

No. 13251

Supreme Court of Illinois

Chester et al

vs.

Rumsey

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 202.

1861
Chas. R. Ramsey
Plaintiff
vs.
Defendant

1861

SUPREME COURT OF ILLINOIS,

April Term, A. D. 1861.

AUGUSTINE CHESTER AND
MARIETTE N. CHESTER

vs.

JULIAN S. RUMSEY.

POINTS FOR APPELLANTS.

I. The mortgage should have been excluded because the acknowledgment was invalid and insufficient.

20 *Ill. R.*, 137, on page 142, *Moulton v. Hurd*.

21 *Ill.*, 124. 12 *Ill.*, 273.

5 *Gil.*, 113, *Mariner v. Sanders*.

11 *Ill.*, 123, *Hughes v. Lane*.

22 *Ill.*, 363, *Garrett v. Moss*.

6 *McLean*, 200.

1 *Purple's Statutes*, Title "Conveyance," ch. 24, § 16.

II. The deed from the mortgagee to the Plaintiff below should have been excluded, because the sale under the mortgage was invalid.

(a.) Because a *feme covert* residing in Illinois can not make a conveyance by attorney.

10 *Verm.*, 1.

7 *Gray*, 243.

1 *Purple's Stat.*, Title "Conveyances," ch.

24, § 17 and (44).

3 *Shep.*, (15 *Maine.*) 304.

(b.) Because the property in question was sold in bulk.

Melville W. Fuller
Atty for appellants.

202
Supreme Court.
Chester & Wife
vs.
Rumsey
Points for appellants.

Filed Apr. 30 - 1861

L. Leland
Clerk

SUPREME COURT OF ILLINOIS,

April Term, A. D. 1861.

AUGUSTINE CHESTER AND
MARIETTE N. CHESTER

vs.

JULIAN S. RUMSEY.

POINTS FOR APPELLANTS.

I. The mortgage should have been excluded because the acknowledgment was invalid and insufficient.

20 *Ill. R.*, 137, on page 142, *Moulton v. Hurd*.

21 *Ill.*, 124. 12 *Ill.*, 273.

5 *Gil.*, 113, *Mariner v. Sanders*.

11 *Ill.*, 123, *Hughes v. Lane*.

22 *Ill.*, 363, *Garrett v. Moss*.

6 *McLean*, 200.

1 *Purple's Statutes*, Title "Conveyance," ch. 24, § 16.

II. The deed from the mortgagee to the Plaintiff below should have been excluded, because the sale under the mortgage was invalid.

(a.) Because a *feme covert* residing in Illinois can not make a conveyance by attorney.

10 *Verm.*, 1.

1 *Purple's Stat.*, Title "Conveyances," ch.

7 *Gray*, 243.

24, § 17 and (44).

3 *Shep.*, (15 *Maine*), 304.

(b.) Because the property in question was sold in bulk.

Melville W. Fuller
Atty. for appellants.

Supreme Court.

Chester & Wife

vs.

Rumsey.

Points for appellants.

Filed Apr. 30 - 1861

L. Leland

Clerk

SUPREME COURT OF ILLINOIS,

April Term, A. D. 1861.

AUGUSTINE CHESTER AND
MARIETTE N. CHESTER

vs.

JULIAN S. RUMSEY.

POINTS FOR APPELLANTS.

I. The mortgage should have been excluded because the acknowledgment was invalid and insufficient.

20 *Ill. R.*, 137, on page 142, *Moulton v. Hurd*.

21 *Ill.*, 124. 12 *Ill.*, 273.

5 *Gil.*, 113, *Mariner v. Sanders*.

11 *Ill.*, 123, *Hughes v. Lane*.

22 *Ill.*, 363, *Garrett v. Moss*.

6 *McLean*, 200.

1 *Purple's Statutes*, Title "Conveyance," ch. 24, § 16.

II. The deed from the mortgagee to the Plaintiff below should have been excluded, because the sale under the mortgage was invalid.

(a.) Because a *feme covert* residing in Illinois can not make a conveyance by attorney.

10 *Verm.*, 1.

1 *Purple's Stat.*, Title "Conveyances," ch.

7 *Gray*, 243.

24, § 17 and (44).

3 *Shep.*, (15 *Maine*.) 304.

(b.) Because the property in question was sold in bulk.

Melville W. Fuller
Atty. for appellants.

Supreme Court

Chester & Wife

vs

Rumsey

Points for appellant.

Filed Apr. 30 - 1861

L. Leland

clerk

SUPREME COURT OF THE STATE OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, 1861.

AUGUSTIN CHESTER and	}
MARIETTE N. CHESTER, his wife,	
vs. <i>Appellants,</i>	
JULIAN S. RUMSEY,	<i>Appellee.</i>

POINTS AND AUTHORITIES OF APPELLEE.

I.

The first assignment of error is, we think, improperly made, and cannot be entertained by the Court, because the motion by the plaintiff below to withdraw the replication and file an amended replication, is a motion addressed to the discretion of the Court, and cannot therefore be assigned for error.

*Clemson & Waters vs. The President and Directors
of The State Bank of Illinois*, 1 Scam., 45.

Phillips vs. Dana, 1 Scam., 498.

Warren vs. McHatton, 2 Scam., 32.

II.

The second assignment of error is not good, because

1. The defendant below, after the demurrer to the replication was overruled, took issue upon it and went to trial, thereby waiving his demurrer.

Peck vs. Boggess, 1 Scam., 281.

Wann vs. McGoon, 2 Scam., 77.

Gilbert vs. Maggord, 1 Scam., 471.

2. Because the evidence in the first trial upon the issues made by the plea in abatement and replication do not appear upon the record, and the Court therefore cannot determine whether there was error in the judgment of the Court below or not.

III.

The third assignment of error is obnoxious to the same objection as the latter portion of the second assignment.

IV.

The first three assignments of error are all bad, because

1. The record does not show that the defendants below excepted to the judgment of the court upon the issues or the plea in abatement, and refusing a new trial.

Dickhu vs. Durrell, 11 Ill., 72.

Smith vs. Cahill, 17 Ill., 67.

2. Because the defendants below, by taking a new trial under the statute, abandoned their rights, if they had any, of having the proceedings and judgment of the Court in that trial reviewed by the Supreme Court.

Harrison vs. Clark, 1 Scam., 131.

The remaining assignments of error question the validity of the mortgage from the appellants, Chester and wife, to George F. Rumsey, and the deed from G. F. Rumsey to the appellee, based upon the mortgage.

The appellee acquires title as purchaser at a public sale, under the power contained in the mortgage from Chester and wife to G. F. Rumsey.

The principal, and we believe the only objection urged to the mortgage is, that the acknowledgement was inoperative and insufficient in law to pass the estate of the wife of the appellant, Augustin Chester.

2. Because the evidence in the first trial upon the issues made by the plea in abatement and replication do not appear upon the record, and the Court therefore cannot determine whether there was error in the judgment of the Court below or not.

III.

The third assignment of error is obnoxious to the same objection as the latter portion of the second assignment.

IV.

The first three assignments of error are all bad, because

1. The record does not show that the defendants below excepted to the judgment of the court upon the issues or the plea in abatement, and refusing a new trial.

Dickhu vs. Durrell, 11 Ill., 72.

Smith vs. Cahill, 17 Ill., 67.

2. Because the defendants below, by taking a new trial under the statute, abandoned their rights, if they had any, of having the proceedings and judgment of the Court in that trial reviewed by the Supreme Court.

Harrison vs. Clark, 1 Scam., 131.

The remaining assignments of error question the validity of the mortgage from the appellants, Chester and wife, to George F. Rumsey, and the deed from G. F. Rumsey to the appellee, based upon the mortgage.

The appellee acquires title as purchaser at a public sale, under the power contained in the mortgage from Chester and wife to G. F. Rumsey.

The principal, and we believe the only objection urged to the mortgage is, that the acknowledgement was inoperative and insufficient in law to pass the estate of the wife of the appellant, Augustin Chester.

2. Because the evidence in the first trial upon the issues made by the plea in abatement and replication do not appear upon the record, and the Court therefore cannot determine whether there was error in the judgment of the Court below or not.

III.

The third assignment of error is obnoxious to the same objection as the latter portion of the second assignment.

IV.

The first three assignments of error are all bad, because

1. The record does not show that the defendants below excepted to the judgment of the court upon the issues or the plea in abatement, and refusing a new trial.

Dickhu vs. Durrell, 11 Ill., 72.

Smith vs. Cahill, 17 Ill., 67.

2. Because the defendants below, by taking a new trial under the statute, abandoned their rights, if they had any, of having the proceedings and judgment of the Court in that trial reviewed by the Supreme Court.

Harrison vs. Clark, 1 Scam., 131.

The remaining assignments of error question the validity of the mortgage from the appellants, Chester and wife, to George F. Rumsey, and the deed from G. F. Rumsey to the appellee, based upon the mortgage.

The appellee acquires title as purchaser at a public sale, under the power contained in the mortgage from Chester and wife to G. F. Rumsey.

The principal, and we believe the only objection urged to the mortgage is, that the acknowledgement was inoperative and insufficient in law to pass the estate of the wife of the appellant, Augustin Chester.

George F. Rumsey and wife conveyed the land in question to the appellee, Mariette N. Chester, the wife of the other appellant, and she, with her husband, on the same day mortgaged back the premises to him to secure a *portion of the purchase money*, and this fact is stated in the mortgage.

Was the acknowledgement to the mortgage sufficient to pass her estate?

1. It conforms in every particular with the statute as to the form for the conveyance of the wife's estate.

II Purp. Stat., page 157, Chap. 24, Sec. 17.

It states that "*the contents were made known and explained to her,*" and that "*she does not wish to retract.*"

These words were wanting in the acknowledgement in
Hughes vs. Lane, 11 Ill., 123.

In that case the Court held the acknowledgement valid to pass the wife's estate.

A similar acknowledgement to that in *Hughes vs. Lane*, was passed upon by the Court in

Garrett et al. vs. Moss et al., 22 Ill., 363.

and the case of *Hughes vs. Lane* was recognized and affirmed.

2. The counsel for the appellant cites principally the case of

Lane vs. Dolick et al., 6 McLean, 200.

and upon this case reliance is placed by him especially.

A reference to the case and the reasoning contained in it will satisfy the court that it is not at all analagous to the case now before the court, and is decided upon facts and circumstances entirely different.

In the case of *Lane vs. Dolick*, the conveyance was made by the wife, for the purpose of paying her husband's debts, of property *which she had by inheritance in her own right before marriage*.

Here the mortgage is for the purchase money of the very property mortgaged.

There the acknowledgement omitted to state that "the contents of the instrument were made known and explained to her," and "that she does not wish to retract," (as required by law.)

Here both those facts are distinctly stated.

There the court bases its decision upon the assumption that the wife *did not understand* what she was conveying, because "the contents were not explained to her," and nothing on the face of the instrument told her what she was doing. She might well therefore believe she was only parting with her dower.

Here she knew, from the face of the deed, that she was securing the purchase money, on the very property conveyed to her, and this fact was explained to her.

There the Court say the acknowledgement is only a release of dower, because it omits the requirements of the statute "explaining," and "does not wish to retract," &c.

Page 205, 6 McLean.

Here both these are certified to distinctly.

There the Court say, on page 206, "I do not go the extent of saying, that whenever an acknowledgement contains a relinquishment of dower, it follows as a necessary consequence in all cases that the wife's estate will not pass," &c.

His decision is based upon an entirely different state of facts, and acknowledgement from the present.

There are two reasons why this case is much stronger than either *Hughes vs. Lane*, 11 Ill., 113, or *Lane vs. Dolick*, 6 McLean, 200.

1. Both those cases were conveyances by the wife after marriage, of her own property, acquired by inheritance before her marriage.

This is a mortgage back to secure part of the purchase money for the property mortgaged.

If the conveyance had been made by G. F. Rumsey to the husband, the wife would not have been obliged to be joined in the mortgage at all made to secure the purchase money. She would have had no dower in the land as against the mortgagee. She cannot by any possibility set up her ignorance of the character of the title she acquired from Rumsey, and of the nature of the mortgage she gave him.

