859
appeal from
Warrington

AND now come the said appellant and says that in the record and proceedings of the Court below, in the above entitled cause, there is manifest error, and for error said appellant assigns the following, to wit:

1. That said Court admitted improper and illegal testimony offered by plaintiff
2. That said Court rejected proper and legal testimony offered by Defendant
3. That the Court gave to the Jury improper and illegal instructions.
4. That the Court refused to give to the Jury proper and legal instructions offered by Defendant.
5. That the verdict was against the evidence.
6. That the verdict was against law.
7. That the verdict was against both law and evidence, and against the law under the evidence.
8. That the verdict was against the weight of evidence.
9. That the judgment was rendered in favor of the plaintiff when it should have been rendered for the Defendant
10. That said Court overruled the motion for a new trial, made by Defendant
11. The decree and finding of facts are inconsistent with the case made in the pleadings
12. The Petition does not sustain the decree and the finding is against and contradictory to the petition

Stoell for appellant

And now comes the said Respondent McLean by his attorney and for joinder in error say, that there is no error in the record and proceedings of said Circuit Court in said cause, as assigned by said appellant Bryan,

Perryman & Carter
for Resp. McLean

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McLean
v
Bryan

Assignment of
Cons

Filed 24 Oct. 1859
W L Geoarnieu ct

McLean applt
vs
Bryan Respt

On motion to dismiss appeal

There were two appeals in this Cause. plaintiff got a decree for half the land and the Deft appealed from that decree, The Court refused to give him the other half and the plff appealed from that decree

Bryan the Defendant had the record made out at a heavy expense Came up and paid ten Dollars Clerks fees as required by law. McLean takes no steps to bring up his appeal and now Claims the benefit of Bryans expenditure and trouble. We think his appeal should be dismissed. The failure to pay the Clerks fee must be Ground for dismissing appeal or affirming judgment otherwise parties might take appeals bring up the transcript fail to pay fees and keep the Cause here for years

A. O. C. L.

McLean

v.

Bryan

Memorandum

in reference to

motion to dismiss

Charles McLean appelt } Appeal from
" } Washington
John G. Bryan appellee }

The Defendant who is respondent in one branch of the above Cause Comes and moves the Court to affirm the Judgment ~~dismiss the appeal~~ in the said Charles McLean herein because he says that the said Charles McLean has not brought up the transcript and Record of his appeal and paid the Clerks fees as required by law

Stoell for Respt

McLean appelt

v

Bryan appellee

Motion to
dismiss appeal

Filed 24 Oct. 1859.
W L Scarville
Ch

Charles McLean, Pltff. vs John G. Bryan, Deft — In the Supreme Court of Missouri at St Louis October Term A D 1859

Statement of the case by Defendant.

This case was brought up on appeal by defendant from the Circuit Court of Washington County — suit having been originally instituted therein by pltff's filing his petition on the day of A D praying that two certain deeds of conveyance executed by the pltff to dft be declared fraudulent and void, and that the title thereby conveyed be restored to the pltff upon his paying to the dft the amt due him and forming the consideration for the deeds aforesaid. Said deeds dated respectively on the day of Sept: 1849 & the 20th day of October 1850 convey seperate & distinct parcels of land, containing an equal number of acres, and referred to in the pleadings and testimony as the East and West halves of the McLean Confirmation containing 608 acres — The Court below refused to set aside the deed of Sept: 1849 for the East half; but did set aside & annul the deed of Oct 20th 1850 for the West half — from which part of the decree setting aside the conveyance of Oct: 20th 1850, dft now

prosecutes his appeal—

The grounds for relief from pltff's deed of Sept. 1849 — as alleged in his petition — are substantially as follows;

Pltff had employed Drs. Linn & Relfe to procure the confirmation of the land in dispute. The deft came to pltff and insisted on being allowed to obtain this confirmation — which he promised to do gratuitously. Deft obtained the confirmation — and by abusing the influence derived from the relationship existing between them, deft being pltffs family physician; and by reason of pltff's old age and ignorance, pltff & wife being aged and infirm, very ignorant and illiterate persons, neither able to write or read and scarcely able to speak or understand the English language; and by his false and fraudulent representations he the deft did induce the pltff and his wife to sign an instrument of conveyance which in effect was a pure donation of one half the tract aforesaid. ---

As to the second deed of Oct: 20th 1850 pltff charges that deft not contents with obtaining one half of the tract by deceit, fraud etc but deceiving in the same manner to get the other half, he bought a few cows and an old horse for a mere trifle and then sold them to pltff for an exorbitant price, and having

"trumped up" certain old Drs' bills for defts attendance on some of pltiffs children who at the time of his attendance upon them were over 21 years old, and also a small bill against pltiff himself for services as pltiff's family physician - deft. pressed pltiff for the payment of these sums. Pltiff agreed to give a lien on the remaining half of tract by mortgage or deed of trust to secure the payment of his indebtedness to deft - which deft consented to take.

