

14258

No. _____

Supreme Court of Illinois

Scarlett et al

vs.

Gorham et al

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14258

1862

Scarlet

vs

Gotham

Revised

Supreme Court of the State of Illinois,

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1862.

WILLIAM SCARLETT,
MARY E. SCARLETT,
THOMAS NEWLAN,
JAMES K. STEPHENSON, et al. } Appeal from Kane County
Appellants, } Circuit Court.
vs.
IRA GORHAM, and
GEORGE W. D. HAWKINS. }

Brief of Points, Authorities and Argument for Appellants.

1st. The decree in this case does not contain a sufficient statement of facts or evidence to base itself upon, or to warrant the decree; and the record fails to show any evidence to warrant such a decree.

This court will not presume that any other proof was made than what appears in the record.—11 Ill, p. 361; 12 Ill, p. 283.

2d. The decree is nothing more than an ordinary decree for the foreclosure of a mortgage, and is not in consonance with the pleadings and proofs in the case here shown of record.

a. The original bill of complaint, filed Oct. 15th, 1857, by the complainants vs. Stephenson alone, prays to set aside a conveyance made by Gorham, one of the complainants to said Stephenson, of certain lands in Kaneville, Kane County, on the ground of fraud, or fraudulent representations, on the part of Stephenson, in obtaining such deed; and that the title to said lands may become again vested in the complainants.

There never was any service of a summons on Stephenson on this bill, or in the case entitled Ira Gorham and Geo. W. D. Hawkins vs. James K. Stephenson.—Vide Record, page 50.

In December, 1859, one of the complainants (Gorham) filed what purports to be a supplemental bill of complainant vs. Stephenson, William and Mary Scarlett, Thomas Newlan and others, certain judgment creditors of Stephenson, alleging fraud and fraudulent representations on the part of Stephenson to obtain the deed of said Kaneville lands, and praying that said judgments be reversed and cease to be a lien on said lands, and all

sales and deeds of said lands made by the sheriff be set aside, and the deed from Gorham to Stephenson be cancelled, and Stephenson re-convey, or said creditors of Stephenson be directed to pay complainant's demand of \$600.

b. The decree is not in accordance with the prayer of either bill, and is not consistent with the case stated in either bill.

c. Mary E. Scarlett is not a creditor.

3d. The evidence taken in the case, and here shown of record, does not entitle the complainants to decree, even against Stephenson; for there is no fraud on the part of Stephenson proven.

a. The supplemental bill even rebuts the presumption of fraud on the part of Stephenson, and, from its very allegations, ought to prevent complainant from obtaining a decree.

For, in said bill [Record, page 15-16], it is expressly stated that Stephenson stated to Gorham and Hawkins, the complainants, that he got his title from C. W. Lee, of Aurora; and, by going to him, they could be fully advised as to the nature of the title, and what it was worth: and complainant Gorham then advised Hawkins to go and see Lee, and learn from him about it; and that Hawkins went to see Lee, and found it all right, and so told Gorham; and Gorham, believing Hawkins, and placing full confidence in Hawkins' statements,—not Stephenson's,—consented to make the deed, &c.

Showing clearly that Gorham did not rely upon Stephenson's statements, but relied only, and made the deed only, upon Hawkins' statements.

No combination is shown or pretended between Hawkins and Stephenson. The testimony of Stephenson [Record, p. 71-78] establishes the fact that there was no fraud on the part of Stephenson. He testifies that he made no representations to Hawkins or Gorham relative to the title or value of the land, but referred them to Lee to learn all about it; and that if, after seeing Lee, they desired to trade, to come to his house at Aurora, and he would trade, &c.: that Hawkins came to his house at Aurora next day; and traded.

C. W. Lee's testimony simply shows the fact that Stephenson had no title to the land, (Stephenson's testimony, and Lee's, in this particular, clash somewhat; both being complainant's witnesses) and that his, Lee's title, was not good, and the Wisconsin

land not worth much. Lee also testifies that Hawkins never came to see him about the Wisconsin land.

So then, as against the defendant, Stephenson alone, the complainants under the allegations of the bill of complaint, and the proofs, would not be entitled to a decree.