2. Both the deeds in those cases were made before the passage of the confirmatory or remedial Act of Feb. 11, 1853.

I Purp. Stat., p. 167.

which provides "that no deed, mortgage, &c., heretofore executed or hereafter to be executed by husband and wife in good faith, to convey or encumber the estate of either husband or wife, and acknowledged before a proper officer, &c., shall be held invalid

"or defective in law by reason of any informality in setting forth
"the particulars of the acknowledgement in the certificate: Provided
"that it appears *in substance*, from the certificate, that the parties
"executing the instrument executed it freely and voluntarily, and
"that in case of married women, it appears in substance, that they
"knew the contents of the instrument, and were examined separate and
"apart from their husbands."

If there is anything at all in the point made, as to the acknowledgement, it is certainly obviated by this Act.

In *Hughes vs. Lane*, the deed was made in 1836, and the case decided in 1849, before the passage of this Act.

The case in 6 McLean was decided in 1854, upon a deed made in 1834.

The remedial Act is not referred in the decision in 6 McLean, either because not presented by counsel, or because the Court held it to be not retroactive, but proactive in its operation.

The deed now before the Court was made in 1856, after the passage of the remedial act.

If the requirements of the statute are substantially complied with, the certificate of acknowledgement is sufficient.

McConnell vs. Read, 2 Scam., 371.
McConnell vs. Johnson, 2 Scam., 523.
Livingston vs. Kittell, 1 Gilm., 116.
Vance vs. Schuyler, 1 Gilm., 160.
Delaunay vs. Burnett, 4 Gilm., 454.
Nantz vs. Bailey, 3 Dana, (Ky.) 111.
McIntyre vs. Ward, 5 Binney, (Pa.) 296.
Shaller vs. Brand, 6 Binney, (Pa.) 438.
Stephens vs. Doe, 6 Blackford, (Ind.) 475.
Chemist vs. Shane, 16 Ohio, 599.
Ruffner vs. McLenan et al., 16 Ohio, 639.
Doe dem. Ravisty and Wife vs. Fridge, 3
McLean, 245.
Talbot vs. Simpson, 1 Peters' C. C., 188.
Dennis vs. Tarpenny, 20 Barb., (N. Y.) 371.
Dundas vs. Hitchcock, 12 Howard, U. S.
Sup. Ct., 256.

The argument in the last case is specially referred to as deciding that the intention of the parties is to be gathered from the instrument itself, and that substantial compliance with the statute, as to the acknowledgement, only is required.

It has been, however, expressly decided that the insertion of the words, "*and relinquishes her dower*," &c., do not limit the estate which the wife passes, provided that the statute is complied with in the form of the acknowledgement.

18 Miss., (3 Bennett,) 531 and 573.

Delassus vs. Parton, 19 Miss., (4 Bennett,) 425.

Perkins vs. Carter; 20 Miss., (5 Bennett,) 465.

These cases are directly in point.

The portion of the acknowledgement which the counsel for the appellants claims to be informal and invalid, is

"And the said Mariette N. Chester, wife of Augustin Chester, (who is personally known to me to be the same person who subscribed the said instrument of writing,) having had the contents of the said instrument made known and explained to her, and being by me examined separate and apart from her said husband, did acknowledge said instrument to be her free act and deed; that she executed the same, *and relinquished her dower in the lands and tenements therein mentioned*, voluntarily and freely, and without the compulsion of her said husband, and that she does not wish to retract."

The words "*and relinquishes her dower to the lands and tenements therein mentioned*," compose a distinct clause, separated by commas from, and independent of, the rest of the acknowledgment. They may be parenthesized—they are so by the commas. The acknowledgment is complete without them. They may be stricken out, and the acknowledgment would be good. They are mere surplusage, a recital of more than is necessary.

And this is really all that the acknowledgment does. It recites more than is required. It parts with the estate of the wife, and, besides doing so, it professes to relinquish a dower interest which she had not to relinquish.

The estate conveyed is not limited by the superfluous words in the acknowledgment. The acknowledgment is not vitiated, being otherwise complete, by the further and superfluous statement of the wife that she parts, in addition to her estate, with her dower, which she was not possessed of, and therefore could not convey.

J. P. CLARKSON,
Counsel for Appellee.

Chicago, May 28th 1886,

Hon. John D. Catton
Ottawa

Dear Sir

I am informed that you are to write the opinion in No. 202, Chester v. Rumsey - The printed argument prepared on behalf of the appellants in that cause did not reach Ottawa, notwithstanding my most strenuous exertions until after the Court had adjourned after having affirmed this judgment - I notice that under the Statute of '59 you are permitted at any time within six months after adjournment to change your judgment and also to stay proceedings in the meantime - The questions involved in this particular case seem to me to be of some importance generally and of the utmost importance to my client, Mrs. Chester - I am confident that I need say nothing to induce your Honor to give (as perhaps you have already given) your best consideration to the questions of law involved but as my argument did not arrive in season for

examination before a conclusion was arrived at, I can not believe myself to be taking an unusual or improper step in asking your Honor before drawing the opinion to run over the argument which I have submitted. I am conscious that I did not do the case justice in my oral argument but have endeavored to do so in the printed one and think its perusal may aid my clients and the interests, perhaps, of the public - I herewith forward an argument and have turned down a leaf where the discussion of the Illinois statute & decisions commences, the preceding pages being quotations from the decisions in other states, ~~that~~ the acknowledgment in question & the two sections of our act being also set forth on pages three & four -

It has struck me very forcibly that point III, the last one in the argument & on the last page and a half thereof, secured the reversal of this judgment, leaving the main questions unadjudicated to be hereafter presented if the occasion should arise - By a reversal the Plaintiff below might if he could, make proof.

of condition broken of the mortgage which he failed to do in this case, as at present, presented, unless the recitals of the deed from the mortgagee to the Plaintiff were evidence which I have endeavored to show they were not & could not be as against a married woman - Thus the case might again be tried and the Defendants below have the advantage, which by statute ought to be theirs, of a second trial upon the merits - This they can not now obtain unless the judgment is reversed as they took their second new trial after a trial not upon the merits but upon a plea in abatement - Of course this is no reason if they are not entitled to a reversal but it raises a certain equity in favor of this lady which should induce a candid and careful consideration of her case, which I make no doubt your Honor will bestow upon it -

As the action is ejectment and as unless the entry of the order of affirmance or the issuing of a procedendo thereon is stayed the appellants will be turned out of house and home I would urge that the entry of the order of affirmance or the issuing of the procedendo be for the present suspended & until the case is reexamined in the light of the authorities adduced & the reasons presented by the printed argument.

I trust that I am committing no breach
of professional decorum in soliciting
your attention to the points presented
in the argument I herewith submit
which arrived too late to be considered
before adjournment - and in asking
also that further proceedings upon
the judgment be stayed until the
argument can be fairly weighed and
passed upon - It is natural that
counsel should be inspired with the
conviction that their clients' cause is
plainly in their favor but beyond even
that natural feeling on my part, I
can not but think that further
examination will lead your Honor
to believe that there are good grounds
for a reversal of this judgment.

Very Truly Yrs.

W. W. Fuller

Printed by Jameson & Morse, 14 La Salle, St. Chicago.

IN SUPREME COURT OF THE STATE OF ILLINOIS.

THIRD GRAND DIVISION.

April Term, A. D. 1861.

AUGUSTIN CHESTER AND MARIETTE N. CHESTER, HIS WIFE, vs. JULIAN S. RUMSEY, Appellee.	}	<i>Appellants,</i> <i>Appeal from the Superior Court of Chicago.</i>
--	---	---

ABSTRACT.

2 This was an action of ejectment, commenced June 21st, A. D. 1859,
3 by filing declaration and notice and proof of service of same on defend-
4 ants.
5

Plaintiff claims in fee the following lots and premises with the ap-
purtenances, viz : lots seven and eight, and the south twenty-nine feet of
lots nine and ten, in block twenty-four, in Wolcott's Addition to Chicago.

Declaration consisted of four counts : 1st, for all the above described
lots, &c. ; 2d, for lot seven ; 3d, for lot eight ; 4th, for the south twenty-
nine feet, &c.

6 Rule on defendants to plead, &c., within twenty days.

7 Plea in abatement filed July 9th, 1859, by defendants in words and
figures following, to-wit :

STATE OF ILLINOIS, } s.s. *In Superior Court of Chicago.*
COOK COUNTY.

AUGUSTIN CHESTER, and MARIETTE N. CHESTER, ads. JULIAN S. RUMSEY.	}	<i>Ejectment.</i>
--	---	-------------------

8 And the said defendants, by Dow & Fuller, their attorneys, come and defend the wrong and injury, &c., and pray judgment of the said plaintiff's declaration filed herein, because they say that before the filing of the said declaration, and before they, the said defendants, were notified by notice and copy of declaration as alleged in said declaration, to-wit: in the February Special Term of the Circuit Court of Cook County, before the Honorable the Judge thereof, then and still being holden at the city of Chicago, County of Cook, and State of Illinois, he, the said plaintiff, impleaded them, the said defendants, and filed his certain declaration against them in a certain plea of ejectment, for the recovery of possession of the same identical premises in the said plaintiff's declaration in this present suit mentioned, and did therein upon the 28th day of March, A. D. 1859, the same being one of the days of the March term of said Court, recover judgment by default against these defendants, for the recovery of the said premises in said plaintiff's said declaration in that behalf mentioned, (being, as aforesaid, the same premises in the said plaintiff's declaration in this suit mentioned) together with costs of suit, for the reversal of which said judgment, the said defendants sued and prosecuted out of the Supreme Court of the State of Illinois, within and for the third grand division of said State, next to be holden at Ottawa on the first Tuesday after the third Monday of April next hereafter following, a writ of error, which said writ of error was by the order of one of the Honorable Judges of said Court, made a supersedeas, and to be obeyed accordingly, and thereby operated and still continues to operate as a suspension of the execution of the said judgment so recovered by the said plaintiff against these defendants, in the said Circuit Court of Cook County, as aforesaid, as by the record and proceedings thereof remaining in the said Supreme Court of the State of Illinois, within and for the third grand division of the said State, to-wit: at Ottawa, aforesaid, more fully appears.

9 And the said defendants further say, that the said writ of error so sued and prosecuted by the said defendants, out of the said Supreme Court of the State of Illinois, within and for the third grand division of said State, for the reversal of the said judgment, hereinbefore set forth, so recovered against these defendants by said plaintiff, as aforesaid, was so sued and prosecuted by the said defendants out of the said Supreme Court, before the commencement of this suit by the said plaintiff, and before the filing of the said plaintiff's said declaration herein, and before they, the said defendants, were notified by notice and copy of declaration, as alleged in said declaration by said plaintiff filed herein.

And the said defendants further say, that the parties in this and the said former suit, and in the said writ of error, so sued and prosecuted out of the Supreme Court of the State of Illinois, for the third grand division of said State, by the said defendants against the said plaintiff for the re-

versal of the said judgment so recovered against these defendants by said plaintiff as aforesaid, are the same and not other or different persons; and that the said former suit, wherein said judgment was so recovered, as aforesaid, was brought for the recovery of the same premises mentioned in this declaration, and no other. And that the said writ of error so sued and prosecuted out of the said Supreme Court of the State of Illinois, within and for the third grand division of said State, for the reversal of the said judgment so recovered by the said plaintiff against these defendants, in said former suit as aforesaid, is still depending and undetermined in the said Supreme Court of the State of Illinois, before the Honorable the Judges thereof. And this they, the said defendants, are ready to verify. Wherefore, they pray judgment of the said declaration, by said plaintiff filed in this suit, and that the same may be quashed, &c.

DOW & FULLER,
Defendants' Attorneys.

10 Affidavit by Augustin Chester of truth of plea, annexed thereto.

11 October 15th, A. D. 1859. Replication filed by plaintiff in the following words and figures:

JULIAN S. RUMSEY,	}	<i>In the Superior Court of Chicago.</i> <i>Ejectment.</i>
<i>vs.</i>		
AUGUSTIN CHESTER and		
MARIETTE N. CHESTER.		

