

14267


No. 14267

Supreme Court of Illinois

Smith

vs.

Forney

71641  7

STATE OF ILLINOIS,

25
SUPREME COURT,

Third Grand Division.

14267

No. 71.

Smith

vs

Jones

1862

State of Illinois }
Peoria County } Samuel Dinon being duly
sworn deposes and says
that Patrick Smith, ^{defendant} who is defendant
in the suit of Jesse Y. Torney, ^{plaintiff below} now appealed
to and pending in the Supreme Court of
Illinois from the Circuit Court of Peoria
County Illinois departed this life the morn-
ing of the 20th day of January A.D. 1861 at
and in Peoria County Illinois - That
affiant that affiant on said day laid
out said Smith and saw him buried
and knows said Patrick Smith to be the
identical ~~party~~ person who was party
defendant to two certain causes pending
and adjudicated in the Circuit Court of
Peoria County Illinois wherein Jesse
Y. Torney was plaintiff and said Patrick
Smith was defendant one of which said
suits was a suit in Chancery to foreclose
mortgage and the other a suit at
law in said court and both of which
were by said Patrick Smith appealed to
the Supreme Court of the State Illinois
and that after perfecting said appeals the
said Patrick Smith died as aforesaid on
the said 20th day of January 1861
as aforesaid

Affiant says that Rosy Smith

Widow of the said Patrick Smith is the
executrix of the said Patrick Smith
duly appointed and qualified

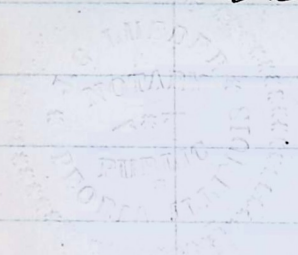
to and subscribed

Sam Dimon

before me this 12th day
of April 1861.

Julius G. Lucder.

Notary Public, Peoria Co., Ill.



Smith 71 267

Jesse J. Torney

affidavit of Denial

Filed Apr 18. 1861

A. Leonard

Clk

State of Illinois } April Term 1861
In the Supreme Court }

Patrick Smyth Appellant } In chancery
vs } Appeal from Peoria
Jesse J. Horney appellee }

Henry Howe being
just duly sworn on oath says that the above named
Patrick appellant in the above cause after perfecting
the appeal in the above entitled cause departed this
life at his residence in the County of Peoria in said
State of Illinois on or about the 20th day of January,
A.D. 1861 leaving Rosey Smyth (his widow)
and

Francis Smyth

John Smyth

James Smyth

Edwara Smyth

William Smyth

Patrick Smyth

Charles Smyth

Mary Smyth

Ann. Maria's Smyth

Betsey Smyth

Catherine Smyth

Margarett Smyth &

Rosey Smyth & his children or heirs

heirs at law He further deposes that
said Patrick Smyth died testate
and appointed his widow the said

Rosey Smyth ^{executrix} of his said last

last will & Testament who has taken upon herself
to act as such executor;

He further states that
the widow & children of said Patrick Smyth all re-
side in Perma County Illinois as he is informed
& believes. He makes this affidavit that
the said widow executor & children may be ~~made~~
~~Proctor~~ substituted as Party appellent & that
Process may issue to them for that purpose
H. Brown

Subscribed before me
on this 4th day of May
1861 Enoch Sloan, Clerk
Circuit Court Perma County
& the seal thereof

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Smith

7

Horney,

apt.

Filed May 9. 1861
L. Leland
Clerk

To the Sheriff of the County of Peoria _____ Greeting:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Circuit Courts of Peoria - County, before the Judge thereof, between Jesse Y. Forney Complainant & Patrick Smyth defendant from which said judgment the said Patrick Smyth obtained an appeal in said Circuit Court & perfected plaintiff and the same by filing bond according to law & in compliance with the order of said Circuit Court

~~defendant, it is said that manifest error hath intervened, to the injury of the said~~

~~as we are informed by~~

~~complaints~~ the record and proceedings of which said judgments ~~we~~ have ^{been} caused to be brought into our Supreme Courts of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law:

And whereas it has been suggested upon the Record of said Supreme Court that on or about the 20th day of January A.D. 1861. after the perfecting of said appeal the said Patrick Smyth departed this life leaving him surviving Rosey Smyth Senior his widow and executrix and Francis Smyth, John Smyth, James Smyth, Edward Smyth, William Smyth, Patrick Smyth, Charles Smyth, Mary Smyth, Ann Mariah Smyth, Peter Smyth, Catherine Smyth, Margaret Smyth & Rosey Smyth Junior his children & sole heirs at law which said widow & executrix & heirs at law of said Patrick Smyth have been, by order of said Supreme Court, substituted as parties appellant in the place & stead of the said Patrick Smyth deceased.

