

No. 12419

Supreme Court of Illinois

Stacey.

vs.

Randall.

71641  7

Proceedings continued and held at the Court House in Bloomington within and for the County of McLean. in the Circuit Court of the Eighth Judicial Circuit of the State of Illinois. before the Honorable David Davis. Presiding Judge of said Eighth Judicial Circuit. at the April Term in the year of our Lord. One Thousand. Eight Hundred and fifty two.

Murray Randall Bill in Chancery
vs. to foreclose a
Bradford Sumner Stacy Mortgage.

Be it remembered that heretofore to wit.. on the Ninth Day of February in the year of our Lord One Thousand. Eight Hundred and fifty two. Murray Randall. by his Solicitor. filed in the Clerks Office of the Court aforesaid the following Bill and Exhibits.. to wit..

"State of Illinois

McLean County

Bill =

ss. of the April Term McLean County Circuit Court A.D. 1852..

"To the Honorable David Davis Judge of the McLean Circuit Court. in Chancery sitting..

"Humbly complaining. shows unto your Honor. your orator. Murray Randall. that on or about the ninth day of February. one thousand Eight Hundred and forty seven. one Bradford Sumner Stacy. became

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and was justly indebted unto your orator, in the
sum of one thousand dollars with interest, by
five certain promissory notes of hand & being so
indebted, in order to secure the payment of the
said sum of money and interest, the said
Bradford Sumner Stacey did make, execute &
deliver unto your orator, on the Ninth day of
February, one thousand eight hundred & forty
seven, a certain indenture of mortgage, which
mortgage is in the words & figures following-
to wit:

"Know all men by these presents that
A. Bradford Sumner Stacey of Boston, in the
County of Suffolk & Commonwealth of Mass.-
Auctioneer - in consideration of one thousand
dollars to me paid by Morry Randall of
Providence, in the State of Rhode Island, Yeoman
The receipt whereof is hereby acknowledged, do
hereby give, grant, bargain, sell & convey unto
the said Randall, all my right, title & interest
in & to all and every part & parcel of the property
& Estate, real & personal, that has been given to
me by my Father, Stimpson Stacey, late of Mount
Hope, in Medway County, in the State of Illinois,
however or wherever said property or any part
of it may be found.
To have & to hold the above granted property and
Estate to the said Randall, his heirs & assigns.

to his & their use and behoof forever. And I, the
said Stacey, for myself & my Heirs, Executors and
Administrators, do covenant with the said Randall,
his heirs and assigns, that I am lawfully seized
of the afore granted property & estate, that they
are free from all incumbrance by me made -
that I have good right to sell & convey the same
to the said Randall, his heirs & assigns forever,
as aforesaid - And that I will & my Heirs Execu-
tors & Administrators shall warrant & defend the
same to the said Randall, his heirs & assigns
forever, against the lawful claims & demands
of all persons -

Provided, nevertheless, that if the said
Stacey, his Executors or Administrators, shall
pay unto the said Randall, his Executors,
Administrators or assigns, the sum of One thousand
Dollars, in two years from the day of the date
hereof, then this deed shall be absolutely void
to all intents & purposes. -

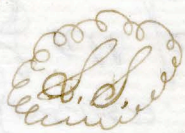
In witness whereof, I, the said Bradford
Sumner Stacey, have hereunto set my hand
and seal, this ninth day of February, in the
year of our Lord, Eighteen Hundred & forty
Seven.

Bradford S. Stacey Seal
Signed, sealed & delivered
in presence of
B. Sumner & N. Edwards.

4 Suffolk. ss. July 2^d. 1847. Then personally appeared
the above mentioned Bradford S. Stacy and ack-
nowledged the foregoing instrument to be his free
act & deed before me. Bradford Summer
Justice of the Peace.

Commonwealth of Massachusetts

Suffolk. ss. I, George C. Weld, Clerk of the
Court of Common Pleas for said County
hereby certify that Bradford Summer, Esq. is a
Justice of the Peace duly Commissioned and
qualified & is authorized by law to take acknowl-
edgments of Deeds & that his Certificate to the above
acknowledgment is in conformity with the laws
of said Commonwealth & that his signature is
genuine. Witness my hand & the Seal of said
Court this second day of July A.D.
Eighteen Hundred & forty seven. -
George C. Weld, Clerk.



And your orator unto your Honor would fur-
ther show that said mortgage was duly recorded
by Isaac Baker, the then Recorder of Middlesex
County in Book L. Page 318. which mortgage
marked Exhibit (A) and notes marked Exhibits
B. C. D. E. & F. your orator files herewith & prays
that they may be taken & considered as a part
of this his Bill of Complaint.
And your orator unto your Honor would

further show that by the last Will & Testament dated September Thirtieth. One Thousand Eight Hundred and Forty Six. One Stimpson Stacey, father of the said Bradford Sumner Stacey, did give & bequeath unto the said Bradford Sumner Stacey all of his (the said Stimpson Stacey's) Real Estate, as will more fully appear by reference to the said Will, now on file in the office of the County Court of Oneida County, Illinois.

And your orator charges & avers that the said Real Estate so bequeathed, from the said Stimpson Stacey, unto the said Bradford Sumner Stacey - and by him mortgaged as aforesaid unto your orator, is described as follows, to wit,

3 Acres NW. corner SE $\frac{1}{4}$. NE $\frac{1}{4}$. Sec. 32. Town. 22 N. R. 1. W.					
30	"	S. End	E $\frac{1}{2}$. S W $\frac{1}{4}$.	"	33 " 22 " " 1. W.
60	"	N. End.	W $\frac{1}{2}$. S W $\frac{1}{4}$	"	33 " 22 " " 1 -
80	"		E $\frac{1}{2}$. SE $\frac{1}{4}$	"	33 " 22 " " 1 -
80	"		W $\frac{1}{2}$. SE $\frac{1}{4}$.	"	33 " 22 " " 1 -

all being in the County of Oneida and State of Illinois.

Your orator unto your Honor would further pray that the said Bradford Sumner Stacey may be made party Defendant to this your orator's bill of complaint and required fully the same.

And your orator further shows unto your Honor that said promissory notes have

long since become due and payable & that the
sum of one Thousand Dollars for principal yet
remains due & unpaid to your orator, together
with the lawful interest thereon, amounting to
the sum of Seven Hundred & fifty seven $\frac{48}{100}$
Dollars for interest, making in the aggregate
Seventeen Hundred and fifty seven $\frac{48}{100}$ Dollars.
That is now due and owing from the said
Defendant unto your orator, by reason whereof
the said Indenture of Mortgage & the Estate
thereby mortgaged have become absolute in your
orator, subject only to the equity of redemption
of this Honorable Court. And that your orator
or some one for him, has frequently applied to
the said Defendant and requested payment of
the principal & interest due to your orator upon
the said notes & Mortgage & your orator well
hoped that he would have complied with such
reasonable request, but the said Defendant has
wholly neglected & still doth neglect & refuse to
pay the same or any part thereof, all of which
actings & doings are contrary to equity and good
conscience. Therefore that Justice may be done
in the premises, your orator respectfully solicits
the aid of this Honorable Court, in the collection
of his said debt & interest as aforesaid & to that
end prays that the said Defendant may be required
to make true, full & perfect answers to all and

singular, the allegations herein contained, as fully and particularly, according to the best of his knowledge, information and belief, as if the same were herein again repeated & he interrogated thereto.

And that the said Defendant may be decreed to pay to your orator, the principal sum of money and interest now due or that hereafter may become due, together with the costs in this behalf expended, by a short day to be appointed by this Honorable Court, and in default thereof that the Defendant & all persons claiming & to claim the same may be foreclosed of & from all equity of redemption, and claim off in and to the said mortgaged premises, with the appurtenances.

And that all and singular, the said mortgaged premises with the appurtenances, may by the order & decree of this Honorable Court, be sold, & out of the money arising from the sale thereof, your orator may be paid the said debt and interest, together with the costs of this proceeding, and that a special Commissioner be appointed by this Honorable Court to make such sale & payments &c. and that your orator may have such other & further relief in the premises, as may seem proper. And may it please your Honor to grant unto your orator, the people's writ of subpoena-issuing out of and under the seal of this Honorable Court, directed to the said Defendant -

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returnable &c. commanding &c. And your
orator as in duty bound will ever pray &c.
T. H. Fell. Comple. Sol.

Exhibit A.