4th. But Mary E. Scarlett is a *bona fide* purchaser without notice, and entitled to protection, even if Stephenson had obtained his deed by fraud.

A *bona fide* purchase, for a valuable consideration and without notice, either from a fraudulent grantor or grantee, shall be protected. He takes the estate discharged of the fraud that previously injected the title.

11 Ill., p. 322.

A purchaser would never be safe if made responsible for the fairness of every preceding sale of the estate, whether notified of the fraud or not.

It is sufficient for the purposes of equity that he comes into Court free of fraud himself, and from the knowledge of, and attempt to, profit by the fraud of others.

Prevo vs. Walters et al., 4 Scam., p. 39.

See the sworn answers of William and Mary E. Scarlett, record pages 53, 59, 62 and 65, stating how they purchased, and the consideration they paid for the land in controversy, and that they purchased without notice, &c.

Mary E. Scarlett purchased of Thomas Newlan, and Newlan obtained title through a sheriff's deed of the said lands, made after the expiration of the time of redemption, on a sale made May 1st, 1858, upon a judgment obtained against Stephenson in Kane Circuit Court March 9th, 1857, by Abraham Moore, who sued for the use of Julius C. Burnham for the sum of \$2.40, and also upon a judgment obtained against Stephenson in favor of same parties on May 29th, 1857, for \$1,000 debt, and \$266.64 damages and costs; which sale of said lands was made to one Anor Richardson; and said Richardson's certificate of purchase was sold and assigned by him to Newlan, and Newlan received the sheriff's deed.—Vide averments of supplemental bill, Record, p. 22, and Newlan's sworn answer, Record, pp. 65, 67.

Newlan obtained judgment vs. Stephenson, Sept. 14th, 1857, in Aurora Court of Common Pleas, for \$490 60; and the said

land in controversy was sold on an execution on said judgment, on the 1st day of January, 1858, to said Newlan.—Vide averments of supplemental bill, Record, p. 22, and Newlan's answer, Record, pp. 65, 67.

Gorham conveyed the legal title to the lands in controversy to Stephenson by warranty deed Sept. 12, 1857.—Record, pp. 46-49.

The two judgments aforesaid, in favor of Moore for the use of Burnham vs. Stephenson, attached to, and became, a lien on the land in controversy as soon as the legal title became vested in Stephenson; and the sale afterwards to Anor Richardson on said judgments vested in him a valid title, and the assignment of his certificate to Newlan; and the sheriff's deed, subsequently obtained thereon, vested in Newlan a valid title; and the conveyance by Newlan to Mary E. Scarlett, being *bona fide*, and for a valuable consideration, vested in her a valid title.

a. Anor Richardson was a third party [not a creditor] who purchased for a valuable consideration—to wit, the amount of said judgments—without notice, and was in all respects a *bona fide* purchaser; and the title of Newlan and Scarlett, through him, must be protected.

b. Newlan was also a bona-fide purchaser on the sale on his own judgment, made Jan. 1st, 1858; which judgment was obtained, and became a lien, Sept. 14th, 1857.

The satisfaction of his execution by the sale of the land discharged the lien of his judgment of record; and he therefore paid a *quid pro quo*, and is a purchaser for a valuable consideration.

5th. The doctrine of *lis pendens* does not apply to Scarlett; for the commencement of a suit in chancery is constructive notice of the pendency of such suit only against persons who acquire an interest in, or title to, the subject of litigation under the defendants, or some of them *pendente lite*.—Stuyvesant vs. Hall, 2 Barb., ch. p 151.

a. Stephenson was the only defendant to the suit pending when Scarlett bought.

Again, in Roberts vs. Jackson [1 Wend, p. 478], it is held, "Where a judgment was entered after the filing of a bill in chancery, and there was no proof of the service of subpoena, or of actual notice to the plaintiffs in the execution previous to the

entry of the judgment, a sale under the judgment was held valid notwithstanding the *lis pendens*; and the title of a subsequent purchase was adjudged good, although he had full notice of the suit:” which is, without doubt, the law.

The title of Mrs. Scarlett, derived through Newlan and Richardson, must be held good, although the suit between Gorham and Stephenson was pending at the time she purchased of Newlan.