Therefore, We Command You, That by good and lawful men of your County, you give notice to the said Rosey Smyth Senior, Francis Smyth, John Smyth, James Smyth, Edward Smyth, William Smyth, Patrick Smyth, Charles Smyth, Mary Smyth, Ann Mariah Smyth, Peter Smyth, Catherine Smyth, Margaret Smyth & Rosey Smyth Junior that they be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if they shall see fit; and further to do and receive what said Court shall order in this behalf; and have you there the names of those by whom you shall give the said ~~last~~ above named Rosey Smyth Senior & others

notice, together with this writ.

Witness, The Hon. John D. Paton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 8th day of May in the Year of Our Lord One Thousand Eight Hundred and Sixty One.

L. Leland

Clerk of the Supreme Court
by J. B. Rice Deputy

State of Illinois }
Marion County } 388

I have duly served this writ
on the within named Rosy Smyth

Senior Lawrence Smyth John Smyth James Smyth Edward
Smyth William Smyth Patrick Smyth Charles Smyth
Mary Smyth Ann Maria Smyth Betsey Smyth
Catharine Smyth Margaret Smyth and Rosy Smyth, Junior

Delivering to each of them a true copy of the same

July 1st 1861

by ~~the undersigned~~ ~~James Stewart~~ 1861

James Stewart Sheriff
By: No. Coy. Deputy

Yves \$24.60

Rec'd by James Stewart
\$24.60
Sheriff

Ch 207

Smith }
 ⁱⁿ } In Supreme Court
Forney }

Motion to ~~Strike out~~
~~residence~~ set aside continuance
and for a rule on plaintiffs to as-
sign errors

The Defendant by way
of suggestion of reasons in favor
of the motion states That the de-
fendant recovered judgment
in September last against Patrick
Smith for some 3000 of Smith
appeals and departed this life
on the 20 of January last. (See di-
visions affidavit on file)

Within the three
first days of the present term of
this Court the Plaintiff files the
record here suggested the death
of the Defendant below. Rosa
Smith the Plaintiff is substituted
as a party appellant or Plaintiff
& on her motion the cause was
continued

The Defendant insists
that the continuance should
be set aside & Appellant ruled
to assign errors for the reason

1. The filing of the record within the three first days was evidently done for the purpose of avoiding a dismissal of the appeal.

2. Under the rules of this Court the defendant could not file the record and prevent a dismissal of the appeal until after the three days.

3. The Plaintiff has her option to file the record or not. If she declines to proceed she has nothing to do but file the record suggest the death of Patrick & Smith have her own name substituted against errors & process. There is no rule of Court or of law known to us that would have prevented her from proceeding at this time. Are there any rule of this Court or of law that would enable the defendant to have the cause continued?

4. If Plaintiff had not filed the record in time a new state of the case would have been presented.

process could have been given to the appeal
and he brought in the appeal
dismissed at this term.

5. The continuance works great
injustice to the defendant. He is in
Cage a year without any fault
on his part. The case can just
as well be disposed of at this term
as at next.

There is neither Justice, reason
or propriety for the continuance
for the above or this reason. Let
Prayer the Court to set aside said
continuance & for a trial on day to
avoid error. From for
def

Smith 71

⁷
Horney

Suggestions in favor
of motion to set a
dead center
for a rule on Pp. to
avoid error

Comment

Proceedings in Chancery, before the circuit court of Peoria county on the fifth day of September AD 1860 in a certain cause wherein Jesse J. Forney was complainant and Patrick Smith was defendant.