Know all men by these presents that
Bradford Sumner Stacey of Boston in the County
of Suffolk & Commonwealth of Massachusetts -
Auctioneer. in consideration of One Thousand
Dollars to me paid by Mowbray Randall of
Providence in the State of Rhode Island Yeoman
The receipt whereof is hereby acknowledged.
do hereby give, grant, bargain, sell and convey unto
the said Randall, all my right, title and interest
in & to all & every part & parcel of the property
and estate, real & personal, that has been given
to me by my father Stimpson Stacey, late of
Mount Hope in Medford County, in the State of
Illinois, however or wherever, said property
or any part of it may be found.

To have & to hold the above granted prop-
erty and estate, to the said Randall, his heirs
and assigns, to his & their use & behoof, forever.
And I, the said Stacey, for myself and my heirs,
Executors & administrators, do covenant with the
said Randall, his heirs & assigns, that I am
lawfully seized of the aforegranted property & estate
that they are free from all incumbrances by
me made, that I have good right to sell and

convey the same to the said Randall, his heirs & assigns forever, as aforesaid. And that I will & my Heirs, Executors & Administrators shall warrant & defend the same to the said Randall, his heirs & assigns forever, against the lawful claims & demands of all persons.

Provided, nevertheless, that if the said Stacy his executors or administrators, shall pay unto the said Randall, his executors, administrators or assigns, the sum of One Thousand Dollars, in two years from the day of the date hereof, then this deed shall be absolutely void to all intents and purposes. In witness whereof, I the said Bradford Sumner Stacy, have herunto set my hand & seal, This Ninth Day of February, in the year of our Lord, Eighteen Hundred & forty seven.

Signed, sealed & delivered  Bradford S. Stacy 
in presence of
B. Sumner & W. Edwards

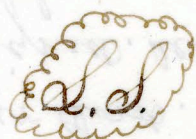
Suffolk, ss., July 2^d, 1847. Then personally appeared the abovenamed Bradford S. Stacy - and acknowledged the foregoing instrument to be his free act & deed before me.

Bradford Sumner,

Justice of the Peace

Commonwealth of Massachusetts
Suffolk. ss.

I, George C. Wilde, Clerk of the Court of Common Pleas for said County, hereby certify that Bradford Sumner Esq. is a Justice of the Peace, duly commissioned & qualified & is authorized by law to take acknowledgments of deeds, & that his certificate to the above acknowledgments is in conformity with the laws of said Commonwealth & that his signature is genuine.



Witness my hand & the Seal of said Court, this second day of July A.D. Eighteen Hundred & Fifty Seven.

Geo. C. Wilde, Clerk

Exhibit. 13.

Providence March 16th 1839

On Demand I promise to pay Clark Dalrymple or bearer One Hundred & fifty Dollars, for value received

B. S. Stacy —

\$150 —

On the back of this note was the following Indorsement.. to wit.. "April 6th 1839..

"Rec^d One Hundred and thirty Dollars on the within. of Mowry Randall Esq."

\$130 —

C. Dalrymple

On the face of this note was the following Indorsement.. to wit..

"Rec^d payment in full by Mr. Randall Esq^r
Attest. C. Walbrunfts"

Exhibit. C.

Providence Dec. 2^d 1839.

Six months after date I promise to pay
the City of Providence or order, Sixty Dollars at
Bank, value received in rent of stalls
\$60.

Bradford S. Stacy

On the back of this note were the following
Endorsements in the following order: to wit,

"Mowry Randall"

"Stephens Pillinghast, City Treasurer"

Rec^d of Mowry Randall payment of
this note in 61.21. Sept. 9th 1840—

\$61.21—

W. R. Watson, Cash^r

Exhibit. D.

Providence Dec. 3^d 1838

Six months after date I promise to pay
the City of Providence or its assigns, One Hundred &
thirty Dollars, at Bank, value received in Rent of
Market House Stalls.

\$130—

Bradford S. Stacy—

On the back of this note were the following
Endorsements, to wit,

"Edward Perry"

"Rec^d of Mowry Randall thirty five Dollars
which is in full for this note
april 29th 1847.

Edward Perry "

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Exhibit. E.

\$400~

Providence May 3^d 1839

One year from date for value received
I promise to pay Clark Walbridge or order
Four Hundred Dollars with Interest.

Bradford S. Stacy -

On the back of this Note write the following
Endorsements.. to wit..

"We jointly guarantee the payment
of the within note..

Thos. F. Carpenter

Mowry Randall "

"Providence Sept. 11th 1840..

Rec^d of Mowry Randall Esq. Four
Hundred and thirty three Dollars @ 40 cts - it
being the amount due me on the within Note..

C. Walbridge "

Exhibit. F.

Sixty days after date for value rec^d I
promise to pay Thomas F. Carpenter or order Two
Hundred & Fifty Dollars at the Mechanics and
Manufacturing Bank..

Providence.. March 11th 1839.. { Bradford S. Stacy -

On the back of this Note was the following
Endorsement.. to wit..

"Pay Mowry Randall or order
without recourse to me as Endorsed..

Thos. F. Carpenter

And thereupon, afterwards, to wit. on the said ninth day of February. said Randall by his Solicitor filed in the Clerk's office of the said Circuit Court, an affidavit in the words & figures following "to wit."

afant.

State of Illinois }
McLean County } McLean Circuit Court. A.D. 1852.

Mowry Randall } In Chancery
Bradford Sumner Stacy } Bill to foreclose a
Mortgage.

H. H. Fell being first duly affirmed according to law, doth depose & say that he is informed & believes that Bradford Sumner Stacy is a non-resident of the State of Illinois and further this deponent saith not —
Subscribed & affirmed to }
before me this 9th day of Feb. A.D. 1852 } H. H. Fell —
Wm W Cullough, Clk. }

And thereupon, afterwards, to wit. on the said ninth day of February, there issued out of the said Clerk's office, a summons, in the words and figures following "to wit."

Summons

State of Illinois }
McLean County } ss. The people of the State of
Illinois - To the Sheriff of

Said County - greeting -

We command you to summon Bradford Sumner Stacy, if to be found in your County, personally to be and appear before the Circuit Court of said County, on the first day of the next Term thereof to be holden at the Court House in Bloomington on the 3^d Monday in the month of April next to answer to a certain bill of Complaint, filed in our said Circuit Court on the chancery side thereof, against him by Mowry Randall.

And have you then there this writ, and make return thereon, in what manner you execute the same.

E. S.

Witness, Wm Mc Cullough, Clerk of
our said Circuit Court at Bloomington
This 9th day of February A.D. 1852 -

Wm Mc Cullough, Clerk,
Per E. H. Rood, Deputy, Clk.

Which said summons was returned with the following Endorsement. -

"The within named Bradford S. Stacy
not found in my County -

Jonathan Blimpse, Shff."

And thereupon, afterwards, to wit, on the 11th day of February, 1852, notice was given to the said Clk., by publication, which said notice, with the Publishers Certificate, was filed in the said Clks

Office on the 21st Day of April A.D. 1852. And is
in words & figures following. to wit..

Notice..

"State of Illinois
McLean County } Circuit Court.. April Term A.D. 1852.

Mown, Randall }
Bradford Sumner Stacy } Bill to foreclose a
Mortgage.

Affidavit having been filed in the
above entitled cause, satisfactorily showing that
the Defendant, Bradford Sumner Stacy, is a non-
resident of the State of Illinois, and Subpoena
having been issued returnable to said April term
A.D. 1852. Now notice is hereby given to said
Bradford Sumner Stacy, that unless you be and
appear before the Circuit Court for said County,
on the first day of the term thereof, to be holden
in the Town of Bloomington, on the third Monday
of April next and plead, answer, except or answer
said Complainant's bill of complaint. The same
will be taken as confessed as to you & a decree
rendered according to the prayer thereof.

Dated at Bloomington this Feb. 11 - /52 -

Wm Geo Cullough, Clerk.

G. H. Fall, Comp's solr }

Certificate

"I hereby certify that the annexed advertisement
was published in the Bloomington Intelligencer -
a weekly newspaper published in the County of

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McLean and State of Illinois - for four weeks suc-
cessively commencing with the 11th day of Feb. 1852.
Jesse W. Fell.. Publisher of
the Bloomington Intelligencer.

And thereupon, afterwards, to wit, at the April term
of said Circuit Court, to wit, on the 20th day of
April A.D. 1852, the following order was made by
said Court, to wit:

Order -
of Court.

"And now at this day comes the Complainant
by his Solicitor W. H. Fell Esq. and the appearance
of the said Defendant being entered by Holmes
& Scott, the said Complainant by his Attorney
aforesaid, prays that the said Defendant may
answer this, the said Complainant's bill aforesaid.
Whereupon it is ruled by the Court here, that the
said Defendant answer as required in ninety
days from the day of adjournment of the present
term of this Court. And in default thereof a
decree will be had in accordance with said
Complainant's said Bill."

