

No. 14677

Supreme Court of Illinois

Hoyt

vs.

Clark.

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

No. 65

J. W. Middleton & Co., Stationers, 196 Lake St.

14679

Hoyt
vs.
Clark

228.

65

Hoyt
v
Clark.

This case is
to be continued
and placed on
the docket at the
next term
Barton
C. J.

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Plas, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the Second day of June in the year of our Lord One Thousand Eight Hundred and Sixty two and of the Independence of the United States of America the Eighty Sixth

Present, The Honorable John M. Wilson Chief Justice of the }
Superior Court of Chicago. }

Van H. Higgins }
Grant Lordnick } Judges.

Prosecuting Attorney.

Anthony Chering Sheriff of Cook County.

Attest, Thomas B. Carter Clerk.

Be it remembered that hereunto is set, on the Twenty Second day of December in the year of our Lord One Thousand Eight Hundred and Sixty Eight. Then issued out of the office of the Clerk of the Cook County Court of Common Pleas the Perpetual Writ of Summons which said Writ with the Sheriff returns thereto endorsed on in words and figures following to wit

State of Illinois
County of Cook

The People of the State of Illinois
To the Sheriff of said County: Greeting -
We Command You that You Summon Richard
Garretson & William H. Hoyt if they shall be

formed in York County, personally to be and appear
before the Court County Court of Common Pleas of said
County of Cook on the first day of the next term thereof
to be holden at the Court House in the City of Chicago
in said County, on the first Monday of January next
to answer unto Mary Clark in her Certain Bill
of Complaint filed in the said Court on the Chancery
Side thereof

And how you shall and thus this writ with an
endorsement thereon in what manner you shall have
executed the same

Seal

Witness Walter Kimball, Clerk
of the said Court and the Seal
thereof at the City of Chicago aforesaid
the 22nd day of December A.D. 1858
Walter Kimball

Clerk

Said this writ in the name of William H. Hunt
the other defendant R. Gamston not found in my County,
and by delivering a Copy thereof to him

John Gray Sheriff
By George Anderson Deputy

And afterwards to wit on the Twenty Second day of
December in the Year aforesaid the Complainant in
the Cause by Humorous Writ & Non Sum Solicitor filed
in the office of the Clerk aforesaid her Certain Bill of
Complaint in words and figures following to wit

To the Honorable John M. Wilson
Judge of the Cook County Court of Common Pleas
within & for the County of Cook and State of Illinois

Your Oratrix Mary Clark of the City of
Cleveland and State of Ohio humbly Complaining
represents unto Your Honor that on or about the
Twenty third day of November in the Year One Thousand
Eight Hundred and Fifty five she made and entered
into a Certain Agreement or Contract in writing with
Richard Gammon of Chicago Illinois whereby Your
Oratrix agreed to Sell to the Said Richard Gammon
the following described Real estate Situate in the
County of Cook & State of Illinois to wit: Lots Number
Three (3) and Four (4) in the Subdivision of Six Acres
in the South West Fractional quarter of Section
Twenty Two, Town (39) N R 14 E marked on Sows
map Mary Clark being 58 1/2 feet front on State
Street & being half the block in depth to an alley
inclusion in depth Situate in Chicago Illinois and
which Contract or agreement is as follows

"Article of Agreement made this Twenty third day
of November in the Year of Our Lord One Thousand
Eight Hundred and Fifty five Between Mary
Clark of Cleveland Ohio of the first part and
Richard Gammon of Chicago Illinois of the Second
part, Witnesseth. That if the party of the Second
part shall first make the payments and perform the
Covenants hereinafter mentioned in his part to be made

And performed the Said party of the first part
hushy Covenants and agrees to Convey and assign
to the party of the Second part in fee Simple Clear
of all incumbrance whatever by a good & Sufficient
Warranty Deed. the following lot piece or parcel
of ground viz: Lot Number Three (3) and Four
(4) in the Subdivision of Six Acres in the South West
Fractional Quarter of Section Twenty Two Town (39)
N R 14 E (marked on Said Map) Many claim
being 58 1/2 feet front on State Street & being half the
block in depth to an alley inclusion in depth
Situate in Chicago Illinois

And the Said party of the Second part
hushy Covenants and agrees to pay the Said party
of the first part at the office of George R Clark
in Chicago Illinois the Sum of Two Thousand Six
Hundred and Thirty Two Dollars and Fifty Cents
in the manner following:

Six hundred and fifty eight Dollars & Fifty
Cents Cash in hand the receipt of which is hereby
Acknowledged and Six Hundred and fifty eight
Dollars & Fifty Cents on the Twenty Third day
of November in each of the Years A D 1856, 1857 and
1858 with interest at the rate of Six per Cent per Annum
payable Annually on the whole Sum from time to time
remaining unpaid. And to pay all taxes assessments
or impositions that may be legally levied or imposed
upon said Lot and in Case of failure of the Said party

of the Second part to make either of the payments or
perform any of the Covenants on his part this Contract
shall be forfeited and determined at the election
of the Said party of the first part, and the party of
the second part shall forfeit all payments made herein
in this Contract and such payment shall be retained
by the Said party of the first part in full satisfaction
and in liquidation of all damages by her sustained, and
she shall have the right to re-enter and take possession.
It is mutually agreed that the time of payment shall
be an essential part of this Contract and that all
the Covenants and agreements herein contained shall
afford to and be obligatory upon the heirs, executors
Administrators and assigns of the respective parties.

In witness whereof the parties to these presents
have hereunto set their hands and seals the
day and Year first above written

(Signed) Mary Clark (Seal)
R Samters (Seal)

And your writing further shews unto your Honor
that the payment that matured on the twenty third
day of November A D 1857 was not paid nor has
there been anything paid on the same since. That on
the said day your writing elected to declare the said
Contract forfeited as she had a right to do and
also on the twenty third day of November A D 1858
and the payment having become due, and the same
not having been paid she again elected to thus

declare the Said Contract forfeited, and all
payments which which had been made by the Said
Richard Gammons on the same forfeited to Your orating

And Your orating further shows unto Your
Honor that she is informed that the Said Richard
Gammons has since the execution of the Said Con-
tract assigned all his right title and interest in
and to the same, and no longer any interest in
law thence. the same having been assigned or trans-
ferred to William H Hoyt who claims to own the same

And Your Orating further shows unto Your Honor
that the Said William H Hoyt nor any one for him
have made the payments due on the Said Contract
as the same become due and payable nor since
although Your orating has fully complied with the
Covenants and Conditions on her part

All which actings and doings of the Said
defendants are Contrary to Equity and good Conscience
and tend to the manifest wrong and injury of
Your orating in the premises.

In Consideration Whereof, and as Your
Orating Can only have relief in a Court of equity
where matters of this nature are properly Cognizable.
to the end therefore that the Said Richard Gammons
and William H Hoyt and the rest of these Confid-
ents when discovered (may) be answer made each
being hereby expressly named) full stop and full
answers made to all and singular the matters herein

Contained as fully and particularly as if the same
 were hereunto repeated and they thereunto distinctly
 interrogated, And that the said Agreement or
 Contract forfeited as aforesaid may be declared to
 be forfeited and may be decreed to be delivered up
 to be Cancelled

Whereby it please Your Honor to grant unto
 Your orators a writ of Summons to be directed unto
 the said Richard Gammon and William H. Hoyt
 thereby Commanding them and each of them at a
 certain day therein mentioned personally to be and
 appear in this Honorable Court and there and there
 to answer all and singular the premises and to stand
 to and abide such order and decree as may be
 judged And Your orators will ever pray
 Shannan, Davis & Towne Henry Clark
 Sol for Capt by Shannan, Davis & Towne

And afterwards to wit on the Twentieth day of
 January in the Year of Our Lord Our Thousand
 Eight Hundred and Fifty nine the defendant
 herein by A. B. Hurd his Solicitor, filed in
 the office of the Clerk aforesaid, his Certain Answer
 in words and figures following to wit