And the said plaintiff saith that his said declaration, by reason of anything by the said defendants in their said plea above alleged, ought not to be quashed, because he says that after the recovery of the said judgment by the said plaintiff in the said Circuit Court of Cook County, against the said defendant, for the recovery of the said premises, as in said plea alleged, and before the said writ of error in said plea alleged had been prosecuted out of the said Supreme Court, and before the filing of said writ of error in said Supreme Court, the said judgment in said Circuit Court so recovered by the said plaintiff, had been and was vacated and set aside, and his said suit had been by him in said Circuit Court dismissed at the cost of him, the said plaintiff, and that at the time of the filing of the said writ of error in said Supreme Court, and the issuing of the said supersedeas in said suit, as in said plea alleged, there was no suit whatever pending in said Circuit Court between the said plaintiff and the said defendants, and no judgment existing nor being in said Circuit Court, in favor of the said plaintiff and against the said defendants for the recovery of the said premises, and that the said judgment in said Circuit Court had been by order of said Circuit Court vacated and set aside, and the said suit had been by said Circuit

12 Court dismissed at the costs of the said plaintiff, before the filing of the
said declaration in this cause in this Court by said plaintiff against the
said defendants, and the service thereof upon the said defendants. And
this the said plaintiff is ready to verify. Wherefore, he prays judgment,
&c.

CLARKSON & TREE,
Plaintiffs Attorneys.

12 October 27th, 1859. Demurrer to replication filed by defendants.

13 November 9th, 1859. Leave given plaintiff to withdraw his repli-
cation, to which defendants except. Leave given to plaintiff to file
amended replication.

14 November 12th, A. D. 1859. Amended replication filed.

15 December 22d, 1859. Defendants demur to amended replication:
16 Demurrer overruled and issue joined, and cause submitted to Court for
17 trial. Court "finds defendants guilty of unlawfully withholding the
premises," &c. Motion for new trial by defendants.

18 December 23d, 1859. Motion for new trial overruled and judgment
on the finding.

19 January 17th, 1860. Motion for new trial granted under the statute,
upon payment of costs.

20 General issue filed by defendants.

21 May 7th, 1860. Trial by the Court, and issues found for the plain-
tiff, and defendants move for new trial.

22 September 22d, 1860. Motion for new trial overruled. Defendants
enter their exceptions, and judgment is rendered for the plaintiff.

23 Defendants pray appeal, which is granted, and they file their appeal
bond and bill of exceptions, according to the order of the Court.

27 On the trial of the cause, the defendants admitted that the said
Mariette N. Chester, one of said defendants, is the wife of said Augustin
Chester, and that said Augustin and Mariette N. Chester resided on
and occupied the said lots of land and premises described in the declara-
tion; that a demand had been made by plaintiff upon the defendants,
before the commencement of this suit, for the possession of said property,
and that said defendants refused to surrender the same. And the plain-
tiff, to further prove the issues on his part, put in evidence a certain
warranty deed of the lots of land and premises described in the plain-
tiff's declaration, in words and figures following, to wit:

"This Indenture, made this first day of November, in the year of our Lord one thousand eight hundred and fifty-six, between George F. Rumsey and Emily E., his wife, of the city of Chicago and State of Illinois, of the first part, and Mariette N. Chester, of the same place, of the second part, witnesseth, that the said party of the first part, in consideration of sixteen thousand two hundred and fifty dollars, (\$16,250,) in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, by these presents does grant, bargain, sell, remise, release, alien and confirm unto the said party of the second part, and to her heirs and assigns forever, all the following described pieces of land, situated in the County of Cook and State of Illinois, described as follows, to wit:

Lots seven (7) and eight (8) and the south (29) twenty-nine feet of lots (9) nine and (10) ten in block (24) twenty-four, in Wolcott's Addition to the City of Chicago, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate and interest whatever of the said party of the first part, either in law or equity, in and to the above bargained premises. To have and to hold the said premises above described, with the appurtenances, unto the said party of the second part, her heirs and assigns forever.

And the said George F. Rumsey, for himself, his heirs, executors and administrators, does covenant to and with the said party of the second part, her heirs and assigns, that the above bargained premises in the quiet and peaceable possession of the said party of the second part, her heirs and assigns, against all persons lawfully claiming or to claim the whole or any part thereof, the said George F. Rumsey, of the first part, shall and will warrant and forever defend.

In testimony whereof, the said party of the first part hereunto set their hands and seals the day and year first above written.

GEO. F. RUMSEY. [SEAL.]
EMILY E. RUMSEY. [SEAL.]"

30 Duly acknowledged by George F. Rumsey and his wife, before Notary Public, November 11th, A. D. 1856.

The plaintiff then offered in evidence a certain mortgage purporting to have been executed by the defendants, Augustin Chester and Mariette N. Chester, his wife, of and upon the lots of land and premises in question, and in words and figures following, to wit:

30 “ This Indenture, made this first day of November, in the year of
our Lord one thousand eight hundred and fifty-six, between Augustin
Chester and Mariette N., his wife, of Chicago, State of Illinois, party of
the first part, and George F. Rumsey, of the same place, party of the
second part. Whereas, the said party of the first part is justly indebted
31 to the said party of the second part in the sum of thirteen thousand and
eighty (\$13,080.00) dollars, secured to be paid by two certain promissory
notes bearing even date herewith, payable to the order of the party of
the second part as follows : (\$6,720.00) six thousand seven hundred and
twenty dollars November first, A. D. 1857, and (\$6,360) six thousand
three hundred and sixty dollars November first, A. D. 1858, the same
being for a part of the purchase money and interest at six per cent. per
annum, agreed to be paid for the premises herein described. Now,
therefore, this indenture witnesseth, that the said party of the first part,
for the better securing the payment of the money aforesaid, according to
the tenor and effect of the said two promissory notes above mentioned,
and also in consideration of the further sum of one dollar, to them in
hand paid by the said party of the second part, (the receipt whereof is
hereby acknowledged,) have granted, bargained, sold, remised, aliened
and conveyed, and by these presents do grant, bargain, sell, remise, alien
and convey unto the said party of the second part, his heirs and assigns
forever, all the following described lots, pieces or parcels of land, situ-
ated in the County of Cook and State of Illinois, viz :

32 Lots (7) seven and (8) eight and the south (29) twenty-nine feet of
lots (9) nine and (10) ten in block (24) twenty-four, in Wolcott's Addition
to the City of Chicago, together with all and singular the tenements,
hereditaments, privileges and appurtenances thereunto belonging or in
anywise appertaining, with the rents, issues and profits thereof, and all
the estate, interest and claim whatsoever of the said party of the first
part, in law as well as in equity, in and to the premises hereby conveyed.
To have and to hold the same, with the appurtenances, unto the said
party of the second part, his heirs, executors, administrators and assigns,
and to their only proper use, benefit and behoof.

 Provided always, and these presents are upon this express condition,
that if the said party of the first part, their heirs, executors, administra-
tors or assigns, shall well and truly pay, or cause to be paid, to the said
party of the second part, his heirs, executors, administrators or assigns,
the aforesaid sum of money, at the time and in the manner specified in
the above mentioned promissory notes, according to the true intent and
meaning thereof, then these presents and everything herein expressed
shall be absolutely null and void. But in case of default in the payment
of the said notes, or either of them above mentioned, or any part thereof,
according to the tenor and effect thereof, the said party of the second
part, or his legal representative or attorney, ~~xxx~~ after having advertised

such sale sixty (60) days in a newspaper published in the city of Chicago, may sell the said premises, or any part thereof, and all right and equity of redemption of the said party of the first part, their heirs, executors, administrators or assigns, therein, at public vendue, to the highest bidder for cash, at the Court House, at the time appointed in such advertisement, or may adjourn the sale from time to time, at discretion; and upon the making of such sale or sales as the attorney of the said party of the first part, for such purpose hereby constituted irrevocable, or in the name of the said party of the second part, or their legal representatives, shall execute and deliver to the purchaser, deeds for the conveyance in fee of the premises sold; and shall apply the proceeds of sale to the payment of (1) expenses for advertising, selling and conveying as aforesaid, including attorney's fees and (2) the amount due on said notes, (3) rendering the overplus, if any, to the said party of the first part, or their assigns, at the office of said party of the second part, in Chicago, Illinois. And the said Augustin Chester and Mariette N., his wife, party of the first part, covenants with the said party of the second part, and his heirs, executors, administrators and assigns, that they are seized in fee of the said premises and have good right to convey the same as aforesaid: that they are free from all incumbrance, and that they will forever warrant and defend the same against all lawful claims.

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

AUGUSTIN CHESTER. [SEAL.]
MARIETTE N. CHESTER. [SEAL.]



To the introduction of which said mortgage in evidence, the defendants by their counsel then and there objected, but the Court overruled the objection and admitted said mortgage in evidence.

To which decision and ruling of the Court, in overruling the defendants' said objection and in admitting said mortgage in evidence, the defendants then and there by their counsel duly excepted.

The plaintiff further offered in evidence the following certificate of publication of notice and notice, the correctness of the facts stated in which certificate were admitted by the defendants without further proof thereof, and is as follows:

"This certifies that the appended notice has been published in the Chicago Daily Times, a newspaper printed and published in the City of Chicago, County of Cook and State of Illinois, from Nov. 17th, 1858, to Jan'y 17th, 1859, consecutively, commencing with the 17th Nov'r, 1858, and that we have received twenty dollars for publishing the same.

SHEAHAN & PRICE,
Publishers."

"MORTGAGE SALE.

Whereas, Augustin Chester and Mariette N., his wife, did on the first day of November, A. D. 1856, make, execute and deliver to George F. Rumsey, a mortgage of the premises hereinafter described, to secure the payment of two certain promissory notes of even date with said mortgage, payable to the order of the said George F. Rumsey as follows: (\$6,720) six thousand seven hundred and twenty dollars on the first day of November, A. D. 1857, and (\$6,360) six thousand three hundred and sixty dollars on the first day of November, A. D. 1858, which said mortgage is recorded in the Recorder's office in and for Cook County, State of Illinois, in book 28 of mortgages, page 183. And whereas, it is provided in and by said Mortgage, that if default be made in the payment of the said notes above described, or either of them, or any part thereof, according to their tenor and effect, the said George F. Rumsey, or his legal representatives or attorneys, after having advertised such sale (60) sixty days in a newspaper published in the City of Chicago, might

sell the said premises in said mortgage referred to and hereinafter described, or any part thereof, at public vendue, to the highest bidder for cash, at the Court House in the City of Chicago, at the time appointed in such advertisement, or might adjourn the sale from time to time at discretion.

And whereas default has been made in the payment of the second of said promissory notes above mentioned, due November 1st, A. D. 1858, for the said sum of six thousand three hundred and sixty dollars (\$6,360).

Now, therefore, public notice is hereby given, that the undersigned, by virtue of the power and authority vested in me by said mortgage above referred to, will on Monday, the seventeenth day of January next, A. D. 1859, at 10 o'clock a. m., sell at public vendue, at the north door of the Court House in the City of Chicago, County of Cook and State of Illinois, to the highest bidder for cash, the following described premises, (being the same premises described in said mortgage,) to wit: lots (7) seven and eight (8) and the south (29) twenty-nine feet of lots (9) and (10) in block (24) twenty-four, in Wolcott's Addition to Chicago, situated in the County of Cook and State of Illinois, for the purposes in said mortgage described.

GEO. F. RUMSEY,

Chicago, November 17th, 1858.

Mortgagee."

CLARKSON & TREE, *Attorneys."*

The plaintiff then offered in evidence a certain deed of the lots of land and premises described in the plaintiff's said declaration, from George F. Rumsey to the plaintiff, dated January 18th, A. D. 1859, as follows, to wit:

"This Indenture, made the eighteenth day of January, in the year of our Lord one thousand eight hundred and fifty-nine, between George F. Rumsey, of the City of Chicago, in the County of Cook and State of Illinois, of the first part, and Julian S. Rumsey, of the same place, of the second part.

