

No. **12085**

Supreme Court of Illinois

Swift, et al.

vs.

Trustees of Schools, T.43
Range 8.

71641  7

70
Rich. K. Swift et al.
vs.
School Trustees T.43 R.8

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12085

12085

Michael R Swift &

Buckner S Morris Defendants with Alex H Palmer
et al Plaintiffs in Error

vs

Trustees of Schools of Town 43rd
Range & East

Supreme Court
New June 1853

Error to McHenry
County

And now comes the Plaintiff in Error Michael
R Swift & Buckner S Morris by Church
& Willard their attorneys and say that
in the record and proceedings in this case
there is manifest error in this

- 1 The Court Erred in reversing the Decree
in this case of judgment against the
Plaintiffs in Error Michael R Swift and
Buckner S Morris
- 2 The Court Erred in making the Decree
in this case in favor of the Defendants
in Error against the Plaintiffs in
Error
- 3 The Decree is erroneous because as
it does not appear in the ~~bill~~ record
that Plaintiffs had notice of the most
gross of the Defendants in Error

4 The decree in favor of the Defendants is in error and against the Plaintiffs in error inasmuch as insufficient evidence as to votes

5 There is no Masters Report of ~~facts~~ under the order referring the case to him

6 The Decree does not recite sufficient proofs or facts to justify the Decree against the Plaintiffs in error

7 There do sufficient facts and proofs appear in the record to change the Plaintiffs in error with notice of the facts incumbent of Dpts in error

8 The ~~Plaintiffs~~ Defendants Swift and Morris having denied under no request by the bill in their answer the votes charged in Complaints bill and the fact of votes not appearing exact by the deposition of Saul T. Shepherd the Court erred in making the decree of foreclosure in favor of the Plaintiffs in error Swift & Morris.

Wherein ~~Swift~~ says that the Decree may be changed as to the ~~Plaintiffs~~ ~~attorneys~~ ~~in error~~

United States of America

State of Illinois
McHenry County ss. Pleas, before the Honorable
Saml G. Nelson Judge of the
Thirteenth Judicial Circuit of the State of Illinois
and presiding judge of the McHenry County Circuit
Court as a Circuit Court begun and held at the
Court house in Moonstown in said County on Mon
day the Thirtieth day of September in the year of
our Lord one thousand eight hundred and fifty two
and of the Independence of the said United States
the twenty sixth

Present the Hon Saml G. Nelson
Judge

Attest
J. H. Johnson
Clerk

Amos B. Cook
State attorney
John Brink
Shuff

Be it remembered that heretofore to wit on the 25th
day of January A. D. 1831 the Trustees of schools of
Township No 4 S. 1 Range 8 by Storer and McLean
their solicitors filed in the office of the Clerk of the Circuit
Court of said County a bill to foreclose a mortgage on
the Chancery land of said Court which said bill is
in the terms and figures following to wit

To the Honorable Hugh Wendling Judge of the 11th
Judicial Circuit for the State of Illinois.

Humbly Com
plaining the trustees of schools of Township forty three

North of Range Eight East of the third principal
Meridian Sheweth unto your Honor that on or about the
fast day of September One Thousand Eight Hundred and
forty four Alexander H. Palmer and Sophia Palmer his
wife of the County of McHenry & State of Illinois defen-
dants in this suit to secure the payment of the sum of
One hundred and thirty dollars loaned money with interest
at the rate of twelve per centum per annum did make
and execute under seal their hand and seal and deliver
unto the said Complainants a mortgage by which said
defendants did grant bargain sell assign convey and con-
firm unto the said Complainants for the use of the inhabi-
tants of said Township all the following described lands
lying and being in the said County of McHenry to wit
The East half of the South West quarter and the East
half of the West half of the South West quarter of
Section No. sixteen in Township No. forty three North of
Range Eight East of the third principal Meridian the
last described lot divided by a line running from the
North West corner to the South East corner of said lot
about where the road now is leading from Crystal
Springs to Fox River which said real Estate was by
said deed or Mortgage was declared to be in mortgage
for the payment of One hundred and thirty dollars loaned
to the said defendants by the complainants as aforesaid for
five years from and after the date of said Mortgage with
interest at the rate of twelve per centum per annum
said interest to be paid half yearly in advance and the
said Alexander H. Palmer and Sophia his wife did in
and by said Mortgage covenant and agree to pay
unto the said Complainants the said sum of money
with the interest thereof at the time and in the
manner above mentioned which Mortgage was

