3. *Bayakbet*, he looked, [illegible], Chippewa, [illegible], *ragahbit*, with the prefix *vav*, makes a word very similar in sound to *enabit*.

4. *Shemesh*, sun, *Gezis*, sun.

Such etymologies as the foregoing, however, though a multitude of them could be found, which perhaps is not the case, would satisfy no judicious inquirer. They might be valued by the ethnographer, who found in the word *missi*, which he erroneously supposed to mean river, the proof that the people who gave a name to the father of waters, came from a particular district of Asia; but among those who hear me, they would be regarded, as they truly are, of no value, and wholly fallacious, when taken as guides in tracing the labyrinths in the descent and filiation of nations. Some future opportunity may occur for entering more carefully upon the investigation of these marked resemblances in grammatical peculiarity, in structure of sentences, and manner of expression, which clearly prove, that the Indian languages, whatever may have been the origin of the people who speak them, are more similar, (not to say akin,) to the Shemitic dialects, than to those of the Caucassian race."

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## VOCABULARY OF THE SAW-KEE AND MUS-QUAW-KE INDIAN TONGUES.

CONTINUED FROM PAGE 48.—SELECTED.

### MUS-QUAW-KE TONGUE.

| | |
|---|---|
| Moon | Tup-pe-ka, Kee-shuth |
| Fire | Sku-tah |
| Chief (officer) | O-ke-maw |
| Soldiery (military) | Sim-maw-ker-lask |
| Friend | Ne-kon |
| Battle | Me-kaw-teè |
| House (domicil) | Wik-ke-op |
| Hatchet (a small axe) | Paw-puk-ke |
| War-club (a weapon) | Paw-puk-uk-ko |
| Knife | Maw-tes |
| Pipe (for smoking tobacco) | Pew-aw-kun |
| Coat, (a garment) | Pe-suk-ki |
| Fort, (a fortification) | Wok-kaw-e-kon |
| Blood | Mis-quee |

# VILLAINY EXPOSED!

BEING

## A MINORITY REPORT

OF THE

## BOARD OF TRUSTEES

OF THE

## DESMOINES LAND ASSOCIATION.

ALIAS

## "THE NEW YORK COMPANY."

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"Fraud avoids a contract *ab initio*, both at law and in equity, whether the object be to deceive the public, or third persons, or one party endeavor thereby to cheat the other."—*Chitty on Contracts, page* 222.

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BY I. GALLAND,

TRUSTEE UNDER ARTICLES OF ASSOCIATION, DATED 22d OF OCTOBER, 1836.

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**Price 50 Cents.**

# INTRODUCTION.

It is usual among men, when they are associated for the transaction of business, the promotion of science, or the improvement of morals; to repose a greater confidence in the members of their own association, than they feel warranted in reposing in others who do not sustain that relation. The prudent and successful management of business, often requires confidence and secrecy among the several members, or partners, as an exposure of the misfortunes, imprudence, extravagance or bad management of some of the members might subject the whole association to great inconvenience, or even to serious damage.

Under such circumstances, it would seem that silence would assume the force of a moral obligation; at least, so long as the reasons for it continued to exist.

It is however, admitted that this obligation ceases with the necessity which imposed it. But when several individuals, having associated themselves for the purposes of honorable and honest enterprise, if afterwards some of them, or even a majority of them, should endeavor to divert their plans of fair and honorable speculation, to schemes of fraud and deception; it would be the right, at least, if it was not the duty of the minority, to expose the deception, regardless of the consequences.

We are told by high authority that "A man's enemies are the men of his own house." Those belonging to the same household family or association, have advantages, which a stranger cannot command in his efforts to injure or destroy—they may rob or plunder a member, and after dividing the spoil, reciprocally swear for each other. Hence, when a majority of the members of any association of men, evince a determination to injure or destroy an individual member or minority, it would seem prudent to seek relief from pecuniary oppression, by a resort to the established tribunals of justice, and to repel the blighting influences of slander and calumny, by a faithful statement of facts in appeal to the tr[illegible]

Such has been my course; and such the causes, which have impelled the necessity for that course. It may be asked, why I have de-

layed for ten or twelve years the disclosures now made? I had instituted suit against Marsh, Lee & Delavan, several years since, and had fondly indulged a hope, that the result of that suit, would either release me from all further legal or moral obligations, as a trustee, to the innocent and unoffending beneficiaries who had reposed a personal confidence in my capacity and integrity in the protection of their rights; or otherwise place me in a situation to discharge those covenant duties, and moral obligations with successful fidelity. This hope has been disappointed: my papers have been purloined from the Clerk's Office, and doubtless have long since been carefully examined in the City of New York, and the dexterity of their western agent greatly applauded.

No personal injury or insult offered, or done to myself would have induced me to expose the plans, tricks and schemes of speculation, adopted by these co-trustees of mine, did I not believe that public justice required it, while my solemn obligations to many of the beneficiaries, imperatively demanded it at my hands. But whatever forbearence I might have been disposed to extend to these schemes, they have overleaped all bounds of moral honesty, and plunged themselves headlong into the very abyss of human depravity. The court files in this country are now groaning with their corrupt and mercenary perjuries; and with an agent whose special employments it is believed, are to purloin papers from the court files, and to swear falsely whenever required, favored also through the indulgence of a pliant court, it would seem vain to make any further effort before the same tribunals.

Under all the circumstances, I have therefore determined on the propriety and necessity of this exposure of fraud, deception and crime.

However desirous may have been some of the judicial tribunals before whom some detached parts of this grand scheme of swindling, have been introduced; to strip it of its plausible exterior, and to probe its moral ulcers, they have so far been unsuccessful in their efforts; the putrid carcass has been so besmeared with judicial basilicon, of Territorial manufacture, as to escape detection.

The following details are intended as a caution to the public, that strangers may be guarded against these covinous intrigues; and to expose a series of deep laid plans for extensive frauds, which under the circumstances heretofore existing, it has been thought [illegible] withhold from the public.

It will scarcely be denied that defective or worthless titles to real property, are among the greatest misfortunes met with in [illegible]



ciety. Millions of money are annually expended in losses and litigations connected therewith, and thousands of families have been reduced to poverty and want, by hasty and inconsiderate purchases of real property.

These examples should admonish all concerned in such purchases, to careful inquiry, and the use of diligence in matters of such absorbing importance.

The Board of Trustees are authorized to sell a limited quantity of these lands, and to divide the residue, and up to the present time they have rendered no account of their sales or other doings, by which to enable the purchasers to ascertain, or a court to determine, whether their authority to sell has not ceased. From the flood of Kilbourn titles to be found among his own family relations, and other tools and instruments of his fraud and deceptions which are withheld from the public records, together with the crowd of such pretended sales now upon the records, I feel well assured that the selling power has long since been exhausted. This fraudulent concealment of the acts and doings of Marsh, Lee & Delavan, has received the sanction and protection of the District Court of this county, under both Territorial and State administration. No other individual in the country has a legal right to such disclosures, except myself as a co-trustee, or as a beneficiary, and on either of these grounds I have a right to be informed of all their doings. But the District Court has magnanimously thrown around this trio of public swindlers, their official "*sui generis*" mantle.

There is, therefore, no alternative left the occupying claimants, but to purchase a worthless title, or to suffer under a defenceless prosecution. The almost impenetrable clouds of covinous concealment, and fraudulent confederation with which these proceedings are at present shrouded, seems to have demanded at my hands, the discharge of a public duty, which it was not possible for any other individual to perform All the original letters, and other documents herein referred to, are now in my possession, which can and will be used as occasion may require.

# HISTORY

OF THE

# DESMOINES LAND ASSOCIATION.

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On the 29th August, 1836, I entered into an agreement in writing with Messrs, Aikin & Little, of Peoria, Ill., for the purpose of purchasing an undivided interest in the Sac and Fox Half Breed Indian reservation. Under this agreement, they advanced to me drafts on certain business firms in the City of New York, for about $8,000; and received from me a deed of conveyance for four fifths of my interest in these lands, to Joshua Aikin, Wm. E. Lee, B. F. Lee and Eli Goodwin, for the consideration of $6,000. Mr. Aikin soon after started for New York City; and after his return, on our settlement, my purchases in the joint names of Aikin, Goodwin, Lees and myself amounted in the aggregate of the purchase money to $32,000. This amount of undivided interest and estate, was under the provisions of the first article of the Association, formed in New York, on the 22d of Oct. 1836, duly conveyed, and vested according to the following article, to wit:

"*Firstly*. That the title to the property already purchased, shall be conveyed to, and duly vested in, Joshua Aikin of Peoria, and Isaac Galland, of Commerce, in the State of Illinois; Samuel Marsh, and William E. Lee, of the City of New York; and Edward C. Delavan, of the city of Albany, as joint tenants, and not as tenants in common, in trust for the persons and parties interested therein as hereinafter defined."

It was the mutual understanding of all the parties, and clearly expressed by the whole tenor of their agreement, that this property should be so vested in the before named board of *five* trustees, as to require the action, and co-operation of the whole board, in order to pass the title thereto—and this was done in the original purchases of every acre of the land to which Marsh, Lee & Delavan, now set up the claim of exclusive ownership, or control.

That this was the understanding of the contracting parties, at the time it was made, and acted upon by them in that sense, for several

years after the contract was made, is proved by all their early acts and doings in the premises—see their Letters of Attorney executed to Aikin & Little, also to Kilborn & Austin. Their deeds, bonds, contracts and agreements, now upon record, in no instance did they attempt to convey the title to this property, or any part thereof, for the term of five or six years after the making of this contract or agreement, without the co-operation of all the Trustees.

A jurist, who is entitled to as much consideration as the ex-Chief Justice of Iowa, has said: "The maxims for the exposition of contracts are simple and consistent, and well calculated to effect their sole object; namely, to do justice between the parties by enforcing a performance of their agreement, according to the sense in which they mutually understood it at the time it was made."—*Chitty on Contracts, page* 19.

The following letter from Mr. Little, is not destitute of interest and importance in this connection:

PEORIA, Nov. 25th, 1836.

DR. GALLAND,

Dear Sir—I wrote you about ten days since, to Belmont, since which time I have learned from Gillett that you have returned to Commerce. I have now been a long time looking for Mr. Aiken, who has not yet arrived. I received a letter from him two days ago, dated the 5th int., in whlch he says, he shall start on the 7th. He also says that some of the owners have been selling out parts of their interest, and that there are now several other very heavy capitalists concerned, viz: E. C. Delavan and E. Corning, the two richest men in Albany, S. Marsh, H. Seymore, and Charles Butler of N. York, and W. C. Gilman, President of Norwich Bank. They have concluded to have for Trustees of the Company, E. C. Delavan, W. E. Lee, S. Marsh, Dr. Galland and Joshua Aiken—five in number—and I wish you would forthwith secure all the remaining interests in your vicinity on the best prices you can, not giving more than $4,000 each, and as much less as you can—be sure about the titles. You have not written me particulars, so I do not know what funds, if any, you have on hand, and beyond the funds in hand, you can make the best purchases you can for *ready cash*, as Mr. A. will bring some with him. The promise of ready cash will be tempting to them. We wish you to go on and make these purchases. The deeds may be made out to blank with sufficient space to put in the names, and you can be *interested in the further purchases or not as you choose*, but in either case you will be well compensated for your services. The money will be ready for further purchases as soon as Mr. A. arrives. I wish you would do what you can in your region, and if you possibly can, meet us here as soon as you can, and bring all the titles with you, and we will have company books prepared and be ready to consult on what is further to be done. I am still confined to the house, and when I shall be able to get out, the Lord only knows. I have made three attempts, and each time had a relapse. Have the goodness to write me by return mail, and oblige.

Your friend. R. E. LITTLE.



Not long after Mr. Aiken's return, I received the following letter, to wit:

PEORIA MILLS, 28th December, 1836.

DR. ISAAC GALLAND,

Dear Sir:—I have been expecting to see you here for some time past. I presume the cause of your not having come over, is owing to the travelling being so bad. It is absolutely necessary that you and Mr. Little and myself should get together and hold a consultation on our Desmoines business as soon as we possibly can. We have a great deal to talk over, arrange, manage and act upon. I hope you will come over immediately and bring with you all the titles and documents relating to the subject, so that we may have a full view of the whole matter.

Mr. Little has been confined to his room ever since his return from St. Louis, with the Asthma—he is unable to attend to any business.

I trust I shall have the pleasure of seeing you here very shortly.

Very respectfully, I remain yours, &c.,

JOSHUA AIKEN.

On the receipt of this letter, I repaired immediately to Peoria, and there meeting Messrs. Aiken and Little, I delivered to them title papers amounting to 32,000 dollars. And was then informed by them, that they had sent one Harvy Gillett, a brother-in-law of the Messrs. Lees, of this Association, with $4,000; also, with authority to draw drafts upon them to be invested in the further purchases of these lands, with instructions to repair immediately to Commerce, Ill., and report to me the new arrangement, and to co-operate with me in making subsequent purchases.

I then urged that the money which I had advanced for the Association should be refunded, and I would avail myself of the choice allowed in Mr. Little's letter, of the 25th Nov. 1836, to wit: He says —"and you can be *interested in the further purchases or not, as you*

*choose*, but in either case you will be well compensated for your services." At which Mr. Aiken expressed some surprise that I should desire to withdraw from an enterprise, which he had regarded as not only safe, but immensely valuable. But, on hearing my reasons for preferring to act as a trustee without any further beneficial interest than that which I had already purchased, they readily consented to continue the former arrangement; and to confide to me the entire task of making the purchases, and drawing drafts on them in payment thereof. And without receiving a dollar of the large amount which I had overpaid of my proportion in the purchases already made—neither did I receive any thing for my services or expenses; but a letter dated, "Peoria, Jan. 10, 1837," was delivered to me, from which I make the following extract:

"Mr. Gillett:

Dr. Sir,——indeed we think it will not do for more than one to be the purchaser at all, and as we gave to Dr. Galland the precedence before in making purchases and examining titles, we think best to continue the arrangement, and it will therefore be best for him to make the drafts on us, and account to us in the titles received; and you will please pay over to him the four thousand dollars now in your hands.

Yours truly,

AIKEN & LITTLE."

With the above important document, I was instructed to return home, and with it and my own credit, to effect purchases of about $29,000 worth of these land claims. Messrs. Aiken and Little, residing at Peoria, in Illinois, were unknown in this district of country, while Marsh, Lee & Delavan, who resided in N. York, were still less known than the former.

On returning home with the above order on Mr. Gillett, for $4,000, I awaited his appearance until about the 1st of February, when I learned that he had gone north, perhaps to Galena; but the truth was he had only gone to Muscatine to speculate with the $4,000, in an enterprise of his own, as I afterwards learned; hence I was disappointed in obtaining any part of the funds which I had relied upon to meet some contracts requiring at least $29,000 to consummate.

I therefore sent a dispatch to Peoria, to advise Messrs. Aiken & Little of my disappointment, and to request them to forward to me the funds required. My dispatch returned and delivered to me the following letter:



Peoria Mills, 6th Feb., 1837.

Dr. Isaac Galland,

Dear Sir:—We have received your favors of the 28th and 30th ult. We have also just received a letter from Mr. Gillett, dated at Burlington, in which he says he was going to Commerce very soon, and Mr. Brierly tells us that you were to go up the river; of course we have no doubt you and Mr. Gillett would meet at Burlington, and all would be right, for it appears Mr. Gillett had purchased but two quarter shares, which he says he would draw upon us for, therefore he must have had all the money on hand, which no doubt will be sufficient for your purposes till we meet in St Louis. We do not feel inclined to pay over two thousand dollars a share under present appearances, but you may buy all you can at that price.

Your plan of getting the affidavits of the Chiefs and head men of the Sac and Fox nations of Indians to the titles which you may purchase, is an excellent one—we highly approve of it, and wish you could get it for all we have bought, as well as for those you may hereafter procure; because the genuineness of the title is *all important*—you will be pleased to make purchases to the full extent of your means, as understood by us when you was here, that is, by paying part cash and drawing on us for the balance. And you will also make further purchases at $2,000 a share, the cash part of the purchase money to be paid after your return from St Louis, and draw on us for the balance. We shall be in St Louis on the first Thursday of March, and shall expect to meet you there without fail.

Yours respectfully,

AIKEN & LITTLE.

Here again I was instructed "to buy all that you can at two thousand dollars a share"—but not a dollar was furnished to do it with—I was requested to make purchases "to the full extent of my means," &c. Indeed, that would have been a small operation, had I used only the means furnished by my New York, and Peoria partners. Mr. Gillett did not come to Commerce, and when at length I did meet with him at Burlington, he had other uses for the $4,000, than to have it vested in Half-Breed claims.

The first Thursday in March came, and the Mississippi was still closed with ice, while the high waters in the smaller streams rendered the land route to St Louis impassable. About the last of March, I went to St. Louis on the first boat that descended the river that spring, and from thence I went to Peoria, where I met Messrs. Aiken & Little, who, at my urgent solicitations, consented to accompany me to the

"Half-Breed Tract." On our arrival at my residence in Commerce, my disappointment was greatly increased on learning that Messrs Aiken & Little had come unprepared to pay the cash part of my contracts which amounted to between 3 and 4 thousand dollars; being the cash payment on purchases, to the amount in the aggregate, of about $29,000. Messrs. Aiken & Little having fully authorised me by their letter of the 6th of February, hereinbefore recited, to promise such cash paymants, after my return from St Louis.

After much labor and difficulty, together with the ill feelings often consequent upon disappointment, we succeeded in remodeling my contracts, so that of necessity, rather than from choice, the grantors consented to take drafts drawn by me on Aiken & Little in payment for these lands, amounting to more than thirty thousand dollars.