In Chancery The Several Answer of William H Hoyt
Defendant to the Complaint of Mary Clark
Against this Complainant and Richard Garretson
And the Said Defendant William H Hoyt reserving
to himself all manner of benefit and advantage of
Exception to the many errors & insufficiencies in the Com-
plainant's said Bill of Complaint Contained for Answer
thereto, or unto so much or such parts thereof as the
Defendant is advised is material for him to make answer
unto, Answering, Says, he admits that on or about the
Twenty Third Day of November in the Year of Our Lord
1853 the said Complainant made & entered into a
Certain Agreement or Contract in writing with said
Richard Garretson. Whereby she agreed to sell to the
said Richard her estate in said Contract described
as lots Number Three (3) and Four (4) in the Subdivision
of Six Acres in the South West Fractional Quarter of
Section Twenty Two. Town (34) N R 14 E (marked in
Sears Map Mary Clark being 3 1/2 feet front on
State Street & being half the block in depth to an alley
inclusive in depth situate in Chicago Illinois & which
said Contract is fully set out in said Complainant's
Bill of Complaint wherein it was agreed that the
said Richard Garretson or his assigns should in pay
for said property the sum of Two Thousand Six Hundred
& Thirty Two Dollars & fifty Cents in the manner following
Six Hundred and fifty eight Dollars & twelve
Cents cash in hand, the receipt of which was thereby

Acknowledged & Paid Hundred fifty eight dollars
& thirty nine Cents on the Twenty Third day of November in
each of the Years A D 1856. 1857 & 1858 with interest
at the rate of Six per Cent per Annum payable Annually
on the whole sum from time to time remaining unpaid
and all taxes assessments or impositions that might
be legally levied or imposed upon said lot which said
payment was to be made at the office of George R
Clark in Chicago Illinois

And this defendant Charges that the payment
due on the 23^d day of Novr 1856 & interest was duly
paid & that he & the Said Gamsteno have paid all taxes
& assessments levied upon said property

And this defendant admits that the payments
due on the Twenty Third day of Novr 1857 & 1858 were
not made by the Said Gamsteno or by this defendant
But this defendant avers that on the day the said
Second payment became due to wit on the Twenty Third
day of November A D 1857 the Said Richard Gamsteno
went to the office of the Said George R Clark with
the Amount then due as per said Contract to pay the
same and did then & there offer the same but he was
told by said Clark that the Said Complainant had
withdrawn the said Article of Agreement and all his
business from his hands & that he was not authorized
to receive said payment & that afterward about the
1st day of January A D 1858 the Said Gamsteno received
a letter from the Merchant Loan & Trust Company bank

stating that the said Agreement was left with it for Collection, that as soon as he received the said notice (which was received in due time of mail) he came from his residence at Henry in this State & went to the said Trust Company Bank to pay the same & was informed that the bond had been taken away from said Bank the day before & it had no authority to receive the money, and that while he was owner of said Contract Court till the 17th day of February A D 1838 he was unable to find any person authorized to receive the said payment

And this defendant admits that on the 17th day of February the said Gammon assigned to this defendant all his right title & interest in & to the said Contract & the premises therein intended to be described & that said Gammon has no interest in said Contract or said premises

And this defendant further avers & insists that since the assignment of said Contract he has been willing & anxious to pay said payment but could not find any person authorized to receive the money. till sometime in August A D 1838 hearing that the said Agreement was in the hands of Humphrey White & Toms this defendant went in company with one Jennings to La Roche. where it was agreed that as soon as they could procure a due for the premises intended to be conveyed properly executed this defendant would pay the said back payment & the payment not then due

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& the said Shumway Write & Trowe agreed to procure such a deed & when it should be received to notify this defendant of its receipt. After waiting till the last payment became due on said Contract for said deed this defendant not hearing from said Shumway Write & Trowe went to see them & was informed that they had received a deed following the description in said Contract. And this defendant further assuming says that about the time the last payment became due he ascertained that the property intended to be conveyed by said Contract was incorrectly described that said six acre tract belonging to said Mary Clark had never been subdivided & that there was no such lots as lots 3 & 4 in Block 4 in said six acres lying upon State Street and the deed offered to him by the said Shumway Write & Trowe would not convey to him any known property.

That the South West fractional quarter of Section Twenty two was on or about the 27th day of April A D 1853 subdivided by Thomas Church then being Assessor & his division of the same filed in the Records office of Cook County May 7th 1853 & Recorded in Book 55 of Maps page 117 by which said subdivision the property intended in said Contract is included in a lot described as lot Seventy nine Block Six & is the South half of the said lot 79, B & C as per Division of SW 1/4 Sec 22 T 39 R 14. And this defendant charges that lots 3 & 4 B 4 of said division do not

belong to Said Complainant. and do not fall within
Said list. And

And this defendant further Answering says that he was ready and willing to pay the said payment and in all things fulfill his part of the said Contract & was & still is anxious to do. Whenever the said Mary Clark shall make to him a good & sufficient deed for the premises intended to be conveyed by said Contract & when said last payment was due this defendant requested of the said Shumway Wait & Tom who were acting as the Agents of said Complainant to procure him such a deed at the same time offering to pay the amount due at the same. That said Shumway Wait & Tom for a long time insisted that the deed in their possession & following the description contained in said Contract was sufficient & that this defendant must take that deed or they would declare said Contract forfeited. That some time about the 20th of November 1868 this defendant went to said Shumway Wait & Tom in Company with A B Bond and tendered to them the sum of Eight hundred dollars in gold & demanded a proper deed upon said Contract containing a correct description of said property & the said Shumway Wait & Tom offend again the said improper deed & insisted that as the same followed the description in said Contract it was all the defendant could demand or require & if the property was not properly described this defendant could file a bill in

Chancery to correct such description. That afterwards
the defendant procured the said deed to go again
to said Shumway, Wait & Tom Genderson to persuade
them to get a proper deed for said premises, during
such conference Mr Wait one of said firm insisted
that his firm had had a great deal of trouble about
the matter and would not take any more. but if
the defendant could procure Mr Tarsyth to make
a deed containing a proper description of the prem-
-ises it should be sent to said Mary Clark to be
executed & if she would execute it, it should be
delivered to this defendant. This defendant at his
own expense procured said Tarsyth to make what
he believed to be a proper deed correctly describing the
property intended to be conveyed by said contract
and gave the same to said Shumway, Wait & Tom
to be sent to said complainant to be executed by
her & he has been informed & believes it was so sent
& that the said Mary Clark said complainant
refused to execute the same & that she still refuses
to give this defendant a deed with a proper descrip-
-tion of the property intended to be conveyed to this
defendant

And this defendant further avers & insists
that the property meant in said contract is the
South fifty eight & a half feet of lot Seventy nine (79)
of block Six (6) appears Division of 49 1/2 acres in
the South West fractional quarter of Section Twenty two (22)

Tom. F. O'Neil (39) N.R. Faintino (14) East of 3rd P.M.
as the same is plotted & recorded in the Recorder's office
in the County of Cook in Book 85 of Maps Page 19th and
that until a deed properly describing said property is ready
to be given he is not bound to pay the balance due on
said Contract. And that he always has been & is now
ready & willing to pay said balance whenever such deed
is delivered to him.

And this defendant further answering says that he
has been put to great cost & trouble on account of the said
Complainant's refusing to make a proper deed for said
premises & he has been unable to make good title & parts
of said premises which he had previously sold to two
persons because of such refusal & has thereby suffered great
loss & damage. All of which matter & things
this defendant is ready to aver maintain & prove as this
Honorable Court shall direct & humbly prays to be hence
dismissed with his costs & charges in that behalf most
unsuccessfully sustained.

William H. Hoyt
By A. B. Wood

A. B. Wood de ft. Sol

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And afterwards to wit on the Fifteenth day of
October in the Year last aforesaid. Mary Clark
by Humphrey White & Son filed herein the Certain
Answer to the Cross Bill in words and figures
following to wit:—

The Answer of Mary Clark the
defendant in this Cross Bill filed by Wm H. Hoyt
Complainant in the Case of this defendant against
the said William H. Hoyt in the Superior Court of
Chicago within and for the County of Cook and State
of Illinois: this defendant Answering says. That it
is true as alleged in the said Cross Bill that the
defendant filed in the Cook County Court of Common
Place a bill of Complaint against the said Complain-
ant and one Richard Gammon and which set
out the Contract with the said Gammon for the
conveyance of the said Lots Number Three (3) and
four in the Subdivision of Six Acres in the South
West fractional Quarter of Section Twenty Two
Town Thirty Nine North Range fourteen East marked
in Lows Map Mary Clark being fifty eight and
a half feet front on State Street and being half
the block in depth to an alley, in claim in depth
situated in Chicago Illinois. And that the same was
sold for the sum of Two Thousand Six hundred and thirty
two dollars to be paid as follows: Six hundred
and thirty two dollars to be paid as follows:

Six hundred and fifty eight dollars and thirteen Cents Cash at the time of the execution of the Said Contract the receipt of which was acknowledged by the Said Contract, and Six hundred and fifty eight dollars and thirteen Cents on the Twenty third day of November in each of the years A D 1856 and 1857 and 1858 with interest at the rate of Six per Cent per Annum payable Annually on the Whole Sum from time to time unpaid

And this defendant further Answering says that the payments so due on the Twenty third day of November A D 1857 and also on the Twenty third day of November A D 1858 together with the interest accruing thereon were not paid, and this defendant did elect to declare the Said Contract forfeited as by the promises and terms of Said Contract, she had a right to do, and all payments made on the Said Contract forfeited for the non payment aforesaid of which the Said Complainant had notice, and that this defendant did set out and alledge in that Said Bill that the Said Contract had been assigned as she was informed and believed by the Said Complainant in the Said Cross bill and that the payments had not been met as agreed upon and promised in the Said Contract

And this defendant further Answering admits that the Answer of the Said Complainant was filed as alleged in the Said Cross bill and that the Said

payments provided for in the Said Contract were to be made to the defendant Six hundred and fifty eight dollars and twelve Cents on the delivery of Said Contract and ^{the balance on} the twenty third day of November in each of the years of 1836, 1837 and 1838 (with interest payable Annually) on all amounts remaining unpaid and to pay all taxes assessed or levied on the Said premises or property. That Said payments by Said Contract were payable at the office of George R. Clark in the City of Chicago, Illinois.