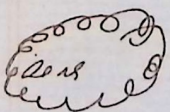
Be it Remembered that heretofore to-wit:-
on the ninth day of August AD 1860, there was filed in the office of the clerk of said court a certain bill in Chancery, in the words and figures following, to-wit:-

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And on the day and date of the filing
of the foregoing bill in chancery, there was
issued from said clerks office, a summons
in words and figures following to-wit: -

Summons = The People of the state of Illinois, to the Sheriff
of Peoria County - Greeting: - We command
you to summon Patrick Smith if he may
be found in your county, to appear before our
circuit court on the first day of the special
term thereof to be held at Peoria, within
and for the said county of Peoria, on the
third Monday of August A.D. 1860 then
and there, in our said court, to answer the
matter and things contained in a certain bill
of complaint lately exhibited before our
circuit court on the chancery side there-
of against him, by Jesse J. Forney for pre-
closure of most page, and make return
of this writ, with an indorsement of the
time and manner of serving the same
on or before the first day of the term
of the said court, to be held as aforesaid.

Witness, Enock Sloan, Clerk of our said court
and the seal thereof, at Peoria, this
ninth day of August in the
year of our Lord one thousand
eight hundred and sixty.

Enock Sloan, Clerk, by J. Newton, Deputy.



Shff. Return

And afterwards said summons was re-
turned into said clerks office, endorsed
in words and figures following to wit:-
State of Illinois, Peoria county - I have duly
served this writ by reading to and deliv-
ering a true copy of the same to the withe-
in named Patrick Smith. August 10. 1860.

John Fryner, Shff
By Easley, Deft.

And afterwards to wit, on the 20th day of Au-
gust A.D. 1860, there was filed with the clerk
of said court the answer of the said Patrick
Smith, in words and figures following
to-wit:-

Answer

State of Illinois In the circuit court
County of Peoria August special term 1860.
In Chancery

Jesse J. Forney



Answer &c. to Amended bill
(interlined after filing) clerk

Patrick Smith

The answer of Patrick Smith
dependant in the above entitled cause for
possession &c, to the complainants amended bill filed herein
(interlined after filing - clerk)
This dependant now and at all times saving and
reserving to himself all manner of advantage
that could in any wise be taken to the many-
fold imperfections in the complainants bill
contained, either by exception, demurrer or oth-

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wise, for answer says. He admits that on or about the third day of March 1859 this respondent was indebted to the complainant in a large sum of money, the particular amount is not recalled by this respondent, but he believes about the sum of mentioned in said complainants bill, but as to the amount of said indebtedness the defendant calls for proof. Your respondent further answering admits that to secure the indebtedness aforesaid, he did execute and deliver to the complainant a deed of mortgage but not at or near the time set forth and charged in said complainants bill. And this respondent denies executing any such mortgage as charged in said bill at the time therein mentioned. This respondent admits that he did execute a mortgage to secure said indebtedness, and that in the said description the property was described as in said bill mentioned, but does not know whether the defect in said description was a mistake or not, but that the same was read over after the same was written and that the same executed with a full knowledge of the contents thereof, and was accepted as this respondent believes by said com=

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plainant with full knowledge of the omission if any. That this respondent does not know whether there is any omission or misdescription or not, but if any this respondent denies the legal right under the above circumstances to correct the same. This respondent admits that there were notes executed at the same time that said mortgage was executed for the amount of said indebtedness, and which are outstanding, but whether yet owned or held by complainant or not this defendant does not know. This defendant further answering says, that he is a married man and was at the time of the execution of said mortgage, and that his wifes name is Rosy Smith, and that she is not a party to this suit, and that she resides in said Peoria county, therefore in consideration of the foregoing premises this respondent prays to be hence discharged with his costs &c.

Wm. W. O'Brien, Sol

for defendant

State of Illinois, County of Peoria, ss.

Patrick Smith the above named defendant being first duly sworn says,

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city and county of Peoria, state of Illinois, on the third Monday in the month of August in the year of our Lord one thousand eight hundred and sixty, it being the twentieth day of said month. Present - the Honorable Elisha S. Powell, judge of the 16th Judicial circuit in said state, John Bryner, Sheriff, and Noah D'Loan, clerk, to-wit:-

Wednesday, August 22^d AD 1860.

Jesse J. Forney

foreclose mortgage

Patrick Smyth

On motion of complainant, by attorney, leave is given him to amend his bill in -
stanter; and the dependant is ruled to answer the same by Monday morning next.

