

No. 14443

Supreme Court of Illinois

Brookfield

vs.

Goodrich

71641  7

100 34
STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division

No. 218

Pratt
vs

Goodrich

1868

MA

BONDS AND MORTGAGE

OF

TO

R. K. SWIFT, JOHNSTON & CO.

Bro *Johnston*

Exhibit 3

1, 2, 3 Sold to Garry Chambers
May & June 1856 thro' Comm Dept
guaranteed by within 60 days after
maturity

4 Sold by Loan & T Department
Feb'y 1857

8, 9, 10 Sold to B. B. Chambers

5 Sold to Philo Cline July 56

6 & 7 " " Richd Goodman
April 57

Trust Deeds & other Instruments
left for record

321
Prof. Dr. Schell
to ...

Agreement of
Trustees of
(...)

Exhibit 2

No. 2

DEED OF TRUST.

John McCaffery Books
TO
Grant Goodrich
FOR USE.

R. K. SWIFT, BROTHER & JOHNSTON.

No. 18457

Filed for record in the Recorder's Office of
Cook County, Illinois
March 17th A. D. 1862, and
recorded in Book 103, of
page 96.

R. K. Swift CR

R. K. SWIFT, BROTHER & JOHNSTON,
CHICAGO, ILL.

8

*Superior Court of Chicago
in Chancery
Benjamin F. Brookfield
vs
Grant Goodrich Mac
(Comptrolr. (Exhibit A) submits
in deposition of R. K. Swift & Johnston
Master in Chancery
of the Superior Court of Chicago)*

*Filed May 27, 1862
J. L. Church
Clk*

This Indenture, Made this First day of March in the Year One Thousand Eight Hundred and Fifty Six BETWEEN John Mc Caffery Bachelor of the City of Chicago in the County of Cook and State of Illinois party of the first part, and Grand Goodrich of the City of Chicago, in the County of Cook, and State of Illinois, party of the second part, WITNESSETH:

Whereas, John Mc Caffery has executed various certain Coupon Bonds bearing even date herewith each in the penal sum of one thousand (\$1000) Dollars, payable to the order of R. K. SWIFT, BROTHER & JOHNSTON, and each conditioned for the payment of the principal sum of Five Hundred (\$500) Dollars, and numbered from Number Eight to Number Twenty inclusive, payable Five years after the date thereof, and the interest thereon semi-annually, at Five per cent. per annum; for which interest certain Coupons, or Interest Notes, for the sum of Twenty Five (\$25) Dollars each, bearing even date with said Bond and thereto annexed, numbered from Number One to Number Ten inclusive, have been executed by the said John Mc Caffery

The principal of said Bond and the said interest payable at the Banking House of the firm of SWIFT, RANSOM & Co., in the City of New York, or the successors of said firm, or at the Merchants' Bank, in said City of New York, in case said firm and successors should cease. And also with the further condition, that if default should be made in the payment of any interest, on the principal of said Bond and the same should remain due and unpaid for thirty days after the same becomes due and payable as aforesaid, then the said principal sum, and all arrearages of interest should, at the option of the said R. K. Swift Brother & Johnston Executors, Administrators or Assigns, become due and payable and might be demanded immediately, or at any time within Three months after such default.

And Whereas, The said John Mc Caffery is desirous of securing not only the prompt payment of said Bonds and Coupons, but also of effectually securing and indemnifying the said R. K. Swift Brother & Johnston for or on account of any assignment, endorsement or guaranty of said Bonds and Coupons,

Now, Therefore, The said party of the first part, in consideration of the premises and for the purposes aforesaid, and in the further consideration of One Dollar to him in hand paid by said second party, the receipt whereof is hereby confessed, he and hereby do grant, bargain, sell and convey unto the said party of the second part, his Heirs, Assigns, or Successor in trust, FOREVER, all the premises situate in the, County of Cook, and State of Illinois and known and described as follows, to wit:

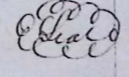
The South West 1/4 of Section Thirty One (31) in Township Thirty Eight (38) North of Range Fourteen (14) East of the Third Principal Meridian Containing One Hundred and Sixty (160) acres.
Also the West Half of the North West Quarter of Section Six (6) in Township Thirty Seven (37) North of Range Fourteen (14) East of the Third Principal Meridian Containing Eighty (80) acres.
Also the South Fifty Eight (58) Acres of the East Half of the North East Quarter of Section One (1) in Township Thirty Seven (37) North of Range Thirteen (13) East of the Third Principal Meridian.

To have and to hold the Same, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining; and also all the estate, interest, claim and demand whatsoever, in Law as well as in Equity, which the said party of the first part, ha/ia and to the premises hereby conveyed, unto the said party of the second part, his heirs, assigns or successor in Trust hereinafter named, FOREVER:—
IN TRUST, NEVERTHELESS, to wit: **In Trust,** That in case of default in the payment of the said Bond, or either of them, or any part thereof, or of the said Coupons or Interest Notes, or either of them or any part thereof, or, in case of a breach of any of the covenants or stipulations herein contained, then, on the application of the legal holder of said Bond, or any of them, or of said Coupons, given for interest as aforesaid, or any or either of them, it shall and may be lawful for said party of the second part, his heirs, assigns or successors in Trust, to enter into and upon all and singular the premises hereby granted, or intended so to be, or any part thereof, and as Attorney for said party of the first part for such purpose duly constituted IRREVOCABLY, or in the name of the said second party, to receive all rents, issues and profits thereof, and to sell and dispose of the said premises, and all the right, title, benefit and equity of redemption of said party of the first part, his heirs or assigns therein, at public auction, at the north door of the Court-House in the City of Chicago, in the State of Illinois, for the highest and best price the same will bring in cash, ten (10) days' public notice having been previously given of the time of such sale, by advertisement in one of the newspapers at that time published in said City of Chicago; to adjourn such sale from time to time as may be thought expedient, and to make, execute and deliver to the purchaser or purchasers at such sale good and sufficient deed or deeds of conveyance for the premises sold; and out of the proceeds or avails of such sale and the purchase money paid thereon, after first paying all costs of advertising and sale, commissions and all other expenses of this Trust, including all moneys advanced for taxes or other liens and assessments, with the interest thereon, to pay the principal and interest due on said Bond and Coupons, or interest Notes, according to the tenor and effect thereof, or to the said **R. K. SWIFT, BROTHER & JOHNSTON,** in case they shall have paid the same; rendering the overplus (if any) unto the said party of the first part, his legal representatives or assigns, on reasonable request; and it shall not be obligatory upon the purchaser or purchasers at any such sale to see to the application of the purchase money, while sale or sales so made, shall be a perpetual bar, both in law and equity, against the said party of the first part, his heirs and assigns and all other persons claiming the premises aforesaid, or any part thereof, by, from, through or under said party of the first part, or any of them.

And the said John M. Coffey for himself his Heirs, Executors and Administrators, covenant and agree to and with said party of the second part, his legal representatives or successor in Trust, that at the time of the sealing and delivery of these presents he is well seized of said premises, and ha good right, full power, and lawful authority to grant, bargain and sell the same in manner and form as aforesaid; that the same are free and clear of all liens and incumbrances whatsoever (unless as hereinafter specified); that he will pay, or cause to be paid, the said above mentioned indebtedness, when and as the same becomes due and payable, and until said indebtedness is fully paid, or said premises are sold by virtue hereof, will in like manner pay all taxes and assessments thereon when and as the same becomes due and payable. And that he will cause any buildings upon said premises to be insured in some safe and responsible Insurance Company for the insurable value thereof, and upon the request of said second party, or the legal holder of any of said indebtedness, assign the Policy or Policies of such Insurance to said party of the second part as collateral hereto, and keep the same so insured and the policies assigned as aforesaid: *Provided however,* That such Insurance shall not be required for a greater sum than the amount of said indebtedness then unpaid.

And it is stipulated and Agreed, That in case of default in any of said payments of principal or interest as aforesaid, or of a breach in any of the covenants or agreements herein or in said Bond, then and in that case the whole of said principal sum hereby secured, and the interest to the time of said, according to the tenor and effect of said indebtedness, shall and may at once become due and payable and the said premises be sold in like manner and with the same effect as if the said indebtedness had matured: *And further,* That in case of the death, resignation, removal from the said City of Chicago, or other inability to act, of said party of the second part, then George Smith of the said City of Chicago, shall be and hereby is appointed and made successor in Trust herein, with like power and authority as the said party of the second part hereby has in and about the management of the said Trust Estate, and the said premises shall become vested in such new Trustee accordingly.

In Witness Whereof, The said party of the first part Sam hereunto set his hand and seal the day and year first above written.

Signed, Sealed and Delivered, }
 in presence of } Sam McWhorter 

STATE OF ILLINOIS, }
 Cook County, }
 Chicago in } ss.

I, Geo. R. Clarke a Notary Public in and for the City of said County, in the State aforesaid, do hereby Certify, That John M. Coffey who is personally known to me as the person whose name is subscribed to the within Trust Deed, as having executed the same, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument of writing, as his free and voluntary act, for the uses and purposes therein set forth, the contents and meaning having been fully explained by me.

And the said _____ wife of the said _____ having been by me examined, separate and apart, and out of the hearing of _____ husband, and the contents and meaning of the said Trust Deed having been by me made known and fully explained to _____ acknowledged that _____ had freely and voluntarily executed the same, and relinquished _____ dower and all right, title and interest to the lands and tenements therein mentioned, without the compulsion of _____ said husband, and that _____ do not wish to retract the same.

Given under my hand and Notarial seal, this fourteenth day of March in the year of our Lord one thousand eight hundred and fifty-six
Geo. R. Clarke
 Notary Public

Exhibit 1

No. 1.

DEED OF TRUST.

John McCaffery, Bah.
TO

Grant Goodrich.
FOR USE.

R. K. SWIFT, BROTHER & JOHNSTON.

No. 18,456

Filed for record in the Recorder's Office of Cook County, Illinois

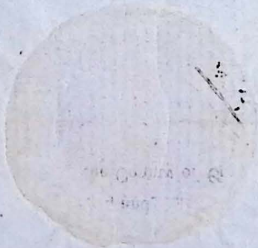
March 17 A. D. 1878, and recorded in Book 103 of

Deeds page 95

L. H. Howard C.R.

R. K. SWIFT, BROTHER & JOHNSTON,
CHICAGO, ILL.

(8)



Vertical text on the left margin, possibly a date or reference number.

This Indenture, Made this First day of March in the Year One Thousand Eight Hundred and Fifty Six BETWEEN John Mc Caffery Bachelor of the City of Chicago in the County of Cook and State of Illinois party of the first part, and Grand Goodrich of the City of Chicago, in the County of Cook, and State of Illinois, party of the second part, WITNESSETH:

Whereas, John Mc Caffery has executed Seven certain Coupon Bonds bearing even date herewith each in the penal sum of

Two Thousand (\$2000) Dollars, payable to the order of R. K. SWIFT, BROTHER & JOHNSTON, and each conditioned for the payment of the principal sum of One Thousand (\$1000) Dollars, and numbered from Number One to Number Seven inclusive, payable Five years after the date thereof, and the interest thereon semi-annually, at Five per cent. per annum; for which interest certain Coupons, or Interest Notes, for the sum of Twenty (\$20) Dollars each, bearing even date with said Bond and thereto annexed, numbered from Number One to Number Seven inclusive, have been executed by the said

John Mc Caffery. The principal of said Bond and the said interest payable at the Banking House of the firm of SWIFT, RANSOM & Co., in the City of New York, or the successors of said firm, or at the Merchants' Bank, in said City of New York, in case said firm and successors should cease. And also with the further condition, that if default should be made in the payment of any interest on the principal of said Bond and the same should remain due and unpaid for Thirty days after the same becomes due and payable as aforesaid, then the said principal sum, and all arrearages of interest should, at the option of the said R. K. Swift Brother & Johnston Executors, Administrators or Assigns, become due and payable and might be demanded immediately, or at any time within Three months after such default.

And Whereas, The said John Mc Caffery is desirous of securing not only the prompt payment of said Bond and Coupons, but also of effectually securing and indemnifying the said R. K. Swift Brother & Johnston for or on account of any assignment, endorsement or guaranty of said Bond and Coupons,

Now, Therefore, The said party of the first part, in consideration of the premises and for the purposes aforesaid, and in the further consideration of One Dollar to Five in hand paid by said second party, the receipt whereof is hereby confessed, ha and hereby do grant, bargain, sell and convey unto the said party of the second part, Heirs, Assigns, or Successor in trust, FOREVER, all the premises situate in No., County of Cook, and State of Illinois and known and described as follows, to wit:

The South West Quarter of Section Thirty one (31) in Township Thirty eight (38) North of Range Fourteen (14) East of the Third Principal Meridian Containing One Hundred and Sixty (160) acres.

(Also the West Half of the North West Quarter of Section Six (6) in Township Thirty seven (37) North of Range Fourteen (14) East of the Third Principal Meridian Containing Eighty (80) acres.

(Also the South Fifty eight (58) acres of the East Half of the North East Quarter of Section One (1) in Township Thirty seven (37) North of Range Thirteen (13) East of the Third Principal Meridian.

Cook County, Chicago

I, Geo. R. Clarke a Notary Public in and for the City of Chicago

do hereby Certify, That John Mc Caffery who is personally known to me as the person whose name is subscribed to the within Trust Deed, as having executed the same, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument of writing, as his free and voluntary act, for the uses and purposes therein set forth, the contents and meaning having been fully explained by me.



And the said [Name] wife of the said [Name] having been by me examined, separate and apart, and out of the hearing of [Name] and the contents and meaning of the said Trust Deed having been by me made known and fully explained to [Name] acknowledged that [Name] had freely and voluntarily executed the same, and relinquished [Name] power and all right, title and interest to the lands and tenements therein mentioned, without the compulsion of [Name] said husband, and that [Name] do not wish to retract the same.

Given under my hand and Notarial seal, this Tenth day of March in the year of our Lord one thousand eight hundred and fifty-Elx Geo. R. Clarke Notary Public

To Have and to Hold the Same, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining; and also all the estate, interest, claim and demand whatsoever, in Law as well as in Equity, which the said party of the first part, has and to the premises hereby conveyed, unto the said party of the second part, his heirs, assigns or successor in Trust hereinafter named, FORVER:— IN TRUST, NEVERTHELESS, to wit: In Trust, That in case of default in the payment of the said Bond, or either of them, or any part thereof, or of the said Coupons or Interest Notes, or either of them or any part thereof, or in case of a breach of any of the covenants or stipulations herein contained, then, on the application of the legal holder of said Bond, or any of them, or of said Coupons, given for interest as aforesaid, or any or either of them, it shall and may be lawful for said party of the second part, his heirs, assigns or successors in Trust, to enter into and upon all and singular the premises hereby granted, or intended so to be, or any part thereof, and as Attorney for said party of the first part for such purpose duly constituted IRREVOCABLY, or in the name of the said second party, to receive all rents, issues and profits thereof, and to sell and dispose of the said premises, and all the right, title, benefit and equity of redemption of said party of the first part, his heirs or assigns therein, at public auction, at the north door of the Court-House in the City of Chicago, in the State of Illinois, for the highest and best price the same will bring in cash, Ten (10) days' public notice having been previously given of the time of such sale, by advertisement in one of the newspapers at that time published in said City of Chicago; to adjourn such sale from time to time as may be thought expedient, and to make, execute and deliver to the purchaser or purchasers at such sale good and sufficient deed or deeds of conveyance for the premises sold; and out of the proceeds or avails of such sale and the purchase money paid thereon, after first paying all costs of advertising and sale, commissions and all other expenses of this Trust, including all moneys advanced for taxes or other liens and assessments, with the interest thereon, to pay the principal and interest due on said Bond and Coupons, or interest Notes, according to the tenor and effect thereof, or to the said R. K. SWIFT, BROTHER & JOHNSTON, in case they shall have paid the same; rendering the overplus (if any) unto the said party of the first part, his legal representatives or assigns, on reasonable request; and it shall not be obligatory upon the purchaser or purchasers at any such sale to see to the application of the purchase money, while sale or sales so made, shall be a perpetual bar, both in law and equity, against the said party of the first part, his heirs and assigns and all other persons claiming the premises aforesaid, or any part thereof, by, from, through or under said party of the first part, or any of them.