Whereas, Augustin Chester and Mariette N. Chester, his wife, of Chicago aforesaid, by a certain indenture of mortgage bearing date the first day of November, in the year of our Lord one thousand eight hundred and fifty-six, for the consideration of the sum of thirteen thousand and eighty dollars (\$13,080) indebtedness from the said party of the first part to the said party of the second part, in said mortgage secured to be paid by the two certain promissory notes of the said Augustin Chester, of even date with said mortgage, payable to the order of the said George F. Rumsey as follows: (\$6,720) six thousand seven hundred and twenty

dollars November 1st, A. D. 1857, and (\$6,360) six thousand three hundred and sixty dollars November 1st, A. D. 1858, and for the further consideration of one dollar, did grant, bargain, sell, remise, alien and convey unto the said George F. Rumsey, his heirs and assigns forever, all the lots, pieces or parcels of land hereinafter particularly described, with the appurtenances, subject to a proviso in the said indenture of mortgage contained, that the same should be void upon the payment by the said party of the first part to said mortgage of the said sum of thirteen thousand and eighty dollars, at the time and in the manner specified in the said two promissory notes, according to their true intent and meaning, with a special power in the said indenture of mortgage contained, authorizing the said George F. Rumsey, his legal representatives or attorney, if default should be made in the payment of the said two notes, or either of them, or any part thereof, according to their tenor and effect, after having advertised such sale sixty (60) days in a newspaper published in the City of Chicago aforesaid, to sell the said mortgaged premises, or any part thereof, and all right and equity of redemption of the said party of the first part to said mortgage, their heirs, executors, administrators or assigns, therein, at public vendue, to the highest bidder for cash, at the Court House in said City of Chicago, at the time appointed in such advertisement, and as the attorney of the said party of the first part to said mortgage, or in the name of the said party of the second part thereto to execute and deliver to the purchaser a deed for the conveyance in fee of the same.

And whereas the said indenture of mortgage has been duly recorded in the Recorder's office in and for the County of Cook aforesaid, in book 28 of mortgages, page 183, and whereas, default having been made in the payment of the second of the said two promissory notes, secured by the said indenture of mortgage, being for the sum of six thousand three hundred and sixty dollars (\$6,360) due November 1st, A. D. 1858, the mortgaged premises hereinafter particularly described were on Monday, the seventeenth day of January instant, (A. D. 1859,) at ten o'clock a. m. of that day, sold at public auction to the said party of the second part hereto, for the sum of three thousand dollars (\$3,000) in cash, that being the highest cash bid, and he the highest cash bidder therefor, said sale being made at the Court House in the said City of Chicago, and having been advertised sixty (60) days previous to the day of said sale in the Chicago Daily Times, a daily newspaper published in said City of Chicago.

Now, therefore, this indenture witnesseth, that the said party of the first part, for and in consideration of the said sum of three thousand dollars (\$3,000) so bid as aforesaid, to him in hand paid by the said party of the second part, at the time of the ensealing and delivery of these presents, (the receipt whereof is hereby acknowledged,) hath granted,

bargained, sold, aliened, released and confirmed, and by these presents doth grant, bargain, sell, alien, release and confirm unto the said party of the second part, and to his heirs and assigns forever, all the following described lots, pieces or parcels of land situate in the County of Cook and State of Illinois, viz:

40 Lots seven (7) and eight (8) and the south twenty-nine (29) feet of lots nine (9) and ten (10), in block twenty-four (24), in Wolcott's Addition to Chicago, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, as the same are described and conveyed in and by the said indenture of mortgage, and also all the estate, interest and claim whatsoever of the said Augustin Chester and Mariette N. Chester, in law as well as in equity, in and to the above described premises, and also their right and equity of redemption therein, and also all the estate, right, title, interest, property, claim and demand whatsoever of the said party of the first part, both in law and equity, of, in and to the said above described premises, with the appurtenances, as fully to all intents and purposes as the said party of the first part hath power and authority to grant and sell the same by virtue of the said indenture of mortgage. To have and to hold the said above mentioned and described premises, with their and every of their appurtenances, unto the said party of the second part, his heirs and assigns forever.

In witness whereof, the said party of the first part hath hereunto set his hand and seal the day and year first above written.

Signed, Sealed and Delivered } GEO. F. RUMSEY. [SEAL.]
in presence of }

STATE OF ILLINOIS, } ss.
County of Cook. }

41 I, Charles R. Sheldon, a Notary Public in and for the City of Chicago, County of Cook, and the State aforesaid, do hereby certify that George F. Rumsey, personally known to me to be the person whose name is subscribed to the foregoing deed as having executed the same, appeared before me this day in person and acknowledged that he executed the said deed or instrument of writing freely and voluntarily, for the uses and purposes therein expressed.

In witness whereof, I have hereunto set my hand and affixed my notarial seal, this 19th day of January, A. D. 1859.

CHARLES R. SHELDON,
[NOTARIAL SEAL.] Notary Public."

To the introduction of which said last mentioned deed in evidence the defendants, by their counsel, then and there objected, but the Court

overruled the objection and admitted said deed in evidence. To which decision and ruling of the Court, in overruling said defendants' said objection to the admission of said last mentioned deed in evidence, and the admission of the same in evidence, the defendants, by their counsel, then and there duly excepted.

The plaintiff then called as a witness JULIAN MAGILL, who being duly sworn, testified as follows:

42 I know the property in question in this suit. I know the plaintiff, and George F. Rumsey, and Mr. Chester, one of the defendants, and was present at the sale of the property, at the north door of the Court House, under the mortgage. Attended the sale on the morning of the 17th day of January, A. D. 1859. George F. Rumsey, the mortgagee, made the sale. He read the notice offering the property for sale. There were a number of persons present. Capt. Mozier was there. I made a bid on the property myself. Julian Rumsey made the highest bid, and it was knocked off to him. There were persons going in and out of the Court House at the time. The property was bid off at three thousand dollars. The sale was about ten o'clock in the morning. The terms of sale were cash; so stated at the time of the sale.

On cross-examination, the witness testified: George F. Rumsey and Julian S. Rumsey are brothers. They were both at the sale, and Capt. Mozier and myself. George Rumsey put the property up for sale.

This was all the evidence in the cause.

42 The Court thereupon found the issues for the plaintiff, and the defendants entered their motion for a new trial, the reasons assigned in which were as follows:

43 1. Because the Court erred in overruling the objection by the defendants to the mortgage by Chester and wife to George F. Rumsey, and in admitting said mortgage.

2. Because the Court erred in admitting the deed of George F. Rumsey to the plaintiff.

3. Because the Court erred in finding the issues for the plaintiff.

4. Because the Court should have found the issues for the defendants.

5. Because the mortgage from Chester and wife to George F. Rumsey was inoperative, invalid and void.

6. Because the acknowledgment of the mortgage from Chester and wife to George F. Rumsey was invalid and insufficient.

7. And for other reasons.

44 Sept. 22d, A. D. 1860, motion overruled and judgment for plaintiff, and exceptions by defendants entered to the overruling of said motion and the entry of judgment. Appeal prayed and allowed.

ERRORS ASSIGNED.

1. That the Court erred in allowing the plaintiff below (appellee) to withdraw his replication to the plea in abatement of defendants below, after the defendants below had demurred to said replication.

2. Because the Court erred in not sustaining the demurrer of said defendants below to the replication of the said plaintiff to said defendants' plea in abatement, and in not finding the issues on said plea in abatement in favor of said defendants below.

3. Because the Court erred in entering judgment for the recovery of the premises in question on the issues joined on the plea in abatement.

4. Because the Court erred in admitting the mortgage purporting to be executed by the defendants below (appellants) to George F. Rumsey, in evidence, and in overruling the objection of the defendants below thereto.

5. Because the Court erred in admitting the deed from George F. Rumsey to the plaintiff below in evidence, and in overruling the objection of the defendants below thereto.

6. Because the sale of the premises in question upon the mortgage in question, and upon which the deed from George F. Rumsey to the plaintiff below was given, was illegal, invalid and void.

7. Because the Court erred in overruling the motion for a new trial made by the defendants below.

8. Because the Court erred in finding the issues for the plaintiff below.

9. Because the judgment aforesaid, in form aforesaid given, was given in favor of the plaintiff below, and against the defendants below, whereas, by the law of the land, said judgment should have been given in favor of defendants below, and against said plaintiff below.

MELVILLE W. FULLER,
Attorney for Appellants.

202-48

Chester
vs

Rumsey

Abstract

Filed Apr 17th 1861

L. Leland

Clerk

United States of America }
State of Illinois, Cook County }

Pleas before the Honorable the Judges of the
Superior Court of Chicago within and for the
County of Cook and State of Illinois at a
regular term of the Superior Court of Chicago
begun and holden at the Court House in
the City of Chicago in said County and State
on the first Monday being the third day of
September in the year of our Lord one thousand
eight hundred and ninety and of the Independence
of the United States of America the Eighty-fifth.

Present The Honorable John N. Mison, Chief Justice
of the Superior Court of Chicago.

Wm H. Higgins Grant Governor Chicago
Charles H. Hawn Prosecuting Attorney
John Grant . . Sheriff of Cook County

Attest

Wm H. Hawn, Clerk.

Be it remembered that heretofore to wit on the twenty first day of June A. D. eighteen hundred and fifty nine came Julian S. Ramsey by Clarkson & Tree his Attorneys and filed in the Office of the Clerk of said Court his certain Declaration Notice and Affidavit in an action of Ejectment against Augustin Chester & Mariette M. Chester: Which said Declaration Notice and Affidavit is in the words and figures following to wit.

" In the Superior Court of Chicago
" State of Illinois Of the June Term in the year of
Book County . . . our Lord one thousand eight hundred
and fifty nine.

Julian S. Ramsey plaintiff by Clarkson & Tree his Attorneys comes and complains of Augustin Chester and Mariette M. Chester Defendants who were notified by notice and Copy of Declaration according to the Statute in a plea of Ejectment.

For that whereas the said Plaintiff on the first day of June in the year of our Lord one thousand eight hundred and fifty nine was possessed of certain lots of land and premises with the appurtenances situate in Chicago in the said County and known designated and described as follows Viz: Lots numbered Seven (7) and Eight (8) and the South Twenty nine (29) feet of Lot Nine (9) and ten (10) in Block Twenty four (24) in Wolcotts Addition to Chicago Which said premises the said plaintiff claims in fee and the

said Plaintiff being so possessed thereof the said Defendants afterwards to wit on the third day of _____ in the year of our Lord one thousand eight hundred and fifty nine entered into the said premises and ejected the said Plaintiff from and unjustly withheld from the said Plaintiff the possession thereof.

And whereas also the said Plaintiff on the first day of June in the year of our Lord one thousand eight hundred and fifty nine was possessed of a certain lot or parcel of land with the appurtenances situate in Chicago in the said County and known designated and described as follows viz. Lot Number Seven (7) in Block Number Twenty four (24) in Wolcotts Addition to Chicago Which said premises the said Plaintiff claims in fee and the said Plaintiff being so possessed thereof the said Defendants afterwards to wit on the second day of June in the year of our Lord one thousand eight hundred and fifty nine entered into the said premises and ejected the said Plaintiff therefrom and unjustly withheld from the said Plaintiff the possession thereof.

And whereas also the said Plaintiff on the first day of June in the year of our Lord one thousand eight hundred and fifty nine was possessed of a certain lot or parcel of land with the appurtenances situate in Chicago in the said County and known designated and described as follows viz. Lot Number Eight (8) in Block Number Twenty four (24) in Wolcotts Addition to Chicago Which said premises the said Plaintiff claims in fee and the said Plaintiff being so possessed thereof the said Defendants

afterwards to wit on the Second day of June in the year of our Lord one thousand eight hundred and fifty nine entered into the said premises and ejected the said plaintiff therefrom and unjustly withheld from the said plaintiff the possession thereof.

And whereas also the said plaintiff on the first day of June in the year of our Lord one thousand eight hundred and fifty nine was possessed of a certain piece or parcel of land with the appurtenances situate in Chicago in the said County and known designated and described as follows viz. The South Twenty nine (29) feet of lots nine (9) and ten (10) in Block Twenty four (24) in Wolcotts Addition to Chicago. Which said premises the said plaintiff claims in fee and the said plaintiff being so possessed thereof the said Defendants afterwards to wit on the Second day of June in the year of our Lord one thousand eight hundred and fifty nine entered into the said premises and ejected the said plaintiff therefrom and unjustly withheld from the said plaintiff the possession thereof to the damage of the said plaintiff of fifty dollars and therefore he brings suit vs.