And thereupon, afterwards, to wit, on the
fifth day of August A.D. 1852.. Said Defendant by
his Solicitor, filed in said Clerk's office his Answer
to the said Complainant's Bill of Complaint, in
the words and figures following, to wit.

Answer -
of Deft.

"The Answer of Bradford Sumner Stacy to
the Bill of Complaint of Orinoy Randall. ---

Complainant against him in Chancery —

"This Defendant now and at all times hereafter, saving & reserving to himself all manner of benefit & advantage of exception to the many errors & insufficiencies in the Complainant's said Bill of complaint contained, for answer thereto, or so much & such parts thereof as this defendant is advised is material for him to answer unto — answering — says —

That he admits he executed the Mortgage deed in the Plaintiff's Bill mentioned but says that the amount due from him to the Plaintiff at the time said Mortgage was given (which was unaccompanied by any note or other written obligation) was not the sum mentioned as the consideration in said Mortgage but a much smaller sum, to wit, a sum not exceeding Two Hundred fifty nine Dollars and forty four cents as this Defendant verily believes & as has been since ascertained.

This Defendant further answering, says, that said Mortgage was given by him to secure the payment of such sum as might be found to be justly due from him to the Plaintiff, on an unsettled account there existing between them & which was afterwards to be liquidated and the amount due from the Defendant to the Plaintiff to be determined. —

This Defendant further answering, says, that before and at the time of executing said Mortgage he had become embarrassed in his business affairs & that in order to obtain from his creditors a full discharge of their claims against him, an agreement was entered into between him & them subsequent to the execution & delivery of said Mortgage Deed, by which said Creditors agreed to receive of this Defendant, a part of the amount of debts due from him to them respectively, in full satisfaction & discharge of the whole.

That the amount of Dividend due to said Plaintiff on his demands against said Defendant, by the agreement aforesaid was Seventeen Dollars and Seventy Six Cents.

This Defendant further answering - says - that he has never seen the agreement herein referred to at any time, as that part of the business to which it related was conducted principally by said Plaintiff & not by this Defendant himself. - but he is credibly informed & verily believes from letters now in his possession, received from time to time from said Plaintiff, as well as from other reliable sources of information, that said agreement was executed by said Plaintiff, in common with other creditors of this defendant & is now in his said Plaintiff's possession, or under his control & that

by virtue of it. he received, a long time ago. & before the filing of Plaintiffs said Bill, said sum of Seventeen Dollars & Seventy Six Cents, in full for his Dividend, on the said sum of Two Hundred & fifty nine Dollars & Ninety one cents as aforesaid.

And this Defendant further answering says, that according to his best knowledge and belief, he has had no business dealings or transactions with the Plaintiff whatever, since his settlement with his creditors as herein before stated & which was subsequent to the date of said mortgage.

This Defendant further answering said bill of complaint, says that he does not admit but denies, that on the 9th day of February, Eighteen Hundred & fifty two, he was indebted to the Plaintiff in the sum of Fourteen Hundred & fifty nine Dollars & forty four cents, as he in his said bill has alleged according to his best knowledge, information & belief as is herein before fully stated.

The Defendant in further answering the Plaintiffs said Bill, begs leave to introduce & does here introduce the contents of a written instrument, duly executed & delivered by the Plaintiff to the Defendant, & is in the words and figures following, and which he prays may be taken as part of his answer, to wit,

"Whereas J. Mowry Randall of Providence in the State of Rhode Island, have this day

received from Bradford Sumner Stacy of Boston. a deed of even date with this Instrument. whereby the said Stacy mortgages to me. all his right, title and interest in & to certain property and Estate situated in the town of Mount Hope. County of Middlesex & State of Illinois. which came to him from his father by will. And whereas the consideration stated in said deed is the sum of one thousand Dollars. on payment of which by said Stacy - said instrument is to be void. according to the condition thereof. - This instrument witnesses that the real amount due from said Stacy to me is not the above mentioned sum of one thousand Dollars. And I hereby agree that whenever the said Stacy shall make final settlement of accounts between him & myself - and shall pay to me whatever amount may appear to be due on such settlement - then the said mortgage deed shall be absolutely void to all intents and purposes - Any provision in said deed to the contrary notwithstanding. -

In witness whereof. I have hereunto set my hand & seal This Ninth day of February. in the year of our Lord. Eighteen Hundred & forty seven.

Signed, Sealed, and
delivered in presence of

(Signed) Mary Randall 
Bradford Sumner & Newton Edwards.

Suffolk ss. Feb. 11th 1847. — Then personally appeared
the within named Mowry Randall & acknow-
-ledged the foregoing instrument by him
subscribed, to be his free act and deed. —

Before me - Bradford Sumner
Justice of the Peace.

This Defendant admits and avers that he is the
owner of the several parcels of Land in the Plain-
tiffs Bill of Complaint mentioned, to wit.

30 acres — S. End — $E\frac{1}{2}, S W\frac{1}{4}$ — Sec. 33 — Town. 22

60 acres — N. End — $W\frac{1}{2}, S W\frac{1}{4}$ — " 33 — " 22

80 acres — $E\frac{1}{2}, S E\frac{1}{4}$ — " 33 — " 22

80 acres — $W\frac{1}{2}, S S\frac{1}{4}$ — " 33 — " 22

3 acres — N.W. corner S.E. $N E\frac{1}{4}$ — " 32 — " 22

All in Range 1 West in Mexican County, Ills.

All which matters and things contained in
the foregoing answer, this Defendant is ready
to prove & sustain as the Honorable Court shall
direct & prays to be hence dismissed with his
costs in this behalf sustained.

Bradford S. Stacey. —

Commonwealth of Massachusetts
Suffolk ss.

J. Geo. C. Wilde, Clerk of the Supreme
Judicial Court in & for said County of Suffolk, hereby
certify, that on this 17th day of July A.D. 1852, personally

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appeared the abovenamed Bradford S. Stacey and
subscribed the foregoing answer in my presence and
made solemn oath that he had read the foregoing
answer. & that the facts therein stated, so far as
they are within his own knowledge, are true. & that
all other facts therein stated, he believes to be true.

S. S.

In witness whereof, I have hereto set my
hand & affixed the seal of said Court
the day & year above written.

Geo. C. Wilde - Clerk.

S. S.

Commonwealth of Massachusetts.

J. Lemuel Shaw, Chief Justice of the
Supreme Judicial Court of the Commonwealth of Mass.
do certify, that Geo. C. Wilde Esquire - whose
signature is affixed to the paper hereto annexed
is Clerk of said Court, holden at Boston, in the
County of Suffolk, for the Counties of Suffolk and
Norfolk & hath the keeping of all the ancient
files, Records, & Proceedings of said Court throughout
the Commonwealth, down to the first day of August
A.D. 1797, as well as of the files, Records & Proceedings
of said Court holden as aforesaid, for said County
of Suffolk subsequent to that time, and is, by Law
the proper person to make out and certify copies
of all the Records & Proceedings of the said Supreme
Judicial Court previous to the said first day of
August A.D. 1797 - as well as of all Records and

Proceedings of the said Court. holden as aforesaid.
for the said County of Suffolk. subsequent to that time.
And that full faith and credit is Ought to be given
to his Acts & Attestations done as aforesaid & that his
Attestation to the paper hereunto annexed is in
due form. In testimony whereof I have hereunto
set my Hand & caused the Seal of said Court. to
be hereunto affixed. This Nineteenth day of July
in the year one Thousand Eight Hundred
and fifty two. Samuel Shaw. —

And thereupon, afterwards, to wit., at the ~~October~~^{September} term
of said Circuit Court, to wit., on the second day of
October A.D. 1852. the following order was made by
said Court, to wit.,

order for
continuance of this Court" —

And thereupon afterwards, to wit., on the Eleventh
day of February A.D. 1853. the Complainant by his
Solicitors, filed in the office of the Clerk of said Circuit
Court, his Replication to the Answer of the Defendants
which is in words & figures following, to wit.,

Replication
"State of Illinois
McLean Circuit Court. ss."

Mowry Randall } Complainant } In Chancery
vs. } }
Bradford S. Stacey } Defendant } Replication

The Complainant. Mowry Randall, saving & reserving to himself all & all manner of advantage of exception which may be had and taken to the many errors, uncertainties & insufficiencies of the Answer of said Defendant: Bradford S. Stacy, for replication therunto saith. That he doth & will aver, maintain and prove his said Bill to be true, certain & sufficient in the Law to be answered unto by the said Defendants. & that the Answer of the said Defendant is very uncertain, evasive, untrue & insufficient in Law to be replied unto by this Repliant. And Complainant prays, as in & by his said Bill, he hath already prayed.