6th. The purported supplemental bill is irregularly and improperly filed.

a. The record shows no leave of the court to file any such bill.

b. The bill purports to be by one only of the complainants, and against almost entirely new defendants, and making, in a measure, a new state of facts.

In fact, it is a *nondescript*.

7th. The decree is in favor of both Gorham and Hawkins as complainants, and against Stephenson and several other defendants having different rights, and states that the Court did then and there find and fix the amount due from Hawkins [one of the complainants] to Gorham [another of the complainants] for the purchase-price of said land, and that claim vs. Hawkins ought to be a just lien on said land, &c.; and that the defendants have ninety days to pay the debt thus due from one of the complainants to the other, or the land be sold, &c.: which is all there is of the decree.

The decree is a *nondescript*.

For these and other reasons, the appellants pray that the said decree be reversed.

CHAS. WHEATON,
of Counsel for Appellants.

Scarlett v. Wells
vs
Gorham et al
Appellate Brief

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The decree is a *voluntary* sale
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CHAS. WHEATON,

of Counsel for Appellants.

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Filed May 6, 1862
L. S. Leland
Clerk.

Supreme Court of the State of Illinois,

THIRD GRAND DIVISION.

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Brief of Points, Authorities and Argument for Appellants.

1st. The decree in this case does not contain a sufficient statement of facts or evidence to base itself upon, or to warrant the decree; and the record fails to show any evidence to warrant such a decree.

This court will not presume that any other proof was made than what appears in the record.—11 Ill, p. 361; 12 Ill, p. 283.

2d. The decree is nothing more than an ordinary decree for the foreclosure of a mortgage, and is not in consonance with the pleadings and proofs in the case here shown of record.

a. The original bill of complaint, filed Oct. 15th, 1857, by the complainants vs. Stephenson alone, prays to set aside a conveyance made by Gorham, one of the complainants to said Stephenson, of certain lands in Kaneville, Kane County, on the ground of fraud, or fraudulent representations, on the part of Stephenson, in obtaining such deed; and that the title to said lands may become again vested in the complainants.

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sales and deeds of said lands made by the sheriff be set aside, and the deed from Gorham to Stephenson be cancelled, and Stephenson re-convey, or said creditors of Stephenson be directed to pay complainant's demand of \$600.

b. The decree is not in accordance with the prayer of either bill, and is not consistent with the case stated in either bill.

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a. The supplemental bill even rebuts the presumption of fraud on the part of Stephenson, and, from its very allegations, ought to prevent complainant from obtaining a decree.

For, in said bill [Record, page 15-16], it is expressly stated that Stephenson stated to Gorham and Hawkins, the complainants, that he got his title from C. W. Lee, of Aurora; and, by going to him, they could be fully advised as to the nature of the title, and what it was worth: and complainant Gorham then advised Hawkins to go and see Lee, and learn from him about it; and that Hawkins went to see Lee, and found it all right, and so told Gorham; and Gorham, believing Hawkins, and placing full confidence in Hawkins' statements,—not Stephenson's,—consented to make the deed, &c.

Showing clearly that Gorham did not rely upon Stephenson's statements, but relied only, and made the deed only, upon Hawkins' statements.

No combination is shown or pretended between Hawkins and Stephenson. The testimony of Stephenson [Record, p. 71-78] establishes the fact that there was no fraud on the part of Stephenson. He testifies that he made no representations to Hawkins or Gorham relative to the title or value of the land, but referred them to Lee to learn all about it; and that if, after seeing Lee, they desired to trade, to come to his house at Aurora, and he would trade, &c.: that Hawkins came to his house at Aurora next day, and traded.

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a. Anor Richardson was a third party [not a creditor] who purchased for a valuable consideration—to wit, the amount of said judgments—without notice, and was in all respects a *bona fide* purchaser; and the title of Newlan and Scarlett, through him, must be protected.

b. Newlan was also a bona-fide purchaser on the sale on his own judgment, made Jan. 1st, 1858; which judgment was obtained, and became a lien, Sept. 14th, 1857.

The satisfaction of his execution by the sale of the land discharged the lien of his judgment of record; and he therefore paid a *quid pro quo*, and is a purchaser for a valuable consideration.