And the said John Mc Caffery for himself his Heirs, Executors and Administrators, covenant and agree to and with said party of the second part, his legal representatives or successor in Trust, that at the time of the sealing and delivery of these presents he is well seized of said premises, and has good right, full power, and lawful authority to grant, bargain and sell the same in manner and form as aforesaid; that the same are free and clear of all liens and incumbrances whatsoever (unless as hereinafter specified); that he will pay, or cause to be paid, the said above mentioned indebtedness, when and as the same becomes due and payable, and until said indebtedness is fully paid, or said premises are sold by virtue hereof, will in like manner pay all taxes and assessments thereon when and as the same becomes due and payable. And that he will cause any buildings upon said premises to be insured in some safe and responsible Insurance Company for the insurable value thereof, and upon the request of said second party, or the legal holder of any of said indebtedness, assign the Policy or Policies of such Insurance to said party of the second part as collateral hereto, and keep the same so insured and the policies assigned as aforesaid: Provided however, That such Insurance shall not be required for a greater sum than the amount of said indebtedness then unpaid.

And it is stipulated and Agreed, That in case of default in any of said payments of principal or interest as aforesaid, or of a breach in any of the covenants or agreements herein or in said Bond, then and in that case the whole of said principal sum hereby secured, and the interest to the time of sale, according to the tenor and effect of said indebtedness, shall and may at once become due and payable and the said premises be sold in like manner and with the same effect as if the said indebtedness had matured: And further, That in case of the death, resignation, removal from the said City of Chicago, or other inability to act, of said party of the second part, then George [Name] of the said City of Chicago, shall be and hereby is appointed and made successor in Trust herein, with like power and authority as the said party of the second part hereby has in and about the management of the said Trust Estate, and the said premises shall become vested in such new Trustee accordingly.

[Large diagonal line across the page]

In Witness Whereof, The said party of the first part hereunto set his hand and seal—the day and year first above written.

Signed, Sealed and Delivered, in presence of Sam. W. [Name]

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION, }
APRIL TERM, A. D. 1863. }

BENJAMIN J. BROOKFIELD, JOB CARPENTER, ISAAC
METZGER. HENRY OPPENHEIMER, CHARLES G.
SMITH AND CHARLES LETZ,

Appellants,

v s.

GRANT GOODRICH, JOHN McCAFFERY, GARRY
CHAMBERS, JOHN H. KLINE, RICAARD GOOD-
MAN, C. B. HART, JOHN I. THAYER, CHARLES
B. ROYCE, RICHARD K. SWIFT, LYMAN P.
SWIFT AND JAMES S. JOHNSTON,

Appellees.

APPEAL FROM COOK.

ABSTRACT OF RECORD.

R. p.
2

On 10th December, 1861, appellants filed their bill in chancery, in the Circuit Court of Cook County, as follows, viz: Setting forth that, on the 1st of March, 1856, John McCaffery borrowed of Rickard K. Swift, Lyman P. Swift and James C. Johnston, then a firm in Chicago, under name of R. K. Swift, Brother & Johnston, the sum of \$14,000; and to secure it, gave them 21 bonds, (numbered from 1 to 21) all bearing date March 1, 1856, and payable to said R. K. S., B. & J., their executors, administrators or assigns, five years after date, with interest at ten per cent. payable semi-annually: 7 of said bonds (numbered 1 to 7) were for \$1,000

3 each—the remaining 14 for \$500 each. (A copy of one of the bonds set
out—see Record p. 12). That McCaffery further, at the same time, exe-
cuted and delivered to Grant Goodrich, as trustee, two deeds of trust of
the premises described (for description record p. 3) ; that both trust deeds
bore date the same day ; both were acknowledged March 14, 1856, be-
fore the same notary public, and both filed for record on 17th March,
4 1856, at the same moment. That by one of the deeds of trust (see pa-
per on file marked 1), it was provided that if McCaffery failed to pay the
7 bonds for \$1,000, or either of them, or the interest, or any part of it,
that then the trustee might sell the premises, after giving notice as pre-
scribed in the deed of trust. That, by the other deed of trust, like pro-
vision was made as to the 14 bonds for \$500.

5 That all the interest on the bonds was paid until all the bonds fell due,
March 1, 1861.

That complainants are holders of following bonds, for \$500 each, viz :
Carpenter, No. 12 ; Oppenheimer & Metzger, No. 13 ; Smith, 14 and 20 ;
Brookfield, 17 and 18 ; Letz, 19.

That the other \$500 bonds are held as follows, viz : Royce, Nos. 8 and
9, Thayer, 10 and 11, Hart, 15, 16 and 21.

That the \$1,000 bonds are held as follows, viz : Chambers, Nos. 1, 2,
3, &c. ; Kline, No. 5 ; Goodman, No. 6, &c.

6 No interest has been paid on any bonds to complainants since maturi-
ty ; that by the terms of said cotemporaneous deed of trust, complainants
are entitled to require trustee to sell to pay the said 21 bonds. But the
trustee, combining, &c., refused to advertise and sell for the \$1,000 bonds,
or for both the \$500 and \$1,000 bonds, jointly, under the two deeds, or
7 to pay complainants their share of the proceeds of such sale, or of a sale
under either deed ; and the trustee pretends that said deed of trust, to
secure said \$1,000 bonds, was prior in time and right to the deed secur-
ing bonds held by complainants, and that he is bound to sell under said
\$1,000 deed, and out of the proceeds to pay the \$1,000 bonds in full, in
exclusion of complainants equal claim ; and the trustee has caused a
notice of intended sale, under said deed, to be published (per copy, see
record, p. 15), and threatens to proceed to sell thereunder, and from said

8 sale to pay said \$1,000 bonds, in exclusion of complainants claims. Complainants claim that the proceeds of the sale, if made, will not more than pay the \$1,000 bonds, and that McCaffery is wholly insolvent.

9 Further, that the trustee has not entered on nor taken possession of the premises, as required by the trust deed, before advertising or selling. Complainants charge that trustee's pretences are untrue; that the making and delivering of said 21 bonds, the lending of said \$14,000, and the making, acknowledging and recording of the said two deeds of trust were one single and entire transaction; that no priority in time or right was given to either of said deeds of trust over the other. As evidence of the entering of the transaction, and the intention of the parties, complainants aver that there is in the deed to recover the \$500 bonds, an express covenant by McCaffey, that the premises, at the date of the execution of said deed were free and clear from all former grants, liens and incumbrances, as appears by reference to the trust deed (see paper on on file, marked 2), and they set up the acceptance of said deed of trust by trustee with such covenant as an estoppel against said trustee's pretences.

10 **Oath** to answer waived; prayer for injunction against Goodrich to restrain sale, &c., under said notice, and that he may be decreed to sell under both deeds and trust for joint benefit of all bond holders, and for further or other relief. Prayer for process.

11 **Bill** demurred to by Brookfield.

12 **Order** for injunction.

12 **Copy** of bond.

15 **Copy** of notice of sale.

16 **Injunction** bond.

18 **Writ** of injunction.

20 **Summons** and return.

22 **Answer** of Garey Chambers, John H. Kline, Richard Goodman, filed January 31, 1862.

23 They have no knowledge as to the \$14,000 loan ; on information and
belief, deny that he executed 21 bonds to secure the same except as
24 hereafter stated, or that he executed the two trust deeds to secure the
same, except as hereafter stated.

Admit, that on March 1, 1856, he did, in consideration of \$7,000, paid
him by R. K. Swift, Bro. & Johnston, or for some other consideration,
make seven bonds for \$1,000 each, numbered 1 to 7, &c.

Admit that the interest was paid them to March 1, 1861 ; that to se-
cure the same he made a trust deed to Goodrich, conveying following
25 premises (describing same as in bill) ; that the deed was acknowledged
March 14, 1856, and recorded March 17, 1856 ; say that it was provided
therein that on default trustee might sell, &c.

26 Say they are informed that afterwards he made fourteen other bonds
for \$500 each to same parties, which deed was also recorded in Cook
county, but after the other deed mentioned, and is a subsequent lien.
Have knowledge whether there was any consideration for said bonds.

27 Chambers admits he owns bonds 1, 2, 3 and 4, referred to ; says he
purchased two of them in May, and one in June, 1856, and when he
bought R. K. S., B. & J. represented to him that they were secured by
trust deed, which was the first lien ; that trusting them, and finding no
prior incumbrance on record, he bought them innocently, and for a valu-
able consideration, without notice of any prior or simultaneous lien.

28 That in June, 1857, they bought the other of said bonds of B. B. Cham-
bers, also bona fide and for value. That when R. K. S. & J. sold to this
defendant, they held the other fourteen bonds, and complainants bought
a long time afterwards, with full notice of facts above stated, and on a
nominal consideration.

29 Kline admits that he is the owner of bond 5 ; bought the same about
July 1, 1856, and paid therefor in cash, sets out same representations,
&c., as Chambers.

31 Goodman admits he owns bonds 6 and 7 ; bought them April 3, 1857,
for cash ; same representations, &c., as Chambers.

32, 33 All deny that the two trust deeds were filed for record at the same moment; and say if they were, as the trust deed securing their bonds was first recorded, and they purchased as above stated, it is the first lien. Deny that loaning the \$14,000, and making, acknowledging and recording the two deeds were one entire transaction; say the two deeds and sets of bonds were made separately to enable the payees to negotiate the first mentioned, viz: the \$1,000 bonds; that the said payees did negotiate and sell them as aforesaid; whereas, the said payees retained the other 14 bonds until a long time afterwards, and after the payees had failed.

35 **Affidavit** of non-residence of defendants Royce, Thayer, Hart, L. P. Swift, and Johnston.

36 **Publication** Notice and Certificate.

38 **Grant Goodrich Answers**: Admits the two deeds of trust were executed and delivered to him as stated; that he did attempt to sell as stated in the bill, and has no knowledge as to other matters.

39 **Appearance** of McCaffery entered.

42 **Default** of Hart, Thayer, Royce, L. P. Swift, Johnston and R. K. Swift.

43 **Judge's** Certificate of evidence—sets forth that on the hearing, at May Term, 1862, *complainants offered in evidence* 7 bonds (see bonds on file, marked); also, 2 deeds of trust (see paper on file marked 1 and 2); also, as a witness,

Grant Goodrich, *who stated as follows* :

44 I am the trustee mentioned in the deed; I had advertised the property under the \$1000 trust deed alone, when restrained by this injunction. I had not, and never have, entered upon or taken possession of the premises.

Complainants also introduced as a witness,

M. F. Tuley, *who states* :

45 I am acquainted with defendant, McCaffery. In the latter part of 1861,

he was insolvent. He had some property, but incumbered. He owes \$48,000 or \$50,000 besides the indebtedness in this suit.

D E F E N D A N T S ' T E S T I M O N Y .

The defendants offered in evidence the deposition of

R. K. Swift, (which was received subject to complainants' objection)
as follows, viz :

46 I know all the parties except Brookfield. The bonds, marked from 1
to 7, were made by McCaffery, and delivered to R. K. Swift, Brother &
47 Johnston. I do not personally know when. McCaffery had before made
bonds to me for part of this same debt, for several thousand dollars. I
thought about \$12,000. About March 1st, 1856, he wanted to increase
the bonds to \$14,000. I intended to—think I did—propose he should
48 make two classes of bonds : 7 bonds of \$1000, first mortgage, and 14 of
\$500 second mortgage ; and that I told him it made no difference to him
whether there were two classes or not ; to which he assented. The old
papers were then given to some member of our commission department,
and by them to George Taylor, the lawyer, who drew the first papers,
to compute the interest. The bonds are in the hand-writing of Mr.
D'Antin, or the Greek clerk, who were both in our commission depart-
ment. Mr. James S. Johnston was the principal in that department.
He was one of the firm of R. K. S., Bro. & J. My instructions were to
make seven \$1,000 bonds, and a trust deed to secure them as a first lien,
and fourteen \$500 bonds, and a trust deed to secure them as a second lien ;
and not to record the last for two weeks after the other. The fourteen
49 bonds were not intended for sale. McCaffery, for years, paid me the in-
terest on all the 21 bonds. Can't say when the deeds were recorded.
(Complainants objected to statements of conversations with McCaffery,
or statements of any one.) McCaffery, two or three years afterwards—
after our failure—told me he could pay \$7,000 when the bonds came due ;
and I advised him not to pay, unless the holders of the second mortgage
would give him an extension ; to which he assented. (Statement objected
50 to by complainants.) I was a member of the firm of R. K. S., Bro. & J.
I did not know the two deeds were recorded the same day, until last year.

51 I inquired of Mr. Rosenthal, our clerk, about it. He said he left them
for record ; had a sort of recollection that he was told to record the \$1,000
bond deed first ; that he did hand that to the Recorder first ; but imme-
diately after handed, also, the other. I asked him if he did not always
understand the \$1,000 bonds were first mortgage ; he said certainly not,
or he should not have advised his client to buy one of the \$55 ones. I
52 have a memorandum of the balance due from McCaffery, March 1, 1856,
which I produce. The amount, \$9,628.92, the balance of \$14,000, was
53 put to his credit. To every person I talked with about buying the \$500
bonds, I described them as a second lien—I stated it to B. B. Chambers,
when he bought 8, 9 and 10—to Mr. Kline and Mr. Hart ; think I told
it to Carpenter. I told it to Mr. Goodman. (Objected to by complain-
ants.)

Cross Examination :

53 Rosenthal stated that as soon as he saw one trust deed filed, he filed
54 the other. The \$9,628.92, before mentioned, with the balance of \$14,000,
which was paid to McCaffery at the time, made up the amount included
55 in the 21 bonds. The paper marked " Exhibit A," (see paper No. 1 on
file), is the original trust deed securing bonds 8 to 21. It was the ordinary
blank printed form used by us.

Re-Direct Examination :

56 The only reason I can give why the words, " unless as hereinafter spec-
ified," are erased in " Exhibit A," is, that we made it a point only to lend
on clear titles, and our clerks had advices to arrange the securities for
clear titles, and one of them being a Frenchman and the other a Greek,
I think they mistook the instructions, and considered this deed like all
others.

Re-Cross Examination :

I presume both trust deeds were prepared by the same clerk, under
the immediate supervision of Mr. Johnston, one of the members of the
firm.

57 Defendant introduced, as a witness,

J. F. Wait, who stated—

(8)

(Com-
plainants objected to all the testimony of Hart, as hearsay and second-
ary).

COMPLAINANTS' TESTIMONY.

Complainant introduced Julius Rosenthal as a witness, who testified
as follows :

ber, 1857. No. 4 was sold in February, 1857; No. 5, in January, 1856, to Philo Kline; 6 and 7, to Richard Goodman, in April, 1857. I think they were paid for in cash; I speak from a memorandum made by me (see papers on file, No. 3).

63 **Decree** entered June 20th, 1862, as follows:

Recites default of all defendants but Chambers, Kline, Goodman, and Goodrich; that cause was heard on pleadings and proofs, etc.

64 **Order** that the bill be dismissed for want of equity therein, with costs, and that the injunction be dissolved.

Complainants pray appeal to the Supreme Court.

66 68- **Appeal** granted by Court on filing bond, which is done.

69 **Stipulation :**

That the copy of trust deeds and bonds attached to the bill, is accurate; that said deeds and bonds were introduced on the hearing, and that the clerk need not copy the same into the record.

All trust deeds, bonds, and other papers used on the trial may be used on the hearing, as if copied.

Signed by counsel for all parties.

ASSIGNMENT OF ERRORS.

- 70 1. The Court erred in considering the testimony of R. K. Swift.
(Objected to by complainants.)
2. The Court erred in considering the testimony of J. F. Wait.
3. The Court erred in dismissing complainants' bill.
4. The decree should have been for complainants and not for defend-
ants.

WALKER & THOMAS,

Solicitors for Appellants.

Brookfield et al,

vs

Goodrich et al

Abstract

(10)

Filed Apr 23, 1863

J. Seane
Att

RECORDS OF THE COURT

THE COURT OF COMMON PLEAS
FOR THE COUNTY OF MIDDLESEX
IN THE MATTER OF THE ESTATE OF
BROOKFIELD DECEASED
vs
GOODRICH DECEASED
Abstract

WILLIAM H. HARRIS

RECORDS OF THE COURT
FOR THE COUNTY OF MIDDLESEX
IN THE MATTER OF THE ESTATE OF
BROOKFIELD DECEASED
vs
GOODRICH DECEASED
Abstract

Supreme Court.