And this defendant further Answering says that the Said payment of Six hundred and fifty eight dollars and twelve Cents was made on the twenty third day of November 1836 but this defendant does not know, and cannot state whether the Said Complainant has paid the taxes and assessments as alleged in the Said bill and therefore neither admits or denies the allegations in reference thereto but requires strict proof thereof.

And this defendant further Answering says that she does not know and cannot state whether on the 23rd day of November 1837 when the payment on the Said Contract became due the Said Richard Sammons then being the owner of Said Contract went to the office of George R. Clark in the City of Chicago with the amount of money then due on Said Contract or whether he offered to pay the same and the interest then or not, or what he was told by

by the said Clerk. If told anything, or what
notice of any was received by the said Garnition
from the Merchants Savings Loan and Trust Company,
if any was received, or what the said notice contained
or whether said Garnition came to Chicago and went
to said Merchants Savings Loan and Trust Company,
or not or what he was informed of anything by the
officers of said Company or whether said Garnition
was able to find anyone to receive said money,
but this defendant is informed and believes that the
said allegations in the said bill contained are untrue
in fact and this defendant charges the fact to be that
the said Complainant in the said Cross bill has made
no effort to find this defendant or make said pay-
ments and that long after the same was placed in the
hands of Shumway Waitt & Torrey the Attorneys of this
defendant and after said Complainant had notice of
that fact he made no effort whatever to pay the said
payment or fulfill the Contract on his part.

And this defendant further answering says
that the said Contract was placed in the hands of
Shumway Waitt & Torrey long before the month of
February 1858 and the said Plaintiff had notice of the
same, that he admits that the said Plaintiff called
on the said Shumway Waitt & Torrey, but he denies
that he ever offered to pay the amount due on the
said Contract except as herein after stated and any
and all allegations in reference thereto are untrue.

And the only offer which was ever made was long after this defendant had elected to declare the Said Contract forfeited and after the last payment on the same had become due & payable.

And this defendant further answering said that after negotiating for a long time this defendant did consent that if the Said Hoyt would pay up the whole amount due on the Said Contract at that time without any delay and all the expenses incurred in and about the same including the Attorneys fees of her Attorneys Shumway, Waite & Torne she would make a deed in conformity to the Said Contract to which the Said Hoyt agreed, and she executed the Said deed and sent the same to her attorneys using the same description contained in the Said Contract and requested the Said Shumway, Waite & Torne to notify Said Hoyt that they were ready to comply. That the Said Shumway, Waite & Torne did notify the Said Complainant that they had been Said deed executed ready to deliver whenever he complied with Said Agreement, that Said deed was shown to Said Complainant and he made no objection to the same at that time, but said he had used the money and he could not get the amount to comply with Said Contract. Whereupon this defendant by Shumway, Waite & Torne her attorneys notified Said Complainant Said Contract was forfeited, this defendant having so elected and any and all allegations

in the said bill except as hereafter stated contrary
to the same on oath

And this defendant further Answering says
that she admits that some time after the said
Complainant called on the said Humphrey White and
Tome with H. B. Ward the Counsel for said Com-
plainant and tendered to the said Humphrey White
& Tome a Sum of Money, the Amount this Defendant
cannot state, and demanded a deed for the same
whereupon the said Humphrey White and Tome
offered to accept the same and deliver the deed
aforesaid to which the said Hoyt by his
said Attorney refused to give said attorney
when they again as the agents of this defendant
told said Complainant that they should insist on
said forfeiture

And this defendant further Answering
says that she denies that there is any mistake in
the description of the land in the said Contract
that she intended to convey the same as described
in said Contract and that the same is easily
distinguished and the said defendant knows exactly
where the land is situated and is in possession of the
same and has been since he acquired his interest
~~interest~~ therein and any and all allegations of a
mistake is a mere trumped up excuse for the said
Complainant to enable him to obtain time & raise
the money to comply with said Contract

And the defendant further Answering Says that the
Tender so Claimed to have been made Was never in
fact made by the Said Hoyt with his own money
but the same furnished by H P Hurd on his own
Credit and as a mere loan for time and nothing
else and Said Hurd had no idea of allowing the
Said money to go on the Said Contract for the
defendant though her Attorney offered to take the
same and make a deed but the Said Hurd
refused to let the money pass out of his hand,
Although the Attorney of the defendant had at that
time a full Covenant Warranty deed properly ex-
ecuted and acknowledged fully Conveying the Said
property ready to be delivered and which they offered
to deliver when the Said money was paid but the Said
Hurd in the presence of Said Complainant refused to
make Said payment

And this defendant further Answering Says
that she denies that after the Said Hurd Called upon
the Said Humphrey White & Town the Said Complainant
Called on Said White one of Said firm and he agreed
to procure a new deed of Said property from the defend-
-ant. but after importuning the Said White for a
long time the Said White in order to rid himself of
the annoyance and badgering of the Said Complainant
agreed with him that if he could have possession of the
property a deed the Said White would send the same
to the defendant. which the Said White did but this

defendant declined to execute the same. as she
had already elected to declare said Contract forfeited
as she had a right to do. (time being the essence of
said Contract and the said Complainant having
repeatedly refused to comply with the terms of said
Contract, And this defendant did not believe that
the said Complainant could have complied with
the terms of said Contract if she had executed
the same it being apparent from previous acts of
said Complainant that time which it would require
to prepare and execute a new deed was all she
desired not to correct any supposed defect or
mistake in the said Contract

And this defendant denies all and all
manner of Unlawful Combination and Conspiracy
wherein she is by the said bill charged with in this
that there is any other matter come or thing in the
said defendant's said Cross bill contained material
or necessary for this defendant to make answer unto
and not herein and hereby well and sufficiently
answered Confessed traversed and avoided or
denied in and to the knowledge or belief of this defend-
ant all which matters and things the defendant is
ready and willing to aver and maintain as this
honorable Court shall direct and hereby prays that
the said Cross bill may be dismissed with her reason-
able Costs and Charges in this behalf most wrongfully
sustained and that she may have the relief as prayed

in the original bill
Shumway White & Stone
for Clerk

Mary Clark
By E P Stone

And afterwards to wit on the Second day of April
in the Year of our Lord One thousand eight hundred
and Sixty Six, day being one of the days of the
April Term of said Court, ^{Supreme of the State of Ohio} the following Verdict the
Proceedings were had in said Court and entered of
record to wit

Mary Clark

Pill

Richard Garretson
William H Hoyt and

This day Comes said Complain-
ant by Shumway White & Stone her Solicitors and
defendants by H W Bond their Solicitor also Come
and by stipulation filed it is ordered that taking
of proofs herein be closed on or before the 16th
day of April instant

And afterwards to wit on the Eighteenth day of
February in the Year of our Lord One thousand Eight
Hundred and Sixty six. Said day being one of the

day of the February Term of Said Court. the following
Among other proceedings was had in Said Court
and intended of record to wit

Mary Clark

vs
Bill

Richard Gamston and
William H Hoyt

This day Comes the Said Com-
plainant, by Shunway, Pratts & Fome her Solicitors
and the Said defendants by H B Hard their
Solicitor also Come. and by Agreement of the Said
parties in open Court. it is ordered that the prop to
be taken herein to be used in the hearing of this Cause
as well on behalf of the Said Complainant as on behalf
of Said defendants be finally closed by the 15th day
of March next ensuing

And afterwards to wit on the Twentieth day of
December in the Year aforesaid. the said day being
one of the days of the December Term of Said Court
the following Among other proceedings was had in
Said Court and intended of record to wit