5th. The doctrine of *lis pendens* does not apply to Scarlett; for the commencement of a suit in chancery is constructive notice of the pendency of such suit only against persons who acquire an interest in, or title to, the subject of litigation under the defendants, or some of them *pendente lite*.—Stuyvesant vs. Hall, 2 Barb., ch. p 151.

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Again, in Roberts vs. Jackson [1 Wend, p. 478], it is held, "Where a judgment was entered after the filing of a bill in chancery, and there was no proof of the service of subpoena, or of actual notice to the plaintiffs in the execution previous to the

entry of the judgment, a sale under the judgment was held valid notwithstanding the *lis pendens*; and the title of a subsequent purchase was adjudged good, although he had full notice of the suit:” which is, without doubt, the law.

The title of Mrs. Scarlett, derived through Newlan and Richardson, must be held good, although the suit between Gorham and Stephenson was pending at the time she purchased of Newlan.

6th. The purported supplemental bill is irregularly and improperly filed.

a. The record shows no leave of the court to file any such bill.

b. The bill purports to be by one only of the complainants, and against almost entirely new defendants, and making, in a measure, a new state of facts.

In fact, it is a *nondescript*.

7th. The decree is in favor of both Gorham and Hawkins as complainants, and against Stephenson and several other defendants having different rights, and states that the Court did then and there find and fix the amount due from Hawkins [one of the complainants] to Gorham [another of the complainants] for the purchase-price of said land, and that claim vs. Hawkins ought to be a just lien on said land, &c.; and that the defendants have ninety days to pay the debt thus due from one of the complainants to the other, or the land be sold, &c.: which is all there is of the decree.

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For these and other reasons, the appellants pray that the said decree be reversed.

CHAS. WHEATON,
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of Counsel for Appellants.

CHAS. WHEATON,

Filed May 6, 1862
L. S. Blaine
Clerk

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CHAS. WHEATON,
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appeals-Brief

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The decree is a *rescissory*
of the decree.

CHAS. WHEATON,

of Counsel for Appellants

suits to the other, or the land be sold, &c.; which is all there is
nearly days to buy the debt thus due from one of the complain-
be a just lien on said land, &c.; and that the defendants have
purchase-price of said land, and that claim vs. Hawkins ought to
complaints] to Gorham [another of the complainants] for the
and these find and fix the amount due from [Hawkins] one of the
debt having different rights, and states that the Court did then
complaints, and against Stephenson and several other defen-
4th. The decree is in favor of both Gorham and Hawkins as
In fact, it is a *rescissory*

means a new state of facts.

v. The bill purports to be by one only of the complainants
v. The record shows no leave of the court to file any such bill
properly filed.

op. The purported supplemental bill is irregularly and in-
jur.

and Stephenson was pending at the time the purchase of New
York, must be held good, although the suit between Gorham
The title *rescissory* is derived from *rescindere* and *rescissio*
said: "which is without doubt the law.

purchase was adjudged good, although he had notice of the
notwithstanding the *rescissory*; and the title of said petition
entry of the judgment a sale under the judgment will valid

Filed May 6, 1862
L. Leland
Clerk.

Supreme Court of the State of Illinois,

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1862.

WILLIAM SCARLETT,
MARY E. SCARLETT,
THOMAS NEWLAN,
JAMES K. STEPHENSON, et al.
vs.
IRA GORHAM, and
GEORGE W. D. HAWKINS.

} Appeal from Kane County
Circuit Court.

ABSTRACT OF RECORD.

2 Original Bill of Complaint filed October 15th, 1857, alleges that on the 15th day of May, 1855, Ira Gorham (one of the complainants,) was the owner in fee of the lands mentioned and described in the bond thereunto attached, marked A. That on said day said Gorham sold said premises to George W. D. Hawkins, (the other complainant,) according to the terms and conditions of said bond. That on the 15th day of May, 1857, Hawkins had paid eight hundred dollars and interest on said purchase, leaving still due to Gorham six hundred dollars. That on the 11th day of September, 1857, one James K. Stephenson came to
3 Hawkins, and represented that he had 160 acres of land in Wisconsin, to which he had a good and perfect title, free and clear of incumbrance, which he was desirous to trade with Hawkins for the property mentioned in said bond, marked A.