Grant Goodrich, John M. Caffrey, Garry
Chambers, John H. Kline, Richard
Goodman, C. B. Hart, John S. Thayer,
Charles C. Royce, Richard Swift, Lyman D.
Swift and James S. Johnston.
Apples.

ad Sm.

Benjamin L. Brookfield, Job Carpenter,
Isaac Metzger, Harry Appenheimer,
Charles G. Smith and Charles Lutz.
Apprents.

The only question in this case is, whether
the Trust Deed securing the 7 Bonds of \$1000.
each has a prior lien to the other.

We claim that it has, because it was
made to be recorded first.

It was filed for record first, and was
first recorded. It is not true, as stated in
Complainant's points, "that both Deeds were
filed for record simultaneously". Nor is it true,
"that they were recorded simultaneously".

It is important to understand the facts
correctly in order to arrive at a just conclusion.
The testimony shows very clearly, that the Trust
Deed securing the 7 \$1000. Bonds was first
delivered, first filed, and first recorded.
That it was the agreement of the parties to do so,

and it was so done by the instructions of Swift, in accordance with the agreement — that the clerk, when he received the Trust Deeds, marked them in the order in which they were filed for record and in which they were recorded; that is: "No. 1." and "No. 2." Those Trust Deeds are filed with the papers in this case to be inspected by the Court, by stipulation, to which I beg leave to call the attention of the Court.

In *Gougeon vs. Phelps*, 2 Barb. Chan. 441, the Court held, that, although the two mortgages upon the same premises given to different persons bore the same date and were acknowledged at the same time, if it appears it was the agreement and intention of all parties, that one mortgage should have a preference over the other so as to be a prior lien upon the premises, the law, for the purpose of carrying into effect that intention, presumes that the mortgage which was intended to be preferred was delivered first. That principle applies to this case. If it were necessary to resort to any presumption the Court would presume, that, inasmuch as it was expressly agreed that our Deed should be first recorded, it was first delivered for record; but it is not necessary for us to resort to any presumption, inasmuch as the testimony shows it to have been actually first delivered and filed for record, and

first recorded.

The whole transaction shows that it was intended by all parties that our Deed was to be, and in fact was, first filed for record.

Why were two Trust Deeds made if it was not the intention of the parties to give one a preference over the other? The object is very clear. There was a debt of \$14,000.00; - Swift was a Banker; - the property was not worth \$14,000.00; if the whole had been secured by one Trust Deed Swift could not have negotiated it to raise money upon; therefore the debt was divided, and two Trust Deeds made for the purpose, and with an agreement that the one should be first recorded so as to have priority of the other.

It is not disputed that our Trust Deed was first recorded; and, that being the fact, it was a prior lien. By the recording acts of Illinois the recorder is bound to record all Deeds &c. "in regular succession according to the priority of time of their being brought into the office." The Deed first filed for record has the first lien, no matter how little time intervenes; - whether one minute or one hour. They were not simultaneous, for they were not delivered at the same time. Our Deed, then, being first recorded, is the first lien, and if the holders of the Bonds secured by the second Trust Deed attempt to get rid of

What priority they must show some equities
entitling them to an equal lien. So far
from doing that, all the Equities are in
favor of the holders of the Bonds secured by
the first Trust Deed. We not only show
the agreement above referred to, but the
defendants Gory Chambers, John McKim, and
Rich^d Goodman, who are the owners of all the
7 \$1000. Bonds secured by the first Trust
Deed, purchased them for cash, nearly a year
before Swift failed, and the 2nd Class Bonds
were not purchased until after Swift's failure,
and were then taken for precedent debts or
bought for speculation, (See Record page 57.)
On the abstract page 8 Rosenthal is made to
say, that Gory Chambers had money with
Swift, and after his failure took the Bonds.
This is a mistake. Gory Chambers bought his
Bonds for cash in May or June 1856.
Swift ~~failed~~ did not fail till September 1857.
See at page 9 -

It was also admitted by Solis for all
parties that the Bonds from 1 to 7 inclusive
were sold before Swift failed, and before
the other Bonds were sold; - and that the
Bonds secured by the second Trust Deed
were not sold until after Swift's failure - See
abstract page 9.

It is said that the recording act does not apply, because the Trust and estate are the same in both Deeds. That might be so as between the original parties, because then there would be no use of any preference; but the Complainants in this case purchased their Bonds in good faith, at the first lien, and paid cash for them; (this will be seen by a careful reading of the testimony of Rosenthal, and the testimony of Swift on page 57 of record.) they, therefore, are entitled to protection as bona fide purchasers.

Coming vs. Murray, 3 Barb. Sup. Court R. 652.

It is enough that the Complainants are bona fide purchasers, but it, in fact, appears that most, at least, of the purchasers of the 2nd Class Bonds were told when they purchased them that they were a second lien. Swift says: (abstract pag 7) To every person I talked with about buying the \$5000 Bonds I described them as a second lien. I stated it to B. B. Chambers, when he bought 8, 9 & 10; (these are now owned by some of the other defendants) - to Mr. Helme & Mr. Hart; - I think I told it to Carpenter; - I told it to Mr. Goodman.

Aside, therefore from the strong Equities which are shown, and relying alone upon the recording

act the Deed securing the Bonds from 1 to 7
are the first lien.

It is claimed that Swift's testimony
was inadmissible. No objection was made
to Swift's testimony when he was examined, nor
at the hearing, upon the ground of interest, and
cannot now be made. Indeed we were
prepared to release him so as to avoid an
question upon that ground, and the Com-
plainants Counsel agreed he would not
make such objection and did not.

The objection I understand to be upon
the ground that it was merged in the contract.
The evidence does not tend to vary or contradict
a written instrument. Those principles are so
familiar that I do not deem it necessary
to discuss them.

The case of Jones vs. Phelps, 2 Barb Chan. 440,
is precisely like this in that respect and disposes
of that objection.

It is also claimed that the agreement
between the parties that our Trust Deed should
be first recorded cannot affect the rights of
the purchasers of the 2nd Class Bonds. The
answer to that is: that it is not necessary
for us to rely upon such an agreement to
change the order of recording; by the record
we have the priority and the Complainants must

Change that order before they can alter our rights.

That testimony is however important as bearing upon the question as to why our Deed was first recorded, and to repel any presumption that they were intended to be recorded simultaneously.

We do not deem it necessary to answer the various objections and points made by the Complainants. We have, we think, embraced all the various questions that can have any bearing upon the case, and it seems to us that the case is entirely free from any difficulty.

As the property in question consists of a farm in possession of the grantor, and as some waste has already been committed and the property is depreciating in value, we by leave respectfully suggest to the Court the importance of as early a decision as may be consistent with the Court.

E. F. A. Van Buren
Solicitor for Appellants.
Chambers, John Goodman

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Supreme Court
Grant Goddard et al.
Apprs.

Adm.
Benjamin F. Brookfield et al.
Apprs.

Notice May 12, 1863
J. Leland
Clerk

E. H. Van Buren
Agent for
Chambers, Flynn & Goodman

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION, }
APRIL TERM, A. D. 1863. }

GRANT GOODRICH, GARRY CHAMBERS, et. al.,
APPELLEES, }
ADS.
BENJAMIN F. BROOKFIELD, et. al., Appellants.

APPELLEES' POINTS.

The bill in this case was filed to settle the priority of liens of two certain trust deeds.

On the first day of March, 1856, John McCaffery executed to Grant Goodrich two trust deeds: one to secure seven bonds of one thousand dollars each, and the other to secure the payment of fourteen bonds of five hundred dollars each. The bonds were all held by R. K. Swift & Co.

When the the trust deeds were made, it was expressly agreed by McCaffery and R. K. Swift & Co., that the trust deed, to secure the seven bonds of \$1,000 each, should be first recorded and be the first lien. That was the object in making *two* trust deeds. The trust deeds were taken

to the clerk's office, and, by the direction of R. K. Swift, the trust deed to secure the seven bonds of \$1,000 each, was first handed to the recording clerk, and marked "No. 1." The other was afterwards handed to the clerk, and marked "No. 2." The deeds were recorded in the order in which they were handed to the clerk and numbered.

It was the uniform custom of the clerk in the recording office to record deeds, &c., in the order in which they were handed to the clerk.

The seven one thousand dollar bonds, secured with the trust deed marked No. 1 and first recorded, are owned by the defendants, Garry Chambers, John H. Kline and Richard Goodman. Those bonds were first sold, and purchased by those defendants, for a valuable consideration. The others were sold afterwards, and after the failure of R. K. Swift & Co.

By the "Recording Act," the trust deed first recorded is the *first lien*.
Vol. 1 Purple's Statutes, page 159, § 23.

^{Our}
~~One~~ deed was first delivered and first recorded. Even if they had been simultaneously delivered, without any agreement as to priority, yet, inasmuch as the trust deed securing the bonds numbered from one to seven inclusive, was first recorded, and the bonds which are held by the defendants, Garry Chambers, John H. Kline and Richard Goodman, were purchased by them *bona fide*, before the bonds secured by the other trust deed were sold, they would be entitled to the first lien under the recording act.

^{Our}
But, ~~one~~ trust deed was not only first delivered and first recorded, but it was expressly agreed by both parties, when the trust deeds were made, that our trust deed ^{should} be the first lien (see testimony of R. K. Swift). This testimony was admissible. 2 Barb. Ch. 441.

" Although two mortgages upon the same premises bear the same date, and are acknowledged at the same time, if it appears that it was the agreement and intention of all parties that one of the mortgages should

(3)

“ have a preference over the other, so as to be a prior lien upon the premises, the law, for the purpose of carrying into effect that intention, presumes that the mortgage which was intended to be preferred, was delivered first.”

Jones vs. Phelps, 2 Barb. Ch. R. 441.

3 Barb. Sup. Ct. R. 652.

In this case we do not rely upon any presumption, but upon an express agreement, and upon the fact that that agreement was carried out. Our trust deed was actually first recorded. We, therefore, think the decree below should be affirmed.

E. & A. VAN BUREN,

Attorneys for defendants, Chambers, Kline & Goodman.

100 218
Supreme Court
Grant Goodrich
Garry Chamber
et al. Appellus
vs

Benjamin F. Brookfield
et al Appellants
vs
Appellus jointi

Filed May 18 1863

DeLancey CR

Ex A Van Buren
Atty for Appellants

In the Supreme Court of Illinois
Third Grand Division
April Term AD 1863

Benjamin F Brookfield et al }
Appellants }
vs } Appeal from Cook
Grant Goodrich et al }
Appellees }

In addition to the brief herein filed on the part of Appellants, we will here notice the principal facts in the case as admitted by the answer of Grant Goodrich, the trustee, and established by the deeds of trust, bonds and other evidence

(1) On the first of March 1856, McCaffrey being indebted in the sum of fourteen thousand dollars to R K Swift, Brother and Johnson, for the purpose of securing the payment thereof executed his twenty-one bonds, numbered from one to twenty-one consecutively, those numbered from one to seven inclusive being each for one thousand dollars and all of the other fourteen being for five hundred dollars each; all of date the first day of March 1856, and payable five years after date with ten per cent interest semi-annually, to the said R K Swift Brother and John Son or their assigns

For the purpose of further securing the payment of the said bonds, McCaffrey executed two trust deeds, at the same time, conveying the same land, bearing date the same day with each other and also with all of said bonds, ac-

knownedged at the same time and before the same officer, both covenanted against prior incumbrances, and delivered them at the same time to Grant Goodrich, the trustee therein named.

These deeds were delivered to the Recorder on the same day, at the same time, and recorded on the same day, in the same book on consecutive pages, no other paper intervening on the record between them.

Up to, and for a number of weeks after, such recording, all the bonds continued to be owned by R. K. Swift, Brother and Johnson, the payees.

There is not the slightest evidence in the case tending to prove that any of the complainants, who became purchasers of some of the five hundred dollar bonds, had any notice whatever, in regard to the real character of this whole transaction, different from, or other than, that on the face of the deeds as recorded as aforesaid, except that of R. K. Swift (the competency of whose testimony herein is denied) testifies, he "thinks," but is not certain, he told Carpenter that the \$500 bond he bought was a second mortgage bond. This testimony, if competent, is too loose and uncertain to establish such notice as against Carpenter.

The foregoing is believed to be an accurate, full and fair statement of all the facts established which can have a bearing on the hearing in this case, or at least all that it is necessary to consider in deciding the case.

1) Now we hold it to be manifest that the legal effect of this whole arrangement, prior and up to the sale of the first of said bonds sold, was

precisely the same, as if there had been but one trust deed, given to secure all of the said bonds, thus numbered consecutively, and due at the same time

(3) As there was no notice to Complainants (who own some of the \$500⁰⁰) previous to or at the time of their purchase thereof, of this transaction or any part of it, except such as the face of the deeds of trust as recorded as aforesaid gave to them, it is therefore also manifest that any private arrangement or understanding between R. K. Swift or the firm of R. K. Swift, Brother & Johnson and McCaffy, or any unexecuted mere intention of said R. K. Swift as to which of said deeds he intended to have recorded first, or to become a first lien, is not competent evidence against the Complainants, in the absence of proof that they had notice thereof, and cannot be legitimately used to prejudice their rights herein.

(4) The only object of the Statute, in providing for the recording of the conveyances, so far as concerns the question in this case, was to thus give legal notice to all parties who might become interested in the property affected by the conveyance recorded, of the existence and contents of such conveyance. Hence this Honorable Court has repeatedly decided, and for plainly sound reasons, that actual notice of the existence and contents of an unrecorded conveyance, as effectually binds and concludes the party receiving such notice as if the conveyance were actually recorded. Hence also the notice given in this case by the delivery and filing for record and recording of the two

deeds, in the manner that such delivery, filing and recording are proved to have been made, had necessarily precisely the same effect, so far as giving notice to the Appellants of the existence & contents of either or both of said deeds is concerned, as if they had been both and each handed to and read by the Appellants precisely in the order of time as they were both and each handed to and recorded by the recorder, according to the evidence. In each case, the existence and contents of both deeds are known ^{very} nearly at the same moment of time, (if not actually at precisely the same moment, yet before the party thus obtaining such knowledge, can deal concerning the property affected by either deed, in ignorance of the existence or contents of either. And hence it is also manifest that neither the manner nor the time of the delivery, filing and recording of the said deeds as proved in this case, can, as against the Appellants, give a priority of lien in favor of the said \$1000⁰⁰ bonds.

(5) Nor did the order of alienation of said bonds give a corresponding priority of lien; even the Appellees cannot claim such a priority; for such claim would be directly contrary to the position they assume as the real foundation of their alleged priority of lien, to wit, that the deed covering the \$1000⁰⁰ bonds, was in fact a first mortgage and prior lien to the other deed; for if the order of alienation governed as to priority of liens, and if part of the \$500 bonds had been sold before any of the \$1000⁰⁰ bonds, then the latter would be post-mortgaged to the former.

(6) If, as we have assumed, the whole transaction as evidenced by the face of the papers and established legitimately in this case, prior and up to the time when the first bonds were sold by the payees, was precisely the same in legal effect as if all of said bonds had been secured by one and the same deed of trust; then so far as the purchasers of said bonds who have no other notice than the face of the bonds and the said two deeds, are concerned, the said two deeds taken together have the same legal effect, as a common railroad mortgage has, in which all the bonds are made payable at the same time. Under such a mortgage a subsequent purchaser is as fully secured by the lien as any prior purchaser. The face of the mortgage controls the case and protects all interested in the bonds equally. On the other hand, when a mortgage is given to secure different notes, some of which become due before the others; the legal effect is the same as if there were as many different mortgages, of different dates and all recorded according to their priority of dates, as there are notes maturing at different periods: and hence a subsequent sale of the note first due, in such a case, does not affect the priority of lien in favor of the said ^{note} first due. This principle has been repeatedly recognized by this Honorable Court. Hence it is also manifest that the fact of the purchase of the \$500. bonds owned by Appellants was made subsequently to the sale of the \$1000⁰⁰ bonds, ^(if such fact were fully proved by competent testimony which is desired) cannot give the owners of the \$1000⁰⁰ any priority of lien over the Complainants \$500⁰⁰ bonds.