In pursuance of this understanding as pltiff supposed, deft came to him with an instrument of writing for his and wifes acknowledgement; & they signed this instrument believing it to be a mortgage or deed of trust; but afterwards ascertained it to be an absolute conveyance.

Pltiff charges that, placing the utmost confidence in deft as his family physician, deft abused that confidence contrary to good faith, and by fraud misrepresentation she induced pltiff to sign an absolute conveyance when he was merely giving a security -

To the pltiffs petition deft filed a demurrer which was sustained as to the 1st deed & overruled as to the second. Pltiff afterwards filed an amended petition which does not seem to differ materially from the first - It may state more explicitly that as to the 1st deed of Sept: 1849 that deft by

means of the confidence reposed in him by pltff drove an inconscionable bargain with deft.

Deft in his answer states that he has no sufficient information as to the employment by pltff of Drs Lunn & Relfo to procure the confirmation aforesaid - denies that he ever promised to take upon himself the labor, trouble and expense of procuring the said confirmation gratuitously. Deft says he was for many years a practising physician in Washington County and admits his attending to some cases of sickness in pltffs family - but denies that any confidential relationship existed by reason thereof between pltff & dft - deft says he was not the family physician of pltff - but would would visit pltffs family when called upon in his general character of physician. Defendant denies all the material allegations in pltffs petition - Dft ~~Pltff~~ states that pltff being indebted to him in the sum of $290 - pltff & wife came to defts house & proposed to convey the remaining half of the tract confirmed in full satisfaction of his indebtedness to deft - that he deft would have preferred the money but took the land as the only means of collecting his debt - that the conveyance when it was made was understood to be absolute - that the sum paid was the full value of the land at the time of the purchase - that the

- that the pltff in the execution of the deed acted with a full knowledge of all his rights in the premises & free from all control or influence of the deft.

The cause came on for trial, and witnesses were examined by both parties as to the value of the land, the mental capacity of the pltff & wife - & the relationship existing between pltff & deft.

Deft offered in evidence the plat of the Survey of the land in dispute with the interfering claims of other claimants subject to which it was confirmed and which reduced the whole tract to 608 acres.

Deft also offered in evidence the memorandum of settlement between him & pltff. debiting pltff with various notes of different dates drawing interest at 10 per cent, one obligation, one horse, a cow and calf, cash lent, amounting to $290 23 3/4 cts, and crediting pltff with the deed for 320 acres of land at $290 00 - deft also produced an account against pltff for sundry articles amounting to $17,35.

Deft also introduced witnesses proving the acknowledgement by pltff & wife of the deed of Oct: 20, 1830, the explanation of that deed to them in the French language, and the circumstances attending its execution - the declaration affirming by pltff that he had sold the land and had done well.

After the evidence was closed, deft asked of the Court the following instructions, to wit:

If the Court finds from the evidence that the pltff at the date of the deed of Oct. 20, 1850 was of sound mind and that the nature of the instrument was explained to him, and he executed the same with a knowledge of its provisions, and that no fraudulent or false representations were made to him to induce him so to execute it, then it is a valid instrument, and he is not entitled to have the same set aside ----

(1)

Although the pltff may have been at the date of the deed of Oct. 20, 1850 to Bryan an ignorant and illiterate man, and the land have been worth more than Bryan gave him for it, yet these facts are not sufficient to invalidate the deed or render the same fraudulent -

2.

If pltff agreed with deft to give him one half of his claim for procuring a confirmation thereof, and deft did procure the said confirmation, and afterwards in pursuance of said agreement the land was divided between pltff & deft, & pltff with a full knowledge of his rights and when of sound mind conveyed the one half of the tract to the deft, then such conveyance is valid, and the pltff as to such conveyance is entitled to no relief ——

3

(4) Inadequacy of consideration in the absence of fraud is not in law or equity sufficient to invalidate a conveyance of real estate, or to entitle a party to have the same set aside.

(5) Although the deft may have given the pltff the liberty of selling the land conveyed by deed of Oct 20 1850 and paying deft back the consideration money specified in the deed, yet the granting of such privilege does not constitute the instrument a mortgage unless so agreed to and understood at the time it was executed.