The property marked A was, and is, a tavern stand in the village of Kaneville, in Kane County, Illinois. That his, Stevenson's, Wisconsin land was very valuable, and worth \$12.50 per acre.

4 That Hawkins, relying upon these statements, concluded to trade if he could get Gorham's consent, by securing Gorham for the purchase money still due on bond A; and that said Gorham agreed to give Stephenson a good warranty deed of said property in bond A described, and take a lien on said Wisconsin land. That the parties agreed to trade the land in bond A, mentioned, for the land in Wisconsin, mentioned in schedule B, Gorham to give Stephenson a deed for the land in schedule A, and Stephenson to give a deed with full covenants of warranty to Gorham of the lands in schedule B, mentioned. That Stephenson afterwards gave a deed signed by him and wife, of said Wisconsin lands, to Hawkins, as grantee therein; which deed the com-

plainants supposed to be a good warranty deed ; and Hawkins then and there conveyed said Wisconsin lands to Gorham, and took back from Gorham a bond therefor, and Gorham then gave Stephenson a good warranty deed of the land in schedule A, described.

4 That the complainants subsequently found out that said deed was a *special* warranty deed.

5 That said Stephenson, at the time of making said deed, had no title to Wisconsin lands, and knowing the same, conveyed said lands to Hawkins to cheat and defraud the complainants out of the land in schedule A, mentioned.

That Stephenson is insolvent and destitute of means. That Stephenson is trying to sell the land in schedule A, mentioned.

6 Calls for Stephenson's answer not under oath.

Prays that the deed of the lands in schedule A, described, may be set aside and declared null and void, and the title to said lands may become again vested in complainants, the same as though no such deed had been made ; prays for an injunction against Stephenson, his agents, &c., to prevent his selling or encumbering said lands ; that such injunction may be made perpetual, and for such other relief, &c. Bill signed by Gorham & Hawkins, with Parks as solicitor. Affidavit of Hawkins in usual form to bill and order of injunction.

8 Schedule "A": A bond from Ira Gorham to George W. D. Hawkins, dated May 15th, 1855, in penal sum of \$5,000, conditioned to convey all Gorham's title and interest in the following lands, being a part of section 26, in township 39 north, range 6 east of third P. M., and bounded as follows, to wit: North by centre of State road and lands owned by H. Remington, east by lands owned by H. Remington and James Lewis, Jr., south by lands owned by Samuel McNair and J. S. Roberts, and west by J. S. Roberts and school house lot in the village of Kaneville, Kane county, Illinois, on the payment by Hawkins of \$1400, at different times.

10 Schedule B, Wisconsin land, describes the following parcel of land situate in the county of Iowa and state of Wisconsin, to wit: The east half of the north-west quarter of section two, in town 4 north of range 1 east ; also west half of north-west of section 15, town 6 north, range 3 east.

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- 13 (one of the defendants) called on Hawkins to trade and exchange 160 acres of land in Wisconsin, which Stephenson represented he had a good title to, and which he represented was worth \$12 50 per acre, (as complainant is informed and believed) for the Kaneville property sold to Hawkins by complainant; that Hawkins told Stephenson the title to said lands was in complainant, and
- 14 Hawkins and Stephenson then went to complainant Gorham, and
- 15 upon the statement of Stephenson that he had a good title to the premises and that they were worth \$2,000, and said Hawkins being desirous to trade, and upon said Stephenson stating that he got his title from C. W. Lee of Aurora, Kane County, Illinois, and that by calling on him they could be fully advised as to the nature of his title and what it was worth, as Lee had been the owner of the land, the complainant Gorham then advised Hawkins to go and see said Lee and ascertain from him whether or not said Stephenson had a good title, and what it was worth.
- 16 That the next day Hawkins went to Aurora and saw Lee, as he informed complainant, who believed him and placed full confidence in his statements, and had made full inquiries of Lee as to the nature of Stephenson's title and the value, and found that Stephenson had a good and perfect title thereto, and that it was worth \$2000.
- That upon this statement and said Hawkins' desire to trade, the complainant Gorham consented to the trade and to convey to said Stephenson the Kaneville property, and Stephenson was to convey to Gorham by a good and sufficient warranty deed the Wisconsin land, and Gorham was to give Hawkins a bond to convey to him the Wisconsin land on his paying to Gorham \$600.
- 17 And believing that Stephenson had a good title, he, Gorham, made and executed to Stephenson a warranty deed of the Kaneville lands, which deed is attached to Bill and marked exhibit "B."
- 17 And thereupon Stephenson *did read* to said Hawkins a deed made and executed by him and his wife, dated September 11th, 1857, which complainant supposed was a warranty deed, it being

so headed, a copy of which deed is attached to Bill and marked Exhibit "C."