Clarkson & Tree

Attorneys for plaintiff."

To Augustin Chester & Marietta N. Chester the above named Defendants.

You are hereby notified that the Declaration, with a copy whereof you are now herewith served, and to which this Notice is subjoined will be filed in the Superior Court

of Chicago on the twenty first day of June 1859, being the fourteenth day of the June Term 1859 of the said Superior Court of Chicago - That upon filing the same a rule will be entered requiring you to appear and plead to the said Declaration within twenty days after the entry of such rule; and that if you neglect so to appear and plead a judgment by default will be entered against you and the plaintiff will recover possession of the premises specified in the said Declaration.

Dated this Eighteenth day of June A. D. 1859.

Clarkson & Tree

Attorneys for Plaintiff.

"State of Illinois }
Cook County } ss

That Aaron S. Clarkson of Chicago said County being duly sworn doth depose and say that on Monday the twentieth day of June A. D. 1859 he served a copy of the within Declaration and Notice upon the within named Mariette M. Chester one of the within named Defendants in person at her residence in Chicago on said premises in said Declaration mentioned and that he served her the said Mariette M. Chester, the being the wife of the said Augustin Chester with another copy of the within Declaration and Notice for the said Augustin Chester the other of the within named Defendants, the said defendants being in the occupancy of the said premises and the said Augustin Chester being then absent therefrom as deponent was informed

by said Mariette M. Chester,

Subscribed and sworn to before me this 21st day of June A.D. 1859

Waddams S. Clarkson,

Notary Public,

And afterwards to wit on the twenty first day of June (being one of the days of the June Term of said Court) A. D. eighteen hundred and fifty nine the following rule was ordered and entered of record in said Court to wit,

" Julian S. Ramsey

(vs)

Augustine Chester
and Mariette M. Chester

Defendant.

This day comes said plaintiff by Clarkson & Tree his Attorneys and file herein his certain Declaration and Notice in Exemption and it appearing to the Court that defendants have been duly served with a Copy of said plaintiffs Declaration & Notice thereto attached in conformity with the Statute in such case made and provided Wherefore on Motion Plaintiff it is therefore Ordered said defendants to read answer or demurr to said plaintiffs Declaration within Twenty days from the entry of this rule to read or in default thereof Judgment will be entered against them and Plaintiff will recover possession of premises described in his Declaration in this case.

And thereafter to wit on the Ninth day of July A.D. Eighteen hundred and fifty nine came the said Defendants by Dow & Fuller their Attorneys and filed in the Office of the Clerk of said Court their plea to said Declaration, which said plea is in words and figures as follows, to wit:

"State of Illinois }
Cook County . . . }

In Superior Court of
Chicago.

Augustine Chester }
and Martin D. Chester }

vs

Defendant.

Culman S. Ramsey }

And the said Defendants by Dow & Fuller their Attorneys come and defend the wrong and injury &c and pray judgment of the said plaintiff's declaration filed herein because they say that before the filing of the said Declaration and before they, the said Defendants were notified by Notice and Copy of Declaration as alleged in said Declaration, to wit, in the February Special Term of the Circuit Court of Cook County before the Honorable the Judge thereof, then and still being holden at the City of Chicago, County of Cook and State of Illinois by the said Plaintiff misplaced them the said defendants & filed his certain Declaration against them in a certain plea of Ejectment for the recovery of possession of the same certain premises in the said Plaintiff's declaration in this present Suit mentioned and did therein upon the 28th day of March A.D. 1859 the same being one of the days of the March Term of

said Court, recover judgment by default against these ~~no~~
Defendants for the recovery of the said premises in said
Plaintiffs said Declaration in that behalf mentioned (being
as aforesaid the same premises in the said Plaintiffs
declaration in this suit mentioned) together with costs of
suit for the reversal of which said Judgment the said
Defendants sued and prosecuted out of the Supreme Court
of the State of Illinois within and for the Third Grand
Division of said State, next to be holden at Ottawa on
the first Tuesday after the third Monday of April next,
hereafter following a Writ of Error which said Writ of
Error, was by the Order of one of the Honorable Judges
of said Court, made a Supersedeas and to be obeyed
accordingly and thereby operated and still continues to
operate as a Suspension of the Execution of the said
judgment so recovered by the said plaintiff against these
Defendants in the said Circuit Court of Cook County as
aforesaid, as by the record and proceedings thereof remaining
in the said Supreme Court of the State of Illinois within
and for the Third Grand Division of the said State Court
at Ottawa aforesaid more fully appears.

And the said Defendants further say that the
said Writ of Error so sued and prosecuted by the said
Defendants out of the said Supreme Court of the State of
Illinois within and for the Third Grand Division of said
State for the reversal of the said judgment heretofore set
forth so recovered against these defendants by said plaintiff

as aforesaid was so sued and prosecuted by the said Defendants out of the said Supreme Court before the commencement of this suit by the said Plaintiff and before the filing of the said Plaintiff's said Declaration herein and before they the said Defendants were notified by Notice and Copy of Declaration as alleged in said Declaration by said Plaintiff filed herein.

And the said Defendants further say that the parties in this and the said former suit and in the said Writ of Error so sued and prosecuted out of the said Supreme Court of the State of Illinois for the Third Grand Division of said State, by the said Defendants against the said Plaintiff for the reversal of the said judgment so recovered against these Defendants by said Plaintiff as aforesaid are the same and not other or different persons, and that the said former suit wherein said judgment was so recovered as aforesaid was brought for the recovery of the same premises mentioned in this Declaration and no other And that the said Writ of Error so sued and prosecuted out of the said Supreme Court of the State of Illinois within and for the Third Grand Division of said State for the reversal of the said judgment so recovered by the said Plaintiff against these Defendants in said former suit as aforesaid, is still depending and undetermined in the said Supreme Court of the State of Illinois, before the Honorable the Judges thereof and this they the said Defendants are ready to verify Therefore they pray Judgment of the said Declaration by

said plaintiff filed in this suit, and that the same may
be quashed &c

Dow P. Fuller

Defts Attys."

"State of Illinois,
Cook County, . . . } &c

Julian S. Runney

(vs)

Augustine Chester and

Mariette M. Chester . . }

In Superior Court of
Chicago.

Personally comes Augustine Chester
thence duly sworn on oath declares &c that he is one of
the Defendants in the above entitled cause and that the
foregoing plea in the above cause and to which this
affidavit is annexed is true in substance and fact.
Subscribed and sworn to this

7th day of July A.D. 1859

before me

Augustine Chester."

Walter Kimball - Clerk."

And thereafter to wit on the fifteenth day of October
A.D. eighteen hundred and fifty nine the said plaintiff by
his said Attorneys filed in the Office of the Clerk of said
Court, his Replication to said plea: Which said Replication
is in words & figures as follows to wit.

" In the Superior Court of Chicago

Julian S. Ramsey

vs

Augustin Chester and } Defendant

Marietta M. Chester }

And the said plaintiff saith that his said Declaration by reason of anything by the said defendants in their said plea above alleged, ought not to be quashed because he says that after the recovery of the said Judgment by the said plaintiff in the said Circuit Court of Cook County against the said defendants for the recovery of the said premises, as in said plea alleged, and before the said Writ of Error in said plea alleged had been prosecuted out of the said Supreme Court and before the filing of said Writ of Error in said Supreme Court, the said Judgment in said Circuit Court so recovered by the said plaintiff had been and was vacated and set aside and his said suit had been by him in said Circuit Court dismissed at the Costs of him the said plaintiff and that at the time of the filing of said Writ of Error in said Supreme Court and the issuing of said Writ of Error in said suit as in said plea alleged, there was no suit-whatever pending in said Circuit Court between the said plaintiff and the said defendants, and no judgment existing nor being in said Circuit Court in favor of the said Plaintiff and against the said Defendants for the recovery of the said premises, and that the said judgment in said Circuit Court had been by Order of said Circuit Court vacated and set aside, and the said suit had been by said Circuit Court dismissed at the

Costs of the said Plaintiff, before the filing of the said declaration in this cause in this Court by said Plaintiff against the said defendants, and the Service thereof upon the said defendants And this the said Plaintiff is ready to verify. Therefore he prays judgment &c

Clarkson & True
Plffs Atty's."

And thereafter to wit on the twenty, seventh day of October A. D. Eighteen hundred and fifty three the said Defendants by their said Attorney filed in the Office of the Clerk of said Court, their Demurrer to said Replication Which said Demurrer is in words and figures following to wit,

State of Illinois,
Cook County ...

Augustine Chester &
Mariste N. Chester ...
at
Julian S. Runners

In Superior Court
of Chicago.

And the said Defendants by Dow and Fuller their Attorneys come and say that the Replication of the said Plaintiff to the said Plea of them the said Defendants & the matters therein contained in manner and form as the same are above pleaded and set forth are not sufficient in law for the said Plaintiff to have or maintain his aforesaid action thereof against them the said

defendants, and that they the said defendants are not bound
by the law of the land to answer the same and this they
are ready to verify. Therefore for want of a sufficient
replication in this behalf, they the said Defendants pray
Judgment if the said plaintiff ought to have or maintain
his aforesaid action thereof against them &c.

Dow & Fuller

Defts Atty's."

And afterwards to wit on the Ninth day of November
(being one of the days of the said November Term of said
Court) A. D. Eighteen hundred and fifty nine the
following proceedings were had in said cause and entered
of record in said Court to wit.

Julian S. Runners }
vs }
Augustin N. Chester } Defendant
and Mariette N. Chester }

This day comes said plaintiff by
Clarkson & Tree his Attorneys and said defendants by Dow
& Fuller their Attorneys also come and on Motion plaintiffs
Attorneys leave is hereby given plaintiff to withdraw from
the file his replication to Defendants plea herein pleaded
to which defendants except and thereupon leave is given
plaintiff to file amended Replication herein.

And thereafter to wit on the twelfth day of November
A. D. Eighteen hundred and fifty nine the said plaintiff
by his said Attorneys, accordingly filed in the Office of the
Clerk of said Court, Amended Replication in words and
figures as follows to wit,)

" Julian S. Ramsey <u>vs</u> Augustine Chester and <u>Maristhe A. Chester</u>	} In the Superior Court of Chicago November Term A. D. 1859.
--	--

And the said plaintiff by leave
of the Court faith that his said Declaration by reason
of anything by the said Defendants in their said plea
alleged, ought not to be quashed, because he says that there
was no such Writ of Error, sued and prosecuted out of
the Supreme Court of the State of Illinois in and for the
third Grand Division of said State, upon any such
Judgment being and existing in the said Circuit Court of
Cook County, before the Commencement of this suit and
before the filing of the said plaintiffs' said declaration herein,
and before the said defendants were notified, by notice and
Copy of said declaration, as is alleged in said plea; and
that there was not at the time of filing said plea, any
Writ of Error pending and undetermined in said Supreme
Court upon any existing Judgment in the said Circuit
Court of Cook County, such as the said defendants have also
alleged in their said Plea And this the said plaintiff
prays may be inquired of by the Country &c)

Clarkson & Tree
Plffs Atty's."

And the Defendants do the like.

By Dow & Fuller
their Atty's."

And thereafter to wit on the twenty second day
of December A. D. eighteen hundred and fifty nine the
said Defendants by their said Attorneys, filed in the Office
of the Clerk of said Court, their Demurrer to said Amended
Replication which last mentioned demurrer is in words &
figures as follows to wit.

'State of Illinois &
Book Bounties ...

Augustus Chester
& Marietta N. Chester
as
Julian S. Rumsey

In Superior Court
of Chicago

And the said Defendant by
Dow & Fuller their Attorneys come and say that the said
Amended Replication of the said Plaintiff to the said plea of
them the said Defendants and the matters therein contained
in manner and form as the same are above pleaded are
not sufficient in law for the said Plaintiff to have
or maintain his aforesaid action thereof against them the said
Defendants, and that they the said Defendants are not bound
by the law of the Land to answer the same And this they

are ready to verify. Therefore for want of a sufficient replication
in this behalf then the said Defendants pray judgment if
the said plaintiff ought to have or maintain his aforesaid
action thereof against them &c

Dow & Fuller

Defls Atty's.