Fill & Walker

for Complainant.

And thereupon, afterwards, to wit, on said Eleventh Day of February A.D. 1853 - said Complainant by his Solicitors, filed in the office of said Circuit Clerk his Amended Bill in words & figures following.

Amended
Bill.

State of Illinois
McLean County ss.

Mowry Randall

vs.

Bradford S. Stacy

Amended
Bill.

To the Honorable Judge of
the McLean Circuit Court in Chancery sitting.

Your Complainant. Mowry Randall. by leave of the Court. amends his original Bill herein and would respectfully represent & charge that the basis of the indebtedness of One Thousand Dollars from said Defendant, Bradford S. Stacy, acknowledged in said Mortgage of the 9th February, 1847. to Complainant was created in the following manner.

On the 3^d of May 1839. the said Defendant executed his promissory Note to Clark Blalynsple for Four Hundred Dollars, bearing interest from date. which note was endorsed by your Complainant & Thos. F. Carpenter as mere securities of said Bradford S. Stacy & on the 11th day. September. 1840 your Complainant paid the amount of said note and interest, then amounting to Four Hundred and Thirty three Dollars & forty cents. as will all fully appear from said original note & the endorsements thereon. made part hereof marked "E." And on the 2^d day of December 1839. the said Defendant. Bradford S. Stacy, executed his promissory note to the City of Providence for the sum of Sixty Dollars payable six months after date. for the sum of Sixty Dollars. which note was also endorsed by Complainant as his mere security, and which note. Complainant on 9th day of September. 1840. paid off. then amounting with the interest to Sixty one Dollars & Twenty one cents which will appear from said original note made part hereof marked "C." with the endorsements

thereon. And on the 16th day of March. 1839. the said defendant. Bradford S. alias B. S. Stacy executed another note to Clark Dabynympts. for One Hundred & Fifty Dollars. payable on demand. which note Complainant also took up on the 6th day of April 1839. as will fully appear from said original note & endorsement thereon. made part hereof marked "B". And on the 3^d day of December 1838 the said defendant. Bradford S. Stacy. executed his promissory note to the City of Providence for One Hundred & Thirty Dollars. payable six months after date. upon which Complainant on 29th day of April. 1847. paid Thirty Dollars in full thereof as will fully appear from said original note made part hereof marked "C". And on the 11th day of March. 1839. Bradford S. Stacy executed to Thomas F. Carpenter his promissory note for Two Hundred & fifty Dollars. payable sixty days after date. which note said Thomas F. Carpenter assigned for value received to Complainant. which will fully appear from said note and the endorsement thereon. made part hereof marked "F." which said several notes with the interest thereon. remain wholly unpaid by said defendant Bradford S. Stacy. And in consideration of them & of the said general sums of money. paid & laid out & expended by Complainant in taking up said notes. he promised and

agreed to pay the Complainant said sum of
One thousand Dollars & in order to secure the
payment of the same, executed & acknowledged
the said mortgage, on 9th July, 1847 exhibited
in Complainant's Bill, and at the time, although
the account had not been stated or settlement
made of the exact amount due Complainant,
on said several liabilities of Defendants, yet
the real amount due the Complainant was said
several notes & the interest thereon, making in
all at the date of said mortgage, the sum of
Thirteen Hundred & Eighteen Dollars & fifteen Cents.

And Complainant further charges that said
Defendant, Bradford S. Stacy, has heretofore failed
and neglected to make a settlement, of the said
account between him & Complainant, although
often applied to, both before & since the execution
of said mortgage. And your Complainant
charges that said Thirteen Hundred & Eighteen
Dollars & fifteen Cents, with interest thereon to
this date, 9th Feb. 1853, amounts to Seventeen
Hundred & Forty Nine Dollars & Seventy Nine cents
which amount Complainant charges said
Defendant justly & honestly owes & which he
promised & agreed to pay to the Complainant, and
which remains as yet due and wholly unpaid
& to secure which, said mortgage was executed.
Complainant further represents and charges

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that the land conveyed to Complainant by said Defendant, Bradford S. Stacy, by said Mortgage was sold for the tax of the year 1847, & purchased by Robert Stubblefield, as will all fully appear from a Transcript of the proceedings & judgment of the Mexican Circuit Court, for an order of sale made part hereof marked "H." And on the 19th day of April, 1849, Complainant paid Eighteen Dollars & one cent, the Amount of the Redemption money for said land, to Bailey A. Coffey, Clerk, - as will fully appear from his receipt, made part hereof marked "I."

Complainant further charges, that he paid the tax of said land for the year 1848, nine dollars & nineteen cents to Wm McCullough Collector, as will appear from his receipt therefor, made part hereof marked "K." & he also paid the tax for the year 1849 - Thirteen Dollars & Ninety Seven Cents, as will appear from the receipt of said Wm McCullough Col. made part hereof marked "M." And he paid the tax for the year 1850, Seven Dollars & Seventy three Cents & for the year 1851, Eleven Dollars & Twelve Cents, to Jonathan Slinpse Collector, as will appear from his receipts therefor, made part hereof, marked "O" & "2." And he also paid on the day of 185 the sum of \$5.25 cents for improvements and

repairs done on said land, as will fully appear from a Bill thereof, made part hereof marked "S".
Your complainant charges that these said several sums, so paid by the Complainant for the redemption & taxes of said land & Bill for repairs, are an additional lien thereon in favor of Complainant.

He charges, that by virtue of said redemption & payment of taxes on said land, he acquired the right & equitable title at least thereto, and coupled with said mortgage which has been forfeited for the non-payment of said One Thousand Dollars & Interest, Complainant has become invested with the full right & title to said land and the possession thereof should be awarded to him. & Said defendant required to release & relinquish all claim thereon. If it should however be deemed more equitable, Complainant prays as in his original Bill, that said mortgage be foreclosed, and the Complainant's lien for said One Thousand Dollars & interest & for the additional sums set up in this Amendment paid for Redemption, taxes & Repairs & costs as well as the costs of this proceeding, be enforced on said land & it ordered & decreed to be sold to pay the same. That said Bradford S. Stacy be made a defendant to this amended Bill & required to answer the same & on final hearing for general & special relief, as prayed for in original and this

Amended Bill.

Full © Walker.

for Complainant.

And with this Amended Bill were also filed the following Exhibits marked "m." "o." & "2." —

Exhibit. m.

"Received of Simpson Stacy by Mory Randall \$13.97 in full of his State, County © School Tax for 1849 on the following described Real Estate to wit, { Acres. { Description { Section { Township { North Range

30 - S. End E. S.W. - 33 - 22 - " 1. W.

60 - W. End N. S.W. - 33 - 22 - " 1. W.

80 - E. S.E. - 33 - 22 - " 1. W.

80 - N. S.E. - 33 - 22 - " 1. W.

3 - NW. Cor. SE. NE. - 32 - 22 - " 1. W.

Wm. M. Cullough. Col.

Exhibit. o.

"Received of Mory Randall \$7.73 in full of his State, County © School Tax for 1850 on the following described Real Estate to wit, —

3 a. NW. corner SE 1/4 NE 1/4 - S. 32 - T. 22 - R. 1. W. - .23

30 - S. End E 1/2. S.W. 1/4 - " 33 - " " " " .90

60 - W. End N 1/2. S.W. 1/4 - " 33 - " " " " 3.60

80 - E 1/2. S.E. 1/4 - " 33 - " " " " 1.30

80 - W 1/2. S.E. 1/4, - " 33 - " " " " 1.30

7.73

Jonathan Simpson. Col. of

McLean County. Ill. —

"Received of M^{rs} Randat \$11.12 in full of his State, County & School Tax for 1851 on his personal property. & the following described Real Estate..

to wit.	acres	Description	Section	Township	Range	
30	-	pt. SE. SW.	- 33	- 22	- 1 N.	- 1.58
60	-	N. End. W. SW.	- 33	-	" "	- 3.18
160	-	SE.	- 33	-	" "	- 6.36

Jonathan Blimpson, Col. 11.12

pr. E. Montgomery.

And thereupon, afterwards, to wit. on the 13th day of April A. D. 1853. said Complainant by his Solicitors. filed in the office of the said Circuit Clerk, a notice in the words & figures following to wit.

Notice

"John M. Scott, Esq.