At the same time, through the politeness of Col. R. B. Mason, of the U. S. Army, we were enabled to make a general examination of the Chiefs and head men of the Sac & Fox nations of Indians, then convened at "Camp Desmoines," (now Montrose) in relation to the blood and parentage of each Half-Breed claimant upon our list; also, certificates were obtained of their parentage as half-breeds; likewise, a covenant and pledge of the nation, that the individuals from whom we made purchases, were truly and really Half-Breeds, as the certificates represented them to be, viz: "Half-Breeds of their nation entitled to participate in this reservation." It was also further covenanted and agreed, that, "if at any subsequent examination of the rights of these Half-Breeds, in whose favor the said Chiefs had executed certificates or affidavits, there should be found fraud, error or obliquity, in the said certificates or affidavits, or fraud or defect on the part of the grantors, then, and in all such cases, the nation should be holden to us for such damages so sustained."

This indenture was read and interpreted to the Chiefs, and afterwards signed by them in the presence of Col. Mason and others.

This was the plan alluded to, and so highly approved of by Messrs. Aiken & Little in their letter of the 6th of February. This treaty with the Chiefs and head men of the Sac and Fox nation of Indians, being signed in the presence of the officers in command at Fort Desmoines, (now Montrose) and acknowledged before Edwin Guthrie, justice of the peace, was filed in the office of the Desmoines Land Company, alias "*New York Company*," and was intended as a guarantee to secure the amount of the purchase money with damages, provided, that any of the portions so purchased, by me, upon the faith of



the affidavits and certificates of the said Chiefs, should hereafter prove defective or worthless.

I had deemed this precaution necessary for several reasons; among which was the great difficulty of ascertaining the precise proportions of the white and red race in any given individual. The Indian words *ap-pi-ta* and *pos-sic* are often used indiscriminately for *half* or *part*, in the English language. Hence, an individual who was known to be seven eighths Indian had been proved by the affidavits of the Chiefs to be "*a half-breed belonging to their nation, and entitled to a share of these lands.*" To put a stop to this unwarrantable multiplication of claimants, I desired to hold the nation responsible for all such frauds if practiced on me; and to prevent, if possible, any further frauds and perjuries on this subject. The Chiefs were forcibly impressed with the fact that, if any defect should hereafter be discovered in the validity of any of these claims, which I had purchased under their sanction, certificate or affidavit, that I and my partners should look to them for indemnity at the rate of two thousand dollars a share or portion, and that they would be required to refund it out of the proceeds arising from the sales of any lands which they hereafter might sell to the United States.

This agreement I have neither seen or heard of since I delivered it to Messrs. Aiken & Little about the 5th of May, 1837. But I have long since been satisfied that the $10,000 which the Kilbourns drew from the United States Treasury in payment, (as Keokuk said) "for a little stinking meat and rotten corn," pretended to have been sold by them to the Sac & Fox Indians, was in fact drawn from the Indians by virtue of the above contract. I am warranted in this opinion from the fact, that in the answer of Marsh, Lee & Delavan, in the case of partition of this tract, the files of the District Court of this county will show that they claimed about 60 portions, and the decree of partition shows that they were allowed forty-one. It was, therefore an easy operation by giving a few hundred dollars to some influential persons among those simple-hearted people to transform the above obligation into a fictitious account for "*horses, meat, corn, &c.*" Whether Messrs. Marsh, Lee & Delavan have participated in this spoil, I am unable to say, but on a careful examination of the pretended demand of the Kilbourns against the Sac & Fox Indians which I found on file in the office of the private Secretary of Gov. Chambers, soon after the consummation of this fraud, I was confirmed in the above opinion.

At this convention of the Indians at Ft Desmoines in the first and second weeks of May, 1837, in company with Messrs. Aiken & Little, I consummated the contracts which I had previously made with several of the officers, and other persons at the fort, by taking deeds to the Trustees as required by the articles of Association; and in payment, I made drafts on Messrs. Aiken & Little. There was no money used on this occasion, except a small sum which was paid by Mr. Aiken to the Indians. This was the only time that Messrs. Aiken & Little participated in the purchase of any part of this property; and having concluded this business, and made such other arrangements as they deemed necessary, they took their departure for Peoria via Saint Louis.

A few days previous to leaving, they executed and delivered to me the following instrument in writing, viz:

Dr. Isaac Galland,

Dear Sir:—As agents of the Desmoines Land Company, we hereby authorize you to take the charge and supervision of the Half-Breed Tract, and more particularly, to lay out the town of Keokuk, agreeably to a plan now made, with such alterations therein as you may deem expedient, and make such arrangements with persons now resident at Keokuk, as you may think best calculated to promote the interests of the company, and to take all necessary steps preparatory to a sale of lots—to take charge and care of the property at Camp Desmoines—and to rent the unoccupied buildings—to make such sales of land as you may see proper; and we will make the proper bonds for conveyance when we open the office—to employ persons to examine the farming lands to ascertain their value, &c.

Yours truly,

May 6th, 1837. AIKEN & LITTLE,

*Agents of Desmoines Land Association.*

I soon after terminated my purchases of land in the names of these trustees; some dishonored drafts came back from New York on me for payment; being drawn payable to my order and endorsed by me. At the same time we heard of great pecuniary embarrassments in that city.

My purchases for the Association, in the aggregate amounting to $74,877, and which was paid, and promised to be paid to the grantors as hereinafter stated.

I shall be compelled to condense this historical brief, by passing over a period of about one year, during which there was but little of



interest in the transactions--except that the City of Keokuk was laid out—a union and concert of action between the owners of interest in these lands resident in St. Louis, and Messrs. Aiken & Little, agents of the Desmoines Land Association, was attempted, and resulted in a rupture, which terminated in a paper war between the parties. In which *our* agents were first in fault.

I have now in my possession many of the original letters, from both parties, but they are not of sufficient general interest to justify their publication. Still, however, it may not be altogether misplaced in this connection, here to say that Messrs. John Walsh and Archibald Gamble, as agents for the St Louis claimants, with Aiken & Little, jointly issued the following card sometime about the 10th of May, 1837, to wit:

## HALF BREED LANDS.

### *KEOKUK, Wisconsin Territory.*

This place is situated on the west bank of the Mississippi River, about two hundred miles above St Louis, at the foot of the Lower Rapids, which is the first obstruction to the navigation for the largest class of Steamboats.

At this place all the steam boats in ascending the Mississippi at low water, are compelled to discharge their cargoes, which are transported over the Rapids in lighters, and on descending, the boats receive their cargoes from the lighters at this place.

The landing is equal to any on the river. No part of the town is ever overflowod. As this place, and its great local advantages, are well known to the public generally, it is deemed unnecessary to enter more fully into particulars. The proprietors prefer that those who wish to purchase, should examine for themselves the merits of this point. A part of this property will be offered at Public Sale on the ground.

ON THE FOURTEENTH DAY OF JUNE NEXT.

It is situated on the Half Breed Lands, and the proprietors have so united their interests, as to enable them to give a good title.—Terms of Sale—One fourth Cash, and the balance half in two, and half in three years, bearing interest at 6 per cent. per annum.

A part of that portion of the Farming Lands of the Half Breed Tract, which have been surveyed, being 119,000 acres, will also be offered at public sale by quarter sections, at the same time and place; and on the same terms as above.

JOSHUA AIKEN, ARCHIBALD GAMBLE, | ROBERT E. LITTLE, JOHN WALSH,

Agents for the Proprietors.

Persons desirous of further information in relation to the title of these lands, may obtain it upon application to Col. John W. Johnson, J. Spalding, Esq., J. & E. Walsh, of St Louis, or Judge Ralston, of Quincy, Dr. Galland, Commerce, Geo. Davenport, Rock Island.

At this sale, on the 14th June, lots on Water Street, between Main and Blondeau, sold from $60 to $84 per foot—the aggregrte amount of that sale was about 50 lots, sold for something more than $53,000.

But a small part of this sum was ever paid, as it was agreed on the part of the above agents that sixty days should be given to the purchasers to come forward and pay the advance cash instalment; but before this could be done, viz: in three days after the said sale of lots in Keokuk, and without the co-operation of Messrs. Gamble & Walsh, the following notice appeared in the public prints, to wit:

"HALF BREED LANDS."

"The farming lands in the Half-breed Tract, between the Mississippi and Desmoines Rivers, Wisconsin Territory, are now offered for sale at the office of the Desmoines Land Company, at Montrose, (formerly Fort Desmoines) head of Desmoines Rapids of the Mississippi River. The terms of payment are one-fourth cash at the time of sale, and the balance, half in two, and half in three years, with interest at six per cent. per annum. There will be a public sale of lots in the towns of Keokuk and Montrose, commmencing at Keokuk, on Wednesday, Sept. 6th, 1837, and closing at Montrose.

Persons with families, wishing to purchase lands and settle on the Half Breed tract, can be accommodated with rooms, or dwelling houses, and siabling for horses and cattle, at Montrose, without charge of rent, for a reasonable time, to erect buildings on such lands as they may purchase.

JOSHUA AIKEN,
ROBERT E. LITTLE,
Agents.

Office of the Desmoines Land Company,
Montrose, June 17th, 1837.

To say the best of this notice, it was very uncivil to Messrs. Gamble & Walsh, with whom Messrs. Aiken & Little had formed a co-agency. And had they intended to act in good faith towards the St Louis claimants, they would most assuredly have consulted with the St Louis agents, and joined their names and agency in the above notice for a further sale of this property.

This course of conduct in our agents was very justly regarded by Messrs. Gamble & Walsh, not only as a personal insult, but it evinced a dishonest intention, by assuming the entire control and ownership of the whole property; and that too in open violation of a previous arrangement mutually entered into by the parties. In July following, the following notice appeared both in hand bills, and in the "Missouri Republican," to wit:

"NOTICE IS HEREBY GIVEN.—That the undersigned, claimants of interests in the Half Breed Lands, are not co-operating with



Messrs. Aiken & Little, in sales of Half Breed Lands or any portion of them. That we do not recognise the right to sell, and shall contest any title which they pretend to convey; and that whoever purchases from them can in no event have a greater right than those gentlemen possess, which we believe to be much smaller than they pretend to claim. There has been no judicial ascertainment of the rights of the claimants, and we, with others, are endeavoring to have an investigation take place, and a final determination made as to the claims of all, before any sale, in order that justice may be done to every one. The course pursued by Messrs. Aiken & Little, has a tendency to throw every thing into confusion, and create endless trouble and litigation. We therefore Warn all persons against purchasing from them:

| | |
|---|---|
| Mary L. Johnson, | Jas. R. M'Donald, |
| Eliza O. Gildersleve, | P. Walsh, |
| E. H. Gliem, | Geo. Patch, |
| Jno. O'Rourke, | Greene Erskine, |
| Michael Tesson, | Josiah Spaulding, |
| Edward Walsh, | Henry McKee, |
| Otis Reynolds, | Hugh Tumelty, F. Dorthey, |

Hermon C. Cole, Wm. Laughton, Elizabeth Hunt, Sheldon Norton, by John Walsh, and A. Gamble, their attorneys.

Philip G. Hambaugh, attorney in fact for twenty-eight additional claimants. St. Louis, July 26, 1837.

And here the co-agencies of Missouri and N. York terminated. A large amount of property having been now secured by regular conveyances, to the trustees, *five* in number, a *majority* of them residing in the State of New York, and to be managed and controlled by that *majority*, under articles of association; while the *minority* of the said trustees, viz: Aiken and Galland, had paid, and assumed to pay, more than three-fourths of the whole purchase money. It was now deemed important by the majority, viz: Marsh, Lee & Delavan, that they should deny all liability to pay any of these drafts—accuse Aiken in the first place, of gross violations of his covenant duties—misapplications of "*large sums of money*;" and knowing well, from my letters that I was most grievously harrassed by the holders of the large am'nt of protested bills; a most felicitous opportunity presented for exciting Galland's prejudices against Aiken, by making him believe that Aiken was the sole cause of all his difficulties.

These circumstances were eagerly seized upon, and successfully

employed by the conspirators in New York. A scheme was thus laid to remove Messrs. Aiken & Little from the agency of the company; and to fill the vacancy, with a choice apprentice of their own school to be newly imported to the scene of operations.

To this end the following letter was forwarded to me from New York, address: "Dr. Isaac Galland, Commerce, Illinois:"

NEW YORK, Aug. 24, 1837.

Dear Sir,—Having relied on Messrs. Aiken & Little for full information to be communicated from time to time, of their operations for the Desmoines Land Association, and supposing that you would also be regularly advised by them of their proceedings, I did not think worth while to trouble you with any communications on the subject. But these gentlemen have violated their trust as our agents. They have never given us any statement by which we could ascertain how they disposed of the large sums of money we placed in their hands, notwithstanding my repeated and very urgent request that it be furnished without delay.

In June I received what they called a semi-annual statement of their accounts with the association; which was any thing but satisfactory. I wrote for explanations, and when I heard that Mr. Little was on his way to New York, I hoped that he would be prepared to settle all difficulties—he accounted for only part of the money, by saying that Mr. Aiken had applied about 9 or 10 thousand dollars of it to their private use! most of this sum was taken by Mr. A. for his individual use, the other portion was used for the firm of A. & L., except $1,000, which Mr. L. took himself under the strange idea that he was entitled to it for his services—this he says he is willing to give up.

By this gross violation of a sacred trust, they have forfeited all claim to our confidence.

Mr. W. E. Lee, one of our trustees, left here two days since, intending if possible to reach Keokuk by the 6th of September, when I hope he will meet you. He will explain the object of his visit, and I hope you will agree with us in the opinion that A. & L. ought not any longer to be entrusted with the management of our affairs as agents—I am inclined to think much less unfavorably of Mr. L. than Mr. A.

I have not the means of knowing how Mr. A. is situated in regard to property. I have supposed that he was nominally in real estate rich, but however that may be, he is not a safe man to entrust money



with, and I hope you are not exposed to loss by him. I shall be happy to hear from you at all times.

Very respectfully, your obedient servant,

SAMUEL MARSH.

Believing at that time, that the statements made in the foregoing letter, were true, I had no hesitation in consenting to the removal of the delinquent agents. But it was with great reluctance, and after several days delay, and the most solemn assurances, given to me by Mr. Lee, that the agent then to be appointed, should be merely temporary, until other arrangements could be made, before I consented to the appointment of Messrs Kilbourn and Austin.

As a matter of economy, I urged the appointment of but one agent, as it was evident that there was nothing for them to do, and the office was a mere sinecure.

But in this I was much mistaken; although Mr. Austin retired from the agency some ten years since, still Mr. Kilbourn has been constantly employed in the discharge of the most painful and revolting duties; which indeed, it would seem, that no individual could have performed, short of a depravity resulting from the fall of a second Adam.

Mr. W. E. Lee arrived at Montrose in the early part of September, and the removal of Messrs. Aiken & Little having been agreed upon, Mr. Lee claimed to represent Messrs. Marsh & Delavan by power of attorney. Thus a full board of Trustees, with their agents, was present.

The scheme to be accomplished by Mr. Lee, on his visit to the west, at that time, has since proved to be the attainment of the following objects, viz:

1st. The removal of Messrs. Aiken & Little from the agency.

2d. To fill the vacancy so made in the agency by the appointment of such person or persons, as would give themselves solely up to their service, in carrying out their "plans," "schemes," "suggestions" and "Yankee tricks."

3d. And so to "*manage* a settlement of the accounts of the association *as to appear to be* a bona fide," settlement, but in fact to be no settlement at all.

On the 16th of Sept., 1837, Messrs. Lee, Aiken, Little and myself, being present at the office of the Desmoines Land Association in the town of Montrose, an attempt was made to settle the acts of the company, and a statement was made out by their clerks, viz: D.

W. Kilbourn and Henry S. Austin, in duplicate in the following form, to wit:

"Dr. Aiken & Little, Agents Desmoines land Co.
in acc. with Isaac Galland:

Debit, $88,410 45. Cr. $76,900 00

The duplicate, in the hand writing of Kilbourn, I retained, while Mr. Lee carried with him to New York, the one made by Mr. Austin, to be filed in the office of the "Company," in that city, as he said. On the debit side of this account there was no dispute, or hesitation about allowing every item as charged by me, except the single charge of commission for making and endorsing bills of exchange, amounting to $66,632, at ten per cent—$6,663 20. I insisted on this, as not an unreasonable compensation, for the great risk, in making myself liable to be ruined—about $40,000 of these drafts had already been dishonored, as they had become mature—I had taken up more than ten thousand of these myself at a great sacrifice of property. In addition to this, I had devoted my whole attention and labor to the service of the association for more than one year, in the meanwhile, I had abandoned a lucrative professional practice in order to discharge successfully my duties to this association.

These circumstances were all well known facts, and undisputed by any of the parties. But poverty, and stern necessity were the excuses then attempted to be offered for not affording me the relief, which, at that time, I much needed.

Mr. Lee admitted the justice of my claim, but seemed to think, (for reasons which he then assigned to me) that it was due to me from Messrs. Aiken & Little, and not from the eastern partners.

I will next refer to the other side of this account, and beginning at the foot we find the following items viz:

1st. "I Galland's note to S. H. Burtis rec'd by A. & L. in part payment for Burtis purchase, (but not yet given up to Dr. Galland.) $3,167 00

2d. "Paid and to be paid by Mr. Stebbins $2,499 20

3d. "Drafts on A. & L. in favor of R. Cock and I. Gurell $900 00

"Aiken & Little's draft in favor of I. Galland, on B. F. "Lee & Co., dated Oct. 5th, 1836 $1,000 00

4th. "Accept in favor of Jeremiah Smith $1,000 00

These details of erronious and false credits, which were entered to the credit of this account, were allowed on the hypothesis that they would be paid, but which has never been done.