(6) Before a deed absolute upon its face can be construed to be a mortgage, the burden of proof devolves on the party alleging the instrument to be different from what appears on its face, and unless he so proves it, it must be held to be what its terms purport it to be —

The court did not at the time pass upon these instructions but after hearing the arguments of counsel entered up its decree, and then afterwards gave all the instructions aforesaid; to which deft excepted. The court states the above to be the usual course adopted by it — and that no objections were taken to it by deft until after the rendition of the decree —

The finding of the Court & its decree are as follows to wit; In Oct 1850 pltff "being a feeble minded man, entirely incompetent to manage or transact his business & reposing entire confidence in the dft — the said deft taking advantage of his said weakness, for a very inadequate price or consideration fraudulently procured the pltff to make him a deed for 320 acres" of land "being part of Survey 332 g, confirmed to the said pltff, and that for this cause the said deed of Oct 20th Oct: 1850 by which pltff conveyed to deft the sd 320 acres ought to be declared fraudulent and void, & the title conveyed thereby to deft divested out of him and restored to the pltff upon pltffs paying to the deft the amt due him & forming the consideration of the sd deed and all accruing interest thereon to this date, estimated by the Court at $375,32. Therefore it is considered and adjudged by the Court that upon pltffs paying or tendering to deft the said sum of $375,32 with all interest which shall in the mean time fall due thereon on or before the 1st day of the next term of this Court, that he be entitled to have the said deed cancelled and declared fraudulent & void & the title conveyed thereby restored to him as fully as the same existed before the execution thereof & this cause is continued to the next term, & also that the pltff recover of deft the costs herein expended & have execution therefor"

The deft then moved the Court to set aside its finding and decree & for a new trial on the following grounds:

1. The finding of the Court is against the evidence —
2. The judgement is contrary to law & the evidence in the case
3. The Court decreed contrary to its own instructions given at deft's instance —
4. The Court by its decree failed & refused to remedate the deft in the same position he occupied before the purchase
5. Part of the Consideration paid by deft for the land is withheld from him by the decree,
6. The Court by its decree decides in effect that ignorance is sufficient to invalidate a contract however it turn out to be favorable to the ignorant contracting party,
7. The Court failed to pass upon the instructions asked by deft until after its decree was made, when all asked by deft were given & thereby deft's counsel were deprived of all opportunity of applying the law as laid down to the facts in the evidence —
9. The notes which were surrendered to pltff as part of the consideration of the deed of Oct 20th 1856 bore interest at the rate of ten per cent per annum, and the Court calculated the interest at six per cent
10. The decree is not supported by the finding of the Court — —

This motion was overruled & dft excepted
Deft then moved in arrest of judgement for
the causes in his motion assigned. This motion
was also overruled by the Court & exceptions
by deft thereto taken, all which will more fully
appear from the bill of exceptions signed &
allowed by the Court. From the said decree
the deft took his appeal - which is now brought
before the Supreme Court of Alabama -

Henry M Bryan
Defts Atty -

Supreme Court of Miss.
October Term 1859

Cha's McLean Pltff

vs

John G. Bryan Deft

Statement of the Case
Bryan
Defts Atty

Filed 26 Oct. 1859
Wm S. Glanville Clk.

Charles McLean, Plff. vs. John G. Bryan, Deft. } Supreme Court of Missouri At St Louis October Term AD 1859

Argument for Defendant

We propose to make some analysis and estimate of the evidence as to the inadequacy of the consideration for the conveyance of Oct 20th 1850, the mental incapacity to contract of the grantor, and his confidential relationship to the grantee — from which circumstances it is sought to make out a case of constructive fraud —. To the facts thus ascertained we will then apply the law as we conceive it to be on authority and principle.

But before thus entering into what may may be more appropriately deemed the merits of the case, we will consider an independent ground for the reversal of the decree of the Circuit Court — which will in our opinion relieve this Court from the consideration of any other alleged errors in the decree. It is this: The finding and decree of the Circuit Court are not conformable to the pleadings — and although the facts in that finding might constitute a case for equitable relief — it is not the case presented by the Pltffs petition — its allegations do not countenance or justify the finding of the Court — —

In order that this position may be appreciated we will state briefly the facts as alleged in the pltff's petition, and then copy the finding of the court.

The pltff charges that deft, not content with obtaining the prior deed of Sept. 1849, by deceit, fraud misrepresentations &c, but desiring in the same manner to get a conveyance of the whole, bought a few cows and an old horse for a mere trifle which he sold to deft at an exorbitant price & then "trumped up" certain old Drs bill against pltff's children, who were at the time of his services over 21 years of age - a small medical bill against pltff himself; and after thus establishing an indebtedness on the part of the pltff, pressed him for the payment of the same, until pltff consented to secure it by a lien upon his land - which proposition being accepted by deft, he came to him (in pursuance of this agreement as pltff supposed) with an instrument of writing which pltff & his wife believed to be a mortgage or deed of trust, but which after they had signed and acknowledged they ascertained to be an absolute conveyance - Pltff charges that, by means of the confidence placed in deft as his family physician, deft did contrary to good faith, fraudulently obtain from him an absolute deed when he supposed he was giving nothing more than a mortgage.