And Hawkins and his wife made and executed thereupon to Gorham a warranty deed of said Wisconsin land, and Gorham made and executed to Hawkins a bond to convey said land to Hawkins on his paying him the sum mentioned in the bond, said bond and deed marked Exhibits "D" and "E."

That said Stephenson immediately took possession of said Kaneville land, and on the 16th day of September sold and conveyed said land to one Samuel Stone. Copy of deed marked Exhibit "F."

19 Afterwards Stone became insolvent and conveyed to Asahel Newton, and Newton conveyed and quitclaimed the land to complainant October 12th, 1859. Copy of the last deed marked Exhibit "G."

19 That Stephenson is insolvent, and judgments against him in Kane County Circuit Court.

That Hawkins is insolvent and gone to California.

20 That Stephenson had no title to the Wisconsin land, and the land was and is worthless, and Stephenson knew it.

21 That the following judgments, according to the records of Kane County Circuit Court, were obtained against said Stephenson, to wit:

Orsamus D. Day, by cognovit, Feb. 7, 1857, recovered judgment for \$750 damages and \$5 65 costs. Unsatisfied.

Francis G. Adams, March 9th, 1857, recovered judgment against Stephenson for \$179 20 damages and \$7 75 costs. Not satisfied.

22 That Abraham Moore, who sues for the use of Julius C. Burnham, recovered in said Court, March 9th, 1857, a judgment against Stephenson for \$2 40 costs on demurrer, which was satisfied by sale of said Kaneville land to one Anor Richardson on the first day of May, 1858, and on the 29th day of May, 1857, said Moore, who sued for the use of said Burnham, obtained judgment in said Court for the sum of \$1,000 debt and \$266 64 damages and \$13 10 costs against said Stephenson, which was satisfied as to damages and costs by sale of the said Kaneville land to Anor Richardson on the 1st day of May, 1858.

On the 1st day of January, 1858, the Kaneville land was sold to Thomas Newlan for \$490 60 on an execution and Fee Bill issued out of Aurora Court of Common Pleas in favor of Thomas Newlan and against said Stephenson, on a judgment obtained September 14th, 1857, in said Court in favor of said Newlan.

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| Page of Record. | 23 | That William Scarlett or Mary Scarlett, his wife, claim to be the owner of said Kaneville land, and that he or she has put in possession of said land and appurtenances on rent Daniel Garnett and Minson Garnett. |
| | 24 | That what title the Scarletts have was got from the said Newlan, and Newlan's title was derived through the aforesaid sales of the land. That Stephenson intended to cheat and defraud Gorham and Hawkins in said trade. |
| | 25 | That premises at time of trade were worth \$1,600 to \$1,800, but now not worth more than \$900. |
| | 26 | Makes said Stephenson and William Scarlett and Mary Scarlett, Daniel Garnett, Minson Garnett, Thomas Newlan, Julius C. Burnham, Anor Richardson et als. defendants to said Bill. |
| | 27 | Calls for Stephenson's answer not under oath. |
| | 28 | Calls for Newlan's, William Scarlett's and Mary Scarlett's answers under oath, and the answers of the other defendants. |
| | 28 | Prays that all of said judgments which are or have been liens on said Kaneville land be <i>reversed</i> and <i>taken off</i> said land and cease to be a lien thereon, and the sales made of said land on said judgments be set aside, and all deeds made by the Sheriff of Kane County on such sales be set aside and for naught held, and all title and interest acquired by virtue of such sales be discharged and set aside, and the deed from complainant to Stephenson be cancelled or set aside, and Stephenson be ordered to re-convey the said land to complainant free and clear from liens and incumbrances, or the creditors of said Stephenson be directed to pay complainant's demand of \$600, and such other relief, &c. |
| | 30 | Bill signed by Ira Gorham and Mayborn as solicitor. |
| | 30 | Affidavit of Gorham to truth of bill, in usual form. |
| | 30 to 33 | Exhibit "C," special warranty deed from Stephenson and wife to Hawkins of Wisconsin land, dated September 11th, 1857. |
| | 34 | Exhibit "E," bond from Ira Gorham to Hawkins to convey |
| | 35 | Wisconsin land, dated September 12th, 1857. |
| | 36 | Exhibit "G," quit-claim deed from Asahel Newton to Gorham |
| | 37 | of Kaneville land, dated October 12th, 1859. |
| | 38 | Exhibit "D," warranty deed from Hawkins and wife to Gor- |
| | 39 to | ham of Wisconsin land, dated September 12th, 1857. |
| | 42 | Exhibit "F," deed from Stephenson and wife to Samuel Stone |
| | to | of the Kaneville land, dated September 16th, 1857. |
| | 45 | Exhibit "B," warranty deed from Ira Gorham and wife to James |
| | 46 to | K. Stephenson, conveying the Kaneville land, dated September |
| | 49 | 12th, 1857. |
| | 50 | Summons vs. Stephenson, dated October 15th, 1857, served on N. J. Smith as attorney of Stephenson, Stephenson not found in county. |