But when we add to this the items of shavings and swindleings, which have come to my own knowledge, as perpetrated upon the holders of the drafts enumerated on the credit side of this account, to the above bill of particulars, I find that this credit is overcharged $3,464,-00. If the commission on drafts charged by me, is deducted from the debit it leaves $81,747 25. And deduct the false charge in the credit, including the Burtis note, and it leaves $53,406 00. Showing a balance in my favor on the 16th Sep., 1837, of $28,341 25.

These facts can be proved, and this statement of incontrovertible truth, shows that this large estate, which is worth at this time more than six hundred thousand dollars, cost in the actual aggregate of the purchases, $74,877 00; and that $64,802 of the purchase money was paid in bills of exchange, drawn by Aiken & Little, and endorsed by me, or drawn by me and accepted by Aiken & Little. This sum deducted from the whole amount of the purchase money, will leave the sum of $10,075, as *"the large sums of money we placed in their hands."*—See Mr. Marshe's letter. I would here remark in reference to Mr. Marsh's Letter hereinbefore recited. He says, (alluding to Aiken & Little) "they have never given us any statement by which we could ascertain how they dispesed of the large sums of money we placed in their hands." About ten months had elapsed from the organization of what Mr. Marsh here styles the "Desmoines Land Association," up to this time. And he regards it as a most heinous offence, a "gross violation of a *sacred* trust," that they, for the period of *one month and twenty-four days*, had failed to make out their semi-annual statement. What would Mr. Marsh think of the villain, who should not only fail and refuse to give any account of his doings, and how he had disposed of more than $100,000 worth of property for the term of *ten years;* and at the end of that time, should file his affidavit in a court of record, declaring that he knew not the man;—also, that he, himself never was a member of a "Desmoines Land Assocation." And in order the more effectually to rob his partner, he had given $10,000 to a stereotyped perjurer to swear and steal for him on all occasions where an issue was made, or to be made between him and his partner for the recovery of the embezzled funds? "And Nathan said unto David, Thou art the man."

During Mr. Lee's stay at Montrose, and at my house in Commerce, he repeatedly assured me that on his return to New York, he would use every effort to relieve me from the embarrassments which I had incurred by making and indorsing drafts in payment for this proper-

ty. After accomplishing the objects of his visit, he set out about the 20th September, on his return to New York.

I waited with much solicitude, a long time, for some communication from him, but my hope was doomed to disappointment, while the bill holders became more and more importunate. I at length wrote to Mr Lee imploring relief.

About the last of May, 1838, I received a letter from him, the first part of which here follows:

"NEW YORK, May 9, 1838.

Dear Sir—Your favor of the 17th ult, (post marked 20th,) I had the pleasure to receive 2 days ago—I can very well understand how it is that you are "not reposing on beds of roses."

On my return to this city, after my visit to Montrose, I found the times growing worse and worse, and they have steadily grown worse and worse ever since. Indeed, no one of the parties interested in the half breed land seemed to be willing to make any effort to rescue the property from its embarrassments by raising a single dollar. When I left Montrose, I induced Mr. Kilbourn to appropriate 800 dollars, (which he had in cash belonging to Shipman) to the purposes of the company, expecting that the parties here would be willing to reimburse Mr. Shipman, *pro rata*; but I was obliged to pay the whole out of my own pocket. They would not contribute one dollar."

Here we have Mr. Lee's own statement in proof of their infidelity, selfishness, and total disregard of their own solemn promises. Still, under the influence of malignant hatred, a court in Iowa has loaned its authority to sanctify the deed. And as the honesty, moral worth, and great wealth and piety of these gentlemen trustees, bave been so urgently pressed upon this community, as particularly to secure to Mr LEE the immortality dependent upon the *name* of this county; it is certainly due to his character as an inflexibly honest man, that his further endeavors to pay off these dishonored drafts, which I had drawn on Messrs. Aiken & Little in payment for these lands, should be made public, at least in the county which has the honor of perpetuating his name. I will therefore, make another extract from the same letter. Mr. Lee says:———"I come now to make a suggestion to you, without having consulted even my partners about it—and not knowing therefore, whether I could carry it into effect, even if you thought well of it. I wish you, however, to send me your views on it with all convenient speed. Money is pretty much out of the question—but goods can, (I think) be had. Now, sir, do you think it would be



practicable to buy up Aiken & Little's acceptances with *ready-made* clothing, and other dry goods—getting a good round price for the goods—if you think it can be done, I wish you would send me a list of articles—such as you think the parties would take.

My plan is that the '*Company*' shall not appear in the business, but to have an agent to do it—and after we have bought up the whole or nearly the whole of the paper, to advertise for it, offering to pay the *specie for the whole of it.* What think you of this for a yankee trick?—Aiken & Little must know nothing of it, if it be done. Let me hear from you immediately. If the parties who hold the paper, are really sick and want to realize, they would probably take any dry goods which would suit any of the markets on the Mississippi."

I am, dear sir, very sincerely,

WM. ELLIOTT LEE.

How christian-like, Mr. Lee proposes to act towards the holders of these dishonored acceptances; the full value of which he and his associate trustees had received in lands at reduced prices. After inducing Aiken, Little and Galland "to take them in," he now charitably proposes "to *clothe them!*"

'The 'Company' shall not appear," &c., says Mr. Lee. What "*company*," Mr. Lee? Have not you, as well as Mr. Marsh & Delavan upon your solemn oaths declared, in your answer in the case of B. S. Roberts vs. Marsh, Lee, Delavan & others. Also, in the case of Samuel Van Fossen vs. same defendants, that no "*company*" ever existed &c.? And are not these answers now on the files of the courts in this county? And again, Mr. Lee says, "Aiken & Little must know nothing of it, if it be done." Why, Mr. Lee? Certainly you do not desire to cheat on all sides?—first the holders, and next the maker and acceptors, who are your own partners, by concealing from each your financial operations with the other.

From the whole tenor of the conduct of Marsh, Lee & Delavan, as well as from the partlcular "plans," "schemes," "Yankee tricks," and other evidences of deception, which were "suggested" in many of their letters; I had urged with all possible earnestness, an immediate settlement of our accounts, and had proposed winding up the concern in some desirable form. And by letter about the last of May, in reply to his "Yankee trick" suggestion, I also proposed a plan to pay off the outstanding debts of the Company by dividing the property among the parties; at least so far as each individual had paid up; and to release to each other, their several shares, by which each party being autho-

rized to sell in severally, would be enabled to meet their equitable proportion of the protested bills, which remained unpaid; this letter was addressed to Mr. W. E. Lee. In reply to which I received the following:

New York, June 21st, 1838.

Dr. Isaac Galland,

Dear Sir:—Your esteemed favor of last month reached this place in due course of maill, but unluckily I was absent in Canada, and have very lately returned—this is my apology for not giving you an earlier acknowledgment of your letter. Our best lawyers here say, that such a division as you suggest, would not relieve us of the difficulties you propose to remedy. The only remedy (by conveyance of the property) is to make a sale of the whole property to some party not interested in our purchases—such sale must be so managed as to *appear to be*, and to all *legal* intents and purposes, *in fact to be* a "bona fide" sale." How this is to be managed is yet to be determined. If you have any suggestions to make let me hear from you. In the meanwhile let me make a suggestion to you, which has the concurrence of Mr. Marsh and all others interested as far as we have had opportunity to know. We think it of great importance to secure the good offices of Jeremiah Smith. This man, you know, has a pretended claim of $15,00. Now we propose to say to him that we are desirous of liquidating his claim—but as we have no money, we propose to give him a share of our whole interest in the half-breed tract—say one fiftieth, or even one fortieth of the whole. The deed to be signed by all the trustees. He may, if he pleases, keep the deed in his pocket till all the questions are settled—or we will give him a bond for a deed, conditioned that we shall make him a deed whenever demanded. In this way we may have his influence in our favor while the public calculate upon him against us. What think you of the scheme? If you agree with us, had you not better open a negotiation with him at once? I presume Aiken will fall in with it—for he is just the man who would be likely to invent such a plan. If you get Smith interested in this way, his influence and vote will prevent any sacrifice of the property until we shall have time to clear off the debts.

I am dear sir, yours very truly,

WM. ELLIOTT LEE.

About the same time I received a letter from Mr. Little, from which I make the following extracts:



Peoria, May 14th, 1838.

Friend Galland,

Dear Sir:—Your kind letter per mail was duly received,——as I have many important matters to talk about, I will at once to business.

Since I last wrote you, we have paid off the bills drawn on us by you for the Desmoines Co. Ten thousand dollars, including, however, the amount to Hull, Harter & Billon, which they, (the Co.) say they will not allow us to charge them, and which must be some way arranged hereafter. But it seems of little consequence whether we charge or not, if they are determined not to pay, and their continued silence looks suspiciously that way. This $10,000 we have paid off by disposing of our real estate. In those cases where we accepted only as agents, we obtained nearly a fair price for our lands, but in those cases where we had accepted not as agents, we had to let our lands go at about one half their value.

Having been informed by Kilbourn that N. Smith was desirous of obtaining his pay in lands, we have concluded to take up a part of his demands in that way, to amount of $4,000 if he chooses so to do, and have accordingly sent Kilbourn an offer to make to him. We are willing to do this, and also to take up a few thousand more, but cannot go much farther before our "pond will run out." I have concluded to do this, thinking it might at length induce the N. Yorkers to do something. But in this I may be disappointed. It is very desirable both to you and myself that the large amount of paper with our names upon it should, if possible be taken up. I have, therefore resolved to do all I can to accomplish it, and get my pay back as best I can, and when I can. If I can pay in real estate at something near its value, I am willing to take up some 8 or 10,000 dollars more—and If you can aid Kilbourn in the matter, please do it. * * *

When at New York Mr. Marsh repeatedly told me that when he urged the other parties to pay up and send on the money, when they, some of them, could assign no other excuse, they would say, as the *agreements* had never been signed, there was no *obligation* on their part to pay, and therefore *would* not; and he (Marsh) repeatedly urged me to have it done. I now consider it *all important* that they should be signed. I trust and believe you will view it in the same light. The time may come when these agreements, completed by the signature of yourself and Mr. Aiken will be of great service to us.

Your friend,

May 15th. R. E. LITTLE.

N. B. We have concluded to advise Kilbourn to go immediately to New York, and make one more effort to get them to do something. But as it is uncertain what success would attend his going, we deem it important to go as far as we can in taking up these bills by our own lands, and if it was known that he was going to N. York, they might refuse to take land, hoping to get money on the return of K; and in the end be disappointed, and more outrageous even than now. *Now*, we have it in our power to pay in lands 8 or 10,000 dollars more; but how it may be three months hence, is uncertain. From this reason, we deem it important that when K. leaves, it should not be known that he is going farther than Peoria, and have requested him and Austin to "keep their own council" to those around, but consult fully with you. Yours, R. E. L.

Here we see an honest man writhing under the tormenting importunities of a crowd of outraged creditors, who had become convinced that there was swindling and unfair dealing some where concealed; and were therefore the more clamorous for their demands. I have published this letter mainly for the purpose of shewing the contrast between Robert E. Little, dec'd, and William E. Lee, still living. Mr. Little, on the 14th and 15th of May, was exerting every effort, selling off his own means of support; planing and contriving every honest measure and means, to satisfy these demands, and letting his real estate go at a sacrifice of one half its real value, for the purpose of taking up the accepted drafts which himself and Aiken had authorized me to make for the use and benefit of this association—the lands were sesure in the hands of trustees—but the grantors were not paid for them. The holders of these drafts had heard so much said of the immense wealth of the New York members of this association, that when they were told by Messrs. Aiken & Little, or myself, that they had "no money," or that "money is pretty much out of the question," (See Mr. Lee's letters) they at once became exasperated, and often very abusive—believing, as they had reason to do, that there was base dishonesty somewhere.

The great destruction by fire in N. York, and the consequent derangement of business in that city, disposed me for a long time, to place the most charitable construction upon their otherwise unaccountable conduct.

But, who will not appreciate my surprise, on reading the following letters from Capt. Roberts and Mr. Charles Roberts:



CARLISLE BARRACKS, Penn., Aug. 9, 1838.

Dear Sir:—I will be obliged to you for a copy of the articles of agreement of the "Desmoines Land Company," and such other papers as will go to show that such a company is in existence, and that Aiken & Little were the agents for that company, and that you, as a member of that company, had full power to draw on them for your purchases from me, and that those drafts having been accepted by Aiken & Little, are valid against the company.

I came east upon the strength of assurances from Delavan and others that my claims should be paid. They, however, have undertaken to swindle me out of my demands on them; and I am obliged to bring an action against them.

I am now, Doctor, upwards of $3,000 looser in my purchases and sales to you; and it has already nearly ruined me, and will eventually entirely destroy me, unless I recover these claims. You will assist me much in furnishing such testimony as will show that the Company exists, and that your acts have been in good faith.

I am, sir, with much respect, your obedient servant,

B. S. ROBERTS,
Lt. 1st Dragoons.

For Dr. Galland, Commerce, Ill.

The writer of this letter is a gentleman well known in this county—he is one of the officers hereinbefore referred to, at Fort Desmoines, from whom large purchases of land had been made—his sales to the Association amounted to $6,666. The deeds of conveyance, by which he had alienated his title to this estate, describes the grantees as follows, to wit:

"Joshua Aiken, of Peoria, in the State of Illinois; Wm. E. Lee, and Samuel Marsh, of the city and State of New York; Edward C. Delavan of the city of Albany in the State of New York, and Isaac Galland, of Commerce, Hancock county, and State of Illinois; *Trustees of the Desmoines Land Association.*"

A letter from Mr. Charles Roberts, dated in the City of New York, had previously advised me, that there was some scheme of base villriny concocting in New York against me; I will here give an extract from his letter:

NEW YORK, April 19, 1838.

Dear Sir,—It is asserted by Mr. Samuel Marsh, and also by Mr. William E. Lee, of this city, that you had no authority to draw on Aiken & Little as agents of the Desmoines Co., and that A. & L. had

no authority to accept as agents for such a company, and for this reason (as says Mr. Lee and Mr. Marsh) that no such company ever had any existence. They further say, that yourself and A. & Little never had any right to use the credit of the different individuals, who, it is said, constitute such a company, in the purchase of Half Breed claims. They say your instructions were to purchase with cash and not with credit--and that Aiken & Little were furnished with cash for the purchase of said property, and that when more should be required, the individuals east were to furnish the same to an amount not exceeding $70,000.

Now sir, I am not prepared to believe all these statements—I hold acceptances for Lieut. Roberts, as agent. Please give me all the light you can on the subject, and much oblige, Yours respectfully,

CHARLES ROBERTS,
Agent for Lieut. B. S. Roberts.

It is only necessary to recite the language used in Mr. Marsh's letter hereinbefore copied, dated Aug. 24, 1837, in which he complains of Messrs. Aiken & Little, for not communicating to him "from time to time, their operations for "*the Desmoines Land Association.*" Also see the style of the account herein given, between Aiken & Little, Agents &c., with myself, and which Mr. Lee had carried with him to New York, and hence it must have been familiar to all persons concerned. Mr. Lee's Letters abounded with the title of "Company," for this association. Compare the statements made to Mr. C. Roberts—the oaths of Marsh, Lee & Delavan, now on the files of the District court of this county, (if their New York agent has not abstracted them from the files,) with their own letters, accounts, deeds, and the second article of their "agreement," or articles of association; and then say how far these gentlemen are to be believed, even upon their oaths?

They, Marsh and Lee assert, says Mr. C. Roberts, "that you had no authority to draw on Aiken & Little as agents of the Desmoines Company, and that A. & L. had no authority to accept as agents, for such a company, that no such company ever had any existence." This falsehood is clearly proved by reference to the second article of the agreement, hereinafter recited, and which had been signed and sealed by these men.

"They further say" says Mr. Roberts, "that yourself and A. & Little never had any right to use their credit," &c.—"in the purchase of half breed claims." "Their credit!!" If we had possessed no better credit than *theirs*, but little of all these lands would have been



purchased in *their* names; but unfortunately for us, we had purchased upon our own credit, and vainly hoped that those persons in whose joint names with ourselves, we had taken the titles to the property, would have respected their solemn engagements, and promises "to assume and pay their proportions of the purchase money, &c., at such time as the same should be required to meet the drafts and notes" &c. —See article *Second.*

The following provision in the articles of Association will show what they had promised to do in the premises, to wit:

"*Secondly.*—And the parties hereto mutually covenant and agree to and with each other, and each for himself, to assume and pay on account of, and for the purchase money, expenses and improvements of said premises, purchased and to be purchased, in the following shares and proportions, that is to say: The said Isaac Galland eight forty-eighth parts of the whole: the said Edward C. Delavan eight forty-eighth parts: the said Samuel Marsh four forty-eighth parts: the said Henry Seymour four forty-eighth parts: the said B. F. Lee four forty-eighth parts: the said William E. Lee, eight forty-eighth parts: the said Shipman & Aiken jointly, four forty-eighth parts: the said George P. Shipman in his own right, four forty-eighth parts: at such time as the same shall be required to meet the drafts and notes already made, or which hereafter may be made, by the said Aiken & Little, or either of them, or by any other agent or agents duly authorised on account of the premises already purchased, or hereafter to be purchased, under these presents; and for this purpose the parties hereto respectively agree to accept and pay any draft or drafts which the said trustees, their agent or agents, or their treasurer, by them duly authorized and appointed, shall at any time make upon them or any of them, for their shares of interest as aforesaid."

Messrs. Marsh & Lee, also say, to Mr. Charles Roberts that Galland "Aiken & Little's instructions were to purchase with cash and not with credit."