(7) There being no notice given to Appellants, other than the face of the deeds as recorded, and those deeds being identically the same in all respects, except as to the number of the bonds covered thereby, and the bonds being numbered from one to twenty-one consecutively, and all due at the same time, and neither deed giving on its face any prior lien to any of the bonds; the appellants were justified by the law and the facts within their knowledge, in concluding that there was no intention to give any ^{such} priority of lien in favor of any of the bonds, and they should be protected accordingly.

(8) It was manifestly inequitable and unconscionable in the court below, under all the circumstances of this case, to decree, in effect, as it did, that the Appellants should have no part of the Common Security applied for their benefit, until all of the \$1000⁰⁰ bonds should be first satisfied therefrom - and therefore the said decree ought to be reversed.

(9) We may state here that as a matter of fact that there is no evidence in the case, proving which one of the deeds was first delivered to the recorder
Walker & Thomas
Solicitors for Appellants

109 11 18

Brookfield et al

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Goodrich et al

Argument for the
Appellants

Filed May 9, 1863

J. J. L. Cabot
MR

I.

The fact that the trust deed, given to secure the \$1000 bonds, appears first in order upon the record, cannot affect this case. Deeds take precedence not from the *order* of record, but from the time they are delivered to the recorder for record.

Scates Stat. 969. 1 Gil. 579.

II.

There being no question as to notice, there being the same trustee and same *cestui que trust*, the recording acts have no bearing here as to the original relation of the trust deeds to each other.

2 Barb. Chy. 440.
3 Atk. 646.
1 Sch. & Lef. 90.

“Where two mortgages are recorded at same time, and each mortgagee is cognisant of the giving of the other, the recording acts have no application *as to the question of priority.*”

2 Barb. Chy. 440. 1 Clark Chy. 567.

To the same effect,—

16 Ill. 453.

The sole object and effect of the recording acts being to protect subsequent purchasers and incumbrancers (without notice) against previous deeds, liens, &c., not recorded.

23 Barb. 88. 2 Barb. 151.
6 do 346. 25 Ills. 67.
Willard Equity, 253. 23 do 516.

“Where a trustee took two mortgages on the same property at the same time for different ‘*cestui que trusts*,’ the accidental recording of the one before the other gives it no priority. It is only a subsequent mortgage whose mortgage obtains priority by being first recorded.”

Paige Chy. Reports, p. 545.

“It is a common maxim that he who has precedence in time has the advantage in right, not that time considered barely in itself can make

such difference, but because the whole power over a thing being secured to one person, this bars all others from obtaining a title to it afterwards."

Foublanque's Equity, 320.

III.

The trustee and the *cestui que trust* in both deeds being the same person, priority depends upon the date of actual execution. There is *no legal priority* here.

"At common law every deed took place according to the priority of its date or delivery."

2 Greenleaf's Cruise, 545.
Adams' Equity, 145.

The date and delivery of these deeds being one and the same, they took effect at the same instant of time and are of equal right.

IV.

There is no equitable priority.

"If there be several equal equitable interests affecting the same estate, they will attach upon it according to the periods at which they commence."

Foublanque's Equity, 320.
2 Johnson's Chy. 603.

"The rule of priority which governs transfers and charges of a legal estate, govern also, in the absence of a special equity, transfers and charges of an equitable interest."

Adams' Equity, 148.
Crabb's Law of Real Property, 884.

In this case the parties are incumbrancers under trust deeds made to *same trustee*; made, acknowledged and delivered *at the same instant of time*; recorded *upon the same day* and at same time; given to secure *one entire* indebtedness (not two distinct loans) represented by bonds numbered from *one to twenty-one* consecutively. How can it be claimed that there is a special equity—an equitable priority in favor of deed se-

curing the \$1,000 bonds, *unless notice of such priority is proven to have been brought home to the complainants?*

These complainants bought in good faith—are *innocent purchasers* for value, and had no notice of any priority of the other deed. They had notice of the other deed as the record is notice of contemporaneous liens, (17 Wend. p. 30;) but the evidence is clear that no other notice was given to any of them, (except perhaps Carpenter).

V.

Swift's testimony as to the intention of himself and McCaffrey is inadmissible to vary the deeds.

3 Starkie's Ev. 759.
3 Sand. 7.
1 H. B. Rep. 657.
1 Wend. 424.
8 Barb. 396.

Intention is merged in the deeds and the deeds are *the only* evidence.

3 Starkie's Ev. 761.
1 Hill, 17.
3 Scam. 566.
13 Ill. 133.
17 Ill. 570.

The evidence of Wait was hypothetical, and in fact proved nothing,—it was not the best evidence.

Whether Swift's evidence is or is not admissible, no notice is shown that complainants had any notice as to the intention of the parties to the deeds or of the recognition of priority by McCaffrey, and as between the incumbrancers under the evidence, the deeds alone must govern.

M. F. TULEY,
Att'y for Appellant.

104 218

Brookfield

vs 3

Goodrich

Appellants points
W F Tuley

Filed May 6th 1863

J. DeLanoy
cm

W. F. ALLEY

IN THE
Supreme Court of the State of Illinois,
THIRD GRAND DIVISION,
APRIL TERM, A. D. 1863.

BENJAMIN F. BROOKFIELD *et al.*,
Appellants,
versus
GRANT GOODRICH *et al.*,
Appellees. } *Appeal from Cook.*

POINTS FOR APPELLANTS.

I.

Swift's testimony as to conversation with Mr. Coffey was inadmissible.

I. Because it was merged in the written contract.

Starkie Ev. 666.

8 Mo. 391; 7 Paige, 137; 5 Barr. 183.

11 Humph. 242.

II. Evidence of intention inadmissible to vary deed.

6 Mete. 398; 13 Pick. 124; 10 Pick. 279.

A contract under seal must be tested by itself alone.

1 A. K. M. 103; 8 Cl. & F. 244; 4 Russ. 154.

17 Ill. 570; 1 Bing. 452.

7 T. R. 676, 222, 423.

III. No notice of said conversations or their results is brought to any one of complainants.

II.

Wait's testimony was inadmissible.

- I. Better evidence existed as to the facts attempted to be shown, viz. : Thieleke's testimony.
- II. It was not positive, but hypothetical.

III.

There was no priority in fact between the deeds of trust.

- I. Excluding Swift's statements as to intention, the court knows only that the consideration for the two deeds was one and entire; that both were made, acknowledged, delivered and recorded simultaneously; that the bonds are numbered 1 to 21 consecutively, and therefore that the whole transaction is a unit.

20 Barb. S. C. 429.
1 Phil. Ev. 644.

- II. The agreed rule of priority is, that the order of date prevails, and two instruments dated the same day, create *prima facie* co-equal liens.
Adams' Equity, 145.

- III. Swift's statements as to *intention*, do not alter rights arising from the *facts* and *papers*, especially as against subsequent innocent purchasers. (The papers were prepared under the *supervision* of one of the payees, and therefore there can be no claim of accident or mistake, even if that were material). "An agreement cannot rest partly in writing under seal and partly in parol."
3 Gilm. 463.

- IV. The *cestuis que trust* in each deed were the same. How could they have priority over themselves?

IV.

No priority was created between the deeds by the *order* of record.

- I. Deeds take effect from the *time* they are *delivered* to the recorder or record.
1 Gilm. 579.

Rosenthal's statements to Swift, if receivable, show they were both delivered on the same occasion. Rosenthal himself does not remember delivering them. If he did deliver them, he could not have contemplated creating any priority by any directions he gave, for he himself thought there was no priority, and so advised defendant Metzger. Thielcke, who received the deeds, was not produced. Wait's testimony shows that if two deeds were simultaneously delivered, without directions, he would "*first* record the one he *first* came at." The court, therefore, only knows they were delivered on the *same day*, and recorded in *immediate succession*.

II. Fractions of a day are not to be regarded.

11 Johns. 230; 8 Johns. 347.

The statute requires the recorder to preserve only *the day, not the hour*, when the deed is left for record. Rev. Stat. 432, ch. 27, sec. 7.

Any *other* record by him, therefore, would be extra official, and without weight. The order of record is intended to show nothing, but the successive *days* of record.

III. The recording acts have no bearing here as *varying* the original *relation* of the deeds to each other. They operate by way of estoppel in favor of rights in fact subsequent, but obtained without notice of prior claims, but never change the relative position of two parties entered into with mutual notice of each other's rights.

2 Barber Ch. R. 440; 16 Ill. 453.

Of course there could be no question of mutual notice, when both incumbrances were to the same trustee and for the same *cestuis que trust*.

V.

No priority was created between the purchasers of the bonds by reason of the order of record.

I. The record is notice of all *prior or contemporaneous liens*, though *subsequently recorded*.

15 Wend. 595; 17 Wend. 30.

Priority then becomes dependent on *actual* notice to the party who held the claim, when the prior incumbrance was *first recorded*.

II. The record here showed that the trustee and *cestuique trust* in both deeds were identical, and therefore that *priority* depended on date of actual *execution, not of record*.

III. The record showed the successive numeration of the bonds, and the covenant in each deed against prior incumbrances. (See *post*, VIII.)
Adams' Equity, 152; 9 Sim. 196.
10 Sim. 9; 2 M. & K. 517.

V I.

No priority was effected by the order of assignment of the bonds. The parties received such rights as before existed under the trust deeds, no more. Were it otherwise, the purchasers of the *different bonds* under the *same deed*, might claim priority among themselves, but this court has expressly decided the contrary.

V I I.

No priority was created by any representations of Swift.

I. This is a question of *legal rights*, under the instruments produced. Defendants have no superior equities over us. Verbal statements cannot alter existing or create new rights under a sealed instrument.

17 S. & R. 402; 34 Penn. Stat. 156.

II. The estoppel, if any were created, was against *Swift alone*, and would not extend to a purchaser, who *knew nothing* of such *representations*, nor even of *the sale* of the *other bonds*.

III. One, at least, of the complainants (Metzger), bought upon a statement that the \$500 bonds were first mortgage, as Rosenthal testifies. And no one of the complainants is shown to have been told the contrary, (except, perhaps, Carpenter.)

VIII.

The trustee is estopped by the terms of the instruments accepted by him, from setting up a priority in favor of either set of bondholders.

I. The words "unless as hereinafter specified," in the deed, now claimed to be second in right, which were inserted in the printed blank, (see original paper on file, marked Exhibit 2), were obliterated, thus ignoring any prior incumbrance.

2 Crompt. & M. 539; 2 Starkie R. 47; 7 Taunt. 159.

II. Said deed which was accepted by the trustee, at the same time with the other, now claimed to be prior, contained an *express cover and against prior incumbrances*, and therefore the whole two deeds taken together amounted to an express contract that neither should have priority.

8 Mo. 394; 7 M. G. & S. 338; 3 Gilm. 178.
11 Ill. 240; 2 Vernon, 370; 1 P. Wms. 393.
Com. Dig. "Estoppel" a; Co. Litt. 352 a.

IX.

Trustee had no authority to sell without first *entering on the land*.

7 Gray, 244; 11 Metc. 99.

WALKER & THOMAS,
Solicitors for Appellants.

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Book
as
Goodrich

Pomits

Filed Apr 24, 1863
Iceland
C.M.

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Plas, before the Honorable George Maniere Judge of the Seventh
Judicial Circuit of the State of Illinois, and ~~said~~ presiding Judge of the Circuit Court of
Cook County, in the State aforesaid, and at a term thereof begun and held at the Court House
in the City of Chicago, in said County, on the 10th Monday, (being the
Tenth day) of June in the year
of our Lord One Thousand Eight Hundred and Sixty One and of the
Independence of the said United States the Eighty

Present, Honorable George Maniere Judge of the 7th Judicial Circuit }
of the State of Illinois. }

Joseph R. Marshall States Attorney.

William L. Church Sheriff of Cook County.

Attest, William L. Church Clerk.

Be it remembered that heretofore to-wit on the 10th
day of December in the year of our Lord One thou
said eight hundred and sixty one there was filed
in said Court a certain Bill of Complaint & Bond
for Injunction which are respectively in the words
and figures following to-wit Bill of Complaint
State of Illinois, In the Circuit Court of
Cook County, Cook County, In Chancery,
To the Honorable George Maniere
Judge of the said Court in Chancery sitting,
Humbly complaining shew unto your Honor your
Orators Benjamin F. Brookfield, Job Carpenter,
Henry Oppenheimer and Isaac Metzger partners
under the name of Oppenheimer & Metzger, Charles
G. Smith and Charles Letz, that heretofore to-wit on

the first day of March A D 1856, one John M. Coffey
 borrowed of Richard R. Smith, Lyman P. Smith & James
 S. Johnston then doing business in the City of Chicago
 under their firm name of R. R. Smith Bro & Johnston
 the sum of Fourteen thousand dollars and for securing
 the repayment thereof made, executed and delivered to
 the said R. R. Smith Bro & Johnston his twenty
 one several bonds numbered respectively from One
 to Twenty one inclusive all bearing date on said
 first day of March A D 1856 and all payable to
 the said R. R. Smith Bro & Johnston their ~~heirs~~, ex-
 ecutors administrators or assigns, Five years after
 their said date with interest at the rate of ten
 per cent per annum on the principal sum in each
 of said bonds mentioned payable semi-annually,
 of which said Twenty one bonds, seven, numbered
 respectively from one to seven inclusive were for
 the principal sum of, One thousand dollars each
 and the remaining fourteen numbered respectively
 from eight to Twenty one inclusive were for the
 principal sum of five hundred dollars each
 (a copy of one of which said Five hundred dollar
 Bonds is hereto annexed marked Exhibit "A" and
 with which the remainder of said bonds numbered
 from eight to Twenty one inclusive corresponded
 in all respects, except their respective numbers
 and with which the said bonds numbered from
 one to seven inclusive corresponded in all respects
 except in the amount of principal sum secured

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respectively by them and in their respective numbers) and your Orator further represent unto your Honor that at the time of executing the said above described bonds the said M^cO affey for the further securing the repayment of the said sum of ¹⁰⁰⁰Fourteen thousand dollars and interest in accordance with the tenor and effect of said bonds did make, execute and deliver to Grant Goodrich as Trustee two certain deeds of trust, each conveying to the said Trustee the following described premises viz: The South West quarter of Section Thirty one in Township Thirty eight, North of Range Fourteen, East of the Third Principal Meridian, also the West Half of the North West quarter of Section Six in Township Thirty seven, North of Range fourteen East of the Third principal Meridian, also the South fifty eight acres of the East Half of the North East quarter of Section One in Township Thirty seven, North of Range Thirteen, East of the Third principal Meridian all of said premises lying and being in Cook County in said State of Illinois - each of which said Deeds of Trust bore date on the said first day of March A D 1856, and each of said Deeds of Trust was acknowledged on the fourteenth day of said March A D 1856 before the same Notary Public and each filed for Record on the 17th day of said March A D 1856, and as your Orator are informed and believe at the same moment of said day in the Recorder's Office of Cook County