duely acknowledged by said defendants on the
fourth day of October A.D. 1844 as by said Mort-
gage readily to be produced as this Court shall
direct and more fully appears and the said
Complainants further show that the said sum of
One hundred and thirty dollars principal as
mentioned in said Mortgage remains due to said
Complainants together with interest thereon at
the rate of twelve per centum per annum from
the first day of September A.D. 1844. by reason
whereof the Estate of said Complainant in said
Mortgage premises hath become and is absolute
in law and subject only to the equity of redemption
in this honorable Court. And the said Complainants
show that said defendants or those claiming under
them have from the time of making and executing
said Mortgage possessed and enjoyed and still
do possess and enjoy all and singular the said
Mortgage premises and still has at all times
received and still does receive the rents profits &c
thereof and that no payments or loan or otherwise
have been had by said Complainants or any other
person or persons for the recovery of said sum of
money mentioned in said Mortgage or any part
thereof the Complainants therefore solicit the aid of
this Court to compel the said defendants to answer
under oath all the allegations herein as fully as
if the same were herein again repeated & they specifically
interrogated thereunto and that the said defendants
may be decreed to pay to said Complainants said
principal sum of money above mentioned with the
arrear of interest now due or hereafter to become
due and payable thereon together with costs & charges
in this behalf expended by a day to be appointed

by this Court and in default thereof that the
said defendants above named and all persons
claiming and to claim under them or either of them
or otherwise may be foreclosed of and from all equity
of redemption and claim of in and to said Mortgaged
premises and every part thereof with the appurtenances
and may deliver over to said Complainants all deeds
devises & writings relating to or concerning the same
and that all said singular said Mortgaged prem-
ises with the appurtenances may be sold under
the decree of this Court and that out of the money
arising from the sale thereof said Complainants may
be paid the principal sum due on said Mortgage
and all interest money due or to become due
thereon together with all costs & charges by said Com-
plainants in this behalf sustained and the complain-
ants further represent that the said Alexander H. Palmer
& Sophia his wife on or about the 12th day of July
1847 conveyed said lands to one Henry A. Rice by
deed subject to said Mortgage aforesaid and that
the said Rice on or about the 20th of January 1848
conveyed the same by deed to one Charles Sunderland
who also had notice of said Mortgage and that the
said Henry A. Rice on or about the 21st day of June 1848
conveyed said lands by deed to one John A. Cornell who also
had notice of said Mortgage and that said John A. Cornell
by Trust Deed dated April 3rd 1849 conveyed the said
lands to one Buckner S. Morris in Trust for Richard
K. Swift whom the Complainants charge had notice
of a former incumbrance by said Mortgage. The
Complainants pray therefore that the said Henry A.
Rice Charles Sunderland John A. Cornell Buckner
S. Morris and Richard K. Swift as well as
the said Alex. H. Palmer & Sophia Palmer be made

defendants to this bill of Complaint and that under
their Corporal oath be compelled to answer fully all
the Charges against them in this bill of Complaint
and grant to the Complainants such other & further
relief as may be consistent to Equity and applicable
to this case. May it please your honor to grant the
People wit of Summons under the seal of this Court
commanding the sd defendants to answer this bill
of Complaint and to stand to and abide by such
order & decree in the premises as shall seem meet and
agreeable to equity and good conscience and appli-
cable to your Complainants case

Strode & McClure

Solicitors for Complainants

And which said bill of Complaint has inclosed
therein the following writs dated Jan'y 25th 1851
Jan'y 22nd Sept as amended 1837

J H Johnson

J H Johnson Clerk

Clk

And Thompson to wit. On the 28th day of January A.D.
1851. the said Complainants caused to be issued
out of the office of the Clerk of the Circuit Court
of said County then Witz of Summings directed to
the Sheriffs of Cook Lake and La Salle Counties
in said State of Illinois respectively and which said
writs are in the words and figures following that is to
say.

State of Illinois: The People of the State of
McHenry County & Illinois to the Sheriff of Cook County
Greeting.