It would seem that what is here said of the relationship of the parties – the one being the other's family physician – the ignorance & old age of the plff, mentioned in a former part of the petition – was merely by way of Inducement and aggravation to what follows, viz, the Extortionate prices of certain cows &c sold to plff, the "bumping up" of certain medical bills & the fraudulent procurement of an Absolute deed when plff & wife had good reason to believe and did believe they were executing a mere security –

But the Court ignores what seems to be the material allegations of the petition & finds that the "Plff being a weak minded man, entirely incompetent to manage or transact his business & reposing entire confidence in the deft – the said deft taking advantage of his said weakness for a very inadequate price or Consideration, fraudulently procured the plff to make him a deed for 320 acres" &c.

No evidence was offered to prove that plff supposed he was executing something in the nature of a mortgage – the deed having been explained to him & wife (said to be a "sharp" woman) in presence of each other, & the declaration of plff afterwards proven by his son in law, Fleming, that he had sold the land ~~afterwards~~ & had done well; nor does the Court pass upon this point, but finds another state of facts by means of which it erects a case of Constructive fraud

And one of these facts, viz. inadequacy of consideration — an indispensable element in most cases of Constructive fraud — is not even alleged in the petition.

The finding too that the plff was "a feeble minded man, entirely incompetent to manage or transact his business" seems hardly warranted by the allegation of the petition — for it is only charged that plff and wife were very "ignorant and illiterate, neither able to write or read and scarcely able to speak or understand the English language. Ignorance in its common acceptation means a want of knowledge & does not necessarily imply a weakness or defect in the intellectual faculty — still less does illiterate — & taken in connexion with the context would seem to convey a very different idea from "entirely incompetent to manage or transact his business", which approaches very near the definition of a non compos mentis. Whereas a man of fine mind may from indolence, his situation & condition in life be both ignorant & illiterate, & in this sense deft was willing to admit plff & wife to be such.

The Court then in our opinion committed an error in not finding whether, as alleged, the indebtedness of plff was factitious or extortionate; — & in not finding whether plff executed an absolute deed, which at the time of executing it, plff & wife supposed to be a mere security; but in

finding instead thereof a state of facts which whether such as to entitle the pltff to equitable relief or not, is not that presented in his petition.

A rule of law which should require the pltff in his petition to make with sufficient certainty a statement of those specific facts upon which he claims the interference of a court of justice, and require him on the trial to confine himself to their proof — in order that the deft may be apprized of the charges against him, & prepared to make that defence of which he is capable — would seem to be but the requirements of justice and common sense. It will not be necessary to travel out of our own State reports for authorities in support of this doctrine.

Butcher vs Death & Teasdale, 15 Mo. 271, decides that " the act of 1849, regulating practice in courts of justice, allows amendments even at the trial, in order to conform the petition to the proof and avoid a nonsuit on account of a variance, still the law remains as before, that the cause of action for which the pltff recovers, is to be the same which he charges against the deft & which must be stated either in the original or in an amended petition —

In Beck v Ferrara 19 Mo. 30 " The petition stated that the deft was indebted to the pltff for stall No 20 in the North Market, which was purchased by the pltff from a

third party for dft at his special instance and request. The proof was that the pltff bought the stall for himself & afterwards sold it to dft. Held, this was an entire failure of proof of the cause of action alleged in the petition and not a mere variance"

Linton v Baugh, 17 Mo. 585 decides that "under the code a pltff can only recover on the cause of action alleged in his petition, Thus under a petition for goods sold and delivered, he cannot recover on a state of facts which constitute a trespass de bonis asportatis". Gamble J. observes "It is the evident design of the code that the petition shall state the facts as they actually exist, and as the pltff. expects to prove them"

In Garman vs Johnson 20 Mo. 108, it was held that "Under the ~~code a pltff can~~ new practice, a party who relies upon facts which constitute a ground of equitable relief as a defence to an ejectment, must set them out in his answer with the same particularity that would formerly have been necessary in a bill in chancery".

It has been held in Palmer v Moore 2 Dutch. R. 489 that "Where a Bill in Chancery seeks a general account upon a charge of fraud, it is not sufficient to make that charge in general terms; but it should be pointed to state particular acts of fraud" See Story Eq. plead. §251 §251

It is laid down in Story's Eq. Plead. §257 p. 214 –
"Every fact essential to the plff's title to maintain the Bill, and obtain the relief, must be stated in the Bill, otherwise the defect will be fatal. For no facts are properly in issue unless charged in the Bill; and of course no proofs can be generally offered of facts not in the Bill; nor can relief be granted for matters not charged, although they may be apparent from other parts of the pleadings and evidence; for the Court pronounces its decree secundum allegata et probata"
See cases cited Story Eq Plead §257 ——