And afterwards to wit on the twenty second day of
December (being one of the days of the December Term of
said Court) A. D. eighteen hundred and fifty nine the
following proceedings were had in said Court and entered
of record in said Court to wit

"Julian S. Ramsey

vs

Augustin Chester

& Mariette, N. Chester

Defendants.

And now again comes said plaintiff
by Clarkson & Tree his attorneys and said Defendants by
Dow & Fuller their Attorneys also come and Counsel being
heard on Defendants demurrer to plaintiffs amended replication
to Defendants pleas herein pleaded, and due deliberation being
thereupon had, the Court being fully advised overrules the
demurrer to amended replication, and issues being thereupon
joined upon agreement of parties this Cause is submitted to the
Court for trial without intervention of a Jury, and the Court
now here after hearing the allegations and proof submitted &
arguments of Counsel and being fully advised in the premises

finds defendants guilty of unlawfully withholding the premises described in Plaintiff's Declaration in this cause from said Plaintiff and finds the Estate of the Plaintiff in the premises described in the declaration in this cause to be an estate in fee simple and that he is the owner thereof in fee and is well entitled to hold the same in fee simple as the said Plaintiff hath declared against them, being the certain lots of land and premises with the appurtenances situate in Chicago County of Cook and known designated and described as follows Lots numbered seven (7) eight (8) and the South Twenty nine (29) feet of lot nine (9) and ten (10) in Block Twenty four (24) in Holcott Addition to Chicago.

And thereupon said Defendants submit their Motion herein for a New trial in this cause.

And afterwards to wit on the twenty third day of December (being 21st of the said December term of said Court) A.D. Eighteen hundred and fifty three the following further proceedings were had in said cause and entered of record in said Court, to wit

" Susan J. Russell

(vs)

Augustin Chester and

Mariette N. Chester

} Specimens

And now again come the parties to this cause Plaintiff as well said Defendants by their respective Attorneys as aforesaid and Counsel being heard on

Defendants Motion heretofore submitted herein for a New trial in this cause and due deliberation being thereupon had and the Court being fully advised overrules defendants said Motion for a New trial.

Therefore said Plaintiff ought now to have judgment entered on the Verdict of the Court

Therefore it is considered said Plaintiff do recover against the said defendants possession of the premises in fee simple set forth in his said Declaration described as follows to wit Lots Numbered Seven (7) and Eight (8) and the South Twenty nine (29) feet of lot Nine (9) and ten (10) in Block Twenty four (24) in Holcotts Addition to Chicago, County of Cook and State of Illinois, according to the verdict of the Court as aforesaid.

And it is further considered that said Plaintiff do have and recover of said defendants his Costs and Charges about his suit in this behalf expended and that he have a Writ of the People directed to the Sheriff of Cook County to Cause him to have possession of said premises according to the foreen found and Effect of his said recovery.

And hereafter to wit on the seventh day of May A.D. Eighteen hundred twenty the said defendants by their said Attorneys filed in the Office of the Clerk of said Court their Motion for a New trial in said cause in words and figures as follows, to wit.

And afterwards to wit on the seventeenth day of January (being one of the days of the January term of said Court in the year of our Lord one thousand eight hundred and sixty, the following proceedings were had in said cause and entered of record in said Court to wit,

" Julian S. Rumsey
vs
Augustine Chester and
Mariette, N. Chester . }

Exemption.

And now comes said Defendants by Dow & Fuller their attorneys and it appearing to the Court that said Defendants have paid and discharged all the costs, which have accrued in this cause in support of their Motion heretofore submitted herein for a new trial and in conformity with the Statute in such case made and provided

It is considered by the Court that their Motion be allowed and it is Ordered a new trial be granted accordingly.

And thereafter also on the said seventeenth day of January, A. D. eighteen hundred and sixty the said Defendants filed in the Office of the Clerk of said Court their plea of General issue in words and figures as follows to wit,

"State of Illinois	}	In Superior Court of Chicago
Cook County		
Augustine Chester		
and Mariette, M. Chester		
add	}	Exponent-
Julian S. Rumney		

And the said Defendants by Dow & Fuller their attorneys come and defend the force and injury whereof and say that they are not guilty of unlawfully withholding the premises claimed by the Plaintiff as alleged in the Declaration and of this they the said Defendants put themselves upon the Country of

Dow & Fuller

Defts Attys"

"And the said Plaintiff doth the like

Clarkson & Tree

Plffs Attys"

And afterwards to wit on the seventh day of May (being one of the days of the May Term of said Court) A. D. Eighteen hundred and sixty the following proceedings

proceedings were had in said Cause and entered of record
in said Court, to wit:

" Julian S. Ramsey
vs
Augustin Chester
& Mariette D. Chester

Exponent

This day comes said plaintiff by
Clarkson & Trow his attorneys and said Defendants by
Dow & Fuller their attorneys also come and issues being
joined herein upon agreement of the parties made now here in
open Court - this Cause is submitted to the Court for trial on
issues joined without intervention of a Jury and the Court
now here, after hearing evidence and arguments of Counsel
and being fully advised in the premises finds defendants
guilty of unlawfully withholding the premises described in
plaintiffs declaration in this Cause from said plaintiff and
finds the estate of the premises is the plaintiff's estate in
the premises described in the declaration in this Cause to be
an estate in fee simple and that he is the owner thereof in
fee and is well entitled to hold the same in fee simple as the
said plaintiff hath declared against them being the certain lots
of land and premises with the appurtenances situate in Chicago
County of Cook and known designated and described as follows
Lots Number seven (7) and eight (8) and the South Twenty
nine (29) feet of lot nine (9) and ten (10) in Block Twenty
four (24) in Wolcotts Addition to Chicago, Illinois.

And thereupon said Defendants submit their Motion

and recover of the said Defendants the possession of the premises described in his declaration in this cause as follows to wit, being the certain lots of land and premises with the ~~no~~ appurtenances situate in Chicago, Cook County, and State of Illinois and known and designated and described in said declaration as follows to wit Lot numbered seven (7) and eight (8) and the South Twenty nine (29) feet of lot nine (9) and ten (10) in Block Twenty four (24) in Holcott addition to Chicago, to have and to hold the same in fee simple and that said plaintiff have a writ of possession directed to the Sheriff of Cook County commanding him to deliver possession to said plaintiff of the said premises as aforesaid according to the force form and effect of his said recovery.

And it is further Ordered that said plaintiff do have and recover of the said defendants his costs and charges in this behalf expended and have execution therefor.

And thereupon the said defendants pray an appeal to the Supreme Court of this State, which is allowed to them on filing their appeal bond in the penalty of One thousand dollars conditioned as the law directs to be approved by a Judge of this Court, and to be filed with their Bill of Exceptions herein within thirty days from the date hereof.

And thereafter to wit on the sixteenth day of October A.D. eighteen hundred and sixty the said defendants accordingly filed in the Office of the Clerk of said Court their Appeal Bond in said cause, which said Bond is in the words and figures as follows to wit-

" Know all Men by these presents that we Augustine Chester & Mariette N. Chester his wife as principals of the City of Chicago, County of Cook and State of Illinois and Henry Smith of the same place as surety are held and jointly bound unto Julian S. Ramsey also of the same County and State in the penal sum of One thousand dollar lawful Money of the United States for the payment of which well and truly to be made we bind ourselves our heirs executors & administrators jointly severally and jointly by these presents.

Witness our hands and seals this 15th day of October A. D. 1860,

The condition of the above obligation is such That whereas the said Julian S. Ramsey did on the 28th day of September A. D. 1860 in the Superior Court of Chicago in and for the County of Cook and State aforesaid and of the 2nd September Term A. D. 1860 of said Court recover a judgment against the above bounden Augustine Chester and Mariette N. Chester for the recovery of the possession of certain lots of land and premises with the appurtenances situate in Chicago in said County of Cook aforesaid and known and designated as follows to wit Lots Numbered Seven (7) and Eight (8) & the South Twenty nine (29) feet of lot Nine (9) and ten (10) in Block Twenty four (24) in Wolcotts addition to Chicago, which said premises the said Julian S. Ramsey claimed in law, and the Cost of suit by said Julian S. Ramsey in and about the same in that behalf expended

from which said judgment of the said Superior Court the said Augustine Chester & Mariette N. Chester have prayed for and obtained an appeal to the Supreme Court of said State.

Now therefore if the said Augustine Chester and Mariette N. Chester shall duly prosecute their said appeal with effect and moreover pay the amount of the judgment cost interest and damages rendered and to be rendered against them in case the said judgment shall be affirmed in the said Supreme Court, then this above obligation to be void, otherwise to remain in full force and virtue,

Augustine Chester (Seal)

Mariette N. Chester (Seal)

Henry Smith (Seal)

And afterwards to wit on the fifteenth day of October (being one of the days of the October Term of said Court) A. D. nineteen hundred and sixty, the following proceedings were had in said cause and entered of record in said Court to wit.

"Julian J. Russell

vs

Augustine Chester and

Mariette N. Chester

Defendant

This day again comes the said defendants by Doro and Fuller their Attorneys and file their Appeal Bond herein to the Supreme Court which is

26.

ordered to be approved and filed by the Court.

And thereafter to wit on the Nineteenth day of October A. D. eighteen hundred and sixty the said defendants by their said Attorneys filed in the office of the Clerk of said Court their Bill of Exceptions in said cause which said Bill of Exceptions is in the words and figures as follows, to wit

"State of Illinois }
Cook County, ... }

In Superior Court of Chicago

Julian S. Runney

— vs —

Augustine Chester and

Mariette M. Chester

} Exhibit

Bill of Exceptions.

Be it remembered that on the Seventh day of May A. D. 1860, the same being one of the days of the May term A. D. 1860 of said Superior Court of Chicago, this cause coming on to be tried upon the issues joined, a Jury was waived by agreement of parties and the cause submitted to the Court by like agreement, to be tried both as to matters of law and fact.

It was admitted by the Defendants that the said Mariette M. Chester, one of said Defendants, is the wife of said Augustine Chester, and that said Augustine Chester and Mariette M. Chester resided on and occupied the said Lots of land and premises in said Plaintiffs said Declaration described at the time of the commencement of this suit - that a demand had been made by them plaintiff upon the Defendants before the commencement of this suit for the possession of said property and that said Defendants refused to surrender the

Same.

The said plaintiff to maintain and prove the issues on his part offered in evidence a certain Warranty deed of the Lots of land and premises described in said Plaintiff's said Declaration from George J. Rimesy and Emily E. his wife, to Mariette M. Chester one of the said Defendants, and bearing date the first day of November A. D. 1856 said deed being as follows to wit:—

" This Indenture made this first day of November
" in the year of our Lord one thousand eight hundred and
" fifty six Between George J. Rimesy and Emily E. his wife
" of the City of Chicago and State of Illinois of the first
" part and Mariette M. Chester of the same place of the
" second part Witnesseth that the said party of the first part
" in consideration of Sixteen thousand two hundred and fifty
" dollars (\$16,250) in hand paid by the said party of the second
" part, the receipt whereof is hereby acknowledged, by these
" presents does grant bargain sell remise release alien and
" confirm unto the said party of the second part and to her
" heirs and assigns for ever, all the following described pieces
" of land situated in the County of Cook and State of Illinois
" described as follows, to wit.

" Lots Seven (7) and Eight (8) and the South (29)
" Twenty nine feet of Lots (9) Nine and (10) Ten in Block
" (24) Twenty four in Volcotts Addition to the City of Chicago
" Together with all and singular the hereditaments and
" appurtenances therunto belonging or in anywise appertaining
" and the reversion and reversions remainder and remainders

"rents issues and profits thereof and all the estate and interest
"whosoever of the said party of the first part, either in law
"or Equity in and to the above bargained premises.

"To have and to hold the said premises above described
"with the appurtenances unto the said party of the Second
"part her heirs and assigns forever.

"And the said George F. Rumsey for himself his heirs
"executors and administrators does covenant to and with the
"said party of the Second part her heirs and assigns that
"the above bargained premises in the quiet and peaceable
"possession of the said party of the Second part her heirs and
"assigns against all persons lawfully claiming or to claim
"the whole or any part thereof the said George F. Rumsey of
"the first part shall and will warrant and forever defend

"In testimony whereof the said party of the first part
"hereunto set their hands and seals the day and year first
"above written.