We Command you that
you Summon Alexander & Co Palmer Sophie Palmer
Henry A Rex Almely Sanderland John A. Conner
Benjamin S. Morris and Richard K. Swift if they shall

be found in your County personally to be and appear before
the Circuit Court of said County on the first day of the
next Term thereof to be holden at the Court House in
Woodstock in said County to answer unto the Trustes
of Township number forty three Arch of Range Number
Eight East of the third principal meridian in a view
to foreclose a mortgage on the Chancery side of said
Court. And have you then and there this Ind. with
an endorsement thereon in what manner you shall
have executed the same. Witness Joel H. Johnson Clerk of
the said Court and the seal thereof at
Woodstock aforesaid this 28th day of January
A.D. 1857.

(Seal)

J. H. Johnson

Clerk of the Circuit Court

Which said summons has endorsed thereon
executed by sending to B. S. Munis & B. K. Swift and
delivering to each a copy of the within - the other de
fendants not found in my County May 5th 1857

Given March 10, 1857
J. H. Johnson Clerk

2 Summons	\$1.00
2 Copies	1.00
1 Return	10
2 Miles	10
Paid by Rpts	\$2.20

Wm L. Church Sheriff
By D. S. Wood Depy.

State of Illinois
McHenry County
County Greeting

To the People of the State of
Illinois to the Sheriff of Lake
County Greeting

We Command you that you summon
Alexander H. Palmer Sophia Palmer Henry Allen
Almsley Edmund and John C. Connelly Buckner S
Munis and Richard K. Swift if they shall
be found in your County personally to be and

appear before the Circuit Court of said County on the
first day of the next term thereof to be holden at
the Court House in Woodstock in said County to answer
unto the School Trustees of Township Number forty three
North of Range Number eight East of the third prin-
cipal meridian in a bill to foreclose a mortgage
on the Chungey side of said Court. And have you then
and there this writ with an indorsement thereon in such
manner you shall have executed the same

Sul

Attest Joel W Johnson Clerk of the said
Court and the seal thereof at Woodstock
aforesaid this 28th day of January AD
1851

J. A. Johnson

Clerk of the Circuit Court

Which said Summons has endorsed thereon
I hereby certify that I did serve the within writ on
the within named Charles Sumner and Henry
Allen by reading the same in their presence and
hearing and also delivered to each a true copy thereof
on this 30th day of February AD 1837. The others of
the within named defendants not served they not
being found in my County

L. Sprague Sheriff
By J. Moulton Deputy

State of Illinois
McHenry County
To the People of the State of
Illinois to the Sheriff of La Salle
County Greeting.

We Command you that you Summon
Alexander H. Palmer Sophia Palmer Henry Allen
Charles Sumner John Q. Cornell Benjamin S
Morris and Richard B. Swift if they shall
be found in your County personally to be and

appeared before the Circuit Court of said County on the first day
of the next term thereof to be holden at the Court house
in Woodstock in said County to answer unto the
School Trustees of Township number forty three North
of Range Number Eight East of the third principal
meridian in a bill to foreclose a mortgage on the Chum
brey side of said Court. And have you then and then
this writ with an indorsement thereon in what manner
you should have executed the same.

(Seal)

Witness my hand and the seal thereof at Woodstock
aforesaid this 28th day of January A.D.
1831

J. H. Johnson

Clerk of the Circuit Court

Which said summons has returned thereon
Executed this writ by sending to Alexander H. Palmer
and by leaving a copy with him also by leaving
a copy with him for Sophia Palmer May 6th 1831

R. C. Goodrich Sheriff

Delivered March 22nd 1831

J. H. Johnson Clerk

And heretofore to wit, on the 14th day of April
in the year of our Lord one thousand eight hun
dred and fifty one, it being one of the days of
the April Term of the Circuit Court of said County
and the said Court then being in session the follow
ing order was duly entered upon the records of
said Court to wit

Trustees of Schools of }
T. 43, R. 8. } Bill

A. H. Palmer et al

Answer now made
the Compliments by J. H. Johnson
and William their Solicitors

and on their motion it is ordered that the defendants
answer herein by 8 o'clock Monday morning

And thereupon to wit on the 18th day of April
in the year last aforesaid the said defendants
Morris and Swift filed their answer herein in
the words and figures following to wit

McHenry Circuit Court
April Term 1851.

In Chancery

Defendants of Rufener S. Morris
and Richard K. Swift, to the bill of Complaint
of Trustees of Township forty three Range Eight.