Although under the common law system of pleading the general issue was allowed, the abuse of its vague & indefinite statements has caused a change in the rules of pleading in this respect. The new rules adopted under William 4th require that "In every species of assumpsit, all matters in confession & avoidance, including not only those by way of discharge but those which show the transaction, to be either void or voidable in point of law, on the ground of fraud or otherwise shall be specially pleaded" –
1 Chitty Plead 551e. "In debt on specialty or covenant, the plea of non est factum shall operate as a denial of the execution of the deed in point of fact only; and all other matters shall be specially pleaded, including matters which make the deed absolutely void, as well as those which make it voidable" 1 Chitty Plea p 518

If in other matters a plain and specific statement of the facts constituting the cause of action be required, it would seem to be peculiarly appropriate in a case of supposed fraud. For according to 1 Chitty Plead. 221: "Where the law presumes a fact, it need not be stated in pleading. Thus, as it is an intendment of law, that a person is innocent of fraud and every imputation affecting his reputation, the party insisting upon the contrary must state it in pleading"

In a case of constructive fraud which may be collected from so many particulars entering into combination with one another respecting inadequacy of consideration, the relations of the parties, their situation, condition etc, a general, positive allegation of fraud would very darkly acquaint the deft with the cause of action that he should be called upon to defend - though one so deeply concerning his honor and reputation.

But strike now out of the pltiffs petition those charges as to the factitious or inequitable indebtedness of the pltff to deft - the fraudulent imposition upon pltff of an absolute deed instead of a mortgage - which is truly the only substantive allegation in the petition the others being merely incidental thereto; and we have a desire on the part of deft to obtain through deceit, fraud & misrepresentation from the pltff the land conveyed by deed of Oct: 20th 1850 - and surely this is not sufficient to vacate that deed on the ground of fraud as it is decreed by the Circuit Court -

Value

We will now proceed to examine the Evidence as to the value of the land conveyed by deed of Oct 20 1850

Peter Hughes says it was worth $4. per acre - but afterwards said the land is poor, he would not have the land to live on - the same land conveyd by deed of Oct 20th 1850 -

Gabriel Barrow says that "he once bought half the tract before it was confirmed - agreed to get it confirmed and give him $200.00" It does not clearly appear from this statement whether he was to be separately remunerated for getting it confirmed - if it was, then the $200. he agreed to pay for one half was much less than that paid by deft - if he was not, then the price to be paid would depend upon the cost of procuring the confirmation - which, unless he was aware of the trouble & expense attending it, he might suppose would not exceed $100 - & this would make the price he agreed to pay about the same as that paid by deft. It may be well here again to remark that the tract conveyed by deed of Oct 20 contained only 304 acres, as appears from the plat of survey in evidence, though it is mentioned in the pleadings and evidence as containing 320 acres.

Calvin & Bob Highley testify that it was worth $5 per acre - James Highley, that it was worth $4 or $5 per acre.

Eugene O'Mara, who surveyed the whole tract under orders from the Surveyor General's Office testifies that this land was perhaps worth $1.25 per acre - "that there

was plenty of land at that time in Washington County to enter at Congress price - the running of the Rail Road through the land since 1850 has greatly enhanced its value.

We have then four witnesses who say the land was worth $4 or $5 per acre - one witness, who lived within a mile of it, that as good land adjoining has been entered at 75 cents, - and this seems to be a fair criterion of its value - another witness (who was the County Surveyor for many years) that it was perhaps worth $1.25 per acre.

It will be seen that those witnesses who give it the highest value assign no reasons for their opinions - and therefore it would seem that the opinions as to value of the last mentioned witnesses were entitled to most weight - for who knows upon what grounds those of the former witnesses are based.

It has been proved stated that this land has been greatly enhanced in value since 1850 by the Rail Road running through it (at the date of the conveyance Oct 20 there was no charter of the Iron Mountain R.R. Co)

Now it might be that upon the supposition of the land being worth at present $8 per acre (defts counsel doubts very much whether it could be sold for more than half that price), these witnesses might consider that land which in 1860 would be worth $8. per acre was in 1850 worth $4 or $5 - or it might be, if there were no sales of real estate in the vicinity of this land in 1850

(as is most probable) that these witnesses have derived their notions of its value at that time from what it is worth at present — or it might be that their opinion is a mere Conjecture —

Is there then sufficient proof of inadequacy, not to say Gross inadequacy in the price paid by deft for this land? We quote from a decision of Lord Wyndham 1 Knapp's R. 77 A.D. 1829 "Indeed from the fluctuation in prices, owing principally to the gambling spirit of speculation that now unhappily prevails, it would be difficult to determine what is an inadequate price for anything that is sold". And if this be true in England, it would certainly hold good in this Country.