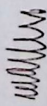
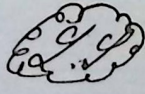
And afterwards to wit:- on the day and date last aforesaid, there was filed with the clerk of this court an amended bill in words and figures following to wit:-

Amended ~~bill~~
mortgage

This Indenture, made this 23th day of March in the year of our Lord one thousand eight hundred and fifty nine between Patrick Smyth of Peoria county and state of Illinois of the first part and Jesse J. Forney of the same place of the second part, Whereas, the said party of the first part is justly

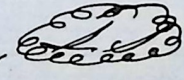
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indebted to the said party of the second part
in the sum of three thousand and two hun-
dred \$20 dollars & 9 cts. secured to be paid by two
certain notes bearing even date herewith the first
note calling for \$1613.09 due on the 11 day of
May 1859, the second calling for \$1605.00 due
on the 11th day of May 1860 both with interest.
Now, therefore, this Indenture witnesseth, That the said
party of the first part, for the better securing the
payment of the money aforesaid, with interest
thereon, according to the tenor and effect of
the said notes above mentioned; and also in
the consideration of the further sum of one
dollar, to him in hand paid by the said party
of the second part, the receipt whereof is hereby
acknowledged have granted, bargained, sold
and conveyed and by these presents do grant,
bargain, sell, and convey unto the said party
of the second part his heirs and assigns for-
ever, all the following tract or parcel of land,
situate, lying and being in the county of Peoria
and state of Illinois known and described
as follows the south west quarter of section
No Five (5) or that part lying north of the
Knoxville and Peoria in Township No. nine
north Range No seven (7) East containing
one hundred and nine acres, together
with all and singular, the tenements, here-

ditaments, and appurtenances thereto belong-
 ing, and all the estate, right, title, interest, prop-
 erty, possession, claim and demand whatso-
 ever, as well in law as in equity, of the said
 party of the first part, of, in and to the above
 described premises, and every part and parcel
 thereof, with the appurtenances: to have and
 to hold ~~and~~ all and singular the above
 mentioned and described premises, together
 with the appurtenances, unto the said party
 of the second part, and to his heirs and as-
 signs forever. Provided always, and these
 presents are upon this express condition,
 that if the said party of the first part his
 heirs, executors and administrators, shall
 well and truly pay, or cause to be paid
 to the said party of the second part, his
 heirs, executors, administrators and assigns,
 the aforesaid sum of money, with the inter-
 est thereon, at the time and in the manner
 specified in the above mentioned notes ac-
 cording to the true intent and meaning there-
 of, that then, and in that case, these presents
 shall be void; otherwise to remain in full force.
 In witness whereof, the said party of the first
 part have hereunto set his hand and seal
 the day and year first above written
 Signed, sealed and delivered in presence of  Patrick Smyth. 

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State of Illinois

Peoria county } I, Matthew Craig a justice
of the peace in and for said county, do cer-
tify, that on this day personally appeared be-
fore me Patrick Smyth whose name ap-
pears subscribed to the foregoing deed of con-
veyance as having executed the same, and
who is personally known to me to be the
real person who and in whose name the
acknowledgment is proposed to be made,
and acknowledged the execution thereof
as his voluntary act and deed for the uses
and purposes therein expressed. Given under
my hand and seal of office at Kickapoo this
twenty third day of March AD 1859.

Matthew Craig, 

Justice of the Peace.

State of Illinois

Peoria county } Recorder office.

I, Euseb D. Sloan, clerk of the circuit
court, in and for the county of Peoria, in
the state of Illinois, and Ex-officio recorder
of deeds in said county, do hereby certify
that the annexed mortgage was filed for
record in my office on the 18th day of May
AD 1859, and has been duly recorded with
the accompanying certificates, on page
170 in book Vol. 10, in said records of-

fice. In witness whereof, I hereto set my hand
 and affix the seal of the said ^{circuit} court at my
 office in Peoria, this 18th day of May
 1859
 Enoch Sloan, Clerk &
 Recorder

Bice

State of Illinois } In the circuit court of Peoria
 Peoria County, W. } County, to August Special Term
 1860.

Jesse J. Forney

vs

Patrick Smyth

In Chancery for foreclosure
 of Mortgage.