These defend-
ants by protestation not confessing or acknowledge-
ing all or any of the matters and things in the
said Complaining bill to be true, in such manner
and form as the same are therein set forth and
alleged do demur thereto and for cause of demur-
er shew that the said Complaints have not in
and by said bill, made or stated such a case as
does or ought to entitle them to any such discrep-
ancy relief as is thereby sought and prayed for,
from or against these defendants, wherefore these defend-
ants demand the judgment of this honorable Court
whether they shall be compelled to make any further
or other answer to said bill or any of the matters and
things therein contained and prays to be heard dis-
missed with his reasonable costs in this behalf
sustained

Wm. Swan

Sol for said defts

Enclosed herein

Wm April 18th 1851 J. H. Johnson Clerk

And thereafter to wit On the 20th day of September
in the year last aforesaid it being one of the days
of the September term of the Circuit Court of said
McHenry County - the said Court then being in session
as aforesaid the following proceedings were had to wit

Justices of Schools
J. B. R. & S.

Alexander H. Palmer
Sophia Palmer Henry Allen
Orrin S. Sargent and John
O. Conner Buckner Morris
and Richard A. Swift

Bill

And now come
the Complainants by
their attorneys and the defend-
ants Alexander H. Palmer Sophia Palmer Orrin S. Sargent Sam-
uel Henry Allen being called come not by
any one for them but fails and makes default herein
which is ordered to be entered of record. It is therefore
ordered that the bill of the said Complainants be
taken as confessed against the said defendants. And
thereupon come Sloan Solicitor for Morris & Swift and
confesses his default herein to the bill of the said
Complainants, and thereupon the said Complainants Solicitor
confesses the demand. It is therefore ordered and ad-
judged by the Court that the said defendants recover
of the Complainants their Costs and Charges about
their demand expensed and that they have execution
therefor and thereupon on motion of the said Solicitor
for the Complainants leave is given him for amount
his bill instanter and that he pay the Costs therein

And thereafter to wit. On the 24th day of September
in the year last aforesaid the said Court being in session
is aforesaid the following proceedings were had to wit

Trustees of Schools T. H. S. & B. to produce
Alexander H. Palmer et al } a Mortgage

And it appearing
to the Court that the amendment to the Complainant's
bill is material, it is therefore ordered that the
defendants Swift and Morris answer in forty days
and it is further ordered that this cause be contin-
ued

And hereafter to wit. On the 20th day of April in the
year of our Lord one thousand eight hundred and
fifty one the said defendants Morris and Swift filed
in the office of the Clerk of the Circuit Court of
said County their several answers herein in the words
and figures following to wit

The answer of Buckner S.
Morris, respondent with Richard H. Swift Henry A.
New John Q. Cornett Sunderland Alexander
H. Palmer & Sophia Palmer to the bill of Complaint
of the Trustees of Schools of Township forty three of
Range eight in the County of McHenry & State of Illinois
filed in the Circuit Court of said County. This

defendant now and at all times hereafter saving
and reserving to himself all manner of exceptions and
benefits and advantages to the many errors and
insufficiencies in the said Complainant's bill of
Complaint contained for answer thereto or to so
much thereof as he is advised that is necessary

for him to make answer unto answer and pay, that he
is informed that the said premises in said bill dis-
cribed, has been conveyed to him by said O Connell
in fee simple, in trust for the benefit of said Swift
and the defendant had no knowledge whatever of
said Mortgage in said bill, mentioned until said
Complainants attempted, to foreclose the same on said
premises and that the defendant had no notice
whatever of said Mortgage either at the time or prior to
the executing acknowledging and recording of the
deed of trust from said O Connell to this defendant
recorded in the records office of said County in Book
B of Mortgages on page 441 and in Book C of
Mortgages on page 564 and that the defendant is
a stranger to all and peculiar the matters and
things in said bill of Complaint contained and
therefore leaves the complainants to make such proof thereof
as they shall be able and having as far as he is con-
cerned in the matter prays to be hence discharged with
any reasonable costs &c
B. S. Morris
Subscribed and sworn to before me
this 16th 1881. J. H. Johnson
Clerk

The joint and several answers of Buckner S Morris
and Richard H Swift impleaded with Henry A New
Olmsted Smedley and John O Connell Alexander H Palmer
and Sophia Palmer to the bill of Complaint of the trus-
tees of Schools of Township forty three of Range eight
in the County of McKinney Illinois.