Mary Clark

vs
Bill

Richard Gamston and William H Hoyt

And now again Com the parties to this Cause by
their Solicitors. And it Appearing that the Cause is ready
for hearing, it is ordered that Said Cause be and is hereby
set down for final hearing on Thursday the Twenty
Fifth day of December Instant

And afterwards to wit on the Twenty Fifth day
of June in the Year of Our Lord One Thousand Eight
Hundred and Eighty Two, Said day being one of the
days of the Term of Said Court. The following
Among other proceedings was had in Said Court
and to wit of Record to wit

Mary Clark

Deora

Richard Gammon

And William H. Hoyt

This Cause Com on to be
heard upon the Bill of Complaint, the Answer and
the replication ^{and the affidavits, and the cross bills and the answers thereto} and the depositions taken
in the Case and proofs and was argued by Counsel
and the Court being fully advised in the premises do
find that the equity of the case is with Complainant
that on or about the 23rd day of November A.D. 1852
the Complainant entered into an agreement in writing
to sell to said Richard Gammon the following de-
scribed real estate in the City of Chicago County of

of Cook and State of Illinois Dist. Lots Number
Three (3) and Four (4) in the Subdivision of Six (6) acres
in the South West fractional quarter of Section Twenty
two (22) Township Thirty Nine 39/ NR 14 E marked
on said map Mary Clark being 38 1/2 feet front
on State Street and being half the block in depth
to an alley inclusive in depth and which Contract
provided for the payment by said Garretino or his
Assigns to said Complainant the sum of two
thousand six hundred and thirty two dollars and
fifty Cents in manner following, Six hundred & fifty
eight dollars & twenty Cents Cash in hand which
was paid. Six hundred & fifty eight dollars and
thirteen Cents on the 23rd day of November of each
of the Years 1856. 1857 & 1858 with interest at the
rate of Six per Centum payable Annually and that
in and by the said Contract bond is made an essence
thereof and that there has been default made in
the payment of the several payments due and payable
on the 23rd day of November A D 1857 and on the 23rd day
of November A D 1858 and that neither of the same
have been paid, and that the amount due thereon
to the date of this decree amounts to the sum of seven
hundred and seventy two ⁶⁴/₁₀₀ dollars and that
the said Hoyt is the assignee of said Contract and
is entitled to a deed of said premises upon the pay-
ment of the same above mentioned as due and that
the Complainant should make a deed of said premises

8

Therefore it is ordered adjudged and decreed that the defendants pay unto the Complainant (within thirty days from the date of this decree, said sum of Seventy hundred and Seventy dollars and Seventy Cents with the interest thereon from the 23rd day of June A D 1862 and upon this So doing the Complainant convey said premises to said William H. Hoyt in fee simple free from all incumbrances (whatsoever) vesting the act of all persons claiming under said Sanitico and the tracts from the date of said Contract, and by a good and sufficient Warranty and in performance of said Contract describing the premises as follows and which description is so made at the request of said defendants to wit. Lots Number three and four (3 & 4) in the Subdivision of Six Acres in the South West fractional Quarter of Section Twenty two (22) Town Thirty nine (39), North of Range fourteenth East and on the East Side of the Main Channel being 58 1/2 feet in State Street and being half the block in depth or as described by the aforesaid Subdivision as recorded in Book 65 of plate page 117 of the Records of Cook County. The South 58 1/2 feet of Lot 49 on State Street of said aforesaid Subdivision being half the block in depth to an alley inclusive.

And in default of said defendant paying said money in the time specified said Contract be declared forfeited and determined and the said defendant forever enjoined from setting up any claim or title

As Said Francis Order and by Virtue of Said Contract
and that the Defendants pay the Costs of these proceedings
and executions ifue therefor and that the Com-
-plainants have leave to Withdraw the plates exhibited
in evidence and that the Cross bill filed in this
Case be dismissed

On the Hearing of Said Cause the following
Depositions and Exhibits were introduced in
evidence on the part of the Complainant and the
Defendants in the words and figures following to
wit

186
State of Illinois }
County of Cook } ss

Superior Court of Chicago
In Chancery

May Clark
vs
William H. Hoyt }

Deposition of Edward P. Youne a witness pro
duced - sworn and examined on the part of the Complain-
ant in the above entitled cause, before me J. M. Scott.
one of the Masters in Chancery of the Superior Court
of Chicago, taken by the consent of the Solicitors of the
respective parties at the office of said Master in the
City of Chicago on the 25th day of October A. D. 1864, at
which time and place appeared the above named
parties by their solicitors.

Edward P. Youne a witness produced, sworn and
examined on the part of the Complainant to the origin-
al Bill and the Defendants to the Cross Bill, deposes
and says, I reside in Chicago, I am one of the Solicitors
for May Clark in this suit, I am acquainted with May
Clark and the Defendant Hoyt, Some time in the fall
of 1857, the Contract marked Exhibit A, was placed in
the hands of Shumway - Meit & Youne as Attorneys
for May Clark, We at once notified Mr Hoyt the
Defendant, who claimed to own said contract by ap-
pointment, and that he must pay it at once, or it would

be forfeited. Hoyt call on us from time to time until about the time the last payment became due giving various excuses why he did not pay the money, but the principal excuse being that he could not raise it. Some time in the fall of 1858 he told me that if I would get a deed from Mary Clark to him of the property in question he would make the payment at once. At that time or about that time there was the two last payments due on the Contract marked Exhibit A." On reflection I think that the last payment on the contract was not due at that time. But Hoyt informed me that if I would procure the deed from Mrs Clark to him of the property described in the Contract he would raise the money and pay it at once, accordingly on the Eleventh day of October 1858 I drew up the deed marked Exhibit B, and sent it to Mrs Clark who resided in Cleveland Ohio, to be Executed which deed has returned to us about the first of November 1858, Executed and acknowledged by Mrs Clark. I then notified Mr Hoyt the Defendant. Mr Hoyt the Defendant that we were ready to comply with the terms of the contract. But the Defendant Hoyt did not for a long time afterwards comply with his agreement. But made various excuses for not doing so. Although I showed him the deed, and at that time he made no objection to it. Sometime afterwards, said Hoyt called at the Office of Shumway, Went & Young with H. B. Hurl his solicitor and tendered to me

as the agent of Mrs Clark a sum of money. The amount I do not know as the same was held by H. B. Hurd Esq and I did not count it. Although I offered to take it, and deliver him the deed. But he refused to let me have the money, although I offered him the deed at that time. I then told Mr Hoyt and Mr Hurd that the contract for the property in question was forfeited, and that hereafter he should not take the money or deliver the deed, at the time I declared the forfeiture of said contract I acted as the agent for Mrs Clark and had instructions from her to that effect.

X

(Cross Examination)

The offer of the tender was made in the month of November. I cannot give the date. I do not remember the amount Mr Hurd proposed to tender he had what purported to be a bag of gold with him. Mr Hurd complained that the deed and the contract did not properly describe the land. I told him at that time he was prepared with a deed in compliance with the contract, which I offered to give him and take the money called for in the contract. I cannot state the language used by Mr Hurd. Mr Hurd claimed as a reason why he did not tender the money, that the contract and deed described the property as Lots, and that there was no subdivision of land, although Hoyt admitted that he could find the property without any difficulty.

(Interrogatory propounded by Solicitor for Defendant Hoyt)
Did not Mr Shumway or Mr Wait say to Mr Hoyt
at or after that time that if he would have Mr
Forsyth make out a deed discharging the property as
he Forsyth should think it ought to be discharged, that
he would send it down to Mrs Clark to be executed by
her?

Answer I have no personal knowledge of any such arrangement,
I don't recollect of seeing Mr Hoyt or Mr Hurd in our
office after the tender although they may have been in,
subscribed and sworn to before

me this 25th day of October A.D. 1860

Edward P. Touse.

Ira Scott,

Master in Chancery of the }
Superior Court of Chicago }

Superior Court of Chicago

In Chancery }

Mary Clark

vs
William H Hoyt Et al }

State of Illinois

County of Cook E. L.

I, Ira Scott one of the masters in Chancery of the Superior
Court of Chicago do hereby certify that the fore-
going Deposition of Edward P. Touse was taken before
me at my office in the City of Chicago on the 25th day
of October A.D. 1860. on the part of the above named
complainant by the consent of the Solicitors of the

respective parties to said cause that before the
commencement of the examination of the said witness
he was duly sworn by me according to law, and
that the foregoing are all the proofs taken before me
on the part of the above named complainant in
said cause

Dated March 15th 1861

Geo. Scott

Masters Fee \$3.00
by Compt^r - Sett^r

Master in Chancery of
the Superior Court of Chicago

Superior Court of Chicago

In Chancery
Mary Clark

vs

William H. Hoyt et al. }

State of Illinois
County of Cook & S.S.