To the Hon. Oliver N. Powell, Judge
 of the 16th judicial circuit in the state of Illi-
 nois in chancery sitting. Your orator Jes-
 se J. Forney of the county of Peoria and
 state of Illinois respectfully represents.
 That on or about the twenty-third day of
 March A.D. 1859 at and within the county
 of Peoria and state of Illinois, Patrick
 Smyth of the county of Peoria and state
 of Illinois (and whom your orator
 prays may be made a party dependant
 to this your orators bill of complaint)
 being then the owner of that part of
 the South west quarter of section num-
 ber five in township number nine north
 of range seven east of the fourth princi-
 pal meridian in the county of Peoria and

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state of Illinois, lying north of the Knoxville and Peoria road, and the said Patrick Smyth being then and there indebted to your orator in the sum of thirty-two hundred and twenty dollars and nine cents being the amount of two promissory notes executed by him the said Patrick Smyth and by him delivered to the complainant and which said two notes are in the words and figures following substantially—

"#161509 On the 11th day of May eighteen hundred and fifty nine I promise to pay Jesse J. Forney or bearer sixteen hundred and fifteen dollars and nine cents for value received with interest. Patrick Smyth,"

"March the 23rd 1859."

"#160500 On the 11th day of May eighteen hundred and sixty I promise to pay Jesse J. Forney or bearer sixteen hundred and five dollars for value received with interest Patrick Smyth,"

"March the 23rd 1859." and your orator files herewith said two original promissory notes & makes the same a part heresp. And your orator further charges that the said Patrick Smyth being so indebted to your orator for the purpose of securing the said

sum of money in said two promissory notes specified, and for the purpose of securing the payment of the indebtedness of him the said Patrick Smyth to your orator the said Patrick Smyth on or about the said 23^d day of March A.D. 1859 executed and acknowledged a mortgage of that date and delivered the same to your orator which original mortgage for greater certainty your orator files herewith and annexes hereto and makes the same a part of this your orator's bill of complaint the same in all respects as if said mortgage acknowledgement and certificate of record were herein at length set out. Your orator charges that said Patrick Smyth intended in and by said mortgage deed to describe and convey therein & thereby to your orator, all that part of the said South west quarter of section five in township number nine north of Range seven east of the fourth principal meridian in Peoria county Illinois, lying north of the Knoxville and Peoria Road and containing about one hundred and nine acres of land. Your orator charges that said mortgage was executed by the said Patrick Smyth

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to your orator to secure the purchase money of said mortgaged premises. Your orator further charges that said sum of money secured by said mortgage has long prior to the commencement of this suit become due and payable, but that the said money has not been paid nor any part thereof, whereby the legal estate in said mortgage premises has become vested in your orator redeemable nevertheless in equity by the said Patrick Smyth in payment of the said moneys secured by said mortgage. Your orator charges that there is now due to him on his said mortgage security the just and full sum of thirty-four hundred and ninety-three dollars and seventy nine cents which is a just & valid lien on said premises intended to be described & conveyed in said mortgage. Your orator therefore prays that said Patrick Smyth may answer this your orator's amended bill of complaint on oath, and that he be compelled to the utmost of his knowledge, recollection & belief answer all and singular the premises the same as if he were thereto herein again specially interrogated, that upon the hearing of

of this cause an account may be taken of the amount due to your orator on his mortgage security, and that said Patrick Smyth be decreed to pay the amount so found to be due within some short day to be fixed by your honor and that in default of such payment that the said mortgaged premises may be sold by the Master in Chancery of this court and the proceeds of such sale be applied to the payment of the amount due to your orator with the interest thereon, and that your orator may have such other further or different relief as equity & good conscience may require

Jesse J. Forney

by A. Grove

his sol.

And afterwards to-wit:- on the 30th day of August AD 1860, the following proceedings were had in said court in this cause, to-wit:-

Jesse J. Forney

vs

Foreclose mortgage.

Patrick Smyth

This day come the complainant by attorney, and the said dependant failing to comply with the order of this court in

This cause, was three times solemnly called and come not but made default. Whereupon it is considered and adjudged by the court that the said complainants bill and the matters and things therein contained be taken as confessed by said dependant.