These defendants
now and at all times hereafter saving and
reserving to themselves all manner of benefits and
advantages of exception to the many errors and
insufficiencies in said bill contained for answer

State of Illinois vs Buckner S Morris being Clerk of said County and
McKinney County Clerk in his foregoing capacity, I certify as of his own knowledge
and true and show stated of them in before O the true

they must or unto so much or such parts thereof as
these defendants are advised is material for them
to make answer unto each answering for himself
and not the one for the other jointly and severally
answer and say that these defendants are strangers
to all and every thing in said bill contained in rela-
tion to the loaning of the money by said trustees of
to said Palmer and the mortgaging by said Palmer
of said premises in said bill described to said trustees
to secure the payment of said money as is set forth
in said bill and therefore these defendants leave said
Complainants to make such proof thereof as they shall
be able. And these defendants further answering except
by deny all knowledge of the loaning of said money
or the Equating of said Mortgage in said bill mentioned
until after the conveying of said premises in said bill
mentioned by said O Connors to said Morris in trust
for the benefit of said Trust by deeds of trust recorded
in the records office of said Montgomery County in book
B of Mortgages on page 441 and in Book C of
Mortgages on page 564 and subsequently pays to
the records of which these defendants refer and said
defendants Trust say that said Conveyance by said deeds
of trust was for a good and valuable consideration
and these defendants claim that said premises in said
bill mentioned are vested in fee simple in said
Morris free from the incumbrance of said Mortgage for
the benefit of said Trust according to the provisions
of said trust deeds and that said Morris is a bona
fide holder of said premises without notice of said
Mortgage.

And these defendants further say they admit
that said Alex. H. Palmer and Sophia conveyed by
Sufficiency and duly acknowledged and recorded said

Said premises in few words to said Henry A. New
and that said New also conveyed by sufficient and
duly acknowledged and recorded said premises to
said O. Connel as appears from the records in the
recorders office of said McMurray County to which
for a more full description of said land these defen-
dants refer. All which matters and things these
defendants are ready to aver maintain and prove as
this honorable Court shall direct and pray to be
herein discharged with their reasonable costs and
charges &c

Richard K. Swift

McMurray Circuit } Buckner S. Morris and Richard
Court April Term 1837 } K. Swift being personally duly
served say they have read
the foregoing answer by them presented and know
the contents thereof and that those things by them
stated in their own knowledge are true and those
things not so stated they believe to be true.

Richard K. Swift

Subscribed and sworn to
before me this 16th day of
April A.D. 1837.

(Seal)

Samuel D. Howard
Clerk of Court

Endorsed thereon filed April 20 1837

J. H. Johnson Clerk

And thereafter to wit On the 5th day of February
A.D. 1832 the said Complainant filed in the
office of the Clerk of the Circuit Court of said
County a 2^d replication in the terms and figures
following to wit

Trustees of Schools
T L L R 8

A. W. Palmer and others

The said plaintiffs having
and reserving to themselves now and at all times
hereafter all and all manner of benefit & advantage
of exceptions which may be had or taken to the
first insufficiencies of the said answers of B. S. Higgins
& R. K. Swift for replication therunto says that they
will aver and maintain & prove their bill of Com-
plaint to be true certain and sufficient in law to be
answered unto and that the said answers of the
said defendants are uncertain untrue and insuffi-
cient to be replied unto by their repliants without
that any other matter or thing whatever in
the said answers contained materials or effectual
in the law to be replied unto confessed and avoided
traversed, or denied is true all which matters and
things their repliants is and will be ready to aver
& maintain & prove as this honorable Court shall direct and
humbly says as in and by his said bill has always
appeared

Stodd & McElm
for Compliants

Answered them

Filed Feb 6th 1832

J. A. Johnson Cl

And thereafter to wit. On the second day of
April in the year last aforesaid, it being one
of the days of the March term of said Court
the following order was entered of record to wit

Trustees of Schools
T 43 R 8

¹⁰ Alexander H. Palmer et al } And now come
McClure then Solicitor and on their motion it is
ordered that this cause be referred to Amos B. Corn
Trustee in Chancery of this Court to take and report
proof on the bill and answer here.