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in the State of Illinois. On and by one of which said Deeds of Trust (a copy whereof is hereto annexed marked Exhibit "B") it was provided that if the said Mc Caffery should fail to pay the seven bonds for one thousand dollars each hereinbefore first mentioned, and numbered respectively from one to seven as aforesaid or should fail to pay either of said bonds or the interest thereon or any part thereof when the same should become due, according to the tenor and effect of said bonds, that then the said Trustee might at the request of the holders of said bonds proceed to sell the said premises having first given notice of such sale as provided in said Deed of Trust to the highest bidder for cash to make the money due on said bonds (a copy whereof ^{also by the other two of said Deeds of Trust} is hereto annexed marked Exhibit "C") it was in like manner provided that if the said Mc Caffery should fail to pay the fourteen bonds for five hundred dollars each herein above mentioned and numbered respectively from eight to twenty one as aforesaid, or should fail to pay either of said bonds or the interest thereon or any part thereof when the same should become due according to the tenor and effect of said bonds, that then said Trustee might at the request of the holder of said bonds proceed to sell the said premises having first given notice of such sale as provided in said Deed of Trust to the highest bidder for cash to make

the money due on said bonds And your Orators further
shew unto your Honor that, as they are informed
and believe the whole of the interest accruing upon
all of the said twenty one bonds was promptly paid
by the said Mc Coffery up to the time when all of
said bonds fell due to-wit on the first day of March
A D 1861, Your Orators further shew unto your Honor
that they are the legal holder and owners of the fol-
lowing described bonds, secured by the said deed
of trust last mentioned each being for the sum
of Five Hundred dollars and interest as aforesaid
to-wit, Job Carpenters Bond number twelve, Oppenhei-
mer & Walzger Bond number thirteen, Charles G Smith
Bonds number fourteen & twenty, Benjamin & Brook-
field Bonds number seventeen & Eighteen and
Charles Letz Bond number nineteen and your Ora-
tors are informed & believe that the remainder of
said Five Hundred Dollar bonds are held and
owned as follows to-wit, Bonds number eight &
nine by Charles B Royce Bonds number ten & eleven
by John P Thayer, Bonds number fifteen, sixteen
& twenty one by C B Mart, Your Orators further
shew unto your Honor that they are informed and
believe that the seven One Thousand Dollar Bonds
mentioned in the first above described deed of trust
are now held and owned as follows viz: Bonds num-
ber One, Two, Three & Four by Garry Chambers
Bond number Five by John W Klines Bonds

number six and seven by Richard Goodman all of which persons above named as owners of said Bonds not complainants herein. Your Orators pray may she made parties to this bill of complaint. And your Orators further represent unto your Honor that the whole of the principal sum of the said bonds respectively held by them, is and has, since the first day of March last, been due and unpaid; and that no interest has been paid to them or either of them on said bonds since their said maturity and that by the terms of the said Deed of Trust above recited securing your Orators said bonds, Your Orators were and are entitled to require of the said Trustee that the said premises described in the said two contemporaneous deeds of trust be sold to make the amount due and unpaid upon the said twenty one bonds secured by said Deed of Trust or so much thereof as the proceeds of such sale could pay pro-rata on said bonds. Yet the said Trustee Grant Goodrich in violation of his duty in this regard combining and confederating with the above mentioned holders of the said seven One thousand dollar bonds, absolutely refused to advertise for sale the said premises under the said Deed of Trust so given to secure the said Five Hundred Dollar Bonds held by your Orators & others as aforesaid in accordance with the terms thereof or to sell the same jointly under the said two contempora-

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new Deed of Trust or to pay your Orators their proportionate share of the proceeds of such sale, or of a sale under either of said Deeds of Trust, and the said Trustee pretends that the said Deed of Trust for securing the said seven One thousand dollar Bonds was and is prior in time and right to the said Deed securing the said Bonds held by your Orators, and that he the said Trustee is bound to advertise for sale and sell the said premises under the provisions of said first mentioned Deed of Trust, and out of the proceeds of such sale to pay and discharge in full the amount due upon the said seven One thousand Dollar Bonds in exclusion of the claims of your Orators and the said Trustee has caused to be published an advertisement or notice of sale under said Deed of Trust in a daily newspaper printed in the City of Chicago (a copy of which said advertisement is hereto annexed marked exhibit 10") and he threatens to proceed under said notice forthwith to sell the said premises and out of the proceeds of such sale to pay the several amounts due on the said seven One thousand Dollar Bonds in exclusion of the claims of your Orators & of every part thereof, and your Orators are informed and believe and so charge the fact to be that the proceeds of the sale of the said premises if sold under the said first mentioned deed of trust

will not pay more than the amounts claimed to be due upon the seven bonds secured thereby, and that the said Mc Caffery is wholly insolvent and unable to pay any ^{part} of the amount due your Orators - and your Orators, ^{further} on information and believe charge the fact to be, that the said Trustee has not entered upon or taken possession of the said premises before proceeding to advertise or sell the same as by the terms of said Deed of Trust he is required to do. But your Orators expressly charge the contrary of the pretences of the said Trustee and his confederates to be true and aver that the making and delivery of the said Twenty One bonds, the lending by said Swift Brother & Folmston to said Mc Caffery of the said sum of fourteen thousand dollars and the making acknowledging and recording of the said Two Deeds of Trust for the securing of the repayment of the said sum of Fourteen thousand dollars mentioned in said bonds were and composed one single and entire transaction and that no priority in time or right was given to either of said bonds or Deeds of Trust over the other and as evidence of the entirety of the said transaction and of the intention of the parties thereto, your Orators charge and aver, that in the said Deed of Trust ^{so given} ~~signed~~ by the said Mc Caffery and accepted by the said Trustee for the securing of the said five Hundred Dollar bonds so held by your

Orators and others as aforesaid there was & is contained
an express covenant by the said W Baffery that the
said premises at the date of the execution of said
Deed were free and clear from all former grants
deeds and incumbrances, all which more fully appears
by reference to the said copy of said Deed of Trust
hereto annexed marked Exhibit "b" and they set
up the acceptance of said Deed of Trust with said
covenants against incumbrances by way of estoppel
against the said false and wrongful pretenses
of the said Trustee. Wherefore for as much as your
Orators are remediless in the premises by the strict
rules of the common law, and can have adequate
relief only in a Court of equity to the end there-
fore that the said Grant Goodrich, John Mc
Baffery Gary Chamber, John W Kline, Richard
Goodman Charles B Royce, John J Thayer, G. B.
Wart Richard R Swift, Lyman P Swift and
James S Johnston may true full and perfect
answers make without oath, the oath of each of
them being hereby waived pursuant to the statute
to all the matters and things herein stated and
charged and that the said Grant Goodrich may
be strictly enjoined and restrained from pro-
ceeding to sell the said premises in accordance
with his said notice of sale or from selling
or advertising to sell the under the said first
mentioned Deed of Trust alone, or for the exclu^{ans}

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benefit of the holders of the sum One thousand dollar
Bonds therein mentioned and that the said Goodrich
may by decree of this Court be compelled to proceed
to give notice and sell the said premises in accord-
ance with the terms of and for the joint benefit of
the holders of all the bonds mentioned in the said
two Deeds of Trust and out of the proceeds of such
sale to pay to such bond holders, the whole amount
generally due them provided the proceeds of such
sale shall be sufficient and if not sufficient
then to pay the same pro rata in accordance
with the several amounts due to each and
that your Orator may have such further or such
other relief as the nature of this case may require.
May it please your Honor to grant unto your Or-
ator the writ of injunction issuing out of and
under the seal of this Court directed to the said
Grant Goodrich his agents and attorneys command-
ing them and each of them absolutely to refrain
and desist from proceeding with the sale
of the said premises under the said notice of
sale or under the said first mentioned Deed of
Trust or from advertising or offering the said
premises for sale or otherwise in any manner
proceeding under the said Deed of Trust and
also the People's writ of summons directed to
the said Grant Goodrich, John Mc Caffery
Garry Chambers, John Mc Rhine Richard

Goodman Charles B Royce John J Thayer, G B Hart
Richard K Swift, Lyman P Swift, and James J
Johnston commanding them and each of them upon a
certain day and under a certain penalty therein to be
inserted to appear in this Honorable Court and answer
the premises and to stand to abide by such fur-
ther order & decree as this Court may see fit to make,
and your Orators will ever pray &c

Morris & Thomas
Compts. Sals.

B F Brookfield
Job Carpenter
Henry Oppenheimer
Frank Metzger
Charles G Smith
Charles Letz

State of Illinois }
Cook County }
City of Chicago } Benjamin F Brookfield of said
County being duly sworn says he has heard the
foregoing bill read and knows the ^{contents} ~~substance~~
thereof and that the matters and things therein stated
are by him known to be true except those stated
on information and belief and as to them he
believes them to be true

B F Brookfield
Subscribed & sworn to before
me this 10th day of December
A D 1861 Jesse B Thomas
Notary Public

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Let the writ of Injunction in conformity with the prayer
in the above and foregoing Bill of Complaint the
Complainant filing a Bond in the penalty of One
thousand dollars with Job Carpenter as surety
To the Clerk of the Circuit } George Manierre
Court Cook Co } Judge of the 2nd Judicial
Circuit Ills.

Exhibit "A" referred to in foregoing bill
\$500. United States of America No Seventeen,
State of Illinois

Know all men by these presents that John Mc Caffery
of the City of Chicago in the County of Cook and
State of Illinois is held and firmly bound unto R R
Smith Brothers & Johnston of the City of Chicago
in the County of Cook and State of Illinois in the
penal sum of One thousand Dollars to be paid unto
the said R R Smith Brothers & Johnston their exec-
-utors and administrators and assigns for which
payment well and truly to be made he binds him-
self his heirs executors and administrators firmly
by these presents, signed dated and delivered at
Chicago in the State of Illinois the first day of
March A D 1856; The condition of this obligation
is such that whereas the above bounden John Mc
Caffery is justly indebted unto the above named
R R Smith Brothers & Johnston in the principal
sum of five hundred dollars for so much money
actually loaned by the said R R Smith Brothers

of Johnston to the said John Mc Coffery at Chicago
in the State of Illinois which sum is agreed to be
paid by the said John Mc Coffery to the said
R R Swift Brothers & Johnston their executors, admin-
istrators or assigns five years from the first day
of March A D 1856, which will be on the first
day of March A D 1861 at the Banking House
of the firm of Swift Ransom & Co in the City of New
York, or the successors of said firm or at the
Merchants Bank in said City of New York, in case
said firm and successors should cease with ten
per cent interest per annum for the same to be com-
puted from the first day of March A D 1856 and
which interest shall be paid semi annually viz:
On the first day of ~~and another first day~~
of ~~and~~ and on the first day of September in each
and every year until the said principal sum
is fully paid and which said interest payments
(until said principal sum shall become due)
are specified in and further secured by Ten Cou-
pons of even date herewith signed by the said
John Mc Coffery and numbered in succession from
No one to No ten inclusive, and all made payable
to the order of said R R Swift Brothers & John-
ston at the Banking House of the firm of Swift
Ransom & Co in the City of New York or the suc-
cessors of said firm, or at the Merchants Bank
in said City of New York in case said firm

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and successions should cease, Nor if the above
bonded John Mc Caffery his heirs executors or
administrators shall well and truly pay to the
said R R Swift Brothers & Johnston their executors
administrators or assigns the said principal sum
of money and the said installments of interest at
the time and time and at the place aforesaid then
and in that case this obligation to be void oth-
erwise to remain in full force and virtue, Provided
nevertheless, and it is hereby expressly agreed and
fully understood that if default be made in
the payment of any of the interest on the said prin-
cipal sum as aforesaid and any portion thereof
shall remain due and unpaid for the space of thirty
days after the same shall become due and pay-
able according to the above recital and con-
dition, then and in that case the said principal
sum together with all arrearages of interest thereon
shall at the option of R R Swift Brothers & John-
ston their executors administrators or assigns
become due and payable and may be
demanded immediately or at any time within
Ninety days after any such default anything
heretofore contained to the contrary notwithstanding.
This Bond is one of several of the
same date and tenor herewith numbered in
succession from No eight to No twenty one
inclusive which amount in all to the sum

Seven thousand dollars secured by a certain Deed
of Trust of even date herewith made by said
John Mc Caffery Bachelor, to Grant Goodrich
of Chicago for the use of Richard R Swift
Lyman P Swift and James S Johnston of the firm
of R R Swift Brother and Johnston their heirs
executors administrators and assigns which will
appear on record in the Recorder's Office of Cook
County of aforesaid

(Signed)

John Mc Caffery (Seal)

Exhibit "K" referred to in foregoing bill,
Trustee's Sale, Whereas, John Mc Caffery of the City
of Chicago, did on the first day of March A D 1856
execute and deliver to the undersigned a certain
Deed of Trust to secure the payment of seven bonds
for the payment of one thousand dollars each with
interest thereon at ten per cent per annum pay-
able semi annually, which bonds were made paya-
ble to the order of Swift Brother & Johnston in
five years from the date thereof, which said
Deed of Trust was recorded in the Office of the
Recorder of the County of Cook and State of Illinois
on the seventeenth day of March A D 1856 in book
103 of deeds at page 95, And whereas default
has been made in the payment of said principal
and interest thereon I shall at the request of
the holders of said bonds, sell at the North

door of the Court House in the City of Chicago and State of Illinois to the highest bidder for cash at ten o'clock A.M. on ^{the} Tuesday the 10th day of December in distinct parcels the premises in said Deed of Trust described to-wit: The South West quarter of Section thirty one (31) in Township thirty eight (38) North of Range fourteen, East of the third principal meridian, Also the West half of the North West quarter of Section six (6) in Township thirty seven (37) North of Range fourteen East of the third principal Meridian, Also, the South fifty eight (58) acres of the East half of the North East quarter of Section one (1) in Township thirty seven (37) North of Range thirteen east of the third principal meridian to the highest bidder for cash to make the money due on said bonds according to the conditions thereof and the provisions and in pursuance of the power in said deed conferred and to me given

Grant Goodrich Trustee

Djunction Bond: Know all men by these presents that me Benjamin F. Brookfield and Job Carpenter are held and firmly bound unto Grant Goodrich in the penal sum of One thousand dollars lawful money of the United States for the payment of which said sum well and

truly to be made me bind ourselves our heirs, ex-
ecutors and administrators jointly and severally,
by these presents, Sealed with our seals and
dated this 10th day of December A. D. 1861. The
condition of this obligation is such, That, whereas
the above bounden Benjamin F. Brookfield has on
the day of the date hereof prayed an injunction
out of the Cook County Circuit Court to re-
strain the said Grant Goodrich from proceeding
to sell certain real estate under a certain Decree
of Trust in said Brookfield's bill of Complaint
mentioned. Now if the said Benjamin F. Brookfield
shall well and truly pay and satisfy all such
costs and damages as shall be awarded against
him in case the said injunction shall be dis-
solved then the above obligation to be void other-
wise to remain in full force and effect.

Benjamin F. Brookfield Seal
Job Carpenter Seal

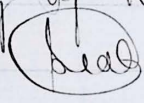
And thereupon to-wit on the said 10th day of
December in the year last aforesaid there was
issued out of and under the seal of said Court
the Peoples writ of Injunction directed to the Sher-
iff of said County to execute which is in the
words and figures following to-wit.

State of Illinois
 County of Cook) The people of the State of Illinois
 To

Grant Goodrich and to your Attorney Solicitors
 agents and servants and to each and every of them
 greeting: Whereas it hath been represented to
 the Honorable George Manierre, Judge of the sev-
 enth Judicial Circuit of the State of Illinois and
 sole presiding Judge of the Circuit Court of Cook
 County in said Circuit and State aforesaid on
 the part of Benjamin F. Brookfield Job Carpenter
 Henry Oppenheimer, Isaac Metzger Charles G.
 Smith & Charles Setz, Complainants in their certain
 Bill of Complaint exhibited before said Judge and
 filed in said Court against you the said Grant
 Goodrich, John Mc Caffery, Garry Chambers
 John W. Kline, Richard Goodman Charles
 R. Royce, John P. Thayer, W. B. Hart, Richard
 R. Swift, Lyman P. Swift and James S. Johnston
 to be relieved touching the matters therein
 complained of In which said bill it is
 stated among other things that you are con-
 spiring and confederating with others to injure
 the Complainant touching the matters set forth
 in the said bill and that your acting and
 doings in the premises are contrary to equity
 and good conscience and the said Judge hav-
 ing under his hand endorsed upon said bill

an order that a writ of Injunction issue out of said Court according to the prayer of said bill. We therefore, in consideration thereof and of the particular matters ^{in said bill} set forth do strictly command you the said Grant Goodrich and the persons before mentioned and each and every of you that you do absolutely desist and refrain from proceeding with the sale of the South West quarter of Section thirty one in Township thirty eight, North of Range fourteen East of the third principal Meridian. Also the West half of the North West quarter of Section Six in Township thirty seven, North of Range fourteen, East of the third principal Meridian, Also the South fifty eight acres of the East Half of the North East quarter of Section One in Township thirty seven North of Range fifteen East of the third principal Meridian. All of said premises lying and being in Cook County Illinois & described in the bill of Complaint filed in said Cause under the notice of Sale or under the first mentioned Trust Deed in said bill of Complaint described, or from advertising or offering said premises for sale or otherwise in any manner proceeding under the said Deed of Trust until this Honorable Court in Chancery sitting shall make other order to the contrary. Hereof fail not under the penalty of what the law directs.