Depositions of witnesses produced - sworn and examined on the part of the Defendant Hoyt in the above entitled cause, taken before me Ira Scott one of the Masters in Chancery of the Superior Court of Chicago at my office in the City of Chicago on the fourteenth day of April A.D. 1860. by consent of the Solicitors of the respective parties at which time and place appeared the Complainant and the Defendant Hoyt by their respective Solicitors,

Noratio Reed a witness produced, sworn and examined on the part of the Defendant Hoyt, deposes and says - My age is forty five years, I reside in Chicago, I am engaged in the Lumber business,

1st

Did you on or about the 19th of February 1858 go to the office of the Merchants Loan and Trust Company's Bank in company with Mr H. B. Stebbins and Mr Hoyt the Defendant, for the purpose of making a payment upon the contract attached to the Copy bill in this suit

(Above question objected to by Complainant's Solicitor as leading)

Answer,

Yes, I did, I am not positive about Mr Stebbins, Mr Hoyt

was and I think Mr Stebbins was a long,

2^d

Which of the payments mentioned in this Contract was it?

Ans^r.

It was the last payment that was due previous to that time.

3^d

How come you to go there?

Ans^r.

In the summer previous - the spring or fore part of summer I had a trade with Mr Hoyt, for the land in controversy. I paid him as near as I can recollect about \$600⁰⁰ or \$650 down, and gave him my note for a year for \$600⁰⁰ or \$650⁰⁰ and was to make the payments on the Contract. When the payment became due I think perhaps I was not prepared to pay it or could not find the place to pay it. I am not sure. In the winter January or February as near as I can recollect I received a letter from Mr Gametson at that time living in Albany - enclosing a letter from a party in Cleveland stating that the money would be received and could be paid at the Merchants Loan and Trust Company - after receiving that letter I went to the Merchants Loan and Trust Company, prepared to pay the demand. They told me that this same man in Cleveland, had instructed them not to receive the money. I don't know if I asked them if the Contract was there. I can't tell whether they had it or not. I had the money to pay it and tendered it.

(Complainant's Solicitor^{Advis} to that part of a late answer which relates to the contents of the letter mentioned in said answer)

4th

What became of your interest in that property?

Ans^r

In the summer following I relinquished all my right, title and interest in it to Mr Hoyt. He was willing to take it back and I lost what I had paid upon it. The Contract

now show me marked Exhibit A, is the contract I purchased of Mr Hoyt - and referred to by me, in my answer to the second direct interrogatory.

(Cross Examination)

1st State the day if you can when you went to the Merchants Loan & Trust Company?

Ans^r I cannot, it was on or about the time mentioned in my direct examination.

2^d Are you positive it was in the month of February 1858?

Ans^r I am quite confident it was, yet it is barely possible it might have been later.

3^d When did you receive the letter from Ganetson?

Ans^r I should think from one to four weeks previous to my going to the Bank.

4 Why did you not go to the Bank when you first received it?

Ans^r I can't tell. I am not sure but I did go to the Bank within a day or two after I received it.

5 Who did you see at the Bank?

Ans^r I saw the receiving Teller, and it's my impression I saw the Cashier, some one who seemed to be posted in the matter.

6 With whom did you have this conversation?

Ans^r With the receiving Teller or Cashier as I supposed.

7 Did you show him the money?

Ans^r I presented a Check. I was prepared to pay it with a check.

8 State now as near as you can by the person to whom you offered the Check.

Ans^r. There was but little conversation had, the sum and

substance was that they were instructed not to receive the money.

9 Did not the person say whom you addressed that the contract had been forfeited?

Ans. I do not recollect of that remark having been made. It may have been made.

10 Was there any understanding or agreement between you and Mr. Hoyt that in the event of his recovering this property he is to convey to you any portion of the same or pay you any portion or the whole of the sum advanced by you?

Ans. No.

11 Was the contract and assignment marked A. delivered to you by Mr. Hoyt?

Ans. It was.

11 How was it transferred back to him?

Ans. I handed it back to him, and erased the assignment to me.

13 Did you ever make any other tender than the tender of the check mentioned by you?

Ans. No Sir.

(Direct Examination resumed)

5th Was any objection made to the taking of the check as money?

Ans. There was not.

X (Cross Examination resumed)

14 Are you acquainted with the way they do business at the Merchants Loan & Trust Company?

Ans. I am not.

15 On what Bank was that Check drawn?

Ans. At that time I was in business with Harleys & Parker of the firm of Harleys, Parker & Co. and its probable it was the firm check on the Marine Bank.

The testimony of a lone witness objected to by Complainant's Solicitor upon the ground of the interest of the witness.

6th (Direct Examination resumed)

Have you any interest in the result of this suit in any way?
(A lone question objected to by complainant's Solicitor.)

Ans. None whatever.

Subscribed and sworn to before me

this 14th day of April A.D. 1860

Ira Scott

Horatio Reed

Master in Chancery of the
Superior Court of Chicago

Horatio Reed the above named witness being recalled
by the defendant deposes and says

7th Int. Will you now produce the letter referred to in your
answer to the 2^d direct interrogatory?

Ans. I now produce it marked Exhibit B.

Subscribed and sworn to before

me this 16th day of April A.D. 1860

Ira Scott

H. Reed

Master in Chancery of the
Superior Court of Chicago }

Clarend 11

1858

W. B. Gerretson

f

Your note is with Merchants
L. L. & Trust Co. which I want paid with Int.

By

Mary Clark

Henry Feb. 25. 1858

Mr Horatio Reed }
Chicago Ills }

Dear Sir

Received your letter
with the Bond

I received this note yesterday
I assigned By Bond of Mary Clark to Mr W. H.
Hoyt. Mr Hoyt has agreed to take up my Bond
that you hold I wish Mr Reed you would de my
name ~~there~~ off after you get the Bond from Hoyt
I assigned to this Effect. All well hoping you
the same

Respy.

B. Gerretson

George B. Clark a witness produced shown and
examined on the part of the Defendant Hoyt de-
poses and says. I am thirty three years of age. I reside
in Chicago. I have been engaged in real Estate. I know
the parties to this suit.

181 Do you know of the contract attached to the crops

lie in this suit?

Ansⁿ Yes Sir. It was drawn up in our office. Myself and Freeman partners.

2^d Were you the agent of Mrs Mary Clark when that was made?

Ansⁿ Yes I was.

3^d How long did you continue her agent in reference to this matter?

Ansⁿ The understanding was that I should sell the property and collect all the payments and charge her the usual commissions.

4 Did she withdraw the contract from your possession and if so when?

Ansⁿ I sent the contract to Mrs Mary Clark to have her signature immediately after the sale she returned one and sent the other for Mr Garretson or it was handed over to her shortly afterwards.

5th When the payment ^{due} on the 23rd day of November 1857 became due - did Mr Garretson or Mr Stoyt apply to you to make the payment, if so did he make it, if not why not?

(Above question objected to by the Complainant's Solicitor)

Ansⁿ Mr Garretson and Mr Stoyt came together to my office and inquired if I was authorized to receive money on that contract, my answer to them was, that Mrs Clark had the contract, and she had not sent it to my office, and I informed & proposed not to receive the money until I had heard from her.

6 Do you know for what purpose they came to your office?

(Above question objected to by Complainants Solicitor)

Answer.

They said that they came to make the payment on the contract. They asked me if I refused to receive the money on the contract and receipt it. I said I did until I heard from Mrs Clark and they then went out. I wrote to Mrs Clark in relation to it, and she never replied to me on the subject. Mr Winslow her son in law replied to my letter, but did not send the contract, nor authorize me to receive the money. Mr Gannon called several times afterwards and inquired about the matter.

7 Was the contract ever presented afterwards to your office for payment.

Answer

Not to my knowledge - I never heard of its being presented.

8 Was there any Plat of that property, describing the same as described in that contract?

(Above question objected to by Complainants Solicitor)

Answer

There was none excepting on Lowes map, there was a subdivision marked - and I was directed by Mrs Clark to sell the lot according to that subdivision. Mrs Clark told me that Mr Scammon or Mr Winslow had a plat and requested me to call and get it and have it recorded. I called for it and neither of them could find it. Mrs Clark then requested me to ^{have} City Surveyor make a plat of it, according to the description on Lowes map and to have the same recorded. I had the survey made. Mr Greeley made it and I think he had it recorded. I am not positive, Mr Greeley came into my office and stated that he

9th
had letter not have it recorded on account of a mistake
the assessors had made in the placing of the line stone
which he had discovered, not giving Mrs Clark enough
land on State Street, I wrote to Mrs Clark or her son in law
Mr Winslow in answering the letter they objected to pay-
ing the Surveyors bill, after that I had no further business
connection with them, I think the letters are in possession
of J. B. Thomas.

all of
(above answer objected to by Complainants Solicitor)
except from the seventh to the fourteenth line of the fore-
going page.