Now compare this assertion with the very language of the agreement: "And the parties hereto mutually covenant and agree to assume and pay, &c., at such time as the same may be required to meet the *drafts* and *notes*, already made, or which *hereafter* may be made by the said Aiken & Little or either of them, or by any other agents duly authorized," &c.

Messrs. Marsh & Lee further said to Mr. Roberts "that Aiken & Little were furnished with cash for the purchase of said property, and that when more should be required, the individuals east were to furn-

ish the same to an amount not exceeding $70,000." (See letter of C. Roberts.) This statement, to some extent, may be correct.—And if it was true, that they at the east, had furnished Aiken & Little with some cash, that was a private arrangement among themselves, and not provided for in the articles of association. Neither have I any knowledge of the fact, further than the statement in Mr. Marsh's letter of the 24th Aug. 1837.

And admitting it to be true, to the utmost extent ever reported to me by common rumor, it did not eeceed $20,000. & Mr. Marsh, in his letter just referred to, charges them, (Aikr & Little,) with misapplying 9 or 10 thousand dollars of that sum, which would leave but 10 or 11 thousand, to be used in the purchase of this property. But there was more than $30,000 invested in the purchase of these lsnds prior to the organization of this Association, (22d Oct. 1836.) And if Aiken & Little had misapplied the whole sum, I was not answerable for that—not a dollar of it ever reached me, that I am aware of—and as I have before said, it was an outside transaction, not within the provisions of the agreement; and the delinquents alone were accountable to those from whom they had received the money.

Messrs Marsh & Lee further said--"when more should be required, the individuals east were to furnish the same to the amount of $70,000.' Have they done so? See Mr. Lee's letters, abounding with excuses, apologies, schemes plans, '*yankee tricks*,' &c., which were so profusely advanced instead of any part of the seventy thousand dollars. His partners, he says also, "would not contribute one dollar." Again he says: "Indeed, no one of the parties interested in the Half-bree lands seemed to be willing to made any effort to reseue the property from its embarrassments by raising a single dollar." This letter, it will be observed, was wrote in May. and the conversation reported in Mr. Charles Roberts' letter, occurred during the preceding month.—What base duplicity! to talk in that manner to the creditors, and then turn round, and in a few days, write with so much affected sympathy to me, "I can very well understand how it is that you are not reposing on beds of roses."

The first purchase which Messrs. Aiken & Little effected in this district of country, was from myself, being four-fifths of all my own individual interest in the Half-breed lands; in part payment whereof they, (Aiken & Little) drew a draft in my favor, on Lee Savaae & Co., (this same W. E. Lee) for $1,500. This, it must be observed was my own private property, and bears date about the 29th Aug 1836. In Feb. following, I gave it in part payment for a stock of dry



goods, purchased of Ethan Kimball. The next news I received of my draft was the following note:

New York, June 19, 1837.

Mr. Galland,

Dear Sir:—The draft which you let me have, on Lee, Savage & Co., for fifteen hundred dollars has been protested. They do not seem to be satisfied with the procedings respecting your purchase, or the purchase you made of me, and drawing on them for your private,use, &c. Your's &c.,

ETHAN KIMBALL."

This was adding not only insult, but falsehood, to injury. They knew the draft was my own private property, &c., that I, of course, had a right to apply it to my own private use. And this base lying quibble was intended to deceive Kimball, and induce him to suffer it to be shaved, by them,—"and *drawing on them* for your *private* use." How superlatively contemptable was this deceptive artifice! I was not the drawer, but the drawee of this draft.

The following extract from a letter of the Rev. George Stebbins, will explain one item in the account hereinbefore stated, wherein the entry made in the account reads thus' "Paid and to be paid by Mr. Stebbins, $2,499, 20-100." Not one cent of of this sum has has ever been paid; concerning which, Mr. Stebbins writs thus:

New York, June 22d, 1838.

Dr. Galland,

"Dear Sir:—As to Dr. Channing I have not seen him for several months, I regret very much that he has not fulfilled in good faith his part of the contract. The $700 draft, which I accepted at his instance, with the understanding that he would meet it, is still unsettled. I am still liable. A note due me from him has not yet been paid. The truth is, I presume, that he is in difficulty with almost every one else. He says the persons for whom he is transacting business, cannot obtain their funds from the south, without a great sacrifice. I think he ought to have written to you, and given a frank disclosure in regard to his means, and any prospective arrangement which he could enter into.—Difficulties are not always diminished by evasion. True and manifest honesty is the best policy. Yours Sincerely,

G. STEBBINS."

"Without a great sacrifice," forsooth, then I must be sacrificed, and insulted, and slandered, into the bargain; to relieve his employers from the necessity of raising the funds which he himself had solmenly prom-

ised to pay to me. Such insufferable villainy, is only equalled by the impudence of the excuse here offered for it.

I should not have referred to this base swindler, called Dr. Channing, by Mr. Stebbins, had not Mr. W. E. Lee insisted that the cash was so certainly to be paid, by Dr. Channing, that he must have it charged to me, or rather, credited to the company, and had it accordingly entered as above stated, "paid and to be paid, by Mr. Stebbins" who had sold out to Channing, who was to take the place of Mr. Stebbins and pay for the interest.

*On the decease of any of the Trustees.* I will next proceed to the consideration of another part of the subject,

"And in the event of the death of any of the said Trustees, occurring before the trusts hereby created are perfected, as herein provided, it is hereby mutually agreed, that the surviving Trustees shall designate some other person to supply the place of such decedent, and the person so designated, shall take the place of such decedent, and execute faithfully all the duties hereby created in the same manner as such decedent, if living. might, could, and ought to have done." See last clause, 3d Art.

Has the court released and discharged the surviving Trustees from their express covenant agreement, as stipulated in the above article, for filling such vacancies as might occur in the board, by the death of any of the Trustees? D. W. Kilbourn, over the signature of "One who knows better," in a late number of the "Dispatch," says: "In the trial of this case the court remarked, that when the decree was made the court *must have had* good and sufficient reasons for *decreeing* the land to *Marsh, Lee & Delavan*; that Galland's interest *might* have been extinguished by *consent*, or otherwise; and at any rate, that if the articles of association were binding, then the *acts* of a *majority* of the Trustees were binding." Wonderful Logician! '*might* have been!'

Now the greatest part of this statement, about what "the court remarked," is a base falsehood, and "*might* have been" a slander upon the court, if that court could be slandered. The above quotation would have been strange language for the same presiding officer to have used in reference to some of his own prior decisions. But I cannot decend to argue with a thief; having a much higher object to attain, by the exposure of rascality in *higher* places.

It will not be denied that Joshua Aiken, one of the Trustees, had died before the trusts created by the instrument, of which the above third article is a part, had been perfected—that the survining Trustees have never "designated some other person to supply the place of such decedent." Again, it must be admitted, that the sentence; '*the said Truslees,*' wherever it occurs in the articles of Association, refers to the whole board of trustees as named, and particularly described in the first article of the said indenture.



Nothing short of the most pitiable ignorance, or a design to accomplish some base purpose, has, or ever will give any other construction to that sentence.

The three first sections of the 3d article in this indenture, declare what the whole board, or a mrjority, may do in reference to the care and management of this property, but the 4th section, clearly commences a distinct sentence, and in the identical language used in the second part of the first article, viz: "and the title to all the lands hereafter purchased or acquired by *the said* Aiken & Little in *the said* district of country, shall be taken in the names of "*the said trustees*" &c. If this refers to the *five* individuals just named and described in the preceding part of the same sentence, then the same sentence means the same thing in section 4, of the 3d article, viz:

"4. And *the said trustees*" are hereby authorized to *sell and convey* from time to time, as they may find opportunity, any part of the lands so purchased, on such terms as to payment, and to take such securities for the purchase money, or any part thereof, as they shall think fit."

The 5th section also begins another distinct sentence, thus: "5. And the trustees, or a majority of them are also, (that is in addition to the authority given to the majority in the 3 first sections,) authorized to make all contracts, and do all lawful things and acts that may be necessary or proper to carry into effect the objects of this agreement, and to promote the interests of the parties concerned, in respect to the property purchased, and every part thereof. Had this scheme of unprecedented construction, now claimed for the majority, "to sell and convey" this property, been set up at the time of making the contract; this trio majority, now dubbed the "New York Company," would never have had employment for their sapient "One who knows better" in this county. They might still have availed themselves of his valuable services in the *fire* department of their New York operations.

If Marsh, Lee & Delavan now really intend to make a good title to the lands and lots which Kilbourn is pretending to sell as their agent, why do they not comply with the clearly expressed terms of the articles of association, under which the same has been awarded and allotted to them?

Is it not their duty to fill the vacancy now in their board, and to compell Galland, by bill or otherwise to perform his trust duties, as specially required in the instrument creating the trust?

These remarks are not intended for those who have *already* purchased from D. W. Kilbourn, and are satisfied with their titles. These pretended sales, are to a very considerable extent, gifts, donations, bribes and rewards for services rendered, or to be rendered; and believing, as I do, that the titles which they have received, in such cases are a full equivalent for the services rendered, there is no wrong done between the parties.

But as there is a continued conflux of honest, enterprising immigrants, to our city and county, these remarks may be of some importance to such—and more especially so at this time, from the facts, that the prices of the property has greatly advanced; while the prices heretofore given for services, have been most alarmingly depressed; either from the number of competitors for the service, or from the near completion of the job.

## CAUTION.

To such persons therefore, either stranger or citizen, those who have already purchased in good faith, or such as may be tempted to purchase through the delusive and alluring proposals of this "New York Company's" agent, I say, do not be in haste about obtaining that *most excellent of all titles*; but like the fox in the fable, who heard another fox extolling the great convenience of his modern discovery—where persons seem especially interested in your welfare, and anxious that you should secure a "Kilbourn title"—look behind them, ten chances to one, if they have not lost, or are in danger of loosing, Reynard's ornamental member; and are only endeavoring to entice you into the same trap.

Marsh, Lee & Delavan, having received this property in trust, "under the" agreement, or "articles of association," leaves the title to the property precisely where it was before the partition—the rights which this association, through their trustees, held in common with all others interested in this reservation, were by the decree of partition, separted from all other rights—no new rights, were thereby created—neither does the circumstance of holding this land in severalty, release the trustees from the discharge of all, or any of their covenant duties, expressed in the said articles of association. These lands are all vested by legal conveyance in the five trustees named in the first article. And in the event of the death of any of them, the articles of agreement provides for supplying the place of such decedant; and there is no rule of law—no inference of common sense or motive of moral honesty, that can, or will release the surviving trustees from their obligation in this part of their covenant duties. And in proof that Messrs. Marsh, Lee & Delavan, have never thought otherwise, I will give below the copy of a communication forwarded to me by Mr. Marsh some time *after* the final confirmation of the decree of partition:



"New York, Nov. 27, 1841.

Dr. Galland,

Sir:—An adjourned meeting of the surviving trustees, named in a certain indenture made the twenty-second day of October, 1836, between Joshua Aiken, Isaac Galland, Samuel Marsh, Benj. F. Lee, Wm. E. Lee, Geo. P. Shipman, Henry Seymour, Edw. C. Delavan and Erastus Canning, will be held at the Temperance House in the city of Albany, on Wednesday the nineteenth of January next, at 4 o'clock, P. M., to elect a Trustee to fill the vacancy occasioned by the death of Joshua Aiken.

Respectfully yours, &c.,

SAMUEL MARSH, Ch'n,
*of the Board of Trustees.*

I did not receive the above until after the time set for the meeting had passed.

It will be observed that this was "*an adjourned meeting*"—these gentlemen had been in consultation upon this subject before—determined, if possible, to dispense with the co-operation of Galland, in the subsequent management, and disposition of this property. But that course, though so very desirable, was so ridiculous, and contemptible, that they declined it, and resolved on giving me the above notic e. While matters stood thus, they determined on another "yankee trick;" and to this end, they sent to this country, a Mr. Nathaniel Marsh, perhaps a relative to our Chairman, in order to secure the celebrated, all devouring, Anaconda "judgment title" from Hugh T. Reid Esq. This title their agent procured in the name of Marsh, Lee & Delavan alone.—Having now succeeded in obtaining a title in *their own* names, there was no further necessity for the co-action of Galland, neither was it now deemed necessary to fill the vacancy occasioned by the death of Aiken.

A batch of blank deeds were forthwith printed—two letters of Atty. to two several individuals, were executed on the same day—in the

same form, and *almost* in the ssme words—and the great work of swindling began. But amidst this triumph, surrounded as they were with all the supports of prostituted power, and perverted justice, with which they could avail themselves, it was insufficient; their Anaconda title has collapsed; but their scheme of fraud is still attempted to be enforced upon the community.

But had the judgment title proved to be "*the title*," as some through ignorance or interest, once contended, it would not have changed or impaired, either the rights of the beneficiaries, or the duties of the trustees, under said articles of association. See the 1st sec. in the 3d article.

"Thirdly. And the parties hereto mutually covenant and agree, that the said trustees, or a majority of them, shall have power, and it shall be their duty, 1st. To cause the title to said lands and property to be thoroughly examined, and established in such form of proceeding, as they may be advised to be proper, to protect the parties in interest against any loss or question on account thereof."

This gave to Marsh, Lee, & Delavan full power and authority to purchase the judgment title, if they were advised that such title was necessary to perfect the title which they already held. But the basest description of cupidity and fraud, dictated to them, the imbecile project, of taking the deed in their own names.

Had these three trustees intended to have acted honestly in this matter, they would have in the first place filled the vacancy then, and even now, existing in the board of trustees, and then have taken the deed to all the trustees. This would have been fair dealing, and consequently out of the line of their manner of doing business. But it is surprising, to what extremes of weakness and imbecility, avarice and cupidity, will somet imes lead men of pliant morals.

## ADMONITION.

I will next show that the pretended conveyances, now, and heretofore made, by D. W. Kilbourn, as agent of Marsh, Lee, Delavan, vest no title to the property therein described, and that the same is a scheme of deception, devised to cheat the purchasers, by making them believe that they are obtaining a good title to the property, when in fact, they are getting no title at all.Now hear what Mr. Lee says on the subject.

"Such sale must be so managed as to appear to be, and to all legal intents and purposes, in fact to be a 'bona fide' sale. How this is to be managrd is yet to be determined. If you have any suggestions to



make let me hear from you." (See W. E. Lee's letter, June 21st, 1838.

How this is to be managed has since been determined, and W. D. Kilbourn, than whom a more fit instrument can scarcely be found, has cheerfully accepted the appointment, as the operative tool in this imposition upon public credulity and misguided confidence.

Those unacquainted with the past history of the events herein briefly sketched, may enquire for the motive which has influenced Marsh, Lee & Delavan, to pursue the course of conduct herein charged. To this inpuiry I reply, that at an early period in the settlement of this district of country, many persons assumed that there was no title to this property vested in any person; others assumed that the title was still in the General government, and that the first settlers would be entitled to pre-emption rights. From these, and other causes, a numerous population was already upon the lands, prior to the decree for the partition and division of it, among the claimants.

This population, it was deemed a very difficult task to remove, without their consent; as force might be repelled by force, and popnlar feeling being always adverse to the schemes of landed monopolies, it was thought probable, yea, almost certain, that even a posse of the country, called out by the Sheriff, to eject the settlers on these lands, would more probably take side with the resident citizens, than with foreign speculators.

It was therefore resolved to sell the lands to such persons as might chose to purchase them, but especially to those persons settled upon them; this sale was to "be so managed as to appear to be, and to all intents and purposes, in fact to be a bona fide sale," but no aiienation of the land, by deceiving the ocupying claimants in this manner, into the belief that they held a valid title to their lands, they would not only cease from their former wasteful destruction of the timber, but they would make more valuable and substantial improvements on the land. This title would secure to the purchaser a quiet occupancy of the premises, until the use of the property would amply repay him the trifling consideration which he had paid out. Thus all present difficulties would be evaded—civil war, taxes, counsel fees, court charges &c., &c.,—avoided, and the settlers compensated for their labour and improvements upon the land, from the rents, and products of the soil.

This was esteemed as a very liberal and christian-like course, towards these western semi-barbarian settlers; so much so, that they must be compelled to accept the gull, or suffer a prosecution.

The gull-catcher for Marsh, Lee & Delavan, like Dr. Franklin's french blacksmith, appears determined, that if the settlers refuse the hot poker, they shall, at least, "*pay me my troub for heat my iron.*"

The last clause of the fifth article of this association provides as follows, to wit:

"And the said trustees shall keep a regular book of accounts, in which shall be entered all their purchases, sales and proceedings in respect to said property, and every part thereof; which books shall, at all times be open to the inspection of any of the parties interested in the said premises; and they shall semi-annually, on the first days of January and July, in each and every year, render an account of their doings, to each of the parties interested, if required."

This they have utterly refused to do; though often and repeatedly called upon, and urged to comply with this expressed agreement. The reasons for refusing to "render an account of their sales and proceedings in respect to said property," will be manifest to every person, on reading the 6th article of said indenture, viz:

"*Sixthly.* And it is mutually covenanted and agreed also, that wherever the trustees shall have received, or realized money enough, from the sale and other disposition of the property, to pay up and satisfy the whole amount of the purchase money, and improvements and interest thereon, over and above the taxes, and assessments, and expenses of management, the power of the said trustees to sell said property shall cease, determine, and be at an end, and they shall forthwith thereafter, and with as little delay as the nature of the business will admit, proceed to make partition of said premises," &c.

Now it is an incontrovertable fact, that would at once appear, if the account of their "sales and proceeding" were rendered, that they have long since, sold, or otherwise disposed of, more than three times the amount, in value, of this property, which they are authorized by the last recited article, to sell or dispose of. Hence, the necessity of concealing their acts, in order to cover their deceptive doings.