"Signed Sealed and delivered) "Geo: F. Rumsey (Seal)
"In presence of : "Emily E. Rumsey (Seal)"

"State of Illinois

"Cook County . .

"Town of North Chicago

I Franklin Hathaway a Notary
"Public in and for said County in the State aforesaid Do
"hereby Certify that George F. Rumsey and Emily E. Rumsey
"his wife who are personally known to me as the real persons
"whose names are subscribed to the within deed, appeared before
"me this day in person and acknowledged that they executed

"and delivered the said deed as their free and voluntary act-
 "for the uses and purposes therein set forth And the said
 "Emily E. Rumsey wife of the said George J. Rumsey having
 "been by me examined separate and apart and out of the hearing
 "of her husband, and the contents and meaning of the said deed
 "having been by me made known and fully explained to
 "her acknowledged that she had freely and voluntarily executed
 "the same and relinquished her dower to the lands and
 "tenements therein mentioned, without compulsion of her said
 "husband, and that she does not wish to retract the same.

"Given under my hand and Notarial Seal this Eleventh
 "day of November in the year of our Lord one thousand eight-
 "hundred and fifty six (A.D. 1856).

"Notarial
 Seal."

Franklin Ashway
 Notary Public."

The said Plaintiff further offered in evidence a certain
 Mortgage from the said Defendants Augustine Chester and
 Mariette M. Chester to George J. Rumsey of the Lots of
 Land and premises described in the Declaration as follows
 to wit:

"This Indenture made this first day of November
 "in the year of our Lord one thousand eight hundred and
 "fifty six Between Augustine Chester & Mariette M. his wife
 "of Chicago, State of Illinois party of the first part and
 "George J. Rumsey of the same place party of the second
 "part Whereas the said party of the first part is jointly
 "indebted to the said party of the second part in the sum

of Thirteen thousand and eighty (\$13080⁰⁰) dollars secured
to be paid by two Certain Promissory Notes bearing even
date herewith, payable to the order of the party of the Second
part as follows (\$61700) Six thousand seven hundred and
twenty dollars November first A. D. 1857 and (\$6310) Six
thousand three hundred and sixty dollars November first
A. D. 1858 the same being for a part of the purchase money
and interest at Six per cent per annum agreed to be paid
for the premises herein described Now therefore this Indenture
witnesseth that the said party of the first part for the better
securing the payment of the money aforesaid according to the
tenor and effect of the said Promissory Notes above mentioned;
And also in consideration of the further sum of One dollar
to them in hand paid by the said party of the Second part
(the receipt whereof is hereby acknowledged) have granted
bargained sold promised conveyed and conveyed, and by
these presents do grant bargain sell promise convey and
convey unto the said party of the Second part his heirs and
assigns forever, all the following described Lots pieces or
parcels of land situate in the County of Cook and State
of Illinois viz:

Lot (7) Seven and (8) Eight and the South (29)
Twenty nine feet of Lot (9) Nine and (10) Ten in Block
(211) Twenty four in Wolcotts Addition to the City of Chicago
Together with all and singular the tenements hereditaments
privileges and appurtenances thereto belonging or in anywise
appertaining with the rents issues and profits thereof and
all the estate interest and claim whatsoever of the said party

" of the first part in law as well as in equity in and to the
" premises hereby conveyed To have and to hold the same
" with the appurtenances unto the said party of the second
" part his heirs executors administrators and assigns and
" to their only proper use benefit and behoof.

" Provided always and these presents are upon this express
" condition That if the said party of the first part their heirs
" executors, administrators or assigns shall well and truly pay
" or cause to be paid to the said party of the second part
" his heirs executors administrators or assigns the aforesaid
" sum of money at the time and in the manner specified in
" the above mentioned promissory notes, according to the true
" intent and meaning thereof, then these presents and everything
" herein expressed shall be absolutely null and void But
" in case of default in the payment of the said notes or either
" of them above mentioned, or any part thereof according to the
" tenor and effect thereof, the said party of the second part, or
" his legal representatives or attorney, (~~or~~) after having advertisement
" such Sale Notice (10) days in a Newspaper published in the
" City of Chicago, may sell the said premises, or any part
" thereof, and all right and equity of redemption of the said
" parties of the first part their heirs executors administrators or
" assigns herein, at Public Vendue to the highest bidder for
" Cash at the Court House at the time appointed in such
" advertisement, or may adjourn the Sale from time to time at
" discretion; and upon the making of such Sale or Sales as the
" Attorney of the said party of the first part for such purpose
" hereby constituted, irrevocable, or in the name of the said

omit

" party of the Second part, or their legal representatives shall
" execute and deliver to the purchaser, deeds for the conveyance
" in fee of the premises sold; and shall apply the proceeds of
" sale to the payment of (1) expenses for advertising, selling
" and conveying as aforesaid, including attorneys fees and (2)
" the amount due on said notes (3) rendering the surplus, if
" any, to the said party of the first part or their assigns at the
" office of said party of the Second part in Chicago, Illinois.
" And the said Augustine Chester and Mariette N. his wife
" party of the first part, covenants with the said party of the
" Second part and his heirs executors administrators and assigns
" that they are seised in fee of the said premises and have
" good right to convey the same as aforesaid; that they are
" free from all incumbrances, and that they will forever warrant
" and defend the same against all lawful claims.

" In witness whereof the said party of the first part here
" unto set their hands and seals the day and year above
" written."

" Augustine Chester (Seal)
" Mariette N. Chester (Seal) "

" State of Illinois }
" Cook County ... } &c.

" This Certifies that on the 24th day of November
" Eighteen hundred and fifty six Before me A. H. H. Tull a
" Notary Public of the City of Chicago in the County of Cook in
" the State of Illinois, appeared Augustine Chester & Mariette
" N. Chester personally, known to me to be the real persons
" whose names are subscribed to the annexed Mortgage as having

"executed the same, and then acknowledged the execution thereof
 "as their free act and deed, And the said Mariette M. Chester
 "Wife of Augustin Chester (who is personally known to me to be
 "the same person who subscribed the said instrument of writing
 "having had the contents of the said instrument made known
 "and explained to her, and being by me examined separately
 "and apart from her said husband, did acknowledge said
 "instrument to be her free act and deed; ~~and~~ ^{that} she executed the
 "same, and relinquished her dower in the lands and tenements
 "herein mentioned, voluntarily and freely, and without compulsion
 "of her said husband, and that she does not wish to retract,
 "Given under my hand and seal Notarial the day and
 "year first above written."

"Notarial
 "Seal"

"O. R. W. Tull
 "Notary Public."

To the introduction of which said Mortgage in evidence
 the defendants by their Counsel then and there objected, but
 the Court overruled the objection and admitted said Mortgage
 in evidence.

To which decision and ruling of the Court in
 overruling the Defendants said objection and
 in admitting said Mortgage in evidence, the
 Defendants then and there by their Counsel
 only excepted.

The Plaintiff further offered in evidence the following
 Certificate of publication of notice and Notice - the correctness
 of the facts stated in which Certificate were admitted by

the Defendants without further proof thereof, and is as follows

" This Certifies that the appended Notice has been
" published in the "Chicago Daily Times" a Newspaper printed
" and published in the City of Chicago, County of Cook and State
" of Illinois from Nov 17th 1858 to Jan'y 17th 1859 consecutively
" commencing with the 17th Nov 1858 and that we have ~~so~~
" received Twenty dollars for publishing the same.

Shehan & Price. Publishers."

" Mortgage Sale.

" Whereas Augustine Chester and Mariette M. his wife did on
" the first day of November A. D. 1856 make covenants and
" deliver to George F. Runsey a Mortgage of the premises herein
" after described to secure the payment of two certain promissory
" Notes of men date with said Mortgage payable to the order of
" the said George F. Runsey as follows (\$1,720) Six thousand
" Seven hundred and twenty dollars on the first day of
" November A. D. 1857 and (\$1,360) Six thousand three hundred
" and sixty dollars on the first day of November A. D. 1858
" which said Mortgage is recorded in the Recorders Office in and
" for Cook County, State of Illinois in Book 28 of Mortgages
" page 183. And whereas it is provided in and by said
" Mortgage that if default be made in the payment of the
" said Notes above described, or either of them, or any part
" thereof according to their tenor and effect the said George F.
" Runsey or his legal representatives, or attorney, after having
" advertised such Sale (be) Sixty days in a Newspaper
" published in the City of Chicago, might sell the said premises
" in said Mortgage referred to and hereinafter described or any

"part thereof at public Vendue, to the highest bidder for Cash
"at the Court House in the City of Chicago, at the time appointed
"in such advertisement, or might adjourn the sale from time
"to time at discretion,

"And whereas default has been made in the payment of the
"principal of said promissory Notes above mentioned due November
"1st A. D. 1858 for the said sum of Six thousand three hundred
"and sixty dollars (\$6360-)

"Now therefore public Notice is hereby given that the
"undersigned by virtue of the power and authority vested in
"me by said Mortgage above referred to will on Monday the
"Seventeenth day of January next A. D. 1859 at 10 o'clock A.
"M. sell at public Vendue at the North door of the Court
"House in the City of Chicago, County of Cook and State
"of Illinois to the highest bidder for Cash the following
"described premises (being the same premises described in said
"Mortgage to wit Lots (7) Seven and eight (8) and the
"South (29) Twenty nine feet of lots (9) and (10) in block
"(24) Twenty four in Forests Addition to Chicago situated in
"the County of Cook and State of Illinois for the purposes
"in said Mortgage described.

"Chicago,

Geo: F. Runyon

"November 17th 1858,

"Mortgagee."

"Clarkson & Tree

"Attorneys"

The Plaintiff then offered in evidence a certain deed of the lots of land and premises described in the Plaintiff's said declaration from George F. Runney to the Plaintiff dated January 18th A.D. 1859 as follows to wit:

" This Indenture made the eighteenth day of January
" in the year of our Lord one thousand eight hundred and
" fifty nine between George F. Runney of the City of Chicago
" in the County of Cook and State of Illinois of the first
" part and Julian S. Runney of the same place of the
" Second part

" Whereas Augustine Chester and Mariette N. Chester his
" wife of Chicago appeared by a certain Indenture of Mortgage
" bearing date the first day of November in the year of
" our Lord one thousand eight hundred and fifty six for
" the consideration of the sum of ~~Thirteen~~ thirteen thousand and
" eighty dollars (\$13080) indebtedness from the said party
" of the first part to the said party of the second part in
" said Mortgage secured to be paid by the two certain &
" promissory Notes of the said Augustine Chester, of men
" dated with said Mortgage payable to the order of the said
" George F. Runney as follows (\$6420) Six thousand four
" hundred and twenty dollars November 1st A.D. 1857 and
" (\$6360) Six thousand three hundred and sixty dollars
" November 1st A.D. 1858, and for the further consideration
" of One dollar, did grant bargain sell remise alien and
" convey unto the said George F. Runney his heirs and
" assigns forever all the lots pieces or parcels of land herein
" after particularly described, with the appurtenances Subject

"to a proviso in the said Instrument of Mortgage contained
"that the same should be void upon the payment of the
"said party of the first part to said Mortgage of the said
"sum of Thirteen thousand and eighty dollars, at the time
"and in the manner specified in the said two promissory
"Notes, according to their true intent and meaning; with a
"special power in the said Instrument of Mortgage contained
"authorizing the said George F. Runney his legal ~~and~~
"representatives or attorney, if default should be made in the
"payment of the said two Notes or either of them or any part
"thereof, according to their tenor and effect, after having ~~and~~
"advertised such Sale sixty (60) days in a Newspaper
"published in the City of Chicago aforesaid, to sell the said
"Mortgage premises or any part thereof and also right and
"Equity of redemption of the said party of the first part
"to said Mortgage their heirs executors, administrators or
"assigns therein, at public Vendue to the highest bidder
"for Cash at the Court House in said City of Chicago at the
"time appointed in such advertisement; and as the attorney of
"the said party of the first part to said Mortgage, or in the
"name of the said party of the second part thereto to execute
"and deliver to the purchaser a deed for the conveyance in
"fee of the same.