- Page of
Record.
- 51 Summons dated December 20th, 1859, vs. Stephenson, William
Scarlett, Thomas Newlan et als.
- 52 Service of summons on the said defendants Day, Stephenson,
Scarlett, Burnham, Newlan, Richardson, Russ, Daniel Garnett
and Minson Garnett.
- 53 Exhibit "A," attached to William Scarlett's answer, being spe-
54 cial warranty deed from Thomas Newlan and wife to Mary E.
55 Scarlett of the Kaneville land, dated September 7th, 1859.
- 56 Answer of William Scarlett, filed April 6th, A. D. 1860.
- The defendant saving and reserving to himself all benefit and
advantage of exception to insufficiencies of the bill for answer
says : That Mary E. Scarlett, wife of defendant, is the owner of
and has the title to the Kaneville land in bill of complaint men-
tioned, that she acquired the title to said lands on the 7th day of
September, 1859, from Thomas Newlan by deed from said New-
lan, dated the said 7th day of September, 1859, conveying said
57 premises to said Mary E. Scarlett, her heirs and assigns forever,
57 a copy of which deed is attached to answer marked "A;" that
said Mary E. Scarlett is a good and bona fide purchaser of said
lands, and purchased of said Newlan in good faith and for valu-
able consideration ; that she, in consideration of the said sale and
conveyance of said Newlan to her, sold and conveyed by deed
to Newlan the following lands, situate in Aurora, Kane County,
Illinois, to wit : Lockwood's sub-division of Block 14 in Stephe-
son's Extended Addition to Aurora, excepting and reserving lots
10, 19 and 20 in said block, and reserving the small wooden
building now on Block 4, which last lands were valued by the
parties at the time of sale at \$1,800, and the lands sold and con-
veyed by Newlan to her were valued at the time of said sale at
\$1,500, and the sum of \$275 was to be paid and was paid by
Newlan to her in money to make up the difference ; that Newlan
58 stated at the time of said sale and conveyance to her that his ti-
tle to said Kaneville lands was good and there were no liens or
claims against said lands, and she relied on such statements of
Newlan and purchased said lands in good faith, supposing and
believing the title of Newlan to be good to said lands.
- Denies any notice or knowledge, at the time of said sale and
conveyance from Newlan to Mary E. Scarlett of said Kaneville
lands, on the part of said Mary E. Scarlett or William Scarlett,
of any claim or interest, legal or equitable, of the said complain-
ant or any other person in and to said lands ; denies all unlawful
combination, &c. Signed by Wilham Scarlett.
- 59 Answer sworn to in usual form by William Scarlett.
- 61 Exhibit A attached to Mary E. Scarlett's answer, being deed