And hereafter to wit. On the 18th day of September
in the year last aforesaid the said Court then
being in session as aforesaid the following depositions
was filed in said cause and which is
in the words and figures following to wit.

State of Illinois }
McHenry County } The Deposition of Samuel F.
Shepard a produced examined
and sworn to be used in an action now pending
in the Circuit Court of McHenry County State of
Illinois wherein the Trustees of Schools of Township
43. North Range 8. East in McHenry County are
Complainants and Alexander H. Palmer & wife ^{defendants} ^{respondents}
are Complainants defendants on the part of said
Complainant.

Answering and deposes the following
interrogatories as follows to wit.

Interrogatory 1st What is your name and age and
where do you reside.

Answer My name is Samuel F. Shepard am 54

years old. I reside in the Town of Plymouth in
McHenry County Ill near Crystal Lake.

Interrogating 2nd Are you acquainted to the parties of
this pair if so. How long have you been acquainted
with them or either of them.

Answer I am acquainted the parties to this pair have
been acquainted such Palmer and wife about nine
years I have been personally acquainted with R R
Swift for or seven years and am acquainted
with him

A B. Coon

Interrogating 3rd What do you know of any thing about
the defendant R. R. Swift having had any kind
evidence of a Mortgage having been given by Alexander
H. Palmer and wife to the School Land of said
Town to secure the payment of money loaned for
the benefit of said School fund to said Palmer

Answer I know that said Swift knew they had been
such a Mortgage given. I told him of it in Chicago
about the month of February or March A D 1849
he said he had known of it before for he said
there was such a Mortgage. Noting upon the matter
but there was no Mortgage to be found. I told him
the Mortgage was unpaid and that the trustees of
the Township were going to foreclose the mortgage. at
the same time he said he informed me that he was about
to loan money to an Irishman who was then present
whose name I did not know. but have since been
informed and believe his name was John A. Connel
and take from him the Irishman security upon said

came for the money loaned I told him that the trustees of
Schools would have their say whether he took a new
oxygen from the Fishman or not. I told him I thought
there was then about three hundred dollars due on
the mortgage. he Swift wanted to know of me if he
would be safe in taking letting the Fishman have
two hundred dollars on the land. I told him he would
not be safe to let him have a dollar, but he told
me he thought he should let him have ^{two} two hundred
dollars on the land and risk it for there was no
mortgage to be seen against the land

Cross Interrogatories

1st In your estimate of the time when the aforesaid con-
vulsion took place

Ans I think I saw for it was just before the great
crash at Chicago with the shipping there in the
Chicago river.

S. P. Shepard

State of Illinois
McHenry County

I Amos B. Corn Justice
County do hereby certify that on this 13th day of
September A.D. 1852 the above named Samuel P.
Shepard who signed the above deposition was
duly sworn by me previous to his examination and
that the questions and answers were carefully read
over to him and ~~the~~ subscribed his name thereto and
that the parties appeared before me at such examination
by their reputation Amos B. Corn

Justice in Chicago McHenry County Ill
Examined this 18th Sept 1852 J. M. Johnson cor

And thereafter to sit on the day and year last
aforesaid the Circuit Court being then in session
at Monroeville in the County aforesaid the a decree
and order of said Court was made, and which is
in the terms and figures following to wit

State of Illinois } Of the Sept Term of the McHenry
McHenry County } County Circuit Court for A.D. 1852

The School Trustees of Township }
Number forty three 43 North of Range }
Number Eight 8 East of the third }
Principal Meridian plaintiffs }
vs }
Alexander H. Palmer, Sophia Palmer }
Wm. A. You, Charles Sanduluan }
John C. Cornell, Dyckman, Morris }
and Richard D. Swift defendants }
In Chancery