Attorney for Bradford S. Stacy -

Sir. You will please take notice that in the suit in Chancery pending in the McLean Circuit Court, wherein I am Complainant & said Bradford S. Stacy is Defendant, I have this day filed in the Clerk's office of said Court with the Clerk thereof, in the papers of said Cause my replication to the answer of said Defendant. I have also in the same manner filed an Amended Bill therein. & shall at the next April term of the McLean Circuit

Court. move the same to submit said cause
for hearing upon original & Amended Bills.
Answer & Replication & Exhibits & such other
proofs as may be taken properly -
Bloomington, Ill. Very Respectfully -
Feb. 11th 1853. Mowry Randall

per Fell & Walker, attys.

Executed the above notice on John M. Scott
Esq. 12th day of Feb. 1853. by delivering to him a
true copy thereof. James S. Bay.
Clerk.

And thereupon. afterwards. to wit. at the April
term of said Court. to wit. on the 13th day of
April A.D. 1853. the following order was made
by said Court. to wit.

Order to file
Amended Bill

"Mowry Randall
vs.
Bradford Sumner Stacy
of Mortgage

"And now at this day come the parties
by their solicitors. & the said Complainant by
Fell & Walker, his solicitors, prays leave of the
Court here that he may file his Amended Bill
in this cause and now brought into Court. & leave is
granted him. and the said Complainant files
herein his Amended Bill."

And thereupon afterwards. to wit. on said 13th
day of April A.D. 1853. the following further

Order to Deft.
to withdraw
Answer.

order was made by said Court. to wit..

"And now comes the Defendant & prays
leave of the Court here. that he may withdraw
from the files of this Court, his Answer to said
Complainant's Bill heretofore filed in this cause.
And leave is granted him.. Whereupon the said
Defendant withdraws from the files of this Court.
his said answer heretofore filed.."

And thereupon, afterwards, to wit.. on said 13th
day of April A.D. 1853. the following further
order was made by said Court. to wit..

Order to Deft.
to answer
Amended Bill

"And now again comes the said
Complainant by his Solicitors aforesaid. &
prays the Court here, that said Defendant
may answer to the Bill of ^(by the) said Complainant.

And also prays that he, the said Complainant
may reply to the answer so made by said
Defendant. & that this cause be continued..

Whereupon it is ruled by the Court here.
that Defendant answer to the Bill of said
Complainant, by the first day of August next.

It is further ruled by the Court that said
Complainant have leave to file his Replication
herein to the answer of said Defendant. —

And that this cause be continued until the
next term of this Court. —

And thereupon, afterwards, to wit, on the first day of August, A.D. 1853 - the Defendant by his solicitor filed in said Clerk's office a Demurrer to the Amended Bill of said Complainant, in words & figures following, to wit:

Demurrer
to
Amended Bill

State of Illinois }
McLean County } set. Circuit Court.

Mowry Randall }
Bradford S. Stacy } In Chancery

And the Defendant as to the Complainant's Amended Bill, saith that the matters & things therein stated, in manner & form & substance, are not sufficient in Law or in Equity for him to sustain said Bill, or be entitled to any relief in equity & this he is ready to verify - Wherefore for want of a sufficient Amended Bill in that behalf wherefore he prays judgment &c., and that the said Bill & amended Bill may be dismissed - Holmes & Scott
Solicitors.

And thereupon, afterwards, to wit, on the 20th day of September A.D. 1853, Wm. H. Holmes, Defendant's Solicitor, filed in the said Clerk's office an affidavit in words & figures following, to wit:

affidavit.

State of Illinois }
McLean County }

Circ. Court
Sept. Term, 1853

Murray Randall
Saturny 13. nuplyke

For Chancery -

Wm H. Holmes, the solicitor of
the Defendants, saith that he has ready for filing
in this Cause, the answer of the said Defendants -

That in his opinion, said Answer is a full & complete
defence to the said Complainants Amended Bill.

That he forwarded to the Defendant, as near as
affiant can now recollect, in June last, a copy
of the Amended Bill - That some time after he
received a letter from the Defendant, who resides,
as affiant is informed & believes, in Boston, Mass.,
a letter stating that he could not have his Answer
filed by the time set by this Court, in the rule
entered at the last term - That Defendant
complained of the shortness of the trial -

Upon which affiant wrote him, that he
supposed it would be sufficient, if the
Answer was ready for filing at this term -

That affiant has always understood the
practice in Chancery to be, that on a rule taken
to answer, that the Defendant fully complied with
that rule, by filing a Demurrer. - That affiant
has on one & he believes on several occasions, in
this Court, acted on that supposition, & has never
until this term, heard the point questioned, to
the best of his recollection. - Affiant further
states, that from the information given him by

the Defendant, he believes he has a good defence to said Bill of Foreclosure & Amended Bill. —

affiant further states, that he did not receive the Defendants Answer, until the rule taken at the last term had expired..

Subscribed & sworn to
before me. This 21st day
of September. - 1853

Wm H. Holmes —
Wm McCullough - clk.

And thereupon, afterwards, to wit, at the September term of said Circuit Court, to wit, on the 20th day of September, 1853.. - the following order was made by said Court, to wit:

Moury Randall

Bradford Sumner Tracy

Bill for foreclosure -

"This day came the Defendants

by Holmes, his solicitor. & moved the Court herefor leave to file an answer herein, & that this cause may be continued. - Whereupon, the Court, being advised in the premises, it is granted to the said Defendant to file his answer to the complainants Bill of Complaint, upon the payment of all costs accrued at this term.. It is ordered that this cause be continued to the next term of this Court." —

And thereupon, afterwards, to wit, on said 20th day

Order to Def.
to answer
Amended Bill

of September, A.D. 1853. said Defendant ^(by his solicitors) filed in said clerk's office, an answer to the Amended Bill of said Complainant, in words & figures following, to wit.

Answer to

Amended Bill

"To the Honorable Judge of the New York Circuit Court in Chancery sitting."

The answer of Bradford Sumner Stacy to the amended of Bill of Complaint of Morry Randal Complainant, against him, said Stacy, in Chancery.

This Defendant, now & at all times hereafter, saving & reserving to himself, all manner of benefit and advantage of exceptions to the many errors and insufficiencies in the Complainant's said Bill of Complaint contained, for answer thereto, or so much & such parts thereof, as this Defendant is advised is material for him to answer unto, answering, says, —

That he admits that he gave said note to Clark McIntyre on the 3^d day of May 1839, for four Hundred Dollars — and that the same was indorsed by the Complainant & Thomas F. Carpenter, as stated in the Complainant's Bill, but alleges that said Endorsers were fully indemnified & secured as Endorsers on said note by a Mortgage on the personal property of this Defendant for a much larger amount than the liability assumed by them as endorsers on said note. That the said Complainant & said Carpenter afterwards took possession of said mortgaged property, & sold the same to pay

the amount due on the said note, but have never rendered to this Defendant any account or any intelligence whatever of the sum for which said property was sold & disposed of, although repeatedly requested so to do. —

This Defendant further answering, says. — that the note given by him dated the 2nd day of December, 1839. payable to the City of Providence for sixty dollars, as named in Complainants Bill was settled & cancelled, by a discharge obtained by defendant on the — day of — 1847 of & from all debts & demands then due and owing from him to his several creditors. —

This Defendant further answering, says. — that the note dated 16th day of March 1839, payable to Clark Halbynsple for two hundred & fifty dollars and the note dated the 3^d day of December, 1838 — payable to the City of Providence for one hundred and thirty dollars. — and the note dated the 11th day of March, 1839, payable to Thomas F. Carpenter for two hundred & fifty dollars, all signed by this Defendant & named in Complainants Bill, have, as this Defendant verily believes, all been settled & discharged in accordance with, & by virtue of an assignment, made by this Defendant to Mary Randall, the Complainant, on or about the 25th day of March, 1839, in & by which, he, the said Randall, was authorized to settle each and all

the aforesaid notes, his own included. —

And the Defendant further answering, says that the Complainant did receive of Defendant, a sufficient amount of money & property, to pay in full all the aforesaid notes. & he verily believes that said notes have all been paid & satisfied as said Complainant has repeatedly declared to this Defendant, that there was sufficient property for that purpose. & that a small amount would be left in his hands belonging to Defendant. but the defendant avers that said Complainant has invariably refused to render an account to this defendant, of his settlement under said assignment, although he has been repeatedly requested so to do.

This Defendant further says that Complainant did make a final settlement with him in the month of — 1847, as he will be able to show by the testimony of those other creditors, who with him discharged said Defendant from all dues & demands & in consideration of which he, said Complainant received his dividend in common with said other creditors of said Defendant — All this the Defendant alleges has been done since the execution of the mortgage given by him to said Complainant dated the 9th day of February — 1847. —

And this Defendant further answering

says, that in regard to the truth of that part of the Complainant's Amended Bill, which alleges the payment by him of certain sums of money, for the redemption & discharge of the premises in question & also for the payment of taxes and repairs made on said premises, he neither admits nor denies said payments, being wholly ignorant of the facts so alleged, but hereby offers to pay to said Complainant such of said sums if any, as may be established by competent proof - when & under such order as this Honorable Court shall make thereon.