It would be tedious to go through in detail all that is said by witnesses as to the mental incapacity of the plff — but we will collect from their testimony enough to show that he was not legally incapable of binding himself by a contract. It should be remembered too that the plff was a Frenchman & spoke English very badly — and would from this cause appear to a great disadvantage

It is said — : "He dressed deer skins"; 'in 1820, was the first time he cleared any land — about 3 acres'; 'he would generally call upon his friends for advice in any business'; traded some; 'Knew how to hunt'; 'seemed to have a very good judgement as to what men to put confidence in"; generally

consulted with his wife who was tolerably sharp'; the men whom he would select as his friends he would be generally well acquainted with'; (his son-in-law says) 'he was a man of ordinary mind, though simple, uneducated & incompetent to do business'.

The Highleys testify; the one, that he does not think pltff knew the difference between 25¢ & 50 cents; the other, that he has given him 5cts & 10cts, & that he did not seem to know the value of them & would ask what it was. If it was not that the pltff was ignorant of the English denominations of these pieces of coin, this testimony seems hardly reconcilable with what we have collected above — and we cannot concur in opinion with the Messrs Highley. The consideration for the deed of Oct 20, however was almost entirely cows, horses, medical services etc, with whose value pltff may be better acquainted.

There is a general form of expression made use of by several witnesses — that pltff. was incompetent to manage or transact business. This should be limited & defined by the particular facts of his incompetency — & in analogy to the principle laid down in the following decision seems entitled to little weight. The competency or incompetency of pltff was to be determined by the Court — & the witnesses should only have stated such facts & circumstances ~~which~~ as would have enabled the Court to come to a determination on the question.

In Dickinson v. Barber, 9 Mass. 225, it was decided that "the depositions of witnesses, physicians, declaring their opinions concerning the insanity of a party, but stating no facts as the ground of their opinions are not admissible evidence on a trial. "The deponents state no facts on which they ground their opinion. This is to be required from physicians as well as others. Juries are to judge of facts; and although the opinions of professional gentlemen on facts submitted to them, have justly great weight attached to them; yet they are not to be received as evidence, unless predicated upon facts, testified either by them, or by others."

As to plff being "aged & infirm" there is no proof & the presumption would rather be to the contrary; as eight or nine years after the execution of the deed, he is still alive, & his memory sufficiently good to swear to the circumstances of that transaction —

As to his poverty, it is proven that he was a very poor man — though now it seems he is ready to refund to deft the consideration money of the deed of Oct 20th — whether from his own improved condition or the charity of his friends does not appear —

As to the relations of the parties — that of physician & patients, but two witnesses testify —

Charles McLean says that Doct Bryan attended my fathers family in cases of sickness — have seen Bryan often at the place & heard the family say he was giving medicines. But afterwards he says I "have never seen him

at my fathers when anybody was sick"-

Is the relation of "family physician", which deft denies, made out by this testimony? John Jamison who lived within a mile of pltff, says, I never knew of any physician attending the family - never saw any one there - the old lady seemed to be the Dr. of the family - the old lady seemed to be afraid of physicians, that their medicines would poison her, children ~~family~~ -

As to the circumstances attending the execution of the deed - It was explained to them by Mr Sply in the French language, in as plain a manner as he could & it was understood by them that they were selling their land, & "they seemed to be pretty well satisfied" - it was executed by pltff's wife a pretty "sharp" woman, with whom pltff generally consulted. Sam Harrison was also present & took the acknowledgements both of pltff & his wife.

It is proven by Jno Fleming, pltffs son in law, that pltff ~~has~~ said to him after the sale that he had "sold the land to Bryan & had done well - that Bryan was a gentleman" -

Upon this state of facts it is sought to set aside for fraud a conveyance of real estate of which dfts has been in possession for eight or nine years!

As to the law of the case: —

We will first consider the simple legal propositions following, and then cases where they enter more or less into combination with each other -

1st Inadequacy of Consideration is not in itself sufficient to vacate an otherwise valid Conveyance: Bath & Montagues Case 3 Ch. C. p. 107 A.D. 1693 per Holt, whose language in great part has been incorporated into the text of Fonblanque's Eq. 2nd ed. 1st vol p. 67 ——

"I must confess Courts of Equity would have enough to do, if they were to examine into the Wisdom and Prudence of them, in disposing of their estates, and if they were not discreetly but foolishly done; therefore to set them aside, — there would, be want of more Courts of Chancery than there are to dispatch the business of Equity in this point: But be a man wise or unwise, if he be legally compos mentis, he is the disposer of his own property: and though he do not dispose of it so discreetly, as a judge or a great lawyer would do, there is no reason Equity should interpose to alter it."