9th Do you know of Mr Winslow acting as the agent of
Mrs Clark in writing letters or otherwise?

Answer A. C. Winslow replied frequently to letters that I wrote
to Mrs Clark.

X (Cross Examination)

1st Who appointed the agent of Mrs Clark?

Answer Mrs Clark herself appointed me agent to sell this prop-
erty, I went to Cleveland and saw her about the prop-
erty and at that time she gave me the contract of it.

2^d How was you authorized to transact the business as
detailed in your answer to the third direct interrogatory?

Answer While I was at Cleveland I was authorized to commence
selling at once and I came back and immediately sold
this property to these Defendants.

3^d Did your contract over the property disclosed in this con-
tract cease when you had received your commissions
and delivered the contract to Mrs Clark,

Ans^r I was requested by Mrs Clark to collect the payments as they became due and deposit them to her account in the Marine Bank.

4 When did you first learn that she had employed some one else to attend to the collection of these payments?

Ans^r I think it was about the same time or shortly after this difficulty about the survey occurred. I heard it incidentally, I heard that Mr Winslow of this place was attending to her business.

5 State the day of the month that Mr. Garritson and Mr. Hoyt called at your office?

Ans^r I can't state. It was the day that the payment became due, they had the contract with them and by referring to it I saw that it was the day the payment became due and that it was made payable at my office.

6 Did they tender the money to you?

Ans^r They did not show any money they said they were prepared to make the payment. I did not ask to see it.

7 Did the Defendant Garritson take possession of the property at the time you sold it to him?

Ans^r I can't say.

8 Did you go down with the Defendants to look at this property before the sale, and if so, did you have any difficulty in finding it?

Ans^r I did, I had no difficulty in finding it.

9 Would a person acquainted with real Estate have any difficulty in finding this property from the subdivision as laid out on Lower map.

(Alone question objected to by defendants Solicitor)

Answer I should think not.

Subscribed and sworn to before
me this 14th day of May A.D. 1860

John Scott

Master in Chancery of the
Superior Court of Chicago

Geo. H. Clarke

Harry B. Bond a witness produced sworn and examined on the part of the Defendant Hoyt deposes and says I reside in Evanston Cook County I am Solicitor for the Defendant Hoyt. I don't know Mary Clark or Janette. I went with Hoyt on the 20th of November 1856 at his request and tendered to Shuman, Weist and Towne fifteen hundred dollars in Gold and demanded a deed from Mary Clark Complainant of the property intended to be described in the contract attached to the Crops Bill in this case, but therein incorrectly described. Mr Towne offered to Mr Hoyt a deed describing the property as in said contract - But refused to make or deliver one with any other description insisting that Mr Hoyt has obliged to take a deed following the description in the contract literally saying that it was wrong Mr Hoyt could apply to the Court of Chancery and have the deed corrected. He offered to take the money if Mr Hoyt would take the deed he then had which is the same deed marked Exhibit B. in Mr Townes deposition. Mr Hoyt did not appear to be aware but that the description in

the contract was correct, til I informed him that it was not

(Complainants Solicitor objects to above statement of witness that Mr Hoyt did not appear to be aware but that the description in the contract until I informed him that it was not,

I was employed about the tenth of November by Mr Aaron Miller who proposed to loan Mr Hoyt fifteen hundred dollars on the said property and perhaps other property to examine an abstract of title of said property and found the difficulty in the description and told Mr Hoyt and also told him if he would get a proper deed he could have the money - otherwise not. Mr Hoyt then employed me to get such deed. I applied for one but was refused any other than the one spoken of. The tender was then made as before stated by my advice. I afterwards applied with Hoyt for a correct deed, made several applications. Mr Hoyt agreed that if Hoyt would procure Forsyth to make a deed with what he considered a proper description and pay Forsyth for making it he would send it to Mrs Clark for her Execution - if she has a mind to execute it, he had no objections or something to that effect.

(Cross Examination)

I don't recollect whether Towner offered to take the money and receipt ^{on} the contract. He offered to take the money I think unconditionally am not sure I know that the reason it was not paid over was because Mr Towner refused

to make any other deed than the one he there offered.
 He did not offer to take the money and procure a deed
 with the proper description. I do not know who obtained
 the money to make this tender, it was brought to me
 by Hoyt or by Hoyt and Miller as I understood it
 the deed tendered by Mr Tourne to Hoyt complied with
 the contract literally after the tender made by me and
 Mr Tourne's offer to accept it as above stated. Mr Tourne
 did say he declared the contract forfeited

Subscribed and sworn to before
 me this 24th day of October A.D. 1860,
 Ira Scott

St B Hurd

Master in Chancery of the
 Superior Court of Chicago

John D. Jennings a witness produced sworn and
 examined on the part of the defendants deposes and says

1st Int.

Did you about the month of August 1859 have or
 hear a conversation with Shumway White & Tourne about
 the property in question, if so state the same?

Ans

I think I did with one of the members of that firm, either
 with Mr White or Tourne. I proposed paying the whole
 amount unpaid on the contract, if they would procure
 a deed of the premises from Mrs Clark. I left with the
 impression that they would procure one in a few days
 and kept the money some days for the purpose of
 making that payment

2^d

What has afterwards been done by you or them in relation

to the matter

Ans^{er}

I waited about three or four weeks but there was no deed come. I afterwards had some recollection of seeing a deed, But it was unsatisfactory to me for want of proper description. If the description had been satisfactory I should have advanced the money.

3

For whom would you have advanced the money and for whose interest would the deed have been taken?

Ans^{er}

For Mr Hoyt

Cross

1st

When did you see this deed?

Ans^{er}

I can't say

2^d

Can you state positively that you ever saw it?

Ans^{er}

No, I can't state positively, How I came by that information I cannot state, My memory is not sufficiently fresh to state whether I went into the office and saw it, or whether I ever saw it at all. I think I must have seen it, I don't know how else I could have known of the deed being deficient in description

3^d

How much money did you offer to pay?

Ans^{er}

The amount that was then due together with that which was to become due

4

How much was that?

Ans^{er}

My impression is that it was ⁱⁿ the neighborhood of thirteen hundred dollars

5

Was this money in coin or Bank bills?

Ans^{er}

I expected to pay it in such money as they demanded I had no money with me.

6 How long did you keep this money?
Answer I kept it about three weeks,
7 Where did you keep it?
Answer Where I kept the balance of my funds,
8 Where was that?

Answer That's no-body's business, but my own.
9 Did you keep this money in Bank?
Answer I never kept the amount separate from my other funds, but held myself in readiness to pay it at any day
(Albre answer objected to by complainants Solicitor as not responsive)

(The witness in explanation states In answer to the first direct interrogatory when I state that I kept the money some days for the purpose of making that payment I mean that I held myself in readiness for several days to make the payment)

10 Did you keep thirteen hundred dollars on hand all the time?

(Albre question objected to by Defendants Solicitor
Defendants Solicitor disclaims any intention to insist upon a tender by the witness or object at that time,
Answer I held myself in readiness all the time.

11 How did you hold yourself in readiness?

(Albre question objected to by Defendants Solicitor)

Answer By being ready to meet it at any time.

12 Are you positive what time this conversation occurred
Can you state the year or the month?

Answer I cannot positively, without referring to some memo-

Declarations I have at my house
Subscribed and sworn to before
me this 13th day of March A.D. 1861
Jas Scott
J. D. Jennings

John G Shortall a witness produced sworn and
examined on the part of the Defendants Hoyt Depores
And says

1st What is your business?

Answer, Conveyancing - making abstracts of titles and exam-
ining records in this county

2^d Have you examined the records of Cook County for the
subdivisions and plats of a certain piece of land
commonly known as Mary Clarks six acres in the
South West fractional quarter of section twenty two
(22) town 39, North of Range 14 East of third prin-
cipal meridian - if so state whether you found said
subdivisions and what subdivisions of the same
and all about the recorded maps of said six acres

Answer I have made such examination and the paper I
now produce marked Exhibit B, contains the result
of such examination

(Cross Examination)

1st When did you make such examination from your
Books or from the Records?

Answer From our and the records of the county in the Records
office of Cook County.