All of which matters and things the Defendant is ready to entertain & prove as this Honorable Court shall order & direct, and he prays to be hence dismissed with his reasonable costs in this behalf sustained

Bradford S. Stacy -

Commonwealth of Massachusetts
Suffolk. ss. On this Thirty first day of August A.D.
Eighteen Hundred & Fifty three, appeared before me, the subscriber, Clerk of the Court of Common Pleas for said County of Suffolk - said Court being of Record with a Seal - Bradford S. Stacy known to me to be the same person, who subscribed the foregoing answer, & made solemn oath that all the matters & things therein contained are true to the best of his own knowledge, when they are stated to be of his

knowledge and to the best of his belief in all other
particulars.. In testimony whereof I have hereunto
set my hand & affixed the seal of said
Court the day & year above written..

S. S.

Joseph Willard, Clerk.

S. S.

Commonwealth of Massachusetts

I, Daniel Wells, Chief Justice of
the Court of Common Pleas of the Commonwealth of
Massachusetts, do certify that Joseph Willard Esq.
whose signature is affixed to the papers hereunto
annexed, is clerk of said Court of Common Pleas for
the County of Suffolk, and hath the keeping of the
files, records, & proceedings of said Court, & of all
former Courts of Common Pleas, holden within &
for said County, and is by law, the proper person
to make out & to certify copies thereof, & that
full faith & credit are & ought to be given to his
acts & attestations done as aforesaid.

In testimony whereof, I have hereunto
set my hand, and caused the Seal of
the said Court to be hereunto affixed
This thirty first day of August in the year
of our Lord one thousand eight hundred &
fifty Three.. Daniel Wells.

And thereupon, afterward, to wit, on the 21st day
of September A.D. 1853, said Complainant filed

in the said clerk's office a Replication to the
 Answer of the Defendant to the Amended Bill.
 in words & figures following - to wit.

Replication

"The Replication of Mowry Randall, Complainant, to the Answer of Bradford S. Stacy to his Amended Bill filed in the McLean Circuit Court. — Replicant saving & reserving to himself all & all manner of advantage of exceptions which may be had & taken to the many errors, uncertainties & insufficiencies of the Answer of said Bradford S. Stacy to Complainant's said Amended Bill, for replication thereto, saith, That he doth & will aver, maintain & prove his said Amended Bill to be true, certain & sufficient in the Law to be answered unto by the said Defendant & that the said answer of the said Defendant is uncertain, evasive, untrue & insufficient in the Law to be replied. And Complainant prays as in & by his said original & amended Bills, he hath already prayed —

J. C. Walker —
Solicitor for Randall.

And thereupon, afterwards, to wit, at the April term of said Circuit Court, to wit, on the 10th day of April A.D. 1854, the following order was made by said Court, to wit.

Mowny Randall

Bradford Summer Stacy



Bill to foreclose

a mortgage

Order..

This day came the complainant by Walker, his solicitor. & moved the Court to strike the answer of said Defendant from file. And shews to the Court here that said Defendant had not complied with the terms of this Court in filing his said answer whereupon the said Defendant, having ^(now) complied with the terms of the Court, by leave of the Court first had & obtained, the Court is of opinion that the said motion, entered by the said Complainant, be overruled

And thereupon afterwards, to wit.. at the April Term of said Court, at the Hearing of said cause - the following agreement & letters were produced in Court, by the Defendant's Solicitors, as evidence, which agreement & letters were subsequently filed among the papers of said Cause. Said agreement & letters are as follows, to wit..

The counsel of the Complainant objected to said agreement & letters, as being inadmissible which objection was overruled

Agreement.

Whereas, C. Mowny Randall of Providence, in the state of Rhode Island, have this day received from Bradford Summer Stacy of Boston, a deed of even date with this instrument whereby the said Stacy mortgages to me, all his right, title & interest, in & to certain property and Estate, situated in the Town of Mount Hope, County of Wiscan, & State of Illinois, which came to

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him from his father by will - And whereas the
Consideration stated in said Deed is the sum
of One Thousand Dollars, on payment of which by
said Stacey, said Instrument is to be void -
According to the Conditions thereof -

This Instrument witnesseth, that the
real amount due from said Stacey to me, is not
the above mentioned sum of One Thousand Dollars

And I hereby agree that whenever the said Stacey
shall make final settlement of accounts between
him and myself, and shall pay to me whatever
amount may appear to be due on such settlement
then the said Mortgage Deed shall be absolutely void
to all intents & purposes, any provision in the
said Deed to the contrary notwithstanding.

In witness whereof I have hereunto
set my hand & seal, this ninth day of February,
in the year of our Lord Eighteen Hundred and
forty seven -

Signed, sealed & delivered } Mowry Randall Esq.
in presence of }
Bradford Sumner & Quentin Edwards }

Suffolk ss., Feb. 11th 1847. Then personally appeared
The within named Mowry Randall & acknowledged
the foregoing instrument by him subscribed, to be his
free act and deed. Before me
Bradford Sumner, Justice of the Peace

Letter. no. 1.

Providence 8th March. 1847.

Dear Sir. Everything has gone on well. I have expected every day when I got into the City, to find the Document signed, sealed, &c. But it is not yet finished, and Mr. Hunt has just said to me, that he did not know but he should come to Boston to see you about the money - and also said that S. & W. Foster thought it best for some one to go on. I told him (of course) that I thought of going down the first of the week. - I thought if I came it might be that would answer. - I write this to put you on your guard if any of them should come down. They have all agreed to take up with the offer. I think you had better write me by the first mail to pay the money as we talked when I left you - I do not want them to come to Boston till the thing is closed. I have hurried Hunt & Foster & Wardwell - but have not opened my mouth to S. & W. F. although I have been into their store almost every day - They do not mistrust me yet. - Mind how you word your letter to me - and be particular to say to me "that you had written Mr. H. but have rec^d no answer - &c." You will know how - I shall try to get it accomplished to day if I can - but think I shall not succeed - They all seem willing - but so much other business that it is not done - If they should call on you before they have signed of - for the money - you

had better go to your Uncle B. and get - and I will replace it. pay it to him as soon as I find how it is - However. I have a mind now I think of it, to say to Mr. A. that I will pay it @ risk getting it of you - Write immediately - and destroy this letter.

Mr. Randall

Letter no. 2.

Providence. 12th March. 1847

Bradford.

Before 12 o'clock, all had signed the paper - and money will be paid out tomorrow - Mail closes.

Mr. Randall
will write you again tomorrow.

Letter no. 3.

Providence, March 13th 1847.

B. S. Stacy.

I wrote you yesterday as requested and now write again as I told you I would - I will tell you how I get along - I got to S. & W. Foster's store at 10 o'clock - met William at the door - he says "have you been to Boston" - Yes, was the answer - "Did you see Stacy" - Yes, and have got the money in my pocket - was my reply - "Come in, we are ready to sign of" - I walked in (of course) he took his pen and signed the paper I brought from Boston - I went in to S. & W.'s store @ W. had gone to N. York - He returned this morning and has signed with

x
The others @ Hunt I made Cashier giving the money
to him - and he has paid out most of the dividends
and will all by 12 o'clock this day - I have most
of the notes in my hands - now - and shall have
all by 2 o'clock - except Dexter's - he has gone to the
state of N. York. will be back in the course a fortnight
I thought I would risk to speak for him - and have
taken his Dividend - I think he will take it when I
see him - I shall send down the package of notes &c
with this - but the "article of agreement" - I must
keep till I see Dexter and will bring down with
me when I come - So you will see that I have
been faithful "over a few things" - @ have settled
all up as I was almost sure I could when I first
saw you, and all has been done without any susp-
-icion. - You will readily see the necessity of destroying
this letter as well as that of yesterday - @ also the
necessity of a continued secrecy on our part - as to
any information from your Father. - We had better
keep all still yet awhile longer. -

On inquiry I find that S. C. Lincoln. lives at
some Factory Village in Norwich or Coventry -
keeps a Boarding House - of course - will not be
likely to hear of his legacy till informed by some
one. - I will send also Hunt's Settlement or
dividends paid, that you will see how it was (the
money) disposed of. Keep all still till I see you
again - which I think will be in the course

of a fortnight —
 B. S. Stacy.

Mr. Randall

They all consider it as so much saved.