4 Bro. P.C. 297, note A.D. 1800 — "Lord Hardwicke enumerates four species of fraud" (the 2nd is) "Fraud may be apparent from the intrinsic value and subject of the bargain itself, such as no man in his senses and not under delusion would make on the one hand, and as no honest or fair man would accept on the other; these are equitable and unconscionable bargains & of such

then the common law has taken notice"
(With reference to this language of Lord Hardwicke it is said) "As to the second head it does not appear that a single case can be found in which it has been held that the mere inadequacy of price is a ground for a court of Equity to annul an agreement though executory, if the same appear to have been fairly entered into and understood by the parties, & capable of being specifically performed. Still less does it appear to have been construed as a ground for rescinding an agreement actually executed."

Coles v Trecothick 9 Vesey 232 & cases cited in the notes
"Inadequacy of price, unless it is such as shocks the conscience, and amounts in itself to conclusive evidence of fraud is not itself a sufficient ground for refusing a specific performance"

Mann v Betterly 21 Vermont 326 AD 1849 —
"Mere inadequacy of consideration furnishes no sufficient ground for the interference of a court of Equity to set aside a deed or contract"

2nd Kent p. 485 - "The common law affords to everyone reasonable indemnity against fraud in dealing; but it does not go to the romantic length of giving indemnity against the consequences of indolence & folly, or a careless indifference to the ordinary and accessible means of information. It requires the purchaser to apply his mind to those particulars

"which may be supposed to be within the reach of his observation and judgement; and the vendor to communicate those particulars and defects which cannot be supposed to be immediately within the reach of such attention".

2nd. Mere weakness of intellect in the grantor is not of itself sufficient to invalidate an otherwise valid deed of conveyance —

1 Parsons on Contracts 314

"Courts of law as well as equity afford protection to those who are of unsound mind. They endeavor to draw a line between sanity and insanity, but cannot distinguish between degrees of intelligence. Against the consequences of mere imprudence, folly, or that deficiency of intellect which makes mistake easy but does not amount to unsound or disorganized intellect even equity gives no relief, unless another party has made use of this want of intelligence to do a positive wrong" —

Rippey v Grant 4 Ired Eq R 443 per Nash J —

"If he (grantor) be of sane mind he has a right to dispose of his property and his will stands in place of a reason, provided the contract or act justify the conclusion that he has exercised a deliberate judgement such as it is, and has not been circumvented or imposed on by cunning, artifice or undue influence, means abhorrent to equity and con-

-stituting fraud" "Where is a legal capacity there cannot be an equitable incapacity"

Osmund v Fitzroy et al 3 P. Wms. 129 per curi:—

"Where a weak man gives a bond, if there be no fraud or breach of trust in the obtaining it, equity will not set aside the bond for the weakness of the obligor if he be compos mentis; neither will this Court measure the size of peoples understandings or capacities, there being no such thing as an equitable incapacity where there is a legal capacity"

Dodds v Wilson 1 Const. R. 448 — —

"Where there is no fraud, or undue advantage taken of a man of weak mind, he must be bound by his contracts. If he is unable to take care of himself, his friends should have a committee appointed; but until such appointment his contracts bind where there is no fraud"

The reason given by Bracton why a madman may not make a valid contract is "that he cannot understand what he is doing". And in questions as to a party's capacity to contract, the true inquiry is as it seems to us: Did he understand what he was about — as it was decided in the following case —

Moffitt v. Witherspoon, 10 Ired. 185 A.D. 1849 —

"Held, that it was error in a judge to instruct the jury, when the inquiry was as to the mental incapacity of a party that "it was not sufficient that she should be able merely to answer familiar

questions, but to manage her business with judgement and discernment" It is sufficient if the person understood what he was about" — —

It will have been seen that the test of a party's capacity to contract - in many of the cases cited - is whether he is non compos mentis or not. As to the meaning of this phrase we quote the following cases

John Beaumont - 1 Whart. 52 A.D. 1836 — an elaborate opinion per Kennedy J — — — "A return of an inquisition, held by virtue of a commission in the nature of a writ de lunatico inquirendo that the party "by reason of old age and long continued sickness, has become so far deprived of reason & understanding as to be wholly unfit to manage his estate is not a sufficient finding that the party is "non compos mentis" within the constitution & laws of this Commonwealth" This decision was based upon the meaning given by common law writers & decisions to the phrase "non compos mentis" Upon this head see also: Ex parte Cranmer 12 Ves. 445 A.D. 1806; Lord Donegals Case 2 Ves: 407; Ridgway v Darwin 8 Ves. 65; In the matter of Morgan 7 Paige's Ch. R. A.D. 1838; In re Holmes 4 Russ Ch R 182 A.D. 1827

3rd " It is not sufficient of itself to set aside a deed given upon valuable consideration that the Grantee is the family physician of the grantor —

We have inserted "upon valuable consideration" - not

because, if it were struck out, the proposition would be ~~struck~~ less correct - but because in several English cases where deeds conveyances have been set aside as fraudulent between patients & physic-an, the conveyance has been gratuitous; and in cases where the parties are strangers in blood and the gift operates as an injustice to his own family, this circumstance may well afford a strong presumption of fraud upon the grantor.