To the Sheriff of said County to execute and re-
turn in the due form of law

Witness, William L
Church Clerk of said ^{Circuit} Court and the seal
thereof at Chicago in said County this
tenth day of December A D 1861
 Wm L Church
Clerk

And thereupon to-wit, On the said tenth day of
December in the year last aforesaid there
was issued of and under the Seal of said Court
the Peoples writ of Summons directed to the
Sheriff of said County to execute which is
in the words and figures following to-wit
State of Illinois }
County of Cook } The people of the State of Illi-
nois to the Sheriff of said County - greeting:
We command you that you summon Grant
Goodrich, John McCaffery, Garry Chambers
John McKline, Richard Goodman, Charles B
Rayce, John D Thayer, C B Hart, Richard R
Swift, Lyman P Swift and James S Johnston
if they shall be found in your County person-
ally to appear before the Circuit Court of
Cook County on the first day of the next term
thereof to be holden at the Court House in
Chicago in said County of Cook on the

first Monday of January next to answer unto
 Benjamin F. Brookfield, Job Carpenter, Henry
 Oppenheimer and Isaac Meitzger partners under
 the name of Oppenheimer and Meitzger, Charles G. Smith
 and Charles Lutz in their certain bill of Complaint
 filed in said Court on the Chancery side thereof
 And have you then and there this writ with an
 endorsement thereon in what manner you shall
 have executed the same, Witness William L
 Church Clerk of our said Court and seal there-
 of at Chicago aforesaid this Tenth day of
 December A D 1861

(Seal)

Wm L Church
 Clerk

And afterwards to-wit. On the 10th day of Decem-
 ber in the year last aforesaid the said Sheriff
 returned into said Court the said writ of In-
 junction endorsed as follows to-wit

Injunction Writ! Served this writ on the within
 named by delivering a true thereof to him the
 10th day of December 1861

Fees. 1 Service	\$ 50
1 Copy	50
1 Mesage	5
Return	10
	<hr/>
	\$ 1.15

Paid by Plaintiff Atty Anthony C Waring Sheriff
 By J. Banning Depty

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And afterwards to-wit On the fourth day of Janry
in the year Eighteen hundred and sixty two the
said Sheriff returned into the said Court the
said writ of Summons endorsed as follows to-
wit. Served this writ on the within named Richard
R Smith by delivering a copy thereof to him
the 4th day of Janry 1862 the others not found

Fees	Service	\$ 50
	Copy	50
	Writ	10
	Return	10
		<hr/>
		\$ 120

Anthony C. Wising Sheriff
paid by Plaintiffs Atty. By A. Bruning Deputy

And afterwards to-wit On the 31st day of January
in the year of our Lord One thousand eight hun-
dred and sixty two the said defendants Garry
Chambers, John W. Rline & Richard Goodman
filed in said Court this certain answer which is
in words and figures following to-wit:
On the Cook County Circuit Court

In Chauary
The joint & several answers of Garry Chambers John
W. Rline & Richard Goodman defendants to the
Bill of Complaint of Buyaman & Brookfield
Job Carpenter, Henry Oppenheimer, Isaac B. ...

Charles G. Smith and Charles Letz complainants,
These defendants now and at all times hereafter
saying & reserving to themselves all manner of ben-
efit & advantage of exception to the many errors
and insufficiencies in the Complainants said Bill
of Complaint contained for answer therein to
or unto so much of such parts thereof as these
defendants are advised is material for them
to make answer unto they answer & say.

They have no knowledge, information, or belief
save by the Bill of Complaint as to whether said
John Mc Caffery did or did not on the first
day of March 1856 or at any other time
borrow of Richard R. Swift Lyman P. Swift &
James S. Johnston or any or either of them the
sum of fourteen thousand dollars or any
other sum, they therefore leave the complain-
ants to prove the same. These defendants further
answering say upon this information that
they deny that for the purpose of securing the
sum of fourteen thousand dollars, the said
John Mc Caffery did execute & deliver to R. R.
Swift Bro & Johnston his twenty one several
Bonds except as hereinafter stated. And these
defendants further answering say they deny
that the said Mc Caffery for the further
securing of the repayment of the said
sum of fourteen thousand dollars & interest

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made executed & delivered to Orant Goodrich as trustee thro deeds of Trust as alledged in said Bill of Complaint or otherwise except as herein after stated to wit. They admit that on the first day of March 1856 the said John Mc Caffery did in consideration of Seven thousand dollars paid to him by said R R Swift Bro & Johnston, or for some other good & valuable consideration paid to him by said R R Swift Bro & Johnston make, execute & deliver to said R R Swift Bro & Johnston seven several Bonds conditioned for the payment of one thousand dollars each numbered respectively from one to seven inclusive payable to the order of R R Swift Bro & Johnston five years after date with interest semi annually at ten per cent per annum, they admit that the interest has been paid upon the same up to the first of March 1861. These defendants further answering say that for the purpose of securing the payments of monies mentioned in the condition of said Bonds at the time & in the manner therein specified the said John Mc Caffery did on the first day of March 1856 make execute & deliver to Orant Goodrich a certain deed of trust conveying to said Goodrich the following premises to wit: The South West quarter of

Section thirty one in Township thirty eight North
of Range fourteen East of the third principal
Meridian containing one hundred & sixty acres
Also the West half of the North West quarter of
Section Six in Township thirty seven North of
Range fourteen East of the third principal merid-
ian containing eighty acres, Also the South
fifty eight acres of the East half of the North East
quarter of Section one in Township thirty seven
North of Range thirteen East of the third prin-
cipal meridian which said deed was ^{duly} acknowl-
edged on the fourteenth day of March 1856 and
recorded on the sixteenth day of the same
Month in the Recorder's Office of Cook County
And these defendants further answering say it was
provided in & by said deed that if the said Mc-
Caffery should fail to pay said Bonds mention-
ed & referred to in said Deed or should fail
to make payment of any interest on the prin-
cipal of said Bonds & the same should
remain due & unpaid for thirty days after
the same should become due & payable as
aforesaid then the said principal sum
and all arrearages of interest should at
the option of said R R Swift Bro & Johnston
or their assigns become due and paya-
ble immediately or at any time within three
months after such default.

And these defendants further answering say they have been informed & believe that afterwards the said Mc Caffery made executed & delivered to said R R Swift Bro & Johnston fourteen other bonds conditioned to pay five hundred dollars each and which were numbered from eight to twenty one inclusive and which also bear date the first day of March 1856 and made executed & delivered to Great-Goodrich another Trust Deed upon the premises described in said Bill of Complaint to secure the payment of the said last mentioned Bonds which said Deed was also recorded in the Recorder's Office of Cook County, but was so recorded after the Trust Deed hereinbefore mentioned given to secure the seven several Bonds of One thousand Dollars each had been recorded & is a subsequent lien upon said premises, But whether there was any consideration for said last mentioned Bonds or what such consideration was if any they have no knowledge information or belief & leave the complainants to prove the same, And this defendant Garry Chapter further answering for himself says, he admits that he is the owner & holder of the Bonds mentioned & numbered one, two, three and four being a part of the seven O

thousand ~~Dollar~~ bonds hereinbefore referred to and secured by the Trust Deed first recorded as aforesaid, this defendant further averring says that he purchased of R R Swift Bro & Johnston three of said Bonds, two of them in May & one in June 1856, and paid them for the same in cash that when he purchased the same the said Richard R Swift, one of the said firms of R R Swift Bro & Johnston, represented to him that said Bonds were secured by a Trust Deed upon the Real Estate therein mentioned as hereinbefore stated and that such Trust Deed was the first lien & incumbrance upon said premises, that this defendant confiding in the representations of said Swift and finding no prior incumbrance upon the Records of the Recorder's Office of Cook County purchased the said Bonds bona fide innocently, & for a valuable consideration that when he so purchased the same he had no knowledge or information of any simultaneous or prior lien of any kind upon said premises but supposed that the Trust Deed given to secure said seven One thousand dollar Bonds was the prior lien upon said premises & still insists that it is so, And this ~~defendant~~ ^{defendant} further averring says that in June 1857 he purchased one

other of said Bonds of one Bennett B Chambers
 that the last mentioned Bond was also purchased
 upon the representations that had been made
 by said R R Swift and were purchased by
 said Bennett B Chambers of R R Swift
 Brothers & Johnson and by this ~~defendant~~^{defendant} of
 said Bennett B Chambers bona fide & for
 a valuable consideration and upon the un-
 derstanding and belief that it was secured
 by a prior lien as before stated. And this
 Defendant further answering says that he
 is informed & believes that when said
 R R Swift Bro & Johnson so sold the said Bonds
 to this defendant and at the time this defend-
 ant purchased the other bond of said Bennett
 B Chambers and at the time said Swift so
 represented to this defendant that the said Trust
 deed securing the payment was the prior lien
 & incumbrance upon said premises said
 R R Swift Bro & Johnson were the owners
 & holders of the said fourteen bonds of
 Five Hundred Dollars each & continued
 to own & hold them for a long time there
 after and if the said Complainants & the
 said Charles B Royce & John H Thayer or
 either of them have ever purchased the said
 Bonds or any or either of them they purchased
 the same a long time after these defendant

became the owners of this respective Bonds, and upon a mere nominal consideration & with full notice of all the facts as hereinbefore stated & particularly of the prior lien of the Trust Deed securing the payment of the Bonds held by these defendants. And the said defendant John Rhye for himself further answering says, he admits that he is the ~~owner~~ ^{& former} holder of Bond Number Five being one of the said Seven Bonds of One thousand dollars each & the payment of which is secured by the Trust Deed hereinbefore mentioned & first recorded as aforesaid. This defendant further answering says, that he purchased the same of R R Swift Bro & Johnston on or about the first day of July 1856 and paid them the full value for the same in cash, that when he purchased the same the said Richard R Swift one of the firm of R R Swift Bro & Johnston represented to him or Philo Rline who bought the same for him that said Bond was secured by a Trust Deed upon the Real Estate therein mentioned as hereinbefore stated and that such trust deed was the first lien and encumbrance upon said premises that this defendant confiding in the representations of said Swift and finding no prior encumbrance upon the Records of the Recorder's Office of Cook County

purchased the said Bond bona fide, innocently &
 for a valuable consideration that when she
 purchased the same he had no knowledge or infor-
 mation of any simultaneous or prior lien of any
 kind upon said premises, but supposed that the said
 Trust Deed given to secure the said seven bonds
 of One thousand dollars each was the prior and
 first lien upon said premises, And this defendant
 further averring says that he purchased the
 Bonds of said R R Swift Bro & Johnson in
 good faith and for a valuable consideration
 supposing the said Trust Deed given to secure
 the money mentioned in said Bond was the first
 lien upon said premises, This Defendant further
 averring says that when said R R Swift Bro
 & Johnson so sold the said Bond to this defend-
 ant & at the time said Richard R Swift so
 represented to this defendant that the said Trust
 Deed securing the payment thereof was the prior lien
 & incumbrance upon said premises said R R
 Swift Bro & Johnson were the owners & holders
 of the said fourteen Bonds of five hundred
 dollars each and continued to ~~own~~^{own} and hold
 them for a long time thereafter, And if the said
 Complainant & Charles B Boyce & John F Thayer
 or either of them have purchased the Bonds or
 any of them they ~~have~~ purchased the same
 with full knowledge of all the facts as

heretofore stated and particularly that the said Trust Deed securing said Seven Bonds of One thousand dollars each were a prior & first lien upon said premises, and the said Richard Goodman for himself further answering says, he admits that he is the owner & holder of the bonds numbered six and seven being two of the said One thousand dollar Bonds & secured by the Trust Deed first recorded aforesaid. The defendant further answering says that he purchased the same of R R Swift Bro & Johnston on or about the third day of April 1897 and paid them for the same in cash. That when he purchased the same the said R R Swift Bro & Johnston represented to him that said Bonds were secured by a Trust Deed upon the Real Estate therein mentioned as heretofore stated and that such Trust Deed was the first lien and incumbrance upon said premises that this defendant confiding in the representation of said Swift and finding no prior incumbrance upon the Records in the Recorder's office of Cook County purchased said Bonds bona fide innocently & for a valuable consideration, that when he so purchased the same he had no knowledge or information of any simultaneous or prior lien of any kind upon said premises but sup-

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posed that the said Trust Deed given to secure said Senior Bonds of One thousand dollar each was the prior & first lien upon said premises. This defendant further answering says that he is informed & believes that when said R R Smitt Bros & Johnston so sold the said Bonds to this defendant and at the time said Richard R Smitt Bros & Johnston so represented to this defendant that the said Trust Deed securing the payment thereof was the prior lien & encumbrance upon said premises, said R R Smitt Bros & Johnston were the owners & holders of the said fourteen bonds of five hundred dollars each and continued to hold ^{and own} them for a long time thereafter. And if the said Complainant and the said Charles B Royce & John F. Payer or either of them have purchased the said Bonds or any of them they purchased the same a long time after these defendants had purchased their respective Bonds and purchased them for a nominal or very small consideration & with full knowledge that the Trust Deed made to secure the payment of the Bonds held by these defendants was a first lien upon said premises and with full knowledge of all the facts therein stated. And these defendants further answering say they deny that the

Two general Trust Deeds were filed at the Recorder's Office at the same moment, and if they were, inasmuch as the Trust Deed securing the Bonds held by these defendants were first recorded & they purchased the bonds upon the representation of said R R Swift Bro & Johnston or some of them, that the said Trust Deed securing them was the first lien upon said premises while the other Bonds were owned & possessed by said R R Swift Bro & Johnston, they insist that the said Trust Deed securing the said Bonds is the first lien upon said premises. These defendants further answering say that they deny that the loaning by said Swift Bro & Johnston of fourteen thousand dollars & the making, acknowledging & recording of the said two deeds of trust were & composed one entire transaction, and they deny that no priority in time or right was given to either of said Deeds of Trust over the other. On the contrary these defendants say that the giving of the two ^{trust} Deeds were separate, and distinct transactions and the same were made together with the said Bonds and taken by said R R Swift Bro & Johnston separately so as to enable them if necessary to negotiate them & to raise money upon them & for that purpose.

the Trust Deeds given to secure the lot of Bonds held by these defendants were made a prior & first lien over the others to enable them the better to negotiate them if necessary and they did negotiate the bonds held by these defendants to raise money upon & did raise money upon them, Whereas the others yet as these defendants are informed & believe were retained by said R R Swift Bros & Johnston & not negotiated until a long time after these defendants had purchased them nor until after the said R R Swift Bros & Johnston had failed when they were either transferred to secure precedent debts or sold in the market for a very small amount. And these defendants deny all unlawful combination & confederacy in the Bill charged without that any other matter or thing material as necessary for these defendants to make answer unto and not herein or hereby well or sufficiently answered unto confessed or avoided traversed or ^{denied} ~~admitted~~ is true to the knowledge or belief of these defendants all which matters & things these defendants are ready to aver maintain & prove as this Honorable Court shall direct and humbly pray to be hence dismissed with their reasonable costs & charges in that behalf most wrongfully sustained.