I would now ask all those who are disposed to believe that the present titles made by D. W. Kilbourn, as "agent for Marsh Lee & Delavan, trustees" &c., are good and sufficient conveyances of the estates therein described. Would there be any impropriety, if, before you make any further purchases of this property, you should ascertain certainly, whether or not "the power of the said trustees to sell said property" has ceased, determined, and came to "an end?" "The said trustees," I have before shown, can mean nothing less than the whole board.



The proceedings, therefore, of Marsh Lee & Delavan, in respect to this property, are not to be regarded, in my view of the matter, as sales, but as the "other disposition of the property," contemplated in the articles of association, to be done by a majority of the trustees.

## REMARKS, COMMENTS AND EXPOSITIONS.

I have never supposed that Mr. Key in drafting that celebrated instrument, commonly called the "Decree of partition," intended any other than a reasonable and common sense construction to be given to the following sentence in that instrument, viz:

"That of these, the defendants, Marsh, Lee, & Delavan, Trustees for the claimants under articles of association, dated 22d Oct. 1836, filed in this case, and as trustees for the persons interested under said articles, are entitled to *forty one* shares and five-eighths of a share."

Although, both courts of law and equity, may compel parties to execute their agreements, neither of these have any authority to make agreements for them, or to substitute one for another.

So, that if Marsh, Lee & Delavan, take land in trust, under an instrument creating that trust, it would seem, that they take it subject to all the provisions, covenants, agreements and special directions, which are clearly expressed in the *entire* instrument. Hence, if the name of but *one* trustee had been given in the decree, that trustee would have taken in joint tenancy, as co-trustee, with all the other trustees named or provided for in the instrument creating the trust. Marsh, Lee & Delavan understood it in this sense, and acted upon it as such, after the confirmation of the decree, in Oct. 1841; as Marsh's notice to me, hereinbefore given clearly shows.

Under all the circumstances herein detailed, it is respectfully submitted to all persons who have already purchased any part of the property claimed by Marsh, Lee & Delavan; or who may hereafter purchase, any of said property, that "it becomes the duty of the party dealing with one whom he knows to be acting for rnother in the transaction, to ascertain by inquiry, the nature and exteut of the authority. And if he trusts without inquiry, he trusts to the good faith of the agent, and not to that of the principal." (Story, on Agency, Sec. 127.

Mr. Holcombe says: "Whenever one man deprives another by his fraudulent conduct, of the enjoyment of any rights, whether in possession, or mere expectancy, he will not only be withheld from realizing the benefit of his own wrong, but suitable redress will be extended to the injured party; even against third persons, who are innocent of the fraud, but not equally entitled to favor." (Page 49.)

If after the final confirmation of a decree, or judgment in partition which had been effected by a compromise and consent of the parties, the Chancellor or Judge should be convinced that such decree or judgment was the result of a collusive conspiracy, entered into between the counsel for the parties, plaintiffs, and defendents, for the purpose of defrauding one or more co-tenants of a large interest and estate in the property so partitioned; I ask, would an impartial chancellor or judge under such circumstances protect the wrong-doers, by surrounding them with the panoply of his own judicial authority, when the fraud practiced, was no less upon his Honor, in obtaining his judicial sanction to their covinous agreement, than it was upon the injured party? What then, must be thought of a judge who will neither correct his *own* errors, nor suffer the frauds to be exposed so long as he can protect it, under the flmsy pretense of judicial dignity?

In compromises, "the parties professedly regard, their rights as doubtful, and act upon that basis."—Am. Jurist, 164, vol. 5. And in such cases, "if both parties are in the same ignorance, the compromise is equally binding, whether the uncertainty rests upon a doubt of fact, or a doubt in point of law."

That the ignorant, doubting, compromising parties, to the notorious *sui generis*, judgment, decree partition, of the Sac and Fox half-breed reservation, are, and of right ought to be, bound by their agreement as stipulated in that non-descript instrument, is not denied; but the question has been raised, whether or not, the *sui generis*, chancellor Judge, who presided on this occasion, really acted in good faith, and understandingly, when he ordered adjudged, and decreed, that" all other persons, whatever, shall be hereafter barred and concluded from any title and claim in said lands."

Mr. Hoffman, in his Chancery Practice, says, "that he has found no subject so difficult as that of partition, and that the lawyer who can conduct successfully to its close, a partition suit of moment, without a mistake, must be very vigilant, very studious, and very lucky."—Vol. 2, page 160.

But a few of our *seven by nine* Iowa pettifoggers, were so very vigilant, studious and lucky, as to partition real estate worth three millions of dollars, in the space of a few hours; commencing their operations a little after dark on Saturday evening, and finishing their labors before 2 o'clock, on the following Sunday morning. And still up to the present time, no '*mistake*, has been discovered in this wonderful achievement! Although it is not quite certain that they have con-



*ducted the case to a successful close*; still it is certain, that they have rendered the title to the property a hundred per cent. more confused and intricate than it was before, and hence secured to themselves, or others of their profession, a rich field for future litigation between the adverse claimants. That Marsh, Lee & Delavan have been and are constantly advised by as able jurists, and as artful legal advisers, as can probably be found in the United States, I have never doubted, but that they should now sell choice tracts of land adjoining the city of Keokuk for 7 or 8 dollars per acre, when other lands in the same vicinity but not so eligibly situated, cannot be purchased for one hundred and twenty five dollars per acre; would seem passing strange.—Or that they should now sell farming land for 3 or 4 dollars per acre, which more than 12 years ago they held at 20 dollars per acre—and actually sold some at that price by the whole survey, should appear mysterious, and is certainly deserving of investigation.

These men only assume to be trustees, and trustees too, under articles of association, which does not authorise *them* alone to sell and convey the property—neither does the said articles authorise the alienation of this property, or any part of it, by an agent of all the trustees; much less by a *part* of the board who are only seized in fee of a part of the title. Again, I have already shown by the articles of association, that there is a point at which "the power of the said trustees (doubtless all of them) to sell said property, shall cease, determine, and be at an end." Who, among the numerous admirers of this New York Company yankee trickry, can inform the public, as to their expenditures and receipts in the premises. But, as if determined to make *certainty* itself more secure if possible, these three trustees have executed to D. W. Kilbourn, a most singularly drawn instrument in writing, which bears date June 6th, 1844; purporting to be a power of attorney—and as Mr. Lee says on another occasion—it "*appears to be*, and to all legal intents and purposes in *fact to be* a *bona fide*" power of attorney. But to whom is this power given by this instrument? Is it to Kilbourn or Nathaniel Marsh? This mysterious instrument sets out with an averment that Marsh, Lee & Delavan have constituted and appointed D. W. Kilbourn, the true and lawful attorney for themselves, and every body else, included under that comprehensive *and so forth*, appended to them as trustees. It next proceeds to give somewhat of a history of Indian affairs—judicial proceedings in Iowa —a sheriff's sale, purchase &c., and at length arriving at a double compound perfect title, and still referring, as I presume, to Kilbourn,

it proceeds as follows, to wit: "and for and in the name of the said Samuel Marsh, Edward C. Delavan and William E. Lee, to sign, seal and acknowledge and deliver any contract, agreement, covenant, conveyance or assurance to any person or persons, that shall lease or purchase the said lands or any of them or any part thereof, and to receive lands, mortgages, notes and money in the name of the said Marsh, Lee & Delavan in payment or on account of any lands so leased or conveyed, or in relation to which any contract or agreement may be made by *the said Nathaniel Marsh by virtue of these presents.*"

In the foregoing extract, we have a long compound sentence, which is intended to *appear to be* "on account of any lands so leased or conveyed, or in relation to which any contract or agreement may be made by the said Nathaniel Marsh." Who is this *said* Nathaniel Marsh, that is nowhere mentioned in this instrument, but in this sentence alone? Truly there is some similarity in the sounds of *Nathaniel and Samuel*, but who would have supposed that the majority of the trustees of a respectable association of gentlemen, and that too, consisting of pious church members and citizens of the great State of N. York, would have descended to so base a stratagem for the purpose of swindling the public, and cheating their own partners? But of Mr. Lee, I can say as he has said of Mr. Aiken on a former occasion—"he is just the man that would be likely to invent such a plan."

Now there are two letters of attorney signed sealed and delivered by Marsh, Lee & Delavan, one to Nathaniel Marsh, and the other to D. W. Kilbourn, constituting each, the true and lawful attorney of all the parties and persons for whom we (they) act as trustees."

These are both on record in the office of the Recorder of deeds in this county, both dated June 6th, A. D. 1844, executed in the City of New York, and attested by Hyram Barney and W. M. Mitchell—both filed for record on the same day at Fort Madison, and recorded in immediate propinquity. And as the letter of attorney to Nathaniel Marsh stands first upon the pages of the record, and Kilbourn's following in the nearest proximity, there can be no other common sense construction of the use here made of "*the said Nathaniel Marsh* by virtue of these presents," than for the purpose of connecting these two agencies, and expressly qualifying the authority hereby delegated to Kilbourn as dependent upon, and subservient to the action of Nathaniel Marsh, as to any lands so leased or conveyed, or in relation to which any contract or agreement *may be made* by the said Nathaniel Marsh, by virtue of these presents."



If, however, this connecting link between these two agencies be regarded as a mistake, error, or misnomen in the instrument, it is not such a misnomen as would avoid any other written agreement?

But I can assure the public that it is no mistake. These letters of attorney, the deeds to be used by Kilbourn, in his pretended sales of this property, &c., are all drawn with the greatest artificial certainty, and couched in such enigmatical language, as to secure the object which they have in view. But again, supposing that Kilbourn and Nathaniel Marsh, are severally constituted agents of Marsh, Lee & Delavan in this business, we will see what Judge Story says: "In regard to two or more agents, it is a general rule of common law, that when an anthority is given to two or more persons to do an act, the act is valid to bind the principal, only when all of them concur in doing it; for the authority is construed strictly, and the power is understood to be joint and not several. Hence it is, that if a letter of attorney is made to two persons, to give or receive livery, both must concur in the act, or the livery is void."—Story on Agency, sec. 42.

Will Marsh, Lee & Delavan inform the public as to the motive, necessity or reasons for constituting and continuing the authority of apparent agencies in both Kilbourn and Nathaniel Marsh for the last five years? These agents do not concur in doing the acts, which they both are authorised to do; but Kilbourn alone assumes to be *the* agent. And although a personal trust cannot be delegated so as to bind the principal, still Marsh, Lee & Delavan who are only co-trustees with others, and as such are joint tenants in trust for the use of other beneficiaries, have assumed (and that too, without the concurrence of their own co-tenants in trust) to authorise Kilbourn, "one or more attorneys or substitutes to make and revoke at pleasure." These trustees, or their legal advisers, place a most extraordinary reliance upon the ignorance or infidelity of the courts of justice in Iowa. And, indeed, it would appear that this reliance is totally well founded in past events. The history and final result of what is commonly called, "The Muscatine Compromise," shows what *can* be done in the courts of Iowa, by secret contrivances out of court. This was a suit in chancery, brought by Wm. Meek and others, plaintiffs, against Josiah Spaulding and others, defendants, to set aside the decree of the court, partitioning the half-breed tract of land; and as this singular instrument called "The Muscatine Compromise," is now before me, I here treat the reader with a sample of its provisions, to wit:

"This contract is the result of a compromise of the chancery suit

hereinbefore mentioned, now pending in the District court of Muscatine county, and contains the terms of said compromise, and it is stipulated and agreed that the complainants in said chancery suit shall cease to prosecute the same, and that said suit *shall be disposed of in favor of the defendants* in said suit at the next term of the said Muscatine court."

Here we have an example of *buying* a verdict of "no *fraud*," when indeed, one of a most extensive and atrocious character in fact existed. But for the consideration of about thirty thousand dollars, the defendants purchased a decision in their favor!! Marsh, Lee & Delavan contributed largely to this nefarious scheme. But to return to my subject.

Mr. Chitty on contracts, says: "The construction shall be *reasonable*, and as near the minds and apparent interests of the parties, as the rules of law will admit." Page 19.

Again he says: "The construction is to be upon the *entire instrument*, and not merely upon disjointed parts." Page 20.

Who, but an Iowa *nisi prius* Judge, would have construed the words "*the said trustees*," in an instrument creating a joint tenancy in *five* co-trustees, to mean "*three*" of them?

This learned jurist seems to have deemed it *reasonable* that the construction should be contrary to the *entire instrument*, and not even supported by any disjointed part; and as distant from the mind, and positive interests of the minority party, as the exercise of prostituted power, influenced by malignity, could dictate.

Mr. Holcombe says: "If there are any special directions in the instrument creating the trust, they must be observed." Page 246. And on page 248, the same writer says: "The ground of the distinction" (between executors and trustees) "seems to be, that as trustees have no power to act separately, they are, as it were, compelled, the one to join in the receipts or conveyances of the other."

But the improved doctrine in Iowa, seems to have been, that trustees who are joint tenants, and whose trust is coupled with an interest in the land, *can act separately*—that they can sell each other out. (See Hillis *vs* Galland)—that they may disregard every special direction or provision of the instrument creating the trust, which stands in the way of the *majority*, in their fraudulent efforts to deprive the *minority* of the enjoyment of their rights; and the reason of this doctrine seems to be, that where the *majority party* reside under a foreign, while the *minority* are resident within the jurisdiction of the court, where the estate



is situated, the personal safety of the nonresident *majority* will be secured against the just resentments and indignation of an insulted, and basely swindled community, when their frauds shall be exposed.

Judge Story on Agency, says: "But where there is not a complete execution of a power, or where the boundaries between the excess and the rightful executions are not distinguishable, then the whole will be void." Sec. 166. The same author at Sec. 13, says: "Therefore, if a man has a power given to him by the owner, to sell an estate, or to make leases for him, he cannot act by an attorney or agent."

But some Iowa Judges have thought that a different rule should prevail in relation to selling and leasing the half-breed lands in this county. See the judicial patronage which our courts have afforded to the frauds perpetrated under *agent* Kilbourn, by *Trustees, &c.*, Marsh, Lee & Delavan; while Nathaniel Marsh, is also another agent of record unrevoked!!

That there is probably no other individual, with whom these trustees have had a sufficient acquaintance, to secure such unmeasured confidence, as that now reposed in D. W. Kilbourn, is highly probable. Though in Sept. 1837, Mr. Lee was not fully assured of Mr. Kilbourn's entire devotion to this kind of service--as he then told me that he and his friends in the east, had no confidence in Kilbourn; that Kilbourn was bankrupt, and irresponsible, and that he would not consent to his appointment as agent, unless Mr. Austin, who was deemed to be a responsible man, was joined with him in the agency.

Hence we now see that a few years service has removed all the doubts and fears of Mr. Lee, and his eastern friends, as to Mr. Kilbourn's competency and fitness for their service.

Mr. Lee at the same time, expressed an opinion, that it would be altogether inexpedient for the association to settle with me, and to assume the entire control of the stock. He alleged that as I had been the purchaser of the whole property, they should rely upon me to see them through the ordeal of investigation of title; and that they, (meaning himself, Aiken, Marsh, and Delavan) could not nor would not let me off, if I should offer gratuitously, to bestow all my interest in the premises to them; but, said he, "we will stick to you as long as there is a button on your coat." And truely, he and his confederates, have redeemed their promise, and still they appear not satisfied with the last button, but it seems they would wish to have the old coat likewise.

The very circumstance of Marsh, Lee & Delavan, sustaining in their service, as agent, a man, who has been twice indicted for perjury in

this county, and who stands publicly charged with stealing a deed, in conspiracy with his brother Edward—alone are sufficient to warrant the conclusion, that their service requires an agent of peculiar qualifications.

That D. W. Kilbourn, as a witness for Marsh, Lee & Delavan is acting under the influence of the strongest motives that could be held out to a man of flexible morals, hackneyed in the common schemes of fraud and knavery, is a fact so well established that no man having any regard for his own reputation, would dare to deny it—that as a witness, he is unworthy of belief, and that his pestilential oaths are now spreading ruin and distress through the domestic circles of some hundreds of private families. How long the public will tamely submit to these blasphemous outrages, which, in atrocity, far exceed all the robberies and thefts, which have stained the pages of the criminal calender of our State, still remains to be seen.

This man and his employers, certainly place great reliance upon the patient forbearance of this community—but patience may cease to be a virtue, and the oppressors may yet reap the harvest of their oppressions. If the courts of the country still continue to give countenance and sanction to these proceedings, by forced and unreasonable constructions of law, and wriiten contracts—by denouncing remedial statutory legislation, as retrospective and unconstitutional—by insulting the parties, with the mere mockery of a jury trial, the court so charging the jurors, as to compell them to bring in a verdict contrary to their own sense of justice, and shocking to the moral sensibilities of all honest men; so much so, that in several instances, the juries have reported *two* verdicts in the same case; one being the mere *echo* of the court's charge, in favor of the decree pretender; while, from both the law and the facts, the jury were satisfied that the other party was entitled to a verdict.

I say that under such aggravated circumstances, after first resorting in vain, to every other means for protection and relief, if the injured parties should assume those rights "which the laws of nature and of natures God entitle them," by providing "new guards for their future security," we shall not be disappointed.

The people have once resorted to the ballot box, for the purpose of placing upon the bench of this judicial district, an impartial, independent and competent individual, to preside over their tribunals of law and equity; but their disappointment was truly mortifying, on learning that their new Justice had changed his views on these important points, so very soon after his election.



Now, it seems, that the first Chief Justice of the Territory of Iowa had determined all these questions without proof, or hearing, he had sanctioned and confirmed the consent agreement of the parties for the partition of the lands, without reading it, or knowing its contents; since which time, efforts have been often made, by those who claim to have been injured by that proceeding, to obtain a hearing in the court, but up to the present time, all their efforts for that purpose have failed.