Amended Answer

And afterwards to-wit on the 3^d day of September A.D. 1860 there was filed with the clerk of this court an "Amended Answer" in words and figures following to-wit:—

State of Illinois }
 County of Peoria }³ In the circuit court August
 Special term 1860 = In Chancery

Jesse J. Forney }
 " }
 Patrick Smith }
 Answer to Amended bill

The answer of Patrick Smith dependant in the above entitled cause for foreclosure &c to complainants amended bill filed herein &c. This dependant now and at all times, saving and reserving to himself all manner of advantage that could in anywise be taken to the manifold imperfections in the complainants amended bill contained, either by exceptions, demurrer or otherwise, for answer says. He admits that on or about the twenty third day of March A.D. 1859 this respondent was

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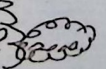
indebted to the complainant in a large sum of money, the particular amount is not recalled by this respondent but he believes about the sum mentioned in said complainant's bill, but as to the amount of said indebtedness this respondent calls for proof, This respondent further answering says, that to secure the indebtedness aforesaid he did execute and deliver to the complainant a deed of mortgage as mentioned in said complainant's amended bill, This respondent admits that he did execute a mortgage to secure said indebtedness, and that in the said description the property was described as in said bill mentioned, but does not know whether the defect in said description mentioned was a mistake or not, but that the same was read over after the same was written, and that the same was executed with a full knowledge of the contents thereof and was accepted as this respondent believes, by said complainant with a full knowledge of the omission if any, that this respondent does not know whether there is any omission or misdescription or not, but if any this respondent denies the legal right under the above circumstances to correct the same. This res-

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Respondent admits that there were notes executed at the same time that said mortgage was executed for the amount of said indebtedness and which are outstanding against him and as respondent is informed are still in the hands of said complainant. This respondent further answering says, that he is a married man and was at the time of the execution of said mortgage, and that his wife's name is Rosy Smith, and that she is not a party to this suit and that she resides in said Peoria county, therefore in consideration of the premises this respondent prays to be hence discharged with his reasonable costs in this behalf &c

x Patrick Smyth

State of Illinois }
 County of Peoria } Patrick Smyth defendant
 in the above entitled cause being first sworn says that the foregoing answer by him subscribed is true to the best of his knowledge and belief &c

subscribed and sworn to } + P. Smyth
 before me this 1st day of Sept-
 ember 1860 = John Johnson, J.P. 

And afterwards to-wit- on the day and date of the filing of the foregoing "Amended answer"

there was filed with the clerk of said court "Exceptions to Amended Answer," in words and figures following to wit:-

State of Illinois } In the Circuit court of
 Peoria County } Peoria County

Jesse J. Forney } In Chancery
 " } Exceptions to Amended
 Patrick Smyth } Answer

Exceptions

The complainant comes and excepts to the amended answer of the defendant in this cause and moves that the said amended answer may be suppressed for the following reasons to-wit:-

1. The said amended answer is uncertain, evasive, insufficient and immaterial.
2. The said amended answer is not signed by counsel.
3. The wife of defendant is not a necessary party
4. The verification of said amended answer is insufficient. Henry Grove, Sol for complt.

And afterwards to-wit: on the day and date of the filing of the foregoing exceptions there was filed in this cause the following admission, to-wit:-

Admission

It is admitted that the defendant owns the land described in the mortgage, and

that the dependant intended to mortgage the premises as charged in the bill. It is further admitted that the dependant executed the notes & mortgage as stated in the bill. The dependant reserves all questions as to the decree of the court in sustaining the exceptions to dependants answer to the amended bill.

M. Williamson, sol for depts
Grove for compt.

And afterwards to wit: on the day and date of the filing of the foregoing admission, the following Proceedings were had in this cause in words following to-wit:-

Jesse J. Forney

vs

Foreclosure Mortgage.

Patrick Smythe

This day this cause came on to be heard on complainants exceptions to dependants amended answer filed herein, and the court being fully advised in the premises, sustained said exceptions.

And afterwards to wit, on the day and year first aforesaid the following proceedings were had in this cause, in words and figures to-wit:-

Jesse J. Forney

3
3
3
3
3

In Chancery for foreclosure of Mortgage

Patrick Smythe

Decree

This day this cause came on to be heard upon the exceptions of complainants to the answer of the defendant filed on this day to the amended bill of complaint filed by the complainant in this cause on the 22nd day of August 1860 on consideration whereof, and the court being fully advised in the premises, It is ordered adjudged and decreed by the court here that the said exceptions be sustained and said answer held and decreed to be uncertain insufficient and evasive, and the same is suppressed, and the defendant saying nothing further this cause come on to be heard upon the amended bill of the said complainant the proofs and allegations of the complainant and the admissions of the defendant by his counsel in open court. The defendant by his solicitor admitted in open court on the hearing of the cause that the defendant owns the land described in the mortgage and that the defendant intended to mortgage the premises as charged in the amended bill of complainant. It was further admitted that the defendant executed the notes and mortgage as stated in the amended bill of complaint. (But the defendant reserved all questions as to the decree of the court in sustaining the exceptions to

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dependants answer to the amended bill of complaint.) The complainant then offered in evidence the two promissory notes executed by the dependant to the complainant and filed with the amended bill in this cause in words and figures following:

"\$161509. On the 11th day of May eighteen hundred and fifty nine, I promise to pay Jessy J. Forney or bearer sixteen hundred and fifteen dollars and nine cents for value received with interest. Patrick Smyth"
March the 23^d 1859."