And now on
this 18th day of September in the year of our Lord one
thousand Eight hundred and fifty two being one of
the days in the September term of the McHenry County
Circuit Court for the year of our Lord one thousand
Eight hundred and fifty two - this cause came on for
a final hearing on the bill answers of the said defendants
Morris and Swift the bill having been previously taken
pro confesso as to the other of the said defendants having
except the said defendant John C. Cornell whose death
was suggested & the proof of the said circumstances whereby
it appears to the Court that the said defendants Alexander
H. Palmer and Sophia Palmer his wife on the first day
of September in the year of our Lord one thousand
Eight hundred and fifty four made executed and
acknowledged and delivered a certain mortgage of their

date to the Trustees of Schools of Township Number forty
three (43) North of Range Number Eight (8), East of the
third principal meridian for the use of the inhabitants
of said Township to secure the payment of the sum
of one hundred and thirty dollars with twelve per cent
annum interest by annuities due and owing from the said
Alexander H. Palmer to the said Trustees as appears which
said mortgage is in the words and figures following viz.
My Alexander H. Palmer, Sophia Palmer of the County of
Cook and State of Illinois do hereby grant convey and
transfer to the Trustees of Schools of Township 43. N. R.
8. E. of the third P.M. meridian for the use of the
inhabitants of said Township the following real estate
to wit The East half of the South West quarter and
the East half of the West half of the South West quarter
of Section Number 16, lying in Township Number forty
three (43) N. R. 8. E. of the 3rd principal meridian the
last described lot divided by a line running from the
South West corner to the South East corner of said
lot, about where the road now leading from Crystal
Lake to Fox River which real estate we declare
to be in Mortgage for the payment of one hundred
and thirty dollars loaned to me by the trustees of said
Township as above and all interest that may accrue
thereon to be computed at the rate of twelve per cent
per annum until paid and I further covenant to
pay the said sum of money five years from the date
hereof and to pay all interest on the above sum
at the rate aforesaid half yearly in advance and
we further covenant that we have a good title to said
estate and that the same is free from all incumbrances
that we may pay all taxes and assessments which
may be levied upon said estate and if said estate
is sold to pay the aforesaid debt or any part

thereof we will deliver immediate possession to
the purchaser. Witness our hands and seals this
first day of September A.D. 1844.

Signe
Seymour Tuten and demand. *Seymour Tuten*
in presence of *Sophia Palmer*

State of Illinois } Before me J. T. Pearson a Justice
McHenry County } of the Peace in for the County of
McHenry *James Alexander H. Palmer*
Sophia his wife and acknowledged that they executed
the within Mortgage for the purposes therein mentioned
and the said Sophia his wife being by me examined
apart from her said husband acknowledged that she
executed the same of her own free will. And I further
certify that I know the individual to be the same
who executed the within Mortgage
Taken and acknowledged before me this 4th day
of October A.D. 1844. *J. T. Pearson J. T. Pearson*

Which said Mortgage being read and heard with the
other proofs in the cause and the Court having con-
sidered the same being fully advised of and con-
sidering the premises adjudge orders and decrees
that the whole principal sum of one hundred
thirty dollars in the said Mortgage mentioned
remains wholly unpaid and that the further sum of
one hundred and eighty dollars of interest on the sum
at the rate of twelve per centum per annum as in said
Mortgage mentioned also remains due and unpaid
amounting in the whole principal and interest to the
sum of two hundred thirty three dollars and eighty cents
and it is further ordered and decreed by the Court
that all the right title interest claim and demand
of the said Alexander H. Palmer & Sophia Palmer his wife

Henry A. New, Chesley, Samuel and Buckner S. Morris, and
Richard A. Swift of in and to the said the East half
of the said South West quarter and the East half of
the West half of the South West quarter of Section Number
Sixteen (16) in Township Number forty three (43) North
of Range Number Eight East of the third principal
Meridian the last lot divided by a line running
from the North West Corner to the South East Corner of
said lot about where the road now leading from Big Lake
Lake to Fox River in the said Montgomerie mentioned there
be exposed to sale for cash at the village of Big Lake
Lake in said Montgomery County after advertising the time
and place of said sale for four weeks successively by
posting such notice at three public places in said County
including one on the front door of the Court house
in Woodstock and also by publishing the same an
abstractment of the time and place of said sale in
the Woodstock Democrat for four weeks successively
and it is further ordered and decreed that the applicant
Complainant have and recover their costs of and from
the last mentioned defendants expended and to be expen-
ded herein in execution of this decree and it is further
ordered and decreed by the Court that they James
S. Corn one of the Justices of this Court shall with
all reasonable dispatch expose the said Montgomerie
premises to sale in the manner herein expressed
specified and that after such sale he is hereby
imprisoned to pay over to the said Complainant
the said sum of two hundred thirty three and
85/100 dollars and the amount of all costs and
legal charges into the Clerk of this Court to be paid
to the persons entitled thereto and it is further ordered
and decreed by the Court that should the said
Montgomerie premises not sell for enough to satisfy