2^d Can you state positively that there is no plat on

second?

Answer

No of course not, because the assessors division of the South West fractional quarter of section twenty two includes said tract of six acres. My examination being made only with reference to a subdivision by Mary Clark.

Subscribed and sworn to before
me this 15th day of March A.D. 1861
Jas Scott

John G Shortall

Master in Chancery of the
Superior Court of Chicago }

We give the following by request
Mary Clark } Agreement, dated November 23, 1855
with } and recorded November 27, 1856 in Bk
Richard Garrison } 125 p 142 } Part of the first part
Covenants and agrees to convey to the party
of the second part in fee simple by a good and sufficient
Warranty Deed the following lot of ground viz:
Lots A^c 3 & 4 in the subdivision of 6 acres in the South West
fractional 1/4 of section 22. Town 39 N. R. 14 marked on
Laroc Map Mary Clark, being 58 1/2 feet front on State street
& being half the Block in depth, to an alley, inclusive in depth
Party of the second part agrees to pay to said party of the first
part at the office of George R. Clark in Chicago. \$12632.⁵⁹
as follows \$658.¹³ Cash in hand (receipt acknowledged) and
\$658.¹³ on November 23rd in each of the years A.D. 1856, 1857

(Exhibit B - refer to in
deposition of John G Shortall)
Jas Scott
Master in Chancery

and 1858, with interest at 6% per annum, payable annually on the whole sum from time to time remaining unpaid and all taxes and assessments or impositions

Contains usual Clause of forfeiture

Not acknowledged.

We have made examination of the Records in the Recorder's office of Cook County, for any subdivision by Mary Clark of the 6 acres named in the above agreement and find no such subdivision on record.

Chicago March 14, 1861.

John G. Shortall & Co,

pr F. R.

The Assessors Division of the South West fractional Section 22 T. 39 N. R. 14 E. of 3^d P. M., includes the six acre tract set off in the partition amongst the owners of said fractional quarter to Mary Clark and is the only subdivision of six acres on record.

Chicago March 15, 1861 John G. Shortall & Co

pr F. R.

Superior Court of Chicago
In Chancery

Mary Clark
vs

William H. Hoyt & al

State of Illinois }
County of Cook } Es.

I Ira Scott
one of the Masters in Chancery of the Superior Court
of Chicago do hereby certify, that the foregoing dep-
ositions were taken before me on the part of the
above named Defendant William H. Hoyt, at my
office in the City of Chicago By the consent of the
Solicitors of the respective parties that before the
commencement of the examination of the said witnesses
they were each by me duly sworn according to law,
and that the foregoing are all the proofs taken before me
on the part of the said Defendant Hoyt in said cause,
Dated March 15th 1861

Ira Scott

Masters F. & J. p^dly
Defendant Hoyt

Master in Chancery of
the Superior Court of Chicago.

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State of Ills }
Henry County, ss }

Superior Court of Chicago, Cook County -
Illinois in Chancery.

Mary Clark. }

William H. Hoyt }

The deposition of Richard Garretson
of the County of Henry, and State of Illinois a witness of lawful
age produced sworn and examined on his Corporate oath, on
the fourteenth day of November in the Year of our Lord one thousand
eight hundred and sixty, at the office of Hamilton M. Way, in
the Town Kenans in the County of Henry and State aforesaid by
me Hamilton M. Way, a commissioner duly appointed by "Decree
in Potestatem" issued out of the Clerk's office of the Superior Court
of Chicago of Cook County in the State of Illinois, bearing test of
Walter Kimball Esq. Clerk of the said Court, with the seal of said Court
affixed thereto and to me directed as such commissioner for
the Examination of said Richard Garretson a witness in a cer-
tain suit and matter in controversy now pending and unde-
termined in said Superior Court of Chicago wherein Mary
Clark is Plaintiff and William H. Hoyt is defendant, in behalf
of the said William H. Hoyt, on the interrogatories of the said de-
fendant which were attached to or enclosed with the said Com-
mission and upon none others. The said Richard Garretson being first
duly sworn by me, as a witness in the said cause previous to the
commencement of his examination, to testify the truth, as well on the part
of the Plaintiff as the defendant, in relation to the matter in contro-

versy between the said plaintiff and defendant, so far as he should be interrogated, testified and deposed as follows;

Interrogatory 1st. What is your name, age and occupation and where do you now reside -

Answer. My name is Richard Garretson, my age is forty five years. I am at present a Banker. I reside in the town of Kewanee Henry County, Ills.

Interrogatory 2nd. Where did you reside during the month of November 1855

Answer. In the City of Chicago Cook County state of Illinois.

Interrogatory 3rd. Do you know the parties plaintiff or defendant mentioned in the above entitled cause, or either and which of them, and how long have you known them or either and which of them.

Answer. I know the defendant William H. Hoyt. Have known him since the year 1848. I do not know the plaintiff Mary Clark.

Interrogatory 4th. If in answer to the last interrogatory, you state that you know the party plaintiff above mentioned, state whether you ever held a contract from her for the purchase of a certain lot of land, situate in the city of Chicago, & State of Illinois described as lots no three (3) & four (4) in the subdivision of (6) acres in the south west fractional quarter of Section Twenty two, Town 39, & Range 14 East marked in Lewis map Mary Clark, being $58\frac{1}{2}$ feet front on State Street and being half the block in depth, situate in Chicago State of Illinois and dated Nov 23d 1855

Answer. I did hold such a contract as is mentioned in the last above interrogatory (Prob) from said Mary Clark, for the purchase of the lots three and four in the subdivision of six acres as men-

ioned in said last interrogatory, on or about the 23rd of November.
AD 1883

Interrogatory 5th. If in answer to the last interrogatory, you say that you did hold such a contract, state all that you know about the circumstances connected with the second and third payments that became due on said contract and the reason why they were not paid when they respectively became due: set forth the same and all the circumstances and particulars thereof, fully and at large according to the best of your knowledge, remembrance and belief, as if you had been thereto particularly interrogated.

Answer. The contract was arranged and agreed upon between myself and George K. Clark, at his office, (Room 204 Metropolitan Block,) in the city of Chicago Illinois. He, said Clark, offered, as the agent of said Mary Clark, complainant, to sell me the lots mentioned, in interrogatory four (4) for a certain price per foot front on State Street. I think the price was forty five dollars per foot. I was to pay one fourth down, and the balance in equal payments at one, two, and three years, with interest payable at the office of said George K. Clark. I paid the first payment to said Clark, and took his writing stating that he had received the money for the first payment, on said purchase of said property, and also containing an agreement on his part, that he would furnish me with the Bond of said Mary Clark, for the sale and conveyance of said property, in conformity with the said agreement, between him, said Clark, and myself. A few days afterwards, said George K. Clark produced and delivered to me, the said Bond or contract of said Mary Clark as per his agreement, which I took and ac-

livered back to him the writing I received from him. He also took from me a duplicate of said Bond signed by me. At the time the second payment became due I went to the office of said Clark, (then Clark & Thomas) and made said payment, according to the provisions of the contract. Sometime before the third payment became due I addressed a letter to Mary Clark, complainant at Cleveland Ohio, asking for an extension of time on said payment. Not receiving any reply, I again addressed her by letter, on the same subject, with the same result. I was then residing at Henry, in Marshall Co. Ill.) I then raised the money, and on the day the third payment was due, went to Chicago, and to the office of said George R. Clark, aforesaid, and offered to pay said third installment on said Bond which was refused said Clark stating, that said Mary Clark had taken her business out of his hands, that the said Bond was not in his possession and that he was not authorized to receive or receipt for any monies paid on said Contract; although his office was the place at which said payments were to be made, according to the terms of said Contract of Sale. Sometime after this I received a notice from the "Merchants Loan & Trust Company" of Chicago stating that said Bond or Contract was in their hands and at their office in Chicago, and asking payment of said third installment. Within a day or two of the receipt of said notice, I again went to Chicago, and to the office of said "Merchants Loan & Trust Company," called for duplicate of said Bond or contract and offered at the counter of said Company, the payment of said third installment on said Contract or Bond. I was then & there informed

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by the clerks & agents of said Company that said Bond or Contract was not then in their possession, but had been recalled or taken from their custody and control and that they were not authorized to receive or receipt for any monies to be applied on said Bond or Contract.

Interrogatory 6th. If you say that you did hold such contract have you assigned it and to whom and have you now any interest in the said contract or land or in this suit.

Answer. I did assign said Contract to William H. Hoyt (Defendant in this suit) in February, A.D. 1858. I have no interest whatever in the said Contract, or land, or in this suit.