Letter no. 4

North Providence Sunday March 14th / 47

Bradford.

I yesterday sent by Express your budget of notes & other papers, as also a letter. — I sent by Express, as the mail had closed before I could get all ready — And I now write you to correct two mistakes I made, being in a hurry when I sent them off — I was thinking you lived in Pleasant instead of Spring St. & so had the package directed — And also to W. Hurry Exchange which if you have got it you will see how — I also forgot to enclose among the old notes S. & W. F. ⁵/₁₆ receipt for two other notes (small ones) which was in Court somewhere — and I expect in Executions — I had the receipt written to cover all Executions &c. — which I will bring with me when I come down — The amt. of the two notes is — one for \$18.75 — and the other \$17.49 — which will make their sum of \$626.12 — I thought you might feel uneasy about them, and so I write this — & shall order it to care of Mr. Hurry, as you may not be looking for it — that is, if you have got the budget — When you get this, please respond and say whether all is or looks right — Mr. Randall — Direct as before — Providence — Care of Sam^l Lincoln —

And thereupon, afterwards, to wit., at the September term of said Circuit Court, to wit., on the 14th day of September, A.D. 1854, the following order was made by said Court, to wit., -

" Mowry Randall Bill to foreclose a
vs. Bradford S. Stacy Mortgage."

Decree.

This cause having been submitted for trial at the last Term of the Court & having been fully heard upon the original & amended Bills, Exhibits, Answer & ^{Depositions & answers thereto} Replication thereto, & the Court having taken time to consider until the present term & being now fully advised, orders & decrees, that the Complainant, Mowry Randall, recover of the Defendant, Bradford Sumner Stacy, the amount of the mortgage debt, with interest to this date, to wit., the sum of One thousand three hundred and thirty seven Dollars & fifty cents with interest at six per cent per annum from this date until paid, and the costs of this suit to be taxed by the Clerk, - And that the said Defendant pay the same on or before the 11th day of November next, & in default thereof that the mortgage be foreclosed & the Defendant's Equity of Redemption therein barred, & that the mortgaged premises herein described - or so much thereof as may be necessary, be sold for cash in hand to pay said debt, interest & costs, as also costs of sale - Said land is known and

described by the following numbers, to wit: —
3 acres - N.W. Corner SE $\frac{1}{4}$ of NE $\frac{1}{4}$. Sec. 33. T. 22. R. 1. W.
30 acres S. End. E $\frac{1}{2}$ of SW $\frac{1}{4}$. Sec. 33. T. 22. R. 1. W.
60 acres N. End NW $\frac{1}{2}$ of SW $\frac{1}{4}$. Sec. 33. T. 22. R. 1. W.
160 acres SE $\frac{1}{4}$ - Sec. 33. T. 22. R. 1. West. — all being
in Morgan County @ State of Illinois. —

It is further ordered & decreed that
William Ward Orme, the Master in Chancery be
appointed the Commissioner to make said sale, who
shall first advertise the same by notice inserted for
three weeks in some weekly newspaper published
in Bloomington, giving a description of the premises
the time, place, and terms of the sale, which shall
be at the Court House door in the City of Bloomington.

He shall give to the purchaser or purchasers, a
Certificate of purchase, entitling them to an absolute
deed of the land, if the same is not redeemed
according to law. He is allowed for his services
the sum of Fifteen Dollars, to be taxed as part of
the cost, and shall make report to the next term
of the Court, and this Cause is continued. —

State of Illinois
Morgan County

ss.

J. Wm. Mc Cullough, Clerk
of the Circuit Court in & for said County, do hereby
certify that the foregoing is a full and complete

Transcript of the Record in said Cause — taken
from the papers in said Cause on file in my office
and from the Records of said Court.

In witness whereof, I have hereunto
set my hand & affixed the seal of
said Court at Bloomington, this
Sixth Day of January in the year of
Our Lord One Thousand, Eight hundred
and fifty five.

Wm^o McCullough, Clerk
By his Deputy — Hudson Burr —

Rec^d of Bradford & Stacy Through the hands
of Holmes & Scott the sum of Twenty-three⁷⁵
Dollars for fees for making the above Transcrip-
t — Wm^o McCullough clk

And now comes the said Bradford & Stacy plaintiff
in error by Holmes, Scott & Wallace his counsel and says
that in the record and proceedings aforesaid there is
manifest error in this to wit —

First — The Bill^{amended} does not make a case to warrant the
relief prayed for —

2nd — The pleadings and evidence did not authorize the
decree that was made by the court —

3rd — The court erred in not dismissing said bill and
amended bill —

4th

The decree entered was for more than was warranted
by the pleadings & proofs -

5.

There was no proof that the lands ordered to be sold
were ever subrogated in the mortgage -
Therefore for these errors & others apparent on the face
of said record the said plaintiff in error prays that
said decree may be reversed & said cause be
dismissed -

Holmes, Scott & Wallace
for plaintiff in error -

Wm. H. Randall,

Attorney

April 3rd 1885

Records from and of Publication

have the following and several of

the above entitled cause and hereby

and defendant Henry Randall in

of hereby enter the appearance of the

Henry Randall defendant in error

vs

Bradford & Stacy Plaintiff in error

of Illinois June Term 1885

In the Supreme Court of the State



B. S. Stacy

vs

Henry Randall

As to the 1st Point made by the appellants that the land described in the mortgage is not the same or is not proven to be the same as the land decreed to be sold I answer 1st

The answer admits that appellant is the owner of the land specified in the decree he also shows by his answer that he was insolvent and not the owner of other property

2 The bill alleges that the land which is described in the decree is the land ~~now~~ devised to appellant by the will of his father pay 5 of record and the bill refers to said will specially as being on file in the office of the clerk of the County Court of McLean Co I submit that this is sufficient to make the will an exhibit & if so the ~~proof~~ ^{evidence} shows that it was in evidence

3 As to the second objection that there is no proof to sustain the bill I answer

The amended bill shows that the mortgage was given to secure Randall for having endorsed certain notes for Stacy. These notes are made exhibits and are produced on the trial. The possession of these notes by Randall is prima facie evidence that he was paid there

The answer does not deny that he has paid them, but sets up various other affirmative defenses, now in so far as the answer sets up new matter in avoidance of the liability of Stacey it must be proven it is not evidence of fact truth of those allegations

Cummin is Cummin

15 Dec 34

It is true that the defendant introduced evidence tending to show that the mortgage was for less than \$1000.00 this defense was set up in the answer to the first bill, the amended bill then shows what notes the mortgage was given to secure. The answer must ~~set up~~ admit the giving of those notes and the mortgage and then set up reasons why said notes ought not to be paid which reasons appellee fails to establish by proof.

The appellee proves by the production of the notes the case that he has stated the appellee fails to prove the defense he has set up.

The amended bill shows that appellee has been compelled to pay taxes & claims to a large amount. These taxes & notes paid by complainant as shown by the notes tax receipts which are made exhibits with the interest thereon make the amount of the decree.

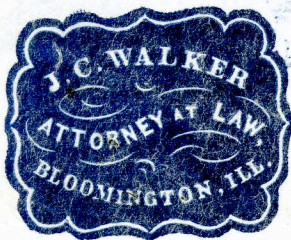
It is true that if the mortgage was not originally for a

Thousand dollars and the notes paid
by complainant ~~are~~ do not amount
to that sum. But these notes being paid
at six per cent and interest do make
the sum

Unless it be held that we
can not have any recovery on the mortgage
at all until there is a settlement between
the parties which would leave the com-
plainant entirely in the power of his
adversary. I can see no error in this
portion of the decree.

B. L. Brown
atty for appellee

53
Stacey & Randell
Points for apples



Stacy
vs. Brief for Appellee Randall
Randall

The appellee, (defendant here,) Randall insists that the decree of sale, &c. in this case is right and should be affirmed.

The grounds of reversal are too technical and attenuated - too much so, for the utmost stretch of the general principle of the mere insufficiency of an answer as ruled, in Ryan vs. Melvin 14 Ill. Rep. 68. Wilson vs. Rinney Id. 27. Now no other fair reasonable or sensible analysis of the pleadings and exhibits can be drawn than that the defendant Stacy in fact owned and held the land described in the Bill mortgage and decree - that he conveyed it by the mortgage. Indeed he not only conveys "all his right, and title and interest in and to all of the said property when or wherever it may be found, but specially covenanted that he was lawfully "Seized of the said property, and the same free from all "incumbrances - that he had good right to sell - and would "warrant and defend the same."

By his answer he admits the execution of the mortgage the description of the lands virtually, in fact, every thing but that he owes the entire debt.

He mainly relies upon a Composition agreement to reduce the amount of the debt.