## EXPLANATION.

While at Montrose, in Sept. 1837, Mr. Wm. E. Lee stated to me, that Messrs. Aiken & Little, in their own right were to have twelve forty-eighth parts of the beneficial interest of the whole stock of the company; and that they (Aiken & Little) were in consideration thereof, to make the instrument or purchases, without cost or charge upon the other members of the association for such services.

Now this being a private parol agreement, between some of the parties, but not communicated to others, I had no knowledge of the fact except from the statement of Mr. Lee, and assuming it to be correct, I then insisted, that as I had performed all, or very nearly all the labor in making the purchases,—and that I had also assumed a personal liability on more than sixty thousand dollars of the funds invested, and from these considerations I suggested to Mr. Lee, that I ought to have refunded to me the cash which I had expended in this service, together with a reasonable compensation for my labor—and in this opinion, Mr. Lee seemed cheerfully to concur; but still insisted that it should of right be paid to me by Messrs. Aiken & Little, in accordance with the above suggested private agreement. Mr. H. S. Austin, as well as Mr. Lee, recollects well that I then urged an immediate settlement of this question, by a mutual submission of the case, to two or more competent individuals. This proposal was neither refused nor agreed to, but like every other effort to bring these men to a settlement, they have continually played off upon some pretended excuse.

Their success in disposing of this property under fictitious titles, has encouraged them to postpone indefinitely, a settlement of the accounts of the company, as well as a division of the property among the parties interested under the articles of association. The gratifying intelligence frequently received from their resident agent in this county, "*that Galland will soon die*," has long flattered them that the entire survivorship would shortly rest in themselves, when they could make still further arrangements for postponing the division of it, until

the whole estate would rest in fee simple, and in the individual rtght of the last surviving trustee.

In this condition of things, under proper arrangements, the whole estate to be divided among the heirs of Marsh, Lee & Delavan, who would then soon advise the holders of the Kilbourn titles of their true situation.

## ANNOTATION.

That Galland has not died, as soon as would seem to have suited the convenience of Marsh, Lee & Delavan, is evident from the several attempts made within a few years past, to assassinate him. Still it will be seen by reference to certain papers now on the files of the District Court, that material changes have been made in their Association, and which it is deemed important to keep secret. This is not to be wondered at, when we consider that these gentlemen have changed the name of the their Association, from "Desmoines" to "New York," This assuming of a false name, and of denying the true name, has not generally been esteemed, among gentlemen, quite reputable, "in the back woods;" but it may be unexceptionable in New York.

These gentlemen have always addressed me in the most respectful manner, never have they expressed to me the first suggestion of dissatisfaction in any of their correspondence with me. I have, therefore, been the more astonished at their conduct as evinced through the words and acts, of the depraved tool, whom they sustain as their agent.

Had they appointed some respectable individual to make contracts, prosecute suits, and to take the care and general supervision of the property, as the majority of the trustees are authorized to do by the articles of agreement—and when conveyances of the title should be required, to have had those instruments aptly worded, and duly executed to the vendees, it would not have required *twelve* or *thirteen* years to have closed this concern. The property would have brought fair prices, and public confidence in the titles might have been secured. But how different is the present condition of things. Two or more suits are now pending to set aside that notorious decree of partition—more than a hundred actions of right, or ejectment, now crowd the records of the court. And at the same time we are told by more than one of our Iowa Judges, that it was deemed to be so important to the public tranquility, and the prosperity of the country, to have the title to this property quieted; that the court making that partition, did not err in *presuming* that every claimant who was not present, contriving, confederating, compromising and consenting, in and to, the frauds,



and falsehoods, then and there concocting, were or *might* be dead! and hence, that the court done right in lending their judicial sanction, to that pragmatical proceeding of a nocturnal contrivance, to quiet the title! Well, truely, if that *has quieted* the title, the evidence of it has not yet become apparent.

Having hereinbefore referred to the answers of Marsh, Lee & Delavan, in the case of Samuel Van Fossen, *vs*, Marsh, Lee, Delavan & Galland, I will here take occasion to say, in respect to that note, drawn by me, in favor of S. H. Burtis, for $3,167, and to recover back that amount, the above suit was instituted; that Mr. Lee was present when that note was cancelled by me at Montrose, about the 15th of September, 1837. He knows that I at that time and place, deliverered to Messrs. Aiken & Little, an attourney's receipt, to Mr. W. Phelps, for two drafts drawn by H. Gillett, (Mr. Lee's brother-in-law) on Messrs. Aiken & Little, for $3,000 each—that I had purchased these for the benefit of the Association, at the request of Messrs. A. & L., to avoid a suit which Mr. Phelps had ordered to be commenced. Also, at the same time, I delivered to Messrs. A. & L. their own promisory note, then due to me individually, for the sum of $1500; being their share of the purchase money, in a purchase made from myself—Mr. Lee was present during the whole transaction—and when I urged that my note to Burtis was not matured by about six months, Mr. Lee replied that it was good policy to take in our paper whenever we could, due or not due. Mr. Lee also took with him a paper, being the duplicate account, hereinbefore mentioned, which contains on the credit side, the following entry, to wit: "I. Galland's note to S. H. Burtis, rec'd by A. & L. in part payment for Burtis's purchase; (but not yet given up to Dr. Galland.) [$3,167."]

With these facts before them, in their answers before referred to, these gentlemen have not only denied, upon their oath, the payment by me, of the said note, but with a depravity rarely to be found, they have insinuated that I must have obtained the said note unfairly, or as the language used, would imply, felloniously. This insinuation, I pronounce an unmitigated falsehood; wilfully and maliciously uttered. In this same record of falsehood, called their answer, they have sworn that I was never a member of their Association, or at least, nothing more than a nominal partner! Let their whole correspondence, their articles of association, the deeds upon record, and their own account of the purchases and payments, made out under their own inspection

and approval, after the termination of all the purchases, be my answer to this base falsehood, so gravely sworn to.

These gentlemen have doubtless pursued a very prudent course, in doing up these jobs of swearing in New York, and hence, not within the criminal jurisdiction of Iowa. "A nominal partner is one who, without having an actual interest in the profiits of a concern, allows his name to be used, or agrees that it shall be continued therein as a partner." [Chitty on Contracts, page 70.

## CONCLUSION.

MONTROSE, Sunday Evening, Sept. 17, 1837.

Dear Sir:—It has occurred to me since I saw you last evening, that it would be an eligible plan for you to address a letter to me in New York, containing a detailed account of your labors in making the purchases on which your commissions are charged.

This history should embrace also a full account of Messrs. Aiken & Little's participation in these labors, touching each contract. It will no doubt be a laborious job to detail all your operations in relation to cash purchases; but, in order to achieve the object I have in view, it is very desirable that the details be so amplified that no mistake need be made in estimating what share of the labor each of the parties performed. If you send such a document to me, it will of course be understood that it is a document which will constitute a part of the archives of the company, and consequently be open to the examination of Messrs. A. & L., as well as the rest.—On these accounts, therefore, I "take the responsibility" of suggesting to you, that it is expedient, that in all you have to say in relation to A. & L., and their labors, *you employ a diplomatic phraseology*—to the exclusion of that "*peculiar and happy way you have*" of expressing yourself, when you seek to conciliate the affections of those whom you do *not* love.

I should be glad to receive such a communication as soon as practicable, but I am aware that I cannot expect it immediately, even if you accede to the plan.

I am, dear sir, yours respectfully,

WM. ELLIOTT LEE.

DR. ISAAC GALLAND,
*Commerce, Ill.*

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## THE REPLY.

KEOKUK, Dec. 8th, 1849.

MR. WM. ELLIOTT LEE,

Very Dear Sir,—After a lapse of more than twelve years, in the



meanwhile having made several communications to you, which, as yet remain unacknowledged, I have at length acceded to your plan, and in the foregoing pages have endeavored briefly to detail, what you very correctly anticipated, a "pretty laborious job." How far I have succeeded in so amplifying these details, "that no mistake need be made in estimating what share of" villainy "each of the parties (has) performed," is most respectfully submitted to your own extensive skill, and experience in such matters.

If I have failed in employing a *phraseology* sufficiently *diplomatic* to to meet your wishes, you must attribute it to the fact, that I have been so long deprived of the advantages of your correspondence.

Messrs. Aiken & Little, having departed this life some years since, it is not understood that this document will be open to their examination—but it is intended that it may "constitute a part of the archives of the *company*," and be filed in your office for future reference; subject to the examination of all concerned. Had I attened to this matter at an earlier day, many important and interesting items herein detailed, would have been lost, from the circumstance of their recent occurrence. In conclusion, therefore, permit me, dear sir, to assure you of the highest consideration which your conduct on this occasion will in any way warrant.

I am, sir, &c.,

I. GALLAND.

# SUPPLEMENT.

That it is always the interest of a large majority of the people in every community to have things right, rather than to let them remain wrong, will certainly be admitted. It is now nearly ten years, since the farce of fraud and knavery, recently dubbed "the judgment of partition," was enacted in the District Court at Fort Madison, and it has been impossible to cram such a farago of falsehoods fraud and imposition down the throats of this community, without resistance.

With all the hackneyed nonsensical falsehoods, of "chaos of rights," "ruinous calamities," "interminable litigation," "a thousand nameless evils," and "a hundred answers in chancery," intended to amuse and impose upon the public; the thinking part of this community are still assured that it is fraud and falsehood, not truth and honesty, that shrinks from investigation; and every attempt to suppress discussion and inquiry, is regarded as a confession of the truth of the charges of fraud and colluson made against the proceedings in partition. All the calamities which art, ingenuity, and a fruitful imagination, have been able to conjure up as the results certainly to follow any interference with, or disturbance of the decree title; have already been, and are daily experienced by hundreds of this community; not from efforts to disturb that title, but from attempts to protect and enforce it; and these evils have increased with the progress of time, ever since the rendition of that decree.

If a thousand new suits should be instituted against the present occupying claimants, within the present year, for the purpose of evicting them, this will only be another illustration of this glorious quiescent decree title, which has been so extravagantly eulogised, both from the bench, and in the bar, for several years past. The bar, it is admitted, have a professional interest, not only in preventing the attainment of an indisputable title, and in promoting "interminable litigation" by manufacturing such titles as the present decree, but its members have also a lein upon the pocket of every dupe who can be decoyed into their snare.

But, by what motives the Bench can be influenced to promote these ends, may be difficult to conceive, unless it should be in view of a subsequent change of positions, in these tribunals. Both ancient and



modern history, however, teach that these dignitaries are only *men*, and sometimes scarcely that, while they have been often found to possess "like passions with other men,"—pecuniary embarrassment, or love of gain, has recently led one of these in the highest ranks of the profession to the crime of *forgery*. And when millions of dollars are at stake, and to be disposed of by a single cast of the judicial dice box; if the best loaded die should win, it might be accounted for, from *natural causes*—it is a fateful game to play against dice loaded with the sacred metals, even in court. As examples of "forensic sophistry" I have added to the report a few remarks upon the opinion of Judge Olney in Telford vs. Barney, also, a brief notice of the argument of Charles Mason in Wright and DeLouis vs. Meeks et al, in the Supreme Court of the State of Iowa.

With all the efforts of sophisticated reason, and falsified facts, which the interested perpetrators of this daring fraud have exerted, to protect themselves from public exposure, and still to secure the ill-gotten spoils of their covinous achievement; they seem to have quieted nothing, except their own consciences, which were doubtless seared at the commencement—public tranquillity has been much disturbed; individual enterprise checked, and public prosperity greatly retarded, by this deceptive title.

The "Muscatine compromise," cost more than would be sufficient in an ordinary course of business, to expunge that reproach of the legal profession, from the records of Iowa in the first place, and then legally to investigate the rights of every claimant to this tract, and partition it fairly among them. But the fraudulent intriguers, being aware of the spurious character of their pretended claims, *know*, that in the event of an investigation of title they will be compelled to disgorge; and this is the most prominent among all "the nameless evils" which a fair trial on the merits, could possibly "breathe new life into." The breath of justice or of equity, would prove a fatal simoon to the creatures of fraud and knavery, who have been hatched upon this tract, within the last ten years.

*"District Court of Lee County,"*
*November Term*, 1848.
*Before* OLNEY, *Judge.*

*Telford vs. Barney.* *.

This was an action of right, (ejectment) for 160 acres of land, parcel of the "Half-Breed Tract."

*On the question of Jurisdiction.*

"By the Court. Indian land possess no intrinsic quality, distinguishing it from domesticated land, and enabling it to repel the jurisdiction of civilized people."

*Civilized people!* What intrinsic trait of character, in the civilized jurisdiction of Iowa Territory can his honor refer to, which would so flatteringly distinguish *it* from the jurisdiction of the *General Government?*

If by the term "Indian land," we are to understand the tenure by which, as well as the jurisdiction under which, the Indian tribes of the United States hold their lands; and by "domesticated land," the lands belonging to American citizens, denizens, &c., who are entitled to hold real estate, by express statutory provisions, it is strange, indeed, that the court could discover no distinguishing quality, enabling an Indian to repel the jurisdiction of Iowa Territory, or of any other State or Territory within the limits of the United States.

Under the Act of Congress organizing the Territory of Iowa, it would be sufficient, to plead the proviso, found in the 1st Section of that law, in order to repel such assumed jurisdiction, viz: "Provided that nothing in this act contained shall be construed to impair the rights of persons or property, now appertaining to any Indians within the said Territory, so long as said rights shall remain unextinguished by treaty between the United States and such Indians," &c., &c.

The Court. "This tract was within the territory of Iowa, and unless jurisdiction of it actually belonged to some other existing political community, it belonged to Iowa." But we have just seen that jurisdiction of it did actually belong to Congress, another "existing political community." Therefore the jurisdiction of it *did not* belong to Iowa.

The Court. "It was not reserved for the use of the half-breed, but granted for their use." But the treaty says neither reserved or granted but "intended for the use of the half-breeds," &c.

* This case was reported by a member of the bar in Lee county and is inserted as an appendix to this volume, by request of several members of the profession. 1 Vol. Greene's Reports, note on page 575.



The Court. "The right to occupy went to the half-breeds. The right to govern went somewhere, either to them or to the U. States." The jurisdiction or right to govern this tract had been vested in the U. States since the cession of Louisiana, and was not surrendered on the 30th of June, 1834. At that time there was no organized political community, within the territorial limits of the present State of Iowa. This tract was not therefore within the territorial limits of any other political community but the general government—neither Wisconsin or Iowa, had, as yet, been ushered into existence, and Michigan was bounded on the west, at that time, by the Mississippi river.—Hence, the right to govern remained where it had always been, for more than thirty years, and therefore *went* nowhere.

The right to occupy this tract, in common with all the other Indians, of their own tribes or nation, had always been conceded to the half-breeds—and it also remained where it already was, and *went* nowhere—but by the treaty of Aug. 1824, the Indians agreed "that none of their tribes shall be permitted to settle or hunt upon any part of it, after the first day of January 1826, without permission from the Superintendent of Indian affairs." See the treaty of 1824. The Sacs and Fox Indians intended that the half-breeds should have exclusive right of occupying this tract; but at the same time they submitted to the general government, the control of that intention, by placing it in the discretion of the government Agent. We are next entertained with an extraordinary chapter in the early history of this country; and being an "*Old Settler*" here, at that time, viz: 1834, we hope to be excused for correcting any error which the court may have fallen into in respect to the condition of these affairs at the period referred to.

By the Court. "Ten years after, when the Indians had ceded their contiguous lands, and with them had migrated many of the half-breeds, leaving a few females, who had married white men, and a few drunken vagrants to annoy the whites; who were beginning to occupy the tract, as well as the ceded land, and when no semblance of a half-breed community existed, or could be constructed of the remaining materials, Congress, in view of these circumstances, released to them the fee in reversion and the right of pre-emption," &c.

If Congress had such a view of circumstances as above stated, it will be difficult to ascertain how they came by it, because in point of fact it is untrue, and the reservoir of falsehood from which the court drew his materials, had not yet arrived in this country.

However necessary it may be in the skilful manufacture of a judicial

the general government, and as such they have been treated as incapable of alienating the lands which they are permitted to occupy under the forbearance of the national government. But suppose that Congress should now relinquish the reversion in the lands of a certain district situated in Minnesota Territory, and occupied by the Sioux Indians, to these Indians, "with full power and authority to transfer their portions thereof by sale, devise or descent," to the Winnebago Indians; would such an act of Congress warrant the Territorial authorities of Minnesota in assuming jurisdiction over the district described in such act? If the law treats "them as natural persons, subject to our *national government*," by what authority has the Territorial government arrogated jurisdiction over them?

The captiousness about "Indian jurisdiction," and "Indian sovereignty," which pervades this judicial opinion, savors so strongly of a desire to render confusion still more confounded, that it is not deemed so important to show who had *not* the jurisdiction as to show who actually *had* it.

This Court has already said, "The right to govern went somewhere, either to them, or to the United States."

But the court has shown that it did not go them, (the Half Breeds,) therefore the court has shown that the right to govern went to the United States.