E Van Buren
Wests Sol

Gary & Chambers
John W Kline
Richard Goodman
By E Van Buren their Atty

And afterwards to wit on the 12th day of Feb-
ruary in the year of our Lord One thousand
eight hundred and sixty two there was filed
in said Court a certain Affidavit of non
residence which is in the words and figures
following to wit:

State of Illinois
Cook County } On the Circuit Court
City of Chicago } of Cook County
Benjamin F Brookfield Job Carpenter
James Metzger Henry Oppenheimer
Charles G Smith and Charles Setz
vs

Grant Goodrich, John McCaffery, Gary
Chambers, John W Kline, Richard Goodman
O B Hart, John J Thayer, Charles B Royce,
Richard R Swift, Lyman P Swift and
James S Johnston

In Chancery
Benjamin F Brookfield being duly sworn says
he is one of the above named complainants
and that Charles B Royce, John J Thayer, C. B.
Hart, Lyman P Swift and James S Johnston

five of the above named defendants are and were at the commencement of this suit non residents of the State of Illinois
Imron to & Subscribed B^r Brookfield
before me this 12th day of
February A 1862 M^{rs} Church Clk

And afterwards to wit on the 15th day of March in the year of our Lord One thousand eight hundred and sixty two there was filed in said Court a certain Notice & certificate of publication which are in the words and figures following to-wit

State of Illinois, County of Cook ss. Circuit Court of Cook County March Term 1862. Benjamin F. Brookfield Job Carpenter, Isaac Metzger Henry Offenheimer, Charles G. Smith and Charles Setz vs Grant Goodrich John McCaffery Garry Chambers John W. Kline Richard Goodman C. B. Hart, John D. Thayer Charles B. Royce Richard R. Smeeth Lyman P. Smeeth and James S. Johnston, in Chancery; Affidavit of the non residence of Charles B. Royce John D. Thayer C. B. Hart, Lyman P. Smeeth and James S. Johnston
* ~~that said complainant~~ filed their bill of Complaint in said Court on the Chancery side thereof on the tenth day of December 1861 and that

* Defendants above named having been filled in the office of the Clerk of said Circuit Court of Cook County, Notice is hereby given to the said Charles B. Royce, John D. Thayer, C. B. Hart, Lyman P. Smeeth & James S. Johnston

a summons thereupon issued out of said Court
against said defendants returnable on the first
Monday of January, 1862 as is by Law required
Now unless you the said Charles B Royce John
P Thayer, G. B. Hart Lyman P Swift and James S.
Holmstrom shall personally be and appear before said
Circuit Court of Cook County on the first day of
next Term thereof to be holden at Chicago in said
County on the third Monday of March 1862 and
plead answer or demur to the said complainants
bill of complaint, the same and the matters and
things therein charged and stated will be taken
as confessed and a decree entered against you
according to the prayer of said Bill
Wm L Church Clerk
Morris & Thomas Compls Solrs.

This certifies that a notice of which the annexed
printed slip is a true copy was published for
four successive weeks to-wit, twenty four times
in the daily Edition of the Chicago Post a news
paper published in the City of Chicago and
of general circulation throughout Cook
County and the State of Illinois, and that the date
of the first paper containing the same was the
fourteenth day of February 1862 and that the
date of the last paper containing the same
was the fifteenth day of March 1862 and
that we have received Six dollars for

publishing the same, Dated at Chicago this 15th
day of March 1862

James M Sheahan } Publishers
F A Eastman }
Ludie Matteson }

#

And afterwards to wit on the 27th day of May in
the year of our Lord One thousand eight hundred
and sixty two one of the said defendants Grant
Goodrich filed in said Court his certain separate
answer which is in words and figures following to
wit,

In Cook County Circuit Court

In Chancery

The separate answer of Grant Goodrich one of the
defendants to the Bill of Complaint of Benjamin
H Brookfield, Job Carpenter Henry Oppenheimer
Jesse Metzger Charles G Smith & Charles
Cety Complainants. This defendant now and
at all times hereafter saving and reserving to
himself all manner of benefit of advantage of
exception to the many errors & inefficiencies
in said bill of Complaint for answer saith,
He admits that two deeds of trust were made
executed and delivered to him as stated in
said Bill of Complaint and that he did attempt
to foreclose and sell the premises therein men-
tioned by virtue of one of said Trust Deeds

As is involuntarily stated in said Bill of Complaint. And this defendant further answering says that as to all the other matters & things set forth in said Bill of Complaint he has no knowledge information or belief of the same & therefore neither admits or denies the same & leaves the complainant to prove the same as they shall be advised. And he prays to be hence dismissed with his reasonable costs & charges.

E Van Buren Grant Goodrich
Sol for Wm Goodrich.

And afterwards to-wit on the 24th day of May in the year last aforesaid Barker & Tully Attorneys for the said defendant John McCaffery filed in said Court a certain appearance which is in the words and figures following to-wit
B F Brockfield et al } In Circuit Court
vs } of Cook County
Grant Goodrich et al } In Chancery.
The hereby enters the appearance of John McCaffery in said cause and hereby waives the rule to plead this day May 24/62
Barker Tully
Attys for, McCaffery

And afterwards, to-wit: at the May Term of
said Court, to-wit: on the 27th day of May in
the year AD 1862, the following proceedings
Among others, were had and entered of record
to-wit-

Benjamin M Brookfield, Job Carpenter
Henry Oppenheimer + Isaac Metzger
partners under the name of Oppenheimer
and Metzger, Charles G Smith + Charles Metzger

Grant Goodrich, John McLaughry, Harry
Chamber, John H Kline, Richard
Goodman, Charles B Royce, John
J Thayer, B B Heartt, Richard K
Swift, Seymour Swift, James S Johnston

Bill for
Injunction vs

This day came
the said Complainants by Morris r. Thomas their
solicitors and the said defendant Grant Goodrich
by E Van Buren his solicitor also comes and
Enters his appearance in said cause, and it appear-
ing to the Court that the said defendants B B
Heartt, John J. Thayer, Charles B Royce, Seymour
P Swift and James S Johnston have been duly
notified of the pendency of said suit by publication
in accordance with the statute in such case
made and provided and that the said defendant
Richard K Swift has been duly personally served
with process of summons issued in said cause

and the appearance of the said defendant John
 McCaffrey having been entered by Barker and
 Tuley sale & service of process waived on motion
 of said Complainant's solicitors it is ordered that
 the said defendants let B. Heath John J. Thayer
 Charles B. Royce, Symant' Swift James S. Johnston
 and Richard B. Swift plead answer or demur
 to the Complainant's Bill of Complaint filed
 in said Cause instanter, and no answer being
 interposed and they being now three times severally
 solemnly called in open Court - Come not - nor does
 any person for them but herein they make default
 Wherefore on motion of said Complainant's solicitor
 it is ordered that the Complainant's said Bill
 of Complaint be and the same hereby is taken
 as confessed by the said last named defendants
 And thereupon said Cause is brought unto be
 heard upon the Complainant's Bill of Complaint
 filed therein the answers of the defendants John W.
 Kline Gary Chambers Richard Woodman and
 Grant Goodrich thereto. Replications Exhibits
 and evidence adduced at the hearing
 and the Court having heard the arguments
 of Counsel and not being sufficiently advised
 in the premises takes the said Cause under
 advisement -

1 And afterwards, to-wit; on the Twenty seventh day of May in the year of Our Lord Eighteen Hundred and sixty two there was filed in said Court a certain Judges Certificate of Evidence which is in the words and figures following to-wit;

State of Illinois

Cook County *vs.* In the Circuit Court of Cook County

In Chancery

Benjamin J. Brookfield, Job Carpenter Isaac Metzger, Henry Oppenheimer Charles G. Smith & Charles Leitz -

vs.

Grant Goodrich, John M. Caffrey, Long Chamber John H. Kline, Richard Goodman, C. B. Hart John S. Thayer, Charles B. Royce, Richard K. Swift Lyman P. Swift, & James S. Johnston

Be it remembered that on the hearing of the above entitled cause at the May term A.D. 1862 of said Court.

The complainants on their part offered in evidence seven bonds in the words and figures following, viz;

(See Stipulation on page 69.)

Also two deeds of trust in the words & figures following, viz;

(See Stipulation on page 69.)

The complainants then introduced as a witness

2 Grant Goodrich, one of the Defendants who testified as follows, viz;

I am the trustee named in the two deeds of trust offered in evidence. An injunction was served upon me in this case restraining me from selling the premises described under one of the Trust Deeds. It was the Trust Deed securing the One Thousand Dollar bond under which I had advertised the property for sale. I had advertised it for sale under that deed alone. I had not and never have entered upon or taken possession of the premises described.

The complainants further introduced as a witness Murray ^{Thelen} ~~Tracy~~ who testified as follows, viz;

I am acquainted with the defendant Tom McCaffrey - His pecuniary circumstances in the latter part of the year 1861 were bad - he was insolvent - I do not know the value of the premises described in the Trust Deeds.

On cross examination by Defendants counsel the said witness further testified

McCaffrey had other property besides that mentioned in the Trust Deeds, during part of the year 1861 - It consisted in a plank road leading from here to Blue Island which he sold in September 1861 a mortgage of \$1000.00 which he turned out

3 at the same time in payment of a debt -
and a small vessel which he sold in
1861 - He also had an interest in a mill
site in Michigan under a contract the
value of which I don't know - He is now
superintending the Mill.

On Re-examination by complainant's
counsel the witness further testified as follows
viz. M^c Caffrey bought the mill site from
Dylaster Lind under a contract on which
he had paid from \$10,000. to \$13,000 + there was
a balance due on it, about the end of
1861 of \$33,000. The payments had expired
which he had agreed to make - His lia-
bilities over and above indebtedness on
that contract were \$14,000 or \$15,000 exclu-
sive of the Trust Deeds in this suit - He
owns \$48,000 to \$50,000. besides this indebtedness.

The complainant offered no further
testimony at this time.

The Defendants then offered in evidence
the Deposition of R. K. Swift and exhibits accom-
panying the same as follows, viz; (which deposition
was received subject to the complainant's objections
specified therein)

State of Illinois
County of Cook s. p.

Superior Court of Chicago
In Chancery

H Benjamin G. Brookfield
 Et. Al.

vs.

Grant Goodrich Et. Al.)

The deposition of Richard N. Swift a witness produced sworn and examined before me Ira Scott one of the Masters in Chancery of the Superior Court of Chicago, on the part of the Defendants in the above entitled cause, and taken before me at my office in the city of Chicago, by consent and agreement of the solicitors of the solicitors of the respective parties to said cause. The said parties appearing before me at my office in Chicago, this Twenty first day of April A.D. 1862 at which time and place the following proceedings were had.

Richard N. Swift a witness produced sworn and examined on the part of the Defendants deposes and says.

1^o State your name, age, residence and occupation, and do you know the parties to this suit.

Answer. Richard N. Swift, shall be forty nine years next August, I reside in Chicago, I think I know all the parties excepting Brookfield.

2 Look at the Bonds marked number One, Two, Three, Four five, six and seven, and

5 marked exhibits - 1 to 7 in the same order, were those bonds made by John McCaffery to R. K. Swift, Brother and Johnston and delivered to them at the time they bear date.

Answer. I can't say that I see them sign them, or have any personal knowledge when they were delivered.

3 What do you know of their execution and delivery, and how they were secured state all you know in relation to the matter.

Answer. I know that McCaffery had executed to me previous to these Bonds, other Bonds for a portion of this same debt, for several thousand dollars, I thought in the neighborhood of twelve, this was previous to March 1st 1856, on or about the fore part of March 1856 McCaffery wanted to increase the Bonds to fourteen thousand dollars, that's my recollection, I believe I proposed that he should make them payable in New York, the new Bonds, the Bonds above referred to being a part of them, I intended to and strongly think that I proposed to him that he should make two classes of Bonds - seven Bonds of One thousand dollars each, first mortgage or lien upon the same property named in the deed of trust to secure these ^{copies} numbered from one to seven inclusive to be dated March 1st 1856 - and to

6 make fourteen Bonds of Five Hundred dollars each, a second mortgage a lien on the premises, of the same date and that I stated to him that it made no difference to him whether the seven thousand were a first lien, or equal, to which he assented, he didnt care - The old papers were then delivered by my direction, I think to some member of our commission department, and by them to George Taylor the Lawyer who had drawn the first papers to take an account of the accrued interest on the prior Bonds - I think Mr. Taylor made the computations and from the hand writing I should judge that he must have redelivered them to our commission department, the Bonds in question were made out in the hand writing of Mr. D'Autie or the Greek clerk, they were both clerks in the commission department - Mr. James S. Johnston was the principal of that department, he had charge of that department - he was one of the firm of R. K. Swift - Brother & Johnston my instructions to Mr. Taylor and to Mr. Johnston or whoever received them the new Bonds to make ~~some~~ seven Bonds of One thousand Dollars each numbered from one to seven inclusive first mortgage or lien, and to make a Trust deed securing them as a first lien, and to make

7 Fourteen Bonds of Five hundred dollars each numbered from eight to twenty one inclusive and a Trust deed upon the same premises securing them as a second lien, ~~securing~~ and this last deed of Trust not to record until in the neighborhood of two weeks after the first was recorded, and that the Bonds from eight to twenty one were not intended for sale - I don't know how long afterwards, but after this was consummated Mr. McLaughry ^{for years} paid the interest to me on these Bonds or in my presence and recognized these Bonds in his conversation numbered from one to twenty one - Of my own knowledge and present memory I can't say when the Trust deeds were recorded, except as appears by the endorsement on the deeds (Complainant objects to statements by conversation with McLaughry or statements by anyone)

4^c

Did Mr. McLaughry by anything he said or did recognize the Trust deed securing the Bonds numbered from one to seven inclusive as a lien upon the premises therein mentioned prior to the Trust deed securing the other fourteen Bonds, if so state what he said and did. (Objected to)

Answer.

I can't give the precise words, the first conversation I have related - After that I

because he said he could pay more than
seven thousand dollars and distinctly him
to say in effect that he would not pay the seven
thousand dollars unless they holders of the second
mortgage bonds would give him an extension of

could say long, perhaps two or three years, it
was after our failure he told me that he
thought he could pay seven thousand dollars
when they come due and in that conversation
or during it I think I advised him not to
pay the seven thousand dollars until the
holders of the second mortgage bonds would
agree to an extension* of from one to three
years, and I think I had several such
conversations of the same import.

5^c Was you at the time these Bonds and Trust
deeds were executed one of the firm of
P. K. Swift-Brother & Johnston.

Answer. Yes Sir -

6 Do you know how it happened that the
two Trust deeds were recorded on the
same day.

Answer. I can only state the excuse the clerk gave
I never knew they were recorded on the
same day except from what I have heard
in the last year I think - When I came back
last fall I heard they were both recorded
on the same day - I went to Mr. Rosenthal
the clerk and asked him if he left the
two deeds of Trust for record, he said he
did, I asked him what instructions he
had about recording them - he said he
had a sort of recollection that he was

9 instructed to record the deed of Trust - to secure the Bonds from 1 to seven inclusive of a thousand dollars each - first - he said he did hand that into the Recorder first - But immediately after on the same day also handed in the deed of Trust for record to secure the fourteen five hundred dollar Bonds numbered from eight to twenty one inclusive - that he thought that was all that was ^{necessary} requisite to comply with his instructions, or words to that effect. I asked him then if he did not always understand that the seven one thousand dollar Bonds from one to seven inclusive were considered first mortgage and he said certainly not or he would not have advised his client to have bought one of the five hundred dollar Bonds.

8 Have you any memorandum in relation to the amount due from Mc Caffrey to you at the time these Bonds were made as spoken of in your former answer; if so in whose hand writing is that memorandum; where did you get it and please produce the same as an exhibit.

Answer.

I have what I think to be such a memorandum. I found it to-day among my papers. I think the computation the figures look to me

10 like the hand writing of James S. Johnston one of the firm of R. K. Swift Brother + Johnston, the signature of George M. Taylor the lawyer to whom the papers were handed to make computations and Julius Rosenthal who was one of our clerks at that time are their signatures I think. I now produce said memorandum marked exhibit 8. That statement makes due nine thousand six hundred and twenty eight dollars and ninety two cents instead of twelve thousand dollars as I supposed. The balance of the fourteen thousand dollars was put to his credit.

9 Look at the paper now shown you marked exhibit 9, and state whether that is a copy of the Trust deed above spoken of by you as security Bonds numbered from 1 to 7 inclusive.

Answer. I think it is

(Crop examination waived)

10 What do you know in relation to the sale of the Five Hundred dollar Bonds.

Answer. That every person that purchased them or talked of purchasing them, that I had any knowledge of - I described them to them as being a ^{second} ~~second~~ lien - with seven thousand dollars a head of them - I stated it to Mr. D. B. Chamber who purchased Bonds 8, 9.

11 + 10. He did not buy them at that time that
held one of the One thousand dollar Bonds - I
stated the same to Mr. Kline who held one of
the One thousand dollar Bonds - And the same
to Mr. Charles D. Hart who holds three of the
Five hundred dollar Bonds - I stated it to
him before he purchased them - I think I stated
the same to Carpenter before he purchased -
I don't know as I can remember any other
names - I did state it to Mr. Goodman before
he purchased two of the One thousand dollar
Bonds. (Complainant's solicitor objects to
answer above as not responsive and as
being statements of third parties and irrelevant.)
(Cross examination)

1st Cross Int. Was the whole consideration of the
fifteen thousand dollar Bonds furnished by
R. K. Swift to McCaffrey.