It would seem to be unnecessary to cite any authorities in support of our 3rd proposition where in a community like our own every person is more or less of a trader and speculator. It would seem to be sufficiently supported by common sense - for what bearing can the fact of attendance upon one in times of sickness as medical adviser have upon a contract to purchase a piece of property in time of health. There may be cases indeed arising out of this relation - where very slight circumstances may afford the strongest presumptions of fraud - for instance, where one party is prostrated on a bed of sickness, agitated by the strongest hopes or fears - helpless in the power of his physician; or where upon recovery from a long and dangerous illness through the skill and fidelity of his physician, he is overcome by a grateful sense of his obligations - and

liable to imposition; but these cases must be proven - and not the barren fact only that he has attended to cases of sickness in the grantor's family. Indeed upon the evidence in this case it was scarcely necessary to state our third proposition. We might adduce other authorities in its support but it is believed that a case from our own reports in which the decision was given by Judge Napton will be sufficient. Doggett v Lane 12 Mo. 215 decides. "The fact that a vendor was a man afflicted with chronic disease, and the purchaser was his family physician, will not warrant an inference of fraud, especially when there are no attending circumstances to corroborate such an inference".

In cases arising from some peculiar and confidential relation between the parties, the motive upon which courts of Equity act, (says Story Eq § 307) is one of general public policy; and it is designed in some degree, as a protection to the parties against the effects of overreaching confidence and self delusion & the infirmities of hasty and precipitate judgements -

In the present case the plff executed the deed jointly with his wife, a "sharp" woman - said to be afraid of Physicians, that their medicines would poison her children - with whom plff generally consulted on

matters of business ~~would~~ - and surely we are warranted in presuming that her presence and advice were sufficient to counteract any influence arising out of the relation between the parties if any such there were.

We will then lay the question of the relationship of the parties out of the case - and briefly consider a case where weakness of intellect and inadequacy of consideration may be combined. It would seem a priori that where a person of weak mind, if not a non Compos Mentis, may bind himself by his contracts & dispose of his property - that he would be bound where his contracts were made & his property disposed of upon an inadequate consideration - for there would be generally such contracts and such a disposition of property as he would be likely to make although no fraud were practised upon him --

On this point we will quote from the opinion of the Lord Chancellor Longborough in Gartside v Sotherwood 1 Brown Ch. R. App. 558 AD 1783 --

In this case every circumstance which, combined with a gross inadequacy of consideration, induces a court of equity to set aside deeds as fraudulently obtained, is clearly made out; but whether the considerations on which the leases were granted were adequate or not, does not fully appear; on one side it is insisted that they are grossly inadequate, and strong evidence of this is given; on the other side, the contrary is asserted

; and they have offered an issue upon that fact"
I proposed to refer it to the Master to look into the instruments, and to inquire into the Considerations, whether adequate or inadequate, And how far inadequate; but the defts have offered an issue;
In this they have gone beyond my idea, for if the Consideration was not perfectly adequate, yet if it was not very inadequate, I saw no grounds to set aside the contract; the Consideration being simply inadequate is not alone sufficient;
Combined with many of the circumstances of this case it would not be sufficient; the degree of inadequacy necessary to invalidate a contract will be very different according to the circumstances of each particular case" The Chancellor holds this language in a case where he says that every other circumstance was found, from which the Court sets aside deeds as fraudulently obtained — —
The last case we will quote is, 2 Atkyns 251 - decided by Lord Hardwicke Ch, AD 1741 —
"It is not sufficient to set aside an agreement in this court to suggest weakness and indiscretion in one of the parties who has engaged in it; for supposing it to be in fact a very hard and unconscionable bargain, if a person will enter into it with his eyes open, equity will not relieve him upon that footing only, unless he can show fraud in the party contracting with him, or some undue means made use of to

to draw him into such an agreement"

In cases like the present the true inquiries are as we conceive them to be upon authority and principle: Whether the party contracting "knew what he was about", and exercised a "deliberate judgement such as it was" in so doing — and "consideration, mental capacity, relationship &c are only material so far as they throw light upon those inquiries.

The other errors assigned in the proceedings of the Circuit Court are submitted without further consideration to this Court.

Henry M. Bryan
Deft's Atty.

Supreme Court of Missouri
At St. Louis
October Term A.D. 1859

Charles McLean, Pltff.
vs
John S. Bryan, Deft

Defendants Argument

Bryan
Defts Atty

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