"\$1605.⁰⁰ On the 11th day of May eighteen hundred and sixty, I promise to pay Jessy J. Forney, or bearer sixteen hundred and five dollars for value received with interest. Patrick Smyth.
March the 23^d 1859."

The complainant then offered and read in evidence the mortgage executed by the dependant and filed with the amended bill of complaint in words and figures following: This indenture made this 23th day of March in the year of our Lord one thousand eight hundred and fifty nine Between Patrick Smyth of Peoria county and state of Illinois of the first part and Jessy J. Forney of same place of the second part, Whereas, the said party of the first

part is justly indebted to the said party of the second part in the sum of three thousand two hundred \$20 dollars & 9 cts secured to be paid by two certain notes bearing even date here with the first note calling for \$1615 09 due on the 11 day of May 1859 the second calling for \$1605 00 due on the 11th day of May 1860 both with interest. Now, therefore, this Indenture Witnesseth, That the said party of the first part, for the better securing the payment of the money aforesaid, with interest thereon, according to the tenor and effect of the said notes above mentioned; and also in the consideration of the further sum of one dollar, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged have granted, bargained, sold and conveyed and by these presents do grant, bargain, sell, and convey unto the said party of the second part his heirs and assigns forever, all the following tract or parcel of land, situate, lying and being in the county of Peoria and state of Illinois known and described as follows the South west quarter of second No. five (5) or that part lying north of the Knoxville and Peoria in township No. nine north Range No. seven (7) east containing one hundred and nine acres, together with all and sin-

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gular, the tenements, hereditaments, and appurte-
nances thereto belonging, and all the estate,
right, title, interest, property, possession, claim
and demand whatsoever, as well in law as in
equity, of the said party of the first part, of,
in and to the above described premises, and
every part and parcel thereof, with the ap-
purtenances: To have and to hold all and
singular the above mentioned and described
premises, together with the appurtenances,
unto the said party of the second part, and
to his heirs and assigns forever. Provided
always, and these presents are upon this ex-
press condition, that if the said party
of the first part, his heirs, executors and
Administrators, shall well and truly pay,
or cause to be paid to the said party of the
second part his heirs, executors, adminis-
trators and assigns, the aforesaid sum
of money, with the interest thereon, at the
time and in the manner specified in the
above mentioned notes according to the
true intent and meaning thereof, that
then, and in that case, these presents
shall be void; otherwise to remain in full
force. In witness whereof, the said party of
the first part have hereunto set his hand
and seal the day and year first above written.

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signed, sealed and delivered in } Patrick Smyth, (L.D.)
Presence of }

State of Illinois }

Peoria county } C. Matthew Craig a justice

of the peace in and for said county do certify that on this day personally appeared before me Patrick Smyth whose name appears subscribed to the foregoing deed of conveyance as having executed the same and who is personally known to me to be the real person who and in whose name the acknowledgment is proposed to be made, and acknowledged the execution thereof as his voluntary act and deed for the uses and purposes therein expressed. —

Given under my hand and seal of office at Richboro this twenty-third day of March

AD 1859

Matthew Craig, (L.D.)

Justice of the Peace.

on consideration whereof the court finds from the evidence that the said amended bill of complaint and the matters therein contained as therein set forth are true and that the equity of the case is with the complainant. The court further finds from the evidence that the defendant did execute said mortgage as in said amended bill set forth, and that he intended thereby

and therein to describe and convey to the complainant all that part of the south west quarter of Section number five in Township number nine north of range seven east in Peoria county, Illinois, lying north of the Knoxville and Peoria road containing one hundred and nine acres of land to secure the payment of the money and notes in said mortgage mentioned described and secured. And the court further finds from the evidence that there is now due to the said complainant on his mortgage security the sum of thirty four hundred and ninety nine dollars and fifteen cents ($3499 \frac{15}{100}$) which sum is hereby declared and decreed to be a just and valid lien on that part of the South west quarter of section number five in township number nine north of range seven east in Peoria county, Illinois, lying north of the Knoxville and Peoria road being one hundred and nine acres of land. And it is further ordered, adjudged and decreed by the court that the said dependant Patrick Smyth pay to the said complainant the said sum of thirty four hundred and ninety nine dollars and fifteen cents with interest thereon within sixty days of the signing of this decree, and in default of such payment, it is further