"And whereas the said Instrument of Mortgage has been
"only recorded in the Records Office in and for the County
"of Cook aforesaid in Book 28 of Mortgages page 183.

"And whereas default having been made in the payment
"of the second of the said two promissory Notes, secured by

" the said Mortgage being for the sum of
" Six thousand three hundred and sixty dollars (\$6360)
" due November 1st A. D. 1858, the Mortgaged premises herein
" after particularly described were on Monday the fourteenth
" day of January instant (A. D. 1859) at ten o'clock A. M.
" of that day, sold at public Auction to the said party of
" the second part hereto for the sum of Three thousand
" dollars (\$3000) in Cash, that being the highest Cash bid,
" and so the highest Cash bidder therefor, said Sale being
" made at the Court House in the said City of Chicago
" and having been advertised sixty (60) days previous to
" the day of said Sale in the "Chicago Daily Times"
" a daily Newspaper published in said City of Chicago.

" Now therefore this Indenture witnesseth that the said
" party of the first part for and in consideration of the said
" sum of Three thousand dollars (\$3000) so bid as aforesaid
" to him in hand paid by the said party of the second
" part at the time of the making and delivery of these
" presents (the receipt whereof is hereby acknowledged) hath
" granted bargained sold aliened released and confirmed
" And by these presents doth grant bargain sell alien release
" release and confirm unto the said party of the second part
" and to his heirs and assigns forever All the following
" described lots pieces or parcels of land situate in the
" County of Cook and State of Illinois viz.

" Lots seven (7) and eight (8) and the South Twenty nine
" (29) feet of lot nine (9) and ten (10) in Block Twenty
" four (24) in Holcott's Addition to Chicago.

" together with all and singular the tenements hereditaments
 " and appurtenances therunto belonging or in anywise
 " appertaining as the same are described and conveyed in and
 " by the said Indenture of Mortgage and also all the estate
 " interest and claim whatsoever of the said Augustine
 " Chester & Mariette, N. Chester in law as well as in Equity
 " in and to the above described premises, and all their rights
 " and Equity of redemption therein, and also all the Estate
 " right title interest property claim and demand whatsoever
 " of the said party of the first part both in law and Equity
 " of in and to the said above described premises with the
 " appurtenances, as fully to all intents and purposes as the
 " said party of the first part hath power and authority to
 " grant and sell the same by virtue of the said Indenture
 " of Mortgage.

" To have and to hold the said above mentioned and
 " described premises, with their and every of their appurtenances
 " unto the said party of the second part his heirs and
 " assigns forever.

" In witness whereof the said party of the first part
 " hath hereunto set his hand and seal the day and year
 " first above written.

" Signed sealed and delivered Geo: F. Ramsey (Seal)
 " In presence of "

" State of Illinois }
 " County of Cook } *h*

Charles R. Sheldon a Notary Public

"public in and for the City of Chicago, County of Cook and
"the State aforesaid do hereby Certify that George F. Roney
"personally known to me to be the person whose name is
"Subscribed to the foregoing deed, as having executed the
"same, appeared before me this day in person & acknowledged
"that he executed the said Deed or Instrument of writing
"freely and voluntarily for the uses and purposes therein
"expressed.

"Notarial
"Seal"

"In witness whereof I have hereunto set my
"hand and affixed my Notarial Seal this 19th
"day of January A.D. 1859.

"Charles R. Sheldon

"Notary Public."

^{to}
To the introduction of which said last mentioned deed
in evidence, the Defendants by their Counsel then and there
objected, but the Court overruled the objection and admitted
said deed in evidence

^{to}
To which decision and ruling of the Court
in overruling said Defendants said objection to
the admission of said last mentioned deed in
evidence and the admission of the same in
evidence, the defendants by their Counsel then
and there duly excepted.

^{to}
The Plaintiff then called as a witness
Julian Magill who being duly sworn testified as follows
I know the property in question in this suit. I know

the plaintiff and George J. Runney and Mr Chester one of the Defendants, and was present at the Sale of the property at the North door of the Court House under the Mortgage attended the Sale in the morning of the 14th day of January A. D. 1859 - George J. Runney the Mortgagee made the Sale - He read the Notice offering the property for Sale - There were a number of persons present - Capt. Mosier was there - There was a bid on the property myself - Julian Runney made the highest bid and it was knocked off to him - There were persons going in & out of the Court House at the time - The property was bid off at Three thousand dollars - The Sale was about ten o'clock in the morning - The terms of Sale were Cash - So stated at the time of the Sale,

On Cross Examination the witness testified.

George J. Runney and Julian J. Runney are brothers - they were both at the Sale & Capt. Mosier myself - George Runney put the property up for Sale

This was all the evidence in the cause

The Court thereupon found the verdict for the plaintiff and the Defendants thereupon entered their motion for a New trial of said cause in words and figures following to wit

"State of Illinois }
Book County ... }
The Superior Court of Chicago
May term A. D. 1860.

1. Julian S. Runsey

(vs)

Augustin Chester and } Defendant
Mariette N. Chester .. }

- And now the said defendants by Melville W. Fuller their Attorney and move the Court for a New trial of said cause for the reasons following to wit
1. Because the Court erred in overruling the objection by the Defendants to the Mortgage by Chester & wife to George F. Runsey and in admitting said Mortgage
 2. Because the Court erred in admitting the deed of George F. Runsey to the Plaintiff
 3. Because the Court erred in finding the issues for the Plaintiff.
 4. Because the Court should have found the issues for the Defendant.
 5. Because the Mortgage from Chester & wife to George F. Runsey was usurious, invalid and void
 6. Because the acknowledgment of the Mortgage from Chester & wife to George F. Runsey was invalid and inefficient
 7. And for other reasons.

Melville W. Fuller

Def's Atty.

Which Motion for a New trial was afterwards to wit on the 22nd day of September A.D. 1860, the same being one of the days of the September Term A.D. 1860 of said Court, overruled by the Court and judgment for the Plaintiff rendered upon the finding of the issues aforesaid

To which several rulings and decisions of the Court in finding the issues in favor of the Plaintiff and in overruling the defendants Motion for a new trial and in rendering judgment for the Plaintiff, the said defendants by their Counsel then and there severally and duly excepted.

To all which rulings and decisions of the Court herein before severally enumerated the defendants by their Counsel then and there duly excepted and prayed an Appeal therefrom which was granted And forasmuch as the several matters & things hereinbefore stated and set forth, do not otherwise appear, the said Defendants pray that this their Bill of Exceptions may be signed and sealed and made a part of the record of this Cause. Which is done.

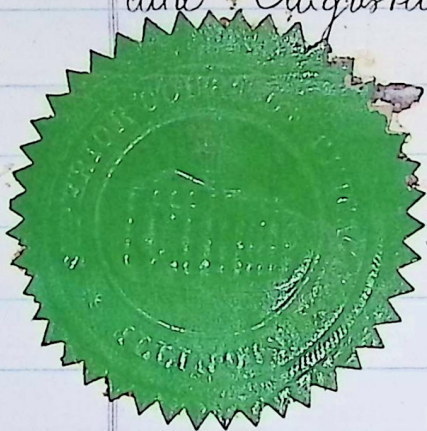
Grant Goodrich (Seal)

State of Illinois }
Cook County } *[Signature]*

Walter Kimball Clerk of the Superior Court of Chicago, within and for the County of Cook in the State of Illinois Do hereby Certify the above and foregoing to be a full true and correct Transcript of the Papers

now on file in my Office, together with all Orders and
judgments entered of record in said Court in a certain
suit therein, wherein Cuban S. Runney was plaintiff
and Augustus Chester and Mariette, N. Chester, defendants.

In testimony whereof, I have hereunto set
my hand and affixed the Seal of said
Superior Court at Chicago in said County
the Sixth day of March A.D. 1861.
Walter Kimball Clerk



State of Illinois
Cook County,

Julian S. Rumsey

— (v) —

Augustin Chester et al

Record.

Recd. Paid by Dep. Att
\$14.00 W. K. Kinsback contd

In Supreme Court of the State
of Illinois
Third Grand Division
April Term, 1861

Augustine Chester &
Marquette N. Chester
Appellants

vs
Julian S. Ramsey
Appellee

Afterwards, writ, on the ~~first~~ Tuesday
after the Third Monday of April
A.D., 1861, at this same term,
before the Judges of the Supreme
Court of the State of Illinois,
came the said Augustine
Chester & Marquette N. Chester,
Appellants by Melville W. Fuller
their Attorney and say that
in the record & proceedings
aforesaid & in ^{the} rendering
the judgment aforesaid,
there is manifest error, in
this, to wit:

1- That the Court erred in
allowing the Plaintiff below
(Appellee) to withdraw his Application
to the ~~the~~ plea in abatement
of Defendants below after the

Defendants below had demurred
to said replication -

in not

2. Because the Court erred
in not sustaining said the
demurrer of said Defendants
below to the replication of the
said Plaintiff to said Defendants
plea in abatement and
finding the issues on said
plea in abatement in favor
of said Defendants below -

3. Because the Court erred
in entering judgment for the
recovery of the premises in
question on the issues joined
on the plea in abatement

4. Because the Court
erred in admitting the
mortgage purporting to be
executed by the Defendants
below (Appellants) to George
F. Runney, in evidence &
in overruling the objection
of the Defendants below
thereto

5. Because the Court erred in admitting the deed from George F. Rumsey to the Plaintiff below, in evidence and in overruling the objection of the Defendants below thereto

6. Because the Sale of the premises in question upon the mortgage in question & upon which the deed from George F. Rumsey to the Plaintiff below was given was illegal, invalid & void -

7. Because the Court erred in overruling the motion for a new trial made by the Defendants below

8. Because the Court erred in finding the issues for the Plaintiff below

9. Because the Courts judgment apportioned in favor of Plaintiff given, was given in favor of the Plaintiff below & against the Defendants below, whereas by the law of the land, said

judgment should have been given
in favor of Defendants below
against said Plaintiff below

and the said Augustin Chester
& Manette W. Chester, Appellants
by M. W. Fuller, their Attorney
pray that the judgment aforesaid
for ^{the} errors aforesaid, and other
errors in the record and proceedings
aforesaid, may be reversed, annulled
& altogether held for nothing, and
that they may be restored to all
things which they have lost
by occasion of such judgment as
Melville W. Fuller
Atty. for Appellants

In the Supreme Court
Third Term Session

Julien J. Remondy appellee

April Term C. D. 1861

ad
Augustin Chester &
Manette W. Chester Appellants

And now comes the said Julien Remondy,
appellee by J. P. Clarkson his Attorney and says that
the first, second and third assignments of error above

herin assigned are irregular, improper, and
insufficient in law and cannot legally be assigned
Because

1. It appears from the record that the ^{defendant} ~~plaintiff~~ below
after their demurrer to the replication was overruled, took
issue on fact therein and tried the Cause upon said issue.
2. No exception was taken by the defendants below to the
rulings of the Court overruling their demurrer to the replication
of ~~defendants~~ below.
3. The evidence on the trial of said issue on said pleaded
statement does not appear in any manner in said
record, and therefore error cannot be properly assigned upon
the finding of the Court below upon said issue.
4. Because it appears from the record that the defendants
below after said issue was determined in favor of the plaintiff
below, paid the Cost of the Case, and took a new trial as
of Course under the Statute, thereby waiving their right of
reversing the rulings of the Court and the judgment in the case.

And the said appellant by his said attorney
says that, as to the assignment of error, ~~frankly~~ ^{frankly} ~~fully~~ ^{fully}
~~exactly~~ ^{exactly} ~~correctly~~ ^{correctly} ~~rightly~~ ^{rightly} and ~~correctly~~ ^{correctly} assigned,
there is no error ^{within} in the record or proceedings
aforeaid or in the judgment aforeaid, and
says that said said judgment (may be ^{in all things} affirmed &c)

J. P. C. Larkins
Counsel for Appellant

2²⁰² Supreme Court
A. Chester vs
appellants

Julian S. Ramsey
Appellee

Record -

Assignment
Error - Joinder &c

Filed April 16 1861
L. Leland
Clerk