From this reasoning, the court seems to have satisfied its scruples if it had any on the subject, that Wisconsin and Iowa, either or both, are the real *United States;* and then he proceeds thus: "Wisconsin and Iowa successively had exercised over it legislation, adjudication and administration, *without question or doubt of right.*"

That Wisconsin and Iowa have arrogantly exercised a jurisdiction which did not belong to them, is the very fact charged—and here this learned judge, in the absence of other evidence, assumes that the exercise of that power, is proof positive of their *right* to exercise it. This reasoning will justify and sustain torts, and even larcenies in general, for the wrong doer can generally boast of the same *right* here contended for, viz: the exercise of acts of ownership over that which belonged to another. But by the last clause, "without question or doubt of right, it would seem that his honor was as ill informed in the recent history of this county, as he has shown himself to be in its early history. In view, therefore, of the repeated organizations of the electors of this district of the county, for the purpose of repelling the arrogant assaults of Territorial legislation, and the thousand and





opinion, to employ such ficticious pictures as may best secure the object in view; it can never be reconciled with the duty of an honest historian. We will then take a glance at things as they actually *were* at that time, (1834.) There was not then, nor ever had been, "a half brreed community" residing on this tract. Some of the Indians had migrated from the Iowa river, to the Desmoines river, where they were still at as convenient distance from this tract, as those who had not so migrated. The few female half-breeds, who had married white men, and were settled upon this tract, had not lived among the Indians, but having been raised and educated by white people, remained upon it. These however were but few; by far the greatest number of the half-breeds never resided on the tract. There never was a time when ten half-breed families resided upon this tract. In 1828, there was only one family, and which contained only two half-breeds. The proportion which "*drunken vagrants*" then bore to the other classes of society, has not been diminished up to the present time; but the proportion of swindling knaves has vastly augmented since the introduction of Iowa jurisprudence. It was not "*drunken vagrants*" who "annoyed the whites," in their improvements upon the tract; but it has always been by a corrupt and prostituted judiciary that they have been and still are "annoyed."

The whites had no right to settle and improve the tract, until the government had relinquished its reversion, and not even then, unless by purchase from the half-braeds. At the time referred to by the court, there were some ten or twelve white families settled at Keokuk,—two or three at Nashville—a military post at Montrose, but no improvements in the way of farming operations upon the tract, except a few, which were either under the immediate controll of half-breeds themselves, or by permission of the half-breeds. It is therefore manifest, that this historical rhapsody of the Court is without a shadow of foundation in fact.

The Court. "The intent of Congress to place this land on a footing with other lands to which the Indian title and sovereignty had been extinguished, could hardly be made more manifest by express words."

"The act tseats the half-breeds, not as a people competent to govern, but as natural pensons, subject to our national government."

Truly, the ordinance of 1787, the organic laws of Wisconsin and Iowa, the act of 1834, now under consideration, as well as the uniform course of the national government towards all the Indian tribes within our limits, have regarded the whole race as in a state of pupilage to

one suits at law, and in equity, under which the citizens have been doomed to suffer, all resulting from the ignorance or corruption of this territorial "legislation, adjudication and administration;"—can the court mean what it says? or expect to be believed?

By the Court.– "If now held void, would bring upon a community of thousands, chaos of rights, and ruinous calamities." These are the consequences which the court anticipates as the results arising from a legal investigation of these questions, before a competent tribunal. We are, however, still disposed to believe that unless his honor is a more correct prophet than historian, we shall have little cause for alarm. Again, the court asks, "And to what good? To protect from wrongful encroachment the rightful jurisdiction of a political community, which never existed," &c. In the mind of this learned judge, himself, and a half-breed "political community," have so effectually preoccupied his whole judicial vista, as to throw the national government beyond the reach of his vision. "And to what good?" To remove the sad consequences resulting from the prostitution of law, and the perversion of justice, which is now made the instrument in the hands of a supple court, to ruin hundreds of families of *whites*, who his honor says, "had mostly possessed themselves of the titles in common tenancy, and had spotted it (the tract) over with farms and villages." To protect the rights of these from worse than chaotic ruin, it has been urged that these corrupt and ruinous proceedings should be held void; and a crew of purse-proud scoundrels, compelled to disgorge their ill-gotten gain. And that the rightful owners of this property may have a day in court, which they have never had, to prove the justice and equity of their claims. This in part, may it please his honor, is "*to what good.*"

By the Court. "The practical exposition of this subject by the several governments, and by the community, received the sanction of the Supreme court in *Webster v. Reid.*—1 Iowa R. 467, and whatever view this court might have taken of the merits of the question, which have been examined out of respect to council who have labored it so confidently, that case must have furnished the law for this."

And where is that case now? Echo answers where!

Where is the *law* then for this case? And what has become of the practical exposition of the several governments and the community which sustained *that* opinion of the Supreme court? The whole history of this county contradicts the inference, that the decision of the Supreme court in *Webster v. Reid*, was a sanction of any practical exposition of this subject, ever given to it by any government or any community, other than the defendant in error, and his mercenaries. And the many thousands of dollars which the community have expended in resisting the preposterous proceedings connected with these, and other similar cases, are so many proofs that the community have never admitted this "practical exposition of the subject."



And the opinion of the Supreme court of the STATE of Iowa have failed to sanction "the practical expositions of the governments," &c., conclusively proves that his honor was here "reckoning without his host."

His honor next proceeds on the authority of Webster vs. Reid, affirmatively to settle the whole question of jurisdiction; and then he proceeds, as usual, to guess at facts alike destitute of proof, or reason, by presumptive perhapses, as follows:

"Perhaps it appeared upon the trial that the half-breeds were scattered among the Indians and whites, and could not be traced in their wanderings nor identified when found; that after the act of release they were sought by sharpers, and induced to convey many times in succession, and these titles, good and bad, were hawked about, and fell into the hands of non-residents, until confusion had become so utterly confounded, that how many, and who were owners, and what were their relative rights, baffled human means to ascertain."

I, too, will suggest a few "perhapses," which shall rest on facts. Perhaps the proceedings in this partition case, do not deserve the *name* of trial,—that a legal gentleman from a foreign state was employed for several days in drafting, digesting and concocting, this decree of partition—that he occupied a private room with locked doors during the time,—that ingress was refused all persons except the confederates —that the court never examined a witness in the case, never read or heard read, a deed, bond or any other title paper belonging to any of the parties—that the parties did know of sources of abundant proof, to do away with all confusion if any existed; that correct lists of all the half-breeds had been made out and certified by the chiefs and head men of the Sac and Fox nation of Indians, and then were within the reach and jurisdiction of the court;—that a record had been kept in the proper offices at Burlington and Fort Madison of all the transfers made by the half breeds of their respective shares or portions in the tract—that there were in no case two deeds from the same half breed to different grantees, bearing even date, or filed for record at the same time; that there was no difficulty in finding the vendees of

the half breeds, who had sold, or the half breeds themselves who had not sold, and in identifying them when found; that the "sharpers" were *too sharp* to purchase very many times in succession, and these were easily detected by the record; that how many, and who, were owners, and what were their relative rights, were matters within the reach of the court and the parties, clearly to ascertain and establish, had it beed consistent with their scheme to do so.

This honorable District Judge next tells us, that the inspired judge who tried this partition suit, notwithstanding that it "baffled human means to ascertain how many and who were owners," did actually find out by some *super-human* means that the exact number was one hundred and one, when their joint estate was severed."

The Court. "From all the light they could get, it found the number of half breeds to have been one hundred and one, when their joint estate was severed, and that these one hundred and one shares had become and were the property of the persons named in the judgment."

If from such obscure light, the sagacious judicial mind of the court was enabled to discover "one hundred and one half breeds," how many would he have fsund had he been furnished with ordinary "*human means*? It was truly fortunate for those few real owners who shared the benedictions of his honor on that occasion, by not being barred and forever concluded; that the task of ferreting out the half breeds was so completely inscrutable, for had it been otherwise, his honor might have found "one thousand and one" half breeds, who are as much entitled to this tract, as are one half of his favored "one hundred and one." He continues:

"And that these one hundred and one shares had become and were the property of the persons named in the judgment."

This discovery was also the result of some *super-human* means; and admitting that the court did get light on this abstuse question; was it the light of revelation, or was it the light derived from the examination of the title papers sustaining the claims of the parties? If this peculiar light by which the court made such extraordinary discoveries, was something more than "human means," with which his honor was specially favored on that trying occasion; then we most respectfully submit, that it proceeded from his Satanic majesty. First, because "satan himself is transformed into an angel of light." And secondly, this being a light of falsehood, could only have been communicated from him, "for he is a liar and the father of it." Perhaps, these authorities are not entitled to as high consideration in Iowa as Webster v. Reid; we will, therefore, proceed to the consideration of the other view of of the question, viz: Was it a light derived from the examination of title papers, &c?



Now Judge Olney says: "Every claimant must make his proof to the court, which is required to inspect his title papers, and send him away empty, if they are not sufficient, though the other claimants should not object, but consent to let him in."

This is doubtless the true doctrine in the case, and the question is, did the court do what it was required to do in the premises? Or did the court sanction a covinous and fraudulent collusion and confederation, entered into by a large number of solicitors or council, who represented, or affected to represent, the claims of half-breeds; the same solicitors assuming to act for both plaintiffs and defendants, and taxing from two to three hundred dollars for each share or portion, which they could procure to be admitted.

By the extraordinary multiplication of half breeds, the counsel fees for procuring their admission in the partition was increased at least twents thousand dollars, over what it would have been by a fair and honest adjudication of the several rights. That there were not two hundred half breeds manufacturad that night, instead of one hundred only, was evidently for the want of a little more time, as the records show that more than sixty claim as their birth day, or birth night, the celebrated 8th of May – this was the last day of the term, and of the week also, and the vigilant court and council, can doubtless prove that they labored most intensely in this matter until the last hour of the day; and it has been said that they even borrowed a few hours from Sunday morning, and that after all this, the court at last affixed his signature to a blank sheet, to be afterwards appended to this wonderful document.

The inhabitants of the district have been often violently agitated and excited—posse's of the county have been called out under arms by the Sheriff, to suppress immeginary acts of violence, which knaves and villains had abundat reason to fear, at the hands of an injured and insulted community.

And all this for the obvious reason, that the claimants had not made proof to the court, and that the court had not inspected their title papers, as he was required to do, though the other claimants should not require it. These facts being too notorious in this community, to be repelled by a false and fraudulent record, it is not sufficient to say to those who have been robbed of their property, and ejected from their homes, that "from all the light the court could get it found that" your

house and farm "had become, and was, the property of the person named in the judgment," and "that all persons were made parties and are estopped by the records," &c., &c.

The plaintiff in this case, claimed title under Marsh, Lee & Delavan by an agent. Did the court "inspect their title papers," at or before the rendition of the judgment of partition? If that court did inspect their title papers as he was required to do, and from the face of those papers found that the forty one shares alotted and adjudged to them "had become, and were, their property," then, truly, another remark made by Judge Olney, in this case, is as true as the oracles of Heaven itself; viz: "If there was fraud, it was the fraud of the court, in making a false record, for the record avers the fact now denied."

All the title papers under which Marsh, Lee & Delavan claimed title to this tract, showed clearly that they were trustees and joint tenants with two other persons, viz· Aiken and Galland, and that the legal title was duly vested in these five trustees, by purchases under the act of relinquishment by the national government; if the court, therefore, did inspect any one single deed, among the whole amount of papers filed by the Attorney of these claimants, in this partition case, the court *did know* that Aiken and Galland held as valid legal interest in the whole forty one shares, as Marsh, Lee & Delavan did, and if the court inspected the articles of association, dated Oct. 22, 1 36, which the record says was filed in the case; then the court *knew* that Aiken and Galland held, collectively, a much greater beneficial interest in this property than Marsh, Lee & Delavan, collectively, did; with all these facts before the court, it was not necessary that Aiken and Galland should have appeared before the court, the appearance of their title papers, and proof of their joint legal title, was as much proof for Aiken and Galland, in their absence from the court, as it was for Marsh, Lee & Delavan, who were not present before the court.

These papers were so many proofs made to the court, and which the court was required to 'inspect' showing title in Aiken, Galland, Marsh Lee & Delavan, in, and to, a large amount of property. The question, therefore is, Did the court adjudicate on the papers, filed with the answer of Marsh Lee & Delavan? A categorical answer has always been evaded both by that court, and all other persons implicated in the fraud, as well as the white-washing tribunals who have endeavored to protect from merited infamy, that most graceless transaction.

But if the court did not inspect these proofs of title, in Marsh Lee and Delavan, but in the great hurry and bustle of that eventful night,



was imposed upon by the false and fraudulent representations of the Attorney for Marsh Lee & Delavan, then the fraud and falshood rests on Marsh Lee & Delavan, than which it would be hard to find a more probable case. There is, therefore, only one more rational view to be taken of this midnight adjudication, and this is sustained by the evidence of several respectable witnesses who were present at the concluding scene of this judicial comedy; and that is, that this document, sometimes denominated 'Decree,' but more recently, the 'Judgment of partition," was elaborated out of court, during the term, and on the night of the last day of that term, was in a clandestine manner presented to the court for attestation and confirmation, under the seal and signature of the court, and which was appended to it, under great excitement and alarm through the court room, occasioned by the unexpected visit of an apparent tenant of the tombs. The guilty conspirators were thunder-struck; their knees smote together like Belshazzar's at his impious feast; but as soon as this ghostly visitor was accounted for, by 'human means,' the farce subsided, and the game of robbery proceeded to its consummation. But Charles Mason, who was the Judge on that occasion, has said upon his oath, that he did not know the contents of that document at the time he signed it, and alleged that it was usual for the council to draft such papers for the court's signature.

Still, Charles Mason himself, has at all times, treated this judgment as the result of judicial inquiry and ascertainment, and not as the amicable act of the parties.

But Judge Olney says: "The court did inquire, and did find the facts, and did settle the rights, and did award the lands according to the rights resulting from the facts found by the inquiry."

Now, his honor has no proof to sustain one lone "*did*," out of all these, except a lying record, which carries upon its face the unmistakeable evidences of fraud and knavery.

By the Court. "These articles of association authorized the trustees to possess themselves of the legal title, which they did by the judgment of partition, if not before; and also to sell a limited quantity, and divide the residue."

Is it possible that this learned Judge, intends to say, that Marsh Lee & Delavan could have possessed themselves of the legal title to this property without the evidence of purchase. He has just before said "Every claimant must make his proof to the court, which is required to inspect his title papers, and send him away empty if they are not sufficient," &c.

Marsh Lee & Delavan are not the only trustees under these articles of association, who possessed themselves of the legal title by purchase from those persons who had derived it from the general government, and these facts were well known to Charles Mason, and all the other leading confederates in that nefarious conspiracy.

The assertion of Judge Olney, that "The court did inquire, and did award the lands according to the rights resulting from the facts found by the inquiry," is as destitute of truth, as any that have ever eminated from the father of lies himself.

It was enough that this Judge had already said, that "whatever view this court might have taken of the merits of the questions, have been examined, out of respect of council who have labored it so confibently that case" (Webster *vs.* Reid) "must have furnished the law for this," without white-washing the exterior of that judicial sepulchre, which, within is filled wito rottenness and corruption. If it furnished the law for him in this case, it was sufficient for his purpose to use it as the paramount law. But he was not the maker or giver of this law, and was therefore under no necessity for giving a history of its origin, and the circumstances which brought it into existence. But when he had voluntarily assumed that task, it was due to his own character as a man that he should not have falsified the facts and events of its real history.

Near the conclusion of this opinion, the court says: "If there was fraud, it was the fraud of the court, in making a false record," &c. It is a notorious fact that the record is false; "or the fraud of the parties in imposing false proof upon the court." Under either of these circumstances of fraud, the court asks, "Could it be admitted, even against a party to the fraud?" to which he gives this sensible answer, "Not in this State, certainly, since Webster *vs.* Reid, Morris 467."

Although the above answer was both sensible and true, at the time it was uttered; still it was not calculated for the meridian of the State of Iowa.

In conclusion, it may be here remarked, that this notice of Judge Olney's opinion, has been elicited mainly by this remark of his, viz:

"These articles of association authorized the trustees" (Marsh Lee & Delavan,) "to possess themselves of the legal title, which they did, by the judgment of partition, if not before."

It the trustees did not possess the legal title before the judgment of partition allotted the lsnds in severalty to them, under what fraudulent motive or influence was it awarded to them? But if they did possess the legal title before the judgment of partition, and filed with the court



their title papers, in proof of that title. Why did Judge Olney leave this point in such obscurity? Will any one presume that he did not *know* by which of those two methods the trustees had acquired the legal title? Certainly he knew that it was half-breed land, and that the trustees were not half breeds, and hence that they had acquired the title from the half breeds, by one of the three methods provided for in the act of relinquishment, to wit, by "sale, devise or descent." —and that they were required to make their "proof to the court, which is required to inspect" their "title papers," &c. If the court did inspect the title papers accompanying the claim of these trustees, he did not award the land according to the proof before him, but according to certain *motives* of much higher consideration in his mind than, either truth or justice, and which hitherto he has deemed prudent to keep secret. And if he did not inspect the proofs of the claims, then the record is false, and Judge Olney,s assertion that he *did*, is not true. And again, whether he did or did not, inspect the proof, or title papers the record is false, fraudulent and corrupt. And it is immaterial to those who have suffered by that false and fraudulent record, whether the court in sustaining it as a valid adjudication of the case, has been influenced by an excessive devotion to his own judicial consistency, or by defect in his understanding of the real facts, which led him to the conclsion that the *truth* could not be ascertained by human testimony; or whether from motives of personal malignity, and individual hate, the court proceeded upon the principle that it was better that some individuals should suffer injustice, than that one person whom it was desirable to rob, should get any thing. It is however the act and its effects, and not the cause, or the moitve which produced it, that now constitutes the main point of public interest or inquiry.

## SUPREME COURT OF THE STATE OF IOWA,

DECEMBER TERM, 1849.

*Wright & DeLouis vs. Meek and others.*

The object in referring to this case at the present time, is not to express any views on the merits of the complainant's bill for relief, but merely to notice a few points of defence made by Charles Mason, for appellees.