Interrogatory 7th. Do you know any other matter or thing of benefit to the said William H. Hoyt in this suit, if so state the same fully.

Answer. I know nothing further, that I now remember.
Richard Garretson.

I Hamilton M. Way of the County of Henry, and State of Illinois a commissioner, duly appointed to take the deposition of the said Richard Garretson, a witness whose name is subscribed to the foregoing deposition, do hereby certify, that previous to the commencement of the examination of the said Richard Garretson as a witness in the suit between the said Mary Clark, plaintiff, and the said William H. Hoyt defendant, so far as he should be interrogated concerning the same, that the said deposition was taken at my office in the town of Keokuk in the County of Henry, and State of Illinois on the fourth day of November, A.D. 1868, and that

after said deposition was taken by me as aforesaid, the interrogatories and answers thereto as written down were read over to the said witness, and that thereupon the same was signed and sworn to by the said deponent Richard Garretson before me, the oath being administered by me as such commissioner at the place and on the day and year last aforesaid.

Hamilton M. Way, Commissioner.

Articles of Agreement, made this eighth day of Nov. in the year of our Lord one thousand eight hundred and fifty six, between R. Garretson of the county of Cook and city of Chicago, and State of Illinois of the first part, and William H. Hoyt of the same county and State of Illinois of the second part, witnesseth. that if the party of the second part shall first make the payments and perform the covenants hereinafter mentioned on his part to be made and performed, the said party of the first part here by covenants and agrees to convey and assure to the party of the second part, in fee simple, clear of all incumbrances whatever, by a good and sufficient Warranty deed, the following lot, piece or parcel of ground viz: Lot (3) three and the North part of Lot (4) from it being the North (38) thirty eight feet of said Lots on State St in Mary Clark Subdivision of the South part of the North west q^r of the South West q^r of Sec. 22 Twenty two in the city of Chicago. And the said party of the second part, hereby covenants and agrees to pay to the said party of the first part the sum of Three Thousand and forty Dollars in the manner following: Nine hundred and twenty seven $\frac{50}{100}$ Dollars Cash in hand Eight hundred and thirty seven Dollars in one year from date, Eight hundred and thirty eight Dollars in two years from date and four hundred & thirty seven $\frac{50}{100}$ Dollars three years from date with interest on all money to be paid, and to pay all taxes assessments or impositions that may be legally levied or imposed upon said lot, and in case of failure of the said party of the second part to make either of the payments, or perform any of the covenants

on his part, this contract shall be forfeited and determined, at the election of the said party of the first part; and the party of the second part shall forfeit all payments made by him on this contract, and such payments shall be retained by the said party of the first part, in full satisfaction and in liquidation of all damages by him sustained, and he shall have the right to reenter and take possession. It is mutually agreed that the time of payment shall be an essential part of this contract, and that all the covenants and agreements herein contained shall extend to and be obligatory upon the heirs, executors, administrators and assigns of the respective parties.

In witness whereof, The parties to these presents have hereunto set their hands and seals the day and year first above written.

Signed sealed and delivered

in the presence of

L. W. Stone.

R. Garretson.

Seal

Wm. H. Hoyt

Seal.

For value received I do hereby assign transfer & set over unto Charles E. Penning of Chicago Cook County Illinois his heirs and assigns forever all my right title & interest of in and to the within contract & the premises therein described and I hereby authorize R. Garretson of this City & County & State to make & deliver to the said Chas E. Penning his heirs & assigns a good and sufficient warrant deed of the within described property after the fulfillment of within contract.

Chicago Novr 15th 1836

Wm H Hoyt

Seal

Attest J. C. Barber

My name is Charles G. E. Ruessing, am same person mentioned in the copy of contract marked Exhibit "A". I am the one mentioned in the assignment. After I got the contract I went to see the lands. Mr. Hoyt pointed out to me the neighborhood of the lands. I got a surveyor to show exact locality. I can't tell who it was, think S. S. Gable. I wanted exact locality to move a building on, which I had in the street. State whether you tried to find locality from the description in the contract from Mrs. Clark to Garretson and if you tried to find it from this contract and whether the surveyor tried to find it from the same.

Objected to as incompetent and irrelevant? I did, would. State whether you or the surveyor could so ascertain the locality of the property? Object to as incompetent and irrelevant. A. We could not.

Q. Have you seen the assessors subdivision of SW 1/4 Sec 22 of 39. NR 14 E. 3 P Mo. as the same is recorded in the records of office in Cook County and if so state as near as you can whether the property intended to be described in the contract mentioned by you lay in said assessors subdivision and if so where in the same as near as you can judge?

Objected to as incompetent and irrelevant.
Answer. As near as I can judge, the property was located in lot 79 block 6 of assessors subdivision, of said quarter section. I suspect the piece I intended to purchase was 38 feet of the south half of that lot, Mr. Hoyt claimed the other part.
What became of the contract assigned by Hoyt to you?

and if you assigned it. why? (objected to as incompetent and irrelevant).

I assigned it to Hoyt; I could not find the property - I could not do anything with it. This was in the fall of '85.
Cross Ex.

I am not a surveyor - I could not myself find lot 49 of block 6 of Assessor's subdivisions myself. I think it was in 1854 - am not sure - I paid Mr. Hoyt about \$11.00 I held the contract about a year. I was to make all payments maturing on the contract assigned to me. He gave me some land in Pike Co when I reassigned the contract to him. One payment had matured when I reassigned the contract. In affliction I think it was 58 but cannot be accurate - My circumstances when I reassigned the contract was very much involved but I should have been able to have made the payments by assigning this contract to some of my creditors, could the lands have been located. Without the assistance of my creditors I could not have made the payments. The payments were already in default when I reassigned it. Hoyt gave me to assign the contract 80 acres of land in Pike Co & Illinois it was worth in cash I considered \$1000 I have sold the land I got between \$500 & \$600 for it. I sold it in the fall of 1861.

Subscribed and sworn
to before me - E. L. Lane, Not. Pub.

Charles F. E. Prussing.

This deposition is to be used the same as if taken in due form. No objection to be taken as to the time or manner of taking the same.

H. B. Hunt - for Hoyt
Harte & Pound

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Cross Examination resumed June 19th 1862 -

Do you mean to be understood by your answer to the interrogatories in chief that you tried to find the lots by the description in the contract between Mrs Clark & Garretson?

Answer. I made a mistake when I said that I tried to find the lot from the description in the contract from Mrs Clark to Garretson. I meant to say from this contract. The contract from Garretson to Hoys & assigned by Hoys to me & attached to this deposition.

Int. Did you ever see the contract from Mrs Clark to Garretson -

Answer. I don't think I did. it might have been laying around there, but I don't think I did.

Have you ever seen Towns Map referred to in the contract from Mrs Clark to Garretson & have you examined the subdivision referred to in the contract aforesaid.

I have.

Could you find the locality of said lots from that map.

I could not locate the lots exactly by that map, that is just what made me object to it. I could tell about the locality of the lots by that map.

Could you locate the lots by that map as to put your building on the lot.

I could not.

recross. Did you take the contract between Mrs Clark & Garretson & try by that & the map with the aid of the surveyor to locate the lot -

I did not.

Do you know whether you could locate the lot by

the contract between Mrs Clark & Garrison & locate the lots -

I don't know whether I could or not

Redirect Look at the description shown you in the complaint. Many clarks bill in this case on page two of said bill & say whether you could have found the locality of the property by that description.

objected to as incompetent & irrelevant & as the opinion of the witness.

I think I could not have found the exact locality by the description above alluded to.

across. You never tried did you?

I never did.

Charles L. E. Prussing,

This is to be used the same as if taken in due form.

J. B. Hunt

for Hoyt.

Hait & Pomeroy.

Compt. Sol.

State of Illinois
County of Cook

I Thomas D Carter Clerk
of the Supreme Court of Chicago in this and for
the County and State aforesaid do hereby Certify
that the foregoing is a full true and Complete
transcript of the Decisions issued in the Bill,
and Answer thereto the Answer to the Cross Bill,
filed in said Cause. The orders and decrees entered
of record in said Court, together with the Depositions
and Exhibits filed in the Court, in a certain Case
wherein Mary Clark was Complainant and
Richard Garnett and William H Hoyt
were Defendants



In testimony whereof I have
hereunto set my hand and affixed
the Seal of said Court at the
City of Chicago in the County and
State aforesaid the 22nd day
of April A.D. 1863



Thomas D. Carter

Clerk

228 65
Clementine
Hoyt

Hoyt Centennial

Record

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Clark
Record

Filed April 23^d 1863
L. Leland
Clark

Rec'd H/16th paid by
Hend & Borth