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ordered, adjudged and decreed that the Master in chancery of this court (who is hereby appointed a commissioner for that purpose) proceed to sell all that part of the said south west quarter of said section five in township number nine north of range seven east in Peoria county, Illinois, lying north of the Knoxville and Peoria road at public vendue at the front door of the court house in the city and county of Peoria and state of Illinois at two o'clock in the afternoon of the day of sale to the highest and best bidder for cash, after having first given due public notice of the time, place and terms of sale and a correct description of the premises to be sold by advertisement and publication of notice in the Peoria Transcript for the space of thirty days prior to such sale said Peoria Transcript being a public newspaper printed and published in the city and county of Peoria and state of Illinois being the nearest newspaper and of general circulation therein. And it is further ordered that said Master upon making said sale shall execute to the purchaser or purchasers of said premises at such sale a certificate of purchase of the same and of said premises are not redeemed from such sale

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within the term limited by law the said Master in Chancery or his successor in office shall upon the expiration of the time of redemption allowed by law execute to the legal holder of said certificate of purchase a good and sufficient deed of said premises. And it is further ordered that out of the proceeds of such sale the said Master shall pay the costs of this proceeding and of such sale and shall also pay to the complainant the amount then due on his mortgage security together with the interest thereon from the signing hereof & the remainder of said purchase money if any said Master shall pay over to the dependant. And it is further ordered that the dependant pay the costs of this proceeding to be taxed. Dependaut prayed appeal to the Supreme Court, allowed on his giving bond in the penal sum of Six hundred Dollars payable to said Plaintiff with Patrick Harman as security, conditioned as the law directs: bond to be filed herein in thirty days.

App. Bond

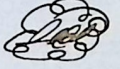
And afterwards to wit: on the 18th day of September A.D. 1860, there was filed in the clerks office of our said, an appeal Bond

in words and figures following to-wit:-
 Know all men by these presents, that
 we Patrick Smith as principal and Pa-
 trick Harman as surety of the county
 of Peoria and state of Illinois, are held
 and firmly bound unto Jesse J. Forney
 of said county, in the penal sum of six
 thousand dollars, lawful money, for
 the payment whereof well and truly to
 be made we bind our selves our heirs
 executors and administrators, jointly and
 severally, firmly by these presents, wit-
 ness our hands and seals at Peoria
 this 17th day of September A.D. 1860.

The condition of the foregoing obli-
 gation is such, that whereas at the Au-
 gust special term of the Peoria county
 circuit court it was ordered, adjudged
 and decreed by said court that the a-
 bove bounden Patrick Smith should
 pay to the above named Jesse J. Forney
 the sum of three thousand four hun-
 dred and ninety nine $\frac{15}{100}$ dollars with
 costs of suit, within sixty days from the
 5th day of September when said decree was
 rendered, from which said decree the said
 Patrick Smith has taken an appeal to the
 supreme court of said state of Illinois, now

if the said Patrick Smith shall prosecute his said appeal with effect and without delay and shall pay said decree so appealed from if the same shall be affirmed by the said supreme court together with all costs interest and damages, then this obligation shall be void otherwise to remain in full force and virtue

Patrick Smith 

Patrick Harman 

State of Illinois
 Peoria County

I, Enock Sloan, Clerk of the circuit court in and for said county and state do certify that the foregoing is a full, true and correct Transcript of the papers and proceedings in said court (except the original bill which has been lost from the files) in a certain cause wherein Jesse J. Forney is complainant and Patrick Smith is defendant as the same remains of record and on file in my office.

In witness whereof I hereby set my hand and affix the seal of said court at Peoria, this 15th day of April A.D. 1861 Enock Sloan, clerk

72 268
Rosey Smith
on
Jesse V. Honey
Record

Filed Apr. 18, 1861
L. Island
Ch.

\$6.00