He says, "Our object (in demurring to complainant's bill) was to avoid expense, vexation, doubt and delay. A full trial would involve the necessity of writing near one hundred answers in chancery—of taking an incalculable amount of testimony—of unsettling to some extent the confidence which is beginning to introduce wealth and prosperity into the choicest portion of our State, and of breathing new life into the thousand nameless evils which have found their chosen home upon this tract." This flippant picture of the consequences which would probably result from an exposure of the fraud, cheating and collusion complained of in the bill, is in part true; it is true that it would involve some "expense;" it is true that it would greatly 'vex' the perpetrators of those misdeeds, to be exposed to public scorn and contempt—it would also "delay" the anticipated harvest, which these impostors have expected to reap from this outrage. "A full trial" he says, "would involve the necessity of writing *near* one hundred answers in chancery." Will this learned gentleman inform the public how many hundred bills, and answers in chancery, declarations, pleas and other proceedings in law, have already been involved, and how many thousand more may yet be involved by attempting to avoid "a full trial." He says it would involve the necessity "of taking an incalculable amount of testimony." Ah, there lies the tug of war. This, and this alone, is what he and his compromising adjudicating compeers have always feared most—testimony. A fearful ordeal indeed, for this "judgment of partition" to submit to—"an incalculable amount of testimony," will be involved in a "full trial." What fractional part of a trial was effected *without* any testimony at all on the night of the 8th May, 1841? But this gentleman tells us, "The law does not require a trial,"—page 6. That was in making the partition; and again he says, "The divine law enjoins, and the human law encourages, an arrangement with our adversary."—Ib. "Our adversary!" what a prostitution of this divine precept! As well might Judas, have cited this authority in support of the *amicable arrangement* which he had made with the Hebrew Priests, to sell his lord for thirty pieces of silver.



If the law did not require a trial, it will not be presumed, that he, as the presiding officer in that meeting for "amicable arrangements," required that which the law did not require, hence this "full trial" which he so rationally fears, should it ever be obtained, will be the *first and only trial* of the case.

All this captious, hypocritical cant about "unsettling to some extent the confidence which is beginning to introduce wealth and prosperity into the choicest portion of our State," is sheer evasion of the real motive. What an excess of mistaken vainglory is therein displayed.* The gentleman ought to know that it is the inherent advantages of a fertile soil, salubrious atmosphere, temperate climate, great facilities of navigation, &c., all combining to furnish a field for profitable labor, enterprise and industry, that have invited thousands to this, "the choicest portion of our State, but many have been repelled for want of confidence in the title to real property here offered to them. Multitudes, it is true, have settled upon the lands and town lots, without title, resolving to hazard all consequences, while a few misguided individuals, seduced by the siren songs of a band of partition rhapsodists, have been caught in the snare. Precisely the converse of what he would here represent, have actually been the results from that agrarian partition—so far as the wealth and prosperity of the country or tract, are concerned, both have been greatly impeded by the perpetration of that act so vainly boasted of—but that the gentleman himself, and his associates have added largely to their wealth, we are not prepared to deny or even to doubt.

He proceeds, "But I do not object to go back to the decree, if we go back to what is equally a part of the case,—the public history of the time when the decree was obtained, and the laws then in force.

The lands were annually sold for taxes, and the time of redemption from the first sales was about to expire. No one could redeem his own interest by itself. The redemption of any quarter section must be for the benefit of all the owners."

By this reference to the public history of the time, we are furnished by the gentleman himself, with the most incontestible evidence, that these lands had not yet found their way into the common mass of domesticated lands so as to subject them to Territorial jurisdiction, but that they actually were still under the jurisdiction of the Federal government, as the legitimate guardian of Indian rights, and not yet sub-

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* See note at the close of this article.

ject to taxation, or Territorial adjudication. And in describing the further achievements of this decree he says, "It was like saving something from a wreck." Very like indeed! and the *wreckers* have looked well to the *salvage*.

Again, he says, "It was a compromise with the flames by which a part was secured instead of loosing all." Truly, it was "a compromise with the flames." And the incendiaries were the compromisers who secured the spoils to themselves. These comparisons are remarkably apt; and show conclusively that the gentleman entertains a very just conception of the true character of that partitionary affair.

But such reasoning cannot be very consoling to those who have been wrecked, robbed and burnt out, to be told that the *wreckers* and *incendiaries* have secured part of the plunder.

"Add to this," he continues, "the prospect of a litigation almost interminable," (well, truly, the decree *terminated* litigation with a witness) "with no probability of attaining more nearly to strict justice, (such is the fallibility of human testimony,) than was then secured," &c.

How inconceivably unascertainable, the *facts* in this case must have been, when "human testimony" afforded "no probability" of eliciting them. Was the court therefore authorised to proceed without an effort to obtain what little testimony there then was within its reach? Or was the court warranted in the conclusion, that if these facts were unknown to a few political adventurers who had not been in the country long enough to become warm in their new nests, that of course no other persons could, by any human means, know more of the facts, than what this sagacious tribunal had already attained?

However formidable these difficulties may have appeared, to those who were ignorant of the facts, it was the excess of vanity which prompted the conclusion that the facts necessary to the administration of strict justice were not susceptible of proof.

But why say more on this point, when the records prove that the court did *not* award the land according to the title papers filed, but, to the contrary, the decree has robbed one or more individuals of some thousands of acres of the land, and awarded it to others in palpable violation of the record evidence submitted to the court. It is therefore, a transparent disguised insincerity, to depict imaginary difficulties which never existed, in order to conceal the real motive which secured the confirmation of that decree in the secret, collusive, and fraudulent manner in which it was obtained. Because, where the



court was furnished with evidence, the land was awarded contrary to that evidence; and if the court was ignorant of the fact at the time of rendering the decree, the same court has since made itself accessary to the fraud by enforcing it, as a matter of its own adjudication.

Thus this scheme of corruption was so contrived as to accomplish this fraud, and at the same time secure the escape of the judicial instrument by which it was effected. When it is assumed that a court of general, superior, or any other jurisdiction, must be presumed to have had all the facts in the case before it, at the time it acted, in any given case, and that the court *did* do *right*; it amounts to the same thing as that the court *could do no wrong*. This at once releases the court from all responsibility, and places him in a state of equal security with that of an idiot or insane person. Here we arrive at the gist of the gentleman's argument, to wit: that "such is the fallibility of human testimony," that in order to avoid the prospect of litigation which would necessarily involve a resort to *fallible* human testimony, it became indispensable, in the attainment of "strict justice," that an amicable arrangement between the parties, should be substituted, instead of a legal adjudication of the facts, and that the court should assume the responsibility of this substitution.

By this notatory motion of this nefarious machine, the responsibility is thrown off from the workers of the engine, and descends upon the infallible, irresponsible engine itself.

But he says, it was "an amicable arrangement with our adversary." Still, while they appeared to disagree, they agreed to plunder. And the court has greatly shortened his journey to Rome by appealing to his own *infallibility*. This decree has provided a defence also, to that old maxim, to wit: "that power must be more than human, which no human power can revoke," by assuming that it was the result of evidence more than human—human testimony being too fallible to be relied upon in this case. And that it is established beyond the reach of human power to revoke, is clearly shown by the following argument, vix: "If Wright can disturb the judgment on his claim of fraud, how much stronger will be the equity of those who received nothing by the judgment—those who received only constructive notice of the proceedings—some of whom, perhaps, were infants and non-residents. Yet the statute excludes all these—proceeding upon the principle that it is better that injustice should be sometimes done, than that litigation should never cease."—Page 7.

This statute, which is opposed to natural justice, and a direct vio-

lation of long established principles of common law, is only another wheel in the same rotary machine; already referred to, designed to throw the responsibility upon the Legisiature who enacted the law.

And again, it can be averred with the certainty of truth, that the same gentleman who so complaisantly cites this authority, gave to that statute the peculiar feature here relied upon, perhaps designed to resist all attempts for a fair and public investigation of this case.

How admirably this machine is observed to perform in this revolution, is here clearly displayed again. It was only necessary to secure enough corruption to solder the parts, and the responsibility passes by a regular succession of rotation, from the compromisers, it passes to the Hon. District Court. From that court it passed to the Legislature it passes again to the 'Chief Justice' of Iowa, who happens to be the same person whom we find at both ends of the chain, and forms the connecting link which completes the circle. The parts having been severally relieved, and all the parts being equal to the whole, it is next thrown from the whole; and the parts, each admire the wisdom equity, justice, sagacity and liberality, of the other, while excessive praises pass between them.

—"some of whom, perhaps, were infants and non-residents. Yet the statute excludes all these—proceeding upon the principle that it is better that injustice should be sometimes done than that litigation should never cease."

But this matter of partition has never been litigated for the obvious reason as we are told by the gentleman, that "the law does not require a trial," or litigation; and it is implicitly stated by him that the matter was not litigated, but that it was compromised, under the enjoinment of that divine law, encouraged by human lam—"an amicable arrangement with our adversary." But the divine law permits no excuse, apology or justification, for oppressing the stranger, or non-resident, neither for robbing the widow or the orphan, under any pretence whatever. It will scarcely be denied, that human law, is subjected to equal fallibillity with human testimony. How evidently incongruous are the positions assumed in support of this case. 1st. That it was a compromise and therefore all persons interested, ought to have known that they would be cheated if they did not attend in their own proper person. 2d. That it was a trial at law, and the statute itself was intended to promote fraud and injustice, by estopping infants, married women, &c., for not doing acts, which the laws of God and man had rendered them incapabable of performing.



3d. That it was a decree judgment, consisting of a medly compound of law, chancery, compromise, consent and contract, between the persons present; for the purpose of cheating and defrauding the persons absent.

Hence, showing conclusively that there were no *adversary* parties before the court. The real parties, were the *present* and the *absent.* The persons present, assuming to act for others; some of whom were represented as plaintiffs otherrs as defendants, while the same attorneys appeared on both sides, if there were two sides to this proceeding.

The statute does not in express words exclude "all these"—it is only by construction of that statute that such injustice can be done, even in protracted cases of litigation, but by no rational construction can this stringent principle be applied in the present case, where no real trial or litigation has yet been had.

It may be asked, Who is more capable of construing a statute, than he who drafted the bill for it? True, but he would most probably give to it that construction which was foremost in his mind, at the time of framing the bill; still a large majority of the legislature who passed it into law might understand it quite differently. It is not however to the draftsman or copyist of the bill, or to a legislature, whose haste or ignorance, often disqualifies them for judging correctly of their own work; neither is it to the imbecility, prejudice or passion, sometimes manifested in courts of subordinate jurisdiction and limited attainments, that we can look with confidence for that rational construction of law, which will secure the administration of natural justice. But it is to a court whose legal attainments, wisdom and tried integrity, give assurance that they will employ the law, (against the strict and rigid rules of which so many complaints are made in equity) as a skillful surgeon would use his scalpel carefully and skillfully, separating the *carious*, from the *sound* and healthy tissues. How unskilful it would be esteemed in a surgeon, if, in attempting to remove a wart or wen from a patient's neck, he should divide the carotid artery—and thus destroy his patient; and his carelessness and awkwardness would be only equalled by his imbecility, should he attempt to excuse himself by alledging that his instrument was too sharp.

And in like manner, how reprehensible it would appear in a court of justice, when assuming to administer the law in the spirit of natural justice, if it should rob industry of its reward, enterprise of its profits, property of its security, society of its tranquillity, and life,

virtue and honesty of their defence; and in excuse for thus promoting encouraging and judicially establishing the very crimes and outrages, which it was their duty to suppress, they should plead the extreme rigor, and unmanageable stringency of the law? In the time of Henry IV, a law was passed making it felony "to multiply gold or silver, or to make use of the craft of multiplication." Fortunately, however, for the Territory of Iowa, it was was only permitted to remain two hundred rnd eighty-five years upon the statute books, and having been repealed prior to the organization of this territory, our sagacious judge was happily relieved from the duty of giving it such construction as he might have deemed necessary to sustain the proceedings of the court in the partition case, in forever precluding infants, &c. It is a fact forced upon the conviction of every jurist, of even moderate attainments, that to the superficial theorist in jurisprudence, confusion in legislation and judicial precedents are multiplied with the progress of time. The law, therefore, is a fearful engine to be placed under the control of ignorance and malice.

But the fraud, hypocrisy, imposition and oppression of this decree or judgment of partition, are now tolerably well understood, and rapidly hsstening to the close of its inglorious career—its parents and their guilty parasites are dressing for the funeral—let the mourners be comforted, that the agonies will soon be over, and the hitherto living monument of their fraud and folly, will silently rest in an inglorious tomb; bequeathing to its afflicted progenitors, the entail of lasting infamy and disgrace.

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Note.—The following story about the "Bear of Berne," was published in some of the French papers, about the time of the flight of Louis XVI. viz: "that in the canton of Berne, in Switzerland, it had been customary from time immemorial, to keep a Bear at the public expense, and the people had been taught to believe, that if they had not a bear, they should all be undone. It happened some years ago, that the bear then in being, was taken sick, and died too suddenly to have his place immediately supplied with another.

During the interregnum, the people discovered that the corn grew, —the vintage flourished, and the sun and moon continued to rise and set, and every thing went on the same as before, and taking courage from these circumstances, they resolved not to keep any more bears. For, said they, "a bear is a very voracious, expensive animal, and we were obliged to pull out his claws, lest he should hurt the citizens."



Of this story we make the following application: The people of this district of Lee county in Iowa, on the morning of the ninth of May, 1841, learned that there was a 'bear' to be kept at the court house in Fort Madison at the public expense, that the capital stock in this animal was divided into "*one hundred and one* equal shares;" and the people were told that so long as they should keep this bear sleek and fat, they would "avoid expense, vexation and delay—the necessity of writing near one hundred answers in chancery—of taking an incalculable amount of testimony—of unsettling, to some extent the confidence which is beginning to introduce wealth and prosperity into the choicest portion of our State, and of breathing new life into the thousand nameless evils which have found their chosen home upon this tract." By the magic power and potent influence of this bear. Said a wise leader of the people, "We hope to avoid all these."

As the bear was "a very ravenous animal," and being catered for by the numerous crowd of stockholders, he soon became sick, supposed to be a surfeit. He was put under a course of dietetics, by agreement of his owners, bearing date March 23, 1844, which is commonly called "the Muscatine Compromise," by which arrangement about thirty thousand dollars were expended in reducing the plethoric habit of the animal, to what his keepers regarded as a healthy standard. The creature showed some signs of convalescence, but inceasing proofs of the future trouble, he was likely to cause to his owners and keepers. It was therefore "ordered and adjudged" by the chief ruler of the bear's privy council, that as *voracity* was the admirable trait of character which had rendered the bear so pre-eminently distinguished, and as it was a clearly presumable case, that he had already devoured the "thousand nameless evils which have found their chosen home upon this tract," it was now advisable to exchange the bear for some other animal, not inferior to him in admirable voraciousness, and possessing greater longevity, if such a creature can be obtained. The evidence of superiority in the animal competitors to be settled by "wager of battel."

The preliminaries having been arranged, the bear was brought forth and placed in the ring before the people,

Then came H. T., whose sir name is Reid, and cast down his Anaconda, which immediately swallowed up the bear, with as little difficulty as old Aaron's rod swallowed the artificial serpents of Egypt; while the astonished and admiring spectators cried "long live the Anaconda."

After this it happened that the people having changed their rules; and some of the people being dissatisfied with the manner in which their favorite bear had been disposed of, insisted on having him restored te his legitimate rights—to which the said Reid and his tribe objected. The case was laid before the tribunal of new rules; and a certain Doctor of laws from a neighbor State, having prepared for the Anaconda a small bolus of natural justice, mixed with common sense, and which by order of the Chief council, was administered to the beast, whereupon the Anaconda vomited forth the bear "upon dry land," as perfectly sound as Jonah was when he came out of the fish; although it was currently reported that the bear has ever since smelt quite *snakey*.

The people then began to take courage from the facts, that under the protection of either of the beasts, as well as during the conflict between them, the grass grew, the water in the Mississippi run down stream, the sun and moon still continued to rise and set, as it had done before these animals had been introduced among them.

The Anaconda being thus disposed of by authority, the people are resolved not to keep this snaky smelling bear any longer than they are compelled to, and they confidently trust that the same wise and upright tribunal, who so righteously delivered them from the capacious gullet of the Anaconda, will soon rescue them from the devouring jaws of the equally cruel and voracious bear, that is still making his "chosen home upon this tract."

P. S. Since the preceding article was written, we have learned with pleasure that the favorite beast is again under a course of depletion in the hands of able, skilful and competent operators, who have already succeeded in pulling out his claws.

And, after a lapse of nearly nine years, having been kept at the public expense, and during that period, more than *three hundred thousand dollars* having been filched from the public by his potent influence; it is thought, that his owners will derive much comfort in their present affliction, on account of the ill health of the beast, from the reflection that the admirable creature has occasioned no loss to his keepers, even if he should not recover from his present distemper.

# ERRATA.

24th page, 1st line, for severally, read "severalty."
42d page, 6th line, for lands, read "bonds."
43d page, 2d and 3d, for misnomen, read "misnomer."
43d page, 2d line, for it is, read "is it."
43d page, 31st line, for totally, read, "tolerably."
47th page, 13th line, for instrument, read "investment."
47th page, 2d line, from bottom for rest, read "vest," also.
48th page, 1st line, read "same."
59th page, 7th line, for have, read "having."
60th page, 7th line, for beed, read "been."
60th page, 30th line, for abstuse, read "abstruse."
61st page, 1st line, for Beid, read "Reid."
64th page, 11th line, after questions, read "which."
64th page, 4th line, from bottom for It, read "If."