Answer. I furnished it.

2^d State how long a time intervened between
the filing of the two Trust deeds for record as
stated by Rosenthal to you.

Ans. I understood him that as soon as he saw one
filed he filed the other

3^d Who directed Rosenthal to file the deeds

Ans. I don't know, I gave the instructions to the
one who took the papers from me in the
Commission Department.

34

4

When were the thousand dollar Bonds sold

Ans.

I can only tell from Mr Rosen that Memorandums from which it appears that Bonds one, two and three were sold in May and June 1856 to Perry Chambers and in July 1856 number five was sold to Cline and in April 1857 number 6 + 7 were sold to Richard Goddard 8, 9 + 10 were sold to D B Chambers; from May 1st to the end of July 1857 I think. Number 4 was sold to D B Chambers between the date of the Bond and October 1856.

5.

State whether or not the sum of \$9628, 92 spoken of by you as the balance due from McCaffrey constituted in part the consideration of all the twenty one bonds.

Ans.

I did - that sum and the balance of the fourteen thousand dollars was taken as a whole and divided into two parts. I gave him a check or some vouchers for the money for the balance that would bring him the money on credit for the amount of the one firm.

6

Look at the papers now shown you marked Exhibit A and state whether or not it is the original Trust deed made to secure the Bonds referred to as numbered from 8 to 21.

Ans

Yes Sir,

7

When did you first see the two Trust deeds referred to

Ans. I cant say that I ever saw the other one. I think I came across this one Exhibit A, about six months ago. We always made it a point never to lend upon anything that had a second circumstance unless we held the money to discharge it, and this case was an exception and therefore the reason appearing in said deed was made. I suppose I dont know any other cause.

8 (Complainants Solicitor Byrd, shall gather answers except the first sentence, as not responsive) Was there not the ordinary Blank for Trust Deeds used in your Office at that time and was it not prepared and printed for you firm under your or their direction.

Ans. Yes Sir,

9 Do you know from his statement or otherwise who was the Client referred to by Mr Rosen that as having bought one of the Bonds by his advice.

Ans. I dont remember.

(Re Direct)

11 State if you please the reason why the words "unless as herein after specified" in Exhibit A were erased.

(Objected to)

Ans. The only reason that I can give is we always made it a point not to lend upon anything but a first lien, and our Clients who filled

as our deeds I believe had advice to arrange the deeds, the securities for clear titles, and one of them being a Frenchman and the other a Greek I think they mistake the instructions, and considered that this deed was like all others.

(Cross Examination resumed)

10 crop

Were the two Trust-Deeds in question prepared by the same Clerk,

Ans

I dont know, but presume they were.

"

State if you know under whose immediate supervision they were prepared.

Ans.

I think Mr James S. Johnston one of the partners of the firm.

R. K. Swift-
R. K. Swift-

Subscribed and sworn to before me this 21 day of April A.D. 1862, Ira Scott

Master in Chancery of the Superior Court of Chicago

Superior Court of Chicago
In Chancery
Benjamin F. Brookfield et al

vs
Grant Goodrich et al

State of Illinois vs
County of Cook
Ira Scott

Master in Chancery of the Superior Court of Chicago do hereby certify that the foregoing deposition on the part of the Defendant in the above entitled cause was taken before me at my office in the City of Chicago on the 21st day of April AD 1862, by the consent and agreement of the Solicitors of the respective parties, that before the commencement of the examination of the witness whose name is subscribed to the said deposition he was by me duly sworn according to law, and his said deposition was subscribed and sworn to on the said 21st day of April 1862 by the said witness before me, and that the foregoing are all the proofs taken before me on the part of the Defendant in said cause.

Dated May 27. 1862.

Ira Scott

Master in Chancery of the Superior Court of Chicago,
by Dep. Clerks }
by Dep. Clerks }

The Defendant further introduced as a witness John H. Wait who testified as follows viz.

I am a clerk in the Records Office in this City. My business is to receive all papers, file them for record, and minute them in the abstract & see to their recording. I have been in the business 5 1/2 years commencing

#55
November 16, 1856. I was immediately preceded by
Mr. Hanna. The person headed me two deeds suc-
cessively it was my uniform course of business to
enter and record first the one first-headed in-
when two were headed together I asked which
they wished recorded first. That was the mode
of doing business when I came into the Office
when I first entered the Office in 1846. I enquired
of Judel & Dickey regarding such things they
told me to enter first the paper presented
first and I did so; I returned again to the
Office in 1856 and found the same practice.
During the interval from 1854 to 1856 frequently
went to the Office with papers, and the Clerk
asked me the same question as to which
should be first recorded the first entered to
record the one first-headed him.

The one of these Trust Deeds in evidence marked
No 1 was filed first. It is the deed to secure 7
notes of \$1000 each. The number indicates
the order in which they were filed for record
and recorded.

On Cross Examination by Complainant's
Counsel the Witness testified as follows viz
When two papers were headed & were
simultaneously and no direction given I
should first enter the first one I came at.
These two Trust Deeds in evidence were filed

17.
for record and recorded in immediate succession
another paper intervening on the same day -
they were both recorded in one Book. When it
is requested I make a memorandum of the
hour of the day when a deed is filed for record
not otherwise. I can't tell who put the figures
147 on these Trust Deeds I think the other figures
were put on by Thielcke. He is not now in the
Office. He then had charge of that part of the
business.

On re-examination by Defendants
Counsel the Witness further testified as follows viz

Thielcke is now in this city.
His name is Charles Thielcke. I do not know
that he is in the city. Mr Howard who was then
Clerk is now in Ogdenburgh New York. I
think Otter was his Clerk who immediately
preceeded me. Complainants Counsel objected
to all the testimony of the Witness Mail as being
hearsay + secondary in its character.

The Defendants introduced
no further testimony.

The Complainants then in-
troduced Julius Rosen that as a Witness
who testified as follows viz.

I do not recollect
whether I filed these Trust Deeds in evidence
for record or not. I was at the time they were

66
filed in the employ of R. K. Swift Brothers + Johnston
The pencil Memorandum at the top of one of the
books Deeds - the word "R. K. Swift delivers" looks
like John B. King's handwriting. I have no
impression as to delivering the Deeds. The figure
No 1 on one deed and No 2 on the other were
written by Mr D. Antin. The body of the deed
is not in the same handwriting as the figures
No 1 + No 2, although D. Antin could write two or
3 different hands. The Clients referred to in
my statement - to R. K. Swift - as having bought
some of these Bonds as first Mortgage of which
he speaks in his deposition were Oppenheimer +
Metzger's complainants in this case. They pur-
chased the Bonds they hold as first Mortgage
bonds.

On Cross Examination by Defendants
Counsel the Witness testified as follows viz -

I sold these Bonds to Oppenheimer +
Metzger and so I know they bought as first
Mortgage bonds. I don't know that anybody
else made such representations. I sold to them
in October or November 1857.

D. Antin above mentioned was a Clerk in the
Commissary Department of R. K. Swift -
Johnston + Co which was a separate concern
R. K. Swift was one of the firm. James S. Johnston
+ R. P. Swift were the other members,

This was R. K. Swift's private matter. I know of the Bonds in question. B. B. Chambers had a claim against Swift - Gary Chambers had money then for some years & when Swift failed he had to take Bonds - Bonds 1, 2 & 3 were sold to Gary Chambers in May & June 1856, Swift failed at the end of September 1857. No 4 was sold by the Loan and Trust Department - in February 1857. No 5 was sold to Philo Kline in July 1856, 6 & 7 were sold to Richard Goldman in April 1857 & I think they were paid for in cash. I speak from a Memorandum made by me at the time which I now hold.

The Defendant then offered the Memorandum referred to which was follows viz,

Memorandum for Exchange of Gypsum Bonds of John McCaffery belonging to R. K. Swift - Johnston & Co former Bonds to R. K. Swift - Johnston & Co for new Bonds to R. K. Swift - Patton & Johnston to be made as of 1st March 1856.

6 Bonds of issue 1st July 1855 for \$500.
 Nos 1 to 6 each with sum \$508.33¹/₃

Exp 4 mos^o dis 29 - \$508.06¹/₃

7 Bonds of issue 1st January 1856 for \$500.
 Nos 1-2 each with sum \$508.33¹/₃

Nos 7 & 8 Exp 4 mos^o dis 29 508.06¹/₃

76 v No 6, 7 + 8 — 6 + 7 = 13x 6604, 82 1/3

6 Bonds of issue 1st August - 1855 for \$500
No 6 Each worth now \$504, 16 2/3

Exp 5 mos dis — 15 504, 01 1/3

x 6 3024, 10
\$9628, 90

Exhibit - 8,

The within Bonds above mentioned were this day turned into the hands of the agents attached in my presence Chicago 15 May 1856.

{ Absopresent }
{ G. S. Johnston } 3

George S. Taylor
Julius Rosenthal

It was thus agreed between the parties to be treated as proved -

That Bonds 8, 9, 10 + 11 were sold in the summer of 1857 + after the 7 \$1000 Bonds were sold, and that the succeeding bonds were sold after that and after R. K. Swift Brother + Johnston failed.

+ further that the deed of Paul in evidence were actually recorded in the same order as filed, the one immediately preceding the other and no further evidence was offered by either party

Given under my hand and seal on this 29th day of May AD 1862.

George Manure (Seal)
Judge of 7th Judicial Circuit - Illinois

And afterwards, to-wit: at the June Term of said
Court, to-wit on the 20th day of June in the
in the year last aforesaid the following
proceedings, among others, were had and
Entered of record, to-wit

"Benjamin T. Brookfield Job Carpenter
Wm. Oppenheimer Isaac Metzger
Charles S. Smith and Charles Setz

Grant Goodrich John M^c Coffey
Mary Chambers John Kline Richard
Goodman, Charles B. Royce John J. Thayer
C. B. Heath Richard K. Swift-Syman
P. Swift and James D. Johnson

Bill for
Injunction re

This
Cause having this day been brought on to be
heard upon the pleadings and proofs taken
therein and after hearing Messrs Morris Thomas
Solicitors for Complainants and E. Van Buren
Solicitor for defendant Mary Chambers John
Kline Richard Goodman + Grant Goodrich
and the Bill having been taken as confessed
by the defendant C. B. Heath John J. Thayer
Charles B. Royce Richard K. Swift-Syman P.
Swift James D. Johnson and John M^c Coffey
and the Court having fully considered and de-
liberated upon all the facts and allegation
set forth in said Bill of Complaint in this

Cause, and the proofs taken in said Cause
It is ordered adjudged and
decreed by this Court that the Bill of Complaint
in this Cause be and the same is hereby dismissed
for want of Equity in said Bill of Complaint
with costs of this suit; And it is further ordered
adjudged and decreed that the said Injunction
heretofore issued in this Cause be and the same
is hereby dissolved, whereupon Complainants
may appeal to the Supreme Court of the
State of Illinois.

And afterwards to-wit On the 3^d day of July in the
year of our Lord One thousand eight hundred and
sixty two the said Plaintiff filed in said Court a
certain Replication which is in the words and fig-
ures following to-wit. In the Circuit Court of
Benj^r F. Brookfield et al } Cook County; Chancery
vs }

Grant Goodrich et al }

The replication of Benjamin
F. Brookfield, Job Carpenter, Isaac Metzger
Henry Oppenheimer Charles G. Smith & Charles
Lutz Complainants to the answer of Grant
Goodrich, Garry Chambers John H. Rline &
Richard Goodman defendants. These repliants sa-
ving &c for Replication to the said answer
said defendants say that they will aver, main-
tain & prove this bill of Complaint to be true,
certain and sufficient in the law to be an-
swered unto and that the said answer is uncer-
tain, untrue and insufficient &c without that
All which matters and things these repliants are
and will be ready to aver, maintain and prove
as this Honorable Court may direct and hereby
pray as in and by this said bill they have already
prayed
Wornis & Thomas
Sol^r for Compt.

And afterwards to-wit On the 22nd day of July in the year last aforesaid there was filed in said court a certain appeal Bond which is in the words and figures following to-wit.

Know all men by these presents that we Benjamin F. Brookfield Job Carpenter, Isaac Metzger Henry Oppenheimer, Charles A. Smith and Charles Letz, as principals and William M. Snowden as surety are held and firmly bound unto Grant Goodrich John Mc Caffery, Garry Chambers, John W. Kline Richard Goodrich, C. B. Neagt, John Thayer, Charles B. Royce, Richard R. Swift, Lyman P. Swift, and James S. Johnston in the penal sum of three hundred dollars for the payment of which sum we and truly to be made we bind ourselves our heirs executors and administrators jointly, severally and firmly by these presents. Witness our hands and seals this 12th day of July A. D. 1862.

The condition of the above obligation is such that whereas a certain Bill in Chancery was on the tenth day of December A. D. 1861 filed in the Circuit Court of Cook County in the State of Illinois by the above named ^{Principal} ~~Plaintiffs~~ against the above named obligees, and whereas a decree has been rendered by said Court in said cause dismissing said

And afterwards to-wit On the 3^d day of July in the
year of our Lord One thousand eight hundred and
sixty two the said Plaintiff filed in said Court a
certain Replication which is in the words and fig-
ures following to-wit. In the Circuit Court of
Benj^t Brookfield et al } Cook County; In Chancery

vs
Grant Goodrich et al }

The replication of Benjamin
F^t Brookfield, Job Carpenter, Isaac Metzger
Henry Appenheimer Charles G. Smith & Charles
Lutz Complainant, to the answer of Grant
Goodrich, Garry Chambers John H. Rline &
Richard Goodman defendants. These repliants sa-
ving &c for Replication to the said answer
said defendants say that they will aver, main-
tain & prove their bill of Complaint to be true,
certain and sufficient in the law to be an-
swered unto and that the said answer is uncer-
tain, untrue and insufficient &c without this
All which matters and things these repliants are
and will be ready to aver, maintain and prove
as this Honorable Court may direct and hereby
pray as in and by this said bill they have already
prayed
Wm^t & Thomas
Sol^r for Compl^t.

And afterwards to wit, At the June Term of said Court to wit; On the 12th day of July in the year of our Lord one thousand eight hundred and sixty two the following proceedings amongst others were had in said Court which are in the words and figures following to wit-

530
21224

Benjamin F. Brookfield et al } Bill for In-
vs } junction &c
Grant Goodrich et al }

This day again come, the said complainants, by this solicitor and the Court now here grants the prayer of the said complainants for an appeal from rulings and decision of this Court in said cause to the Supreme Court of the State of Illinois upon the condition that the complainants shall within ten days from this date execute and file with the clerk of this Court this appeal bond herein in the sum of Three hundred dollars, with W. M. Snowden as surety thereto conditioned according to law

I, WILLIAM L. CHURCH, Clerk of the Circuit Court of Cook County, in the State of Illinois, do hereby certify the above and foregoing, to be a true, perfect and complete copy of The papers & proceedings in a certain cause begun pending in said Court, on the Chance side thereof, wherein Benjamin F. Brookfield and Grant Goodrich vs Edw Defendant

In Witness Whereof, I have hereunto set my hand, and affixed the Seal of said Court, at Chicago, this Sixteenth day of April A. D. 1863



Wm L Church Clerk.

70 \$19.00 paid by Walker Thomas for
Benjamin F. Brookfield and Church

and the said Benjamin J. Brookfield
Job Carpenter, Henry Oppenheimer and
Isaac Metzger, Charles J. Smith and
Charles Setz say and each of them
for himself says that in the record and proceedings
aforesaid, and also in the condition of the judgment
aforesaid there is manifest error in this, that +

1. The Court erred in considering the testimony of R. K. Smith
objection by Complainants
2. The Court erred in considering the testimony of J. H. Wait
3. The Court erred in dismissing Complainants Bill
4. The Decree should have been for Complainants
and not for Defendants

Walker & Thomas

Solrs. for Plaintiff Appellants

And now comes the Defendants &
say there is no error in the record
& proceedings in this case & pray that
the judgment may in all things
be affirmed

E. M. Jones
Deft's Attys

109 218
Brookfield cats
by
Goodrich cats
Recd

Filed Apr. 23, 1863
Leland
Ch.

J. B. Howard

W. H. H. H.

W. H. H.

Plain (see also p. 11)

2/11/78