But if any such agreement it was a mere nudum pactum - not binding or enforceable. (see cases

2 Term Reports 24. 5 East. Rep. 230

It is well settled that such a mere agreement to accept less than the amount really due is no bar for the sum due, 8. B. Monroe Ry. Rep. 598.

It is not good as a plea of accord and satisfaction even. Nor does the alleged depossession as the mortgage ^{was not acknowledged until some time thereafter, viz. on the 2nd July 1847} the proof is not even made as to said agreement or payment - nor is the insolvency, an essential element, proven. (See 8. Ben. Monroe 598. Ry. Reports,)

The answers having been traversed by Replications, denying the Composition, and payments, &c. ^(decree is right) ~~no proof the~~, the defendant further acquired title by his purchase for Taxes as alleged and proven by the exhibits, indeed the said sale and tax receipts clearly identify the lands so mortgaged and sold to be the same, and there is no error to Appellant's prejudice. If any error it is to the prejudice of Appellee, and to the amount of the Taxes paid, &c. and for which the decree made no allowance.

The decree therefore is right and should be affirmed.

Wherefore an affirmance is asked for

James C. Walker
Attorney for Randall

Stacey

vs. { Brief &c
for Appellee

Randall

Defendant Randall
Brief

"M. Sean County"

"L. C. Walker"

Supreme Court - Same term 1856 at Ottawa -

Bradford D. Stacy - plff. in error }
as } Error to McLean.
Morrey Randall - deft. in error }

This was a suit in chancery brought by Randall against Stacy to foreclose a mortgage - The mortgage which is set out as an exhibit does not describe any land in terms, but mortgages all of Stacy's right title and interest in and to "all the property and estate real and personal that had been given to Stacy by his father Simpson Stacy late of 'Mt Hope' McLean Co Illinois" - The original bill alleges that certain lands therein mentioned had been devised to Stacy by his father by will.

Stacy in his answer, admits that he is the owner of the lands - but it nowhere appears in the record, except by the allegation of the original bill, that there ~~was~~ ~~the~~ lands "were given to Stacy by will" - There is no admission of the fact in the answer - nor is there any proof whatever of that fact - The answer of Stacy to the original bill, was withdrawn by leave of the court when Randall filed his amended bill - so that there is no admission or proof whatever that Stacy owned the lands described in the bill - The mortgage describes no land, and there is no proof in the case that the lands mentioned in the bill were those intended to be mortgaged - *Swolf v. Long* 2 Gilb. 679, 682.

Both the original and amended bill call for the answer of Stacy - and in neither of them is the oath to the answer waived. Stacy answered both, and both answers are sworn to. The statements of the answers are therefore to be taken as true, ^{so far as they are responsive to the bill} unless rebutted by the testimony of two witnesses. In Stacy's answer to the amended bill he states under oath that he paid Randall sufficient in money and property to pay and discharge the debts mentioned in the amended bill - that Randall received it for that purpose ~~but~~ refused to make a settlement, and account for the money and property so received by him - although he told Stacy that there was sufficient of it to pay all the debts and leave something for Stacy (See Stacy's answer to amended bill, page 39 of the record) Stacy further states in his sworn answer that subsequent to the making of the mortgage he did make a final settlement with Randall and that Randall received his dividend in full of his debt. These statements are nowhere rebutted by proof of any kind. The fact that the mortgage was given - not for \$1000 - but for what might be found due to Randall on settlement, is fully shown by the written agreement of Randall set out in the pleadings, ~~and~~ (page 19 of the record) and is substantially admitted by the amended bill. These statements of the answer are responsive to the allegation of the bill that the indebtedness spoken of

was due and unpaid - The answer contains a clear and explicit denial that any thing was due on the indebtedness mentioned in the bill, and shows how the same had been discharged - and there is no proof whatever tending to show that these statements of the answer are not true. The mortgage does not show that it was given to ~~secure~~ the indebtedness set out in the amended bill, ^{It contains no reference to any note or notes whatever} and there is nothing in the record to show that it was so given - The written agreement executed by Randall shows clearly that the \$1000 mentioned in the mortgage was not the amount intended to be secured, but that the amount was to be ascertained on settlement. ~~Such settlement was never made~~ According to the allegations of the amended bill such settlement was never made, and when the court below undertook to ascertain the balance, he appears to have taken the allegations of the amended bill as true without proof, and to have disregarded the sworn statements of the answer which were proof in themselves - It would appear that the court below took the amount mentioned in the mortgage (\$1000) and computed the interest thereon from the time it fell due by the terms of the mortgage (2 years after date) till the date of the decree - and that too when it appeared both from the allegations of the amended bill and the statements of the sworn answer that that amount was not the true amount intended to be secured by the mortgage

If the proposition that "the allegations and statements of a sworn answer to a bill in which the oath is not waived, are evidence in favor of the defendant so far as they are responsive to the bill" is correct law - that proposition disposes of this case - The bill charges certain indebtedness, and alleges that it is due and unpaid. ~~The answer under oath~~ and does not waive the oath of defendant. The defendant in his sworn answer not only denies that the indebtedness is due, but shows specifically how it was paid - There is no other proof.

2 Storys Eq. jurisprudence § 1528
and authorities then cited.

In chancery cases, ^{when an issue has been joined} the record must show the evidence upon which the decree was made. 4 Gilm. 370 - ~~Hill~~ and the court will not presume that any evidence was given except what appears in the record - 11. Ill. 361.

33,
Stacy
as
Randall

Argument for
aff. in error

In Supreme Court Term June 1856
Bradford S. Stacy - Plaintiff in Error
vs
Murray Randall Deft-

Error to McLean County-

This was a suit commenced in the court below by Randall against Stacy to foreclose a mortgage - The mortgage does not describe any lands by their numbers or by any other legal description - the mortgage only described the lands as being the same bequeathed to the said Bradford S. Stacy by his father Stinson Stacy late of Mount Hope McLean County Ills. The Bill alleges that certain lands in said Bill described were and are the same that descended to the Bradford S. Stacy - from his father Stinson Stacy - but there is no proof to sustain this allegation. It was error to render a decree for Plaintiff below - against the lands described in his Bill without proof that they were the same lands that were bequeathed to Bradford S. Stacy - by his father - see Cases of D'Wolf vs Long - 2 Gill 679 - Wilson vs Kemney 14 - Ill 28 - The case

The case of Wilson vs Kinnay is a much stronger case than the one now at Bar. In that case the Bill alleged that William Kinnay was the equitable owner of the Land and that he devised the same to the complainant.

The answer of the heir to this allegation was as follows - "True it may be as stated in the complainant's Bill. that the complainant is the Legatee of William Kinnay as stated in said deed. and as such is entitled to the Estate of the said William Kinnay as stated in the said Bill" Yet the Court say that the answer does not admit that William C Kinnay was the devisee of William Kinnay - and because the allegation in Bill. is unsupported by proof the decree of the Court below is reversed - There is no principle better settled by our Court than this. When a material averment in a Bill. is neither admitted or denied by the answer. it must be supported by proof - See cases above cited - Certainly the allegation in Complainant Randall's Bill that the Lands described in his Bill. were the same bequeathed to Drift Stacy - by his Father was a material one. It forms

the Substratum of his Bill and without such Allegation he could never have recovered against said Lurell at all - And because said Allegation is wholly unsupported by evidence we say the decree of the Court below was Erroneous -

Again we say and insist that the judgement of the Court below ought to have been for the Deft- Stacy - because the Complainant Randal Alleges and charges the indebtedness mentioned in the mortgage was certain notes filed with said Bill and made exhibits - which notes are not described in the mortgage - and calls on the Deft- Stacy to answer this Allegation under oath - The Deft- Stacy answering under oath denies that the mortgage was given to secure the notes filed with the Complainant's Bill but insists that the mortgage was given to secure whatever might be found due on Settlement from him (Stacy) to complainant - The answer was responsive to the Bill and therefore evidence for the Defendant - There is not only no evidence to controvert the

the Deft answer but none to support
the allegations of the Bill -

Then the answer denies the main
allegations of the Bill and the com-
-plainant's testimony is loose and
unsatisfactory the judgment should
for the Defendant - See Selby vs Guiney 12 Ill. R. 69 =
And certainly were the complainant
offers no evidence to controvert the
Def't's ^{answer} evidence the judgment ought
to be for Defendant -

Wm M. Scott

for Deft in Error

³⁰
Stacy. P. E. Enon

21
Ranchall

Argument for
Plaintiff -

Wm. D. Enon
for Plaintiff

~~53~~ ~~2~~
B. S. Stacey
vs
M. Randall

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1856

X