Said debt with all legal costs and charges and in
that event the said complainant sheweth but the amount
of said debt costs and charges or said sum for the
said mortgaged premises and the said defendants nor
any of them sheweth receding the said mortgaged premises
from such sale within the space of twelve months thereafter
than then the said Master shall execute acknowledgment and
deliver the title in fee simple of the said mortgaged prem-
ises to the said complainant or their assigns

State of Illinois
McClung County I the undersigned Clerk
of the Circuit Court in
and for the said County and State aforesaid
do certify that the foregoing is a true and perfect
copy of the record and proceedings in the above
entitled cause on file in this office
Attest Joel H Johnson Clerk of said
Court and the seal thereof
at Woodstock this 9th day of
June A.D. 1833.

J H Johnson
Clerk

Mae of Quinn
R R Swift &
B S Morris et al
vs

Trustees of Schools Town
43 R & East

Superior Court Green
Term A S 1858

Order to Mr. Healey

I do hereby enter

judicially accounts for costs

in the above case and as shown

being hereby bound to pay or cause to be paid
all costs which may accrue in this case either
to the opposite party or to any of the officers of this court
by virtue of any decree of this State

J. S. Church

To
Reid, R. Swift & Co

Trustees of Schools T 43. R. & E

Received for costs

Filed
June 15 - 1858.

William O. M.

Dec 8 1858

This evidence was clearly insufficient to warrant the Dec. the rule being well settled that there must be two witnesses or one with strong corroborating circumstances to support it. See *Smith vs Bush* 1 John. Ch. Rep. 459
Stewart vs Waterbury 1 Idw. Rep. 442. and authorities everywhere.

The only question now to be considered is this: Court is to infer or presume that any further evidence was offered than appears in the record there being no bill of exceptions. It is not necessary to go beyond the reported decisions of this court to find this question settled.

With the exception of the ^{the execution} proof of exhibits the presumption is that all the testimony is ^{presented} in the record. *Holdreder vs Bailey* 4 Scam 124-5-6
McClay vs Morris 4 Gil. 370 -
12 Illin. 260
11 Ill. 361

Our Statute has not changed the rule that the evidence must appear in the record and although evidence may be taken orally in court yet it will not be presumed unless it appears in the record.
White vs Morrison et al 11 Ill. 361
Ward vs Owens et al 12 Ill. 283

W. H. Thompson

to

Circle of Science

Abolition

MS. 451

11311 458

Trustees of School, &c
als
Moses & Supt }

And the said debts in error
by Mchm this atty. Says that there is
not error in the record and proceedings
in said cause as alleged by Plaintiffs &c

C Mchm
for debts in

Trustee on
 aas
 House Supt
 London, Mass

Filed June 17th 1853
 L. Leland Clerk
 By P. H. Leland Depy.

Trustees of Schools &
ads
Swift & Morris

This is bill in Chancery
to foreclose mortgage. executed by Palmer
and wife to. depts in Grover on the
1st day of September 1844. to secure the
payment of money borrowed by Palmer
from school fund - Palmer & wife
Subsequently conveyed the land subject
to S. D. Mortgage to. depts. Thru. Thru. Conveyed
^{subject to} to A. Connell - and A. Connell to B. S. Morris
as trustee for H. H. Swift - The death of
A. Connell suggested and the bill taken as
confessed against Palmer & wife. Sunder-
land & Thru. Morris & Swift answered
under oath denying ~~the~~ of Confessed
mortgage. The principal errors assign-
ed are that. the evidence on the
record. to wit the deposition of S. H.
Shepherd. is not sufficient to authorize
the decree when answered under oath

I presume the same rule applies
in Chancery that does at law
and if so this Court cannot notice
the evidence of Shepherd. no bill of
exceptions having been taken. and
the evidence upon which the decree
was rendered not being contained in
this record - The records of deeds
from Palmer & wife to Thru. Conveying
subject to mortgage. having been read

(1805-46)

To the 5 Error assigned. that there is no

master report - There is no exception appear when
the words - but they show the report of master

C. M. B. L. L.
for dept in case

Trusts &c
ads

North & South