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| Page of Record. | from Newlan and wife to Mary E. Scarlett of the Kaneville lands, dated September 7th, 1859. |
| 62 | Answer of Mary E. Scarlett filed July 3d, 1860, being precise- |
| 63 | ly the same as the answer of William Scarlett above set forth, alleging the same facts in answer, and denying all notice or knowl- |
| 64 | edge of complainant's claim to said land at the time of the said sale and conveyance of Newlan to her, and denies that the com- plainant has any claim or interest in or to the said Kaneville lands, and denies combination, &c. The answer signed by Mary E. Scar- lett and sworn to by Mary E. Scarlett in the usual form. |
| 65 | Answer of Thomas Newlan, filed March 31st, 1860. The defendant, saving and reserving all benefits of exception, &c., for answer, says: That he has no knowledge, information or belief relative to the negotiations, bargains and trades between the said complainant and Hawkins and Stephenson, or in what manner Stephenson obtained title to the lands in bill of complaint |
| 66 | described, except from the bill; that on or about September 14th, 1857, he, the defendant, recovered a judgment against Stephenson in Aurora Court of Common Pleas for the amount charged in the bill of complaint, and afterwards he directed the Sheriff to levy upon and sell the said property as the property of Stephenson, which sale took place at the time mentioned in the bill, and the defendant received a certificate of sale therefor from the Sheriff which he still holds; that said judgment was obtained on a note given to defendant by Stephenson; that afterwards and after the sale of said premises to said Anor Richardson as charged in the bill, he, the defendant, purchased the certificate of sale held by said Richardson, and took an assignment of the same, and after- wards, after the expiration of the time of redemption, to wit: on the 6th day of September, 1859, the defendant obtained a Sheriff's deed of said lands, and the same was duly recorded in the Recorder's office of said county, and afterwards, and before the filing of the said supplemental bill herein, he sold and con- |
| 67 | veyed said premises to Mary E. Scarlett; denies all combination &c. Signed by Thomas Newlan and sworn to by Newlan in the usual form. |
| 68 | General replication of complainants Gorham and Hawkins to the answers of Newlan and the Scarletts, filed February 3d, 1862. |
| 69 | Deposition of James K. Stephenson, who swears: |
| 71 | That he went to trade with Hawkins, and showed him a deed for some land in Wisconsin, which he told him he would trade with him if they could agree; that he told Hawkins he had never seen the land, but that he could see his deed was from L. C. Lee, of Aurora; that he wanted \$1,600 for the land, which |

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 Record.

was the consideration mentioned in the deed ; that he didn't want to say anything further about the land, being a party in the concern ; that Hawkins might go and see Lee, and if he wanted to trade, to come to his house in Aurora ; Hawkins came down the next day and traded the tavern stand for the land ; thinks he

72 saw Gorham before he saw Hawkins, and Gorham seemed willing to have the trade made if his claim could be secured ; traded

73 about the 12th of September, 1857, with Hawkins, and gave him the land in Wisconsin for the tavern stand in Kaneville, and

74 called the land worth in the trade \$1,600 ; description in exhibit C is right ; had a quit-claim deed from Lee, and no other title ;

75 did not deliver up the deed to Lee ; the deed was acknowledged before Parker, Justice of the Peace, but never recorded ; got the title to the tavern stand from Gorham, and the deed was record-

76 ed ; supposed at the time that Lee's title to the 160 acres was good, but it has proved not good ; knew that Lee had nothing but a tax title.

77 Don't think that he told Hawkins he had a good title to the land, but he knows he showed him his deed and referred him to Lee to get posted.

78 Deposition of L. C. Lee, who swears :

79 That he held a tax deed in 1857 of lands described in exhibit

80 C attached to bill of complaint ; that in September, 1857, he made a quit-claim deed of said land to Stephenson to be perfected by acknowledging ; the deed was left with Parker, justice of the peace, not to be acknowledged until Stephenson procured a release of a mortgage on a house and lot in Aurora ; failing to do so, the deed was returned, but Stephenson was to have the right

81 to take the deed to consummate the trade. The deed was never acknowledged or recorded. Stephenson returned the deed ; he,

82 Lee, has sold the land since ; didn't regard his title good at that time ; the land would sell for from fifty cents to \$1 25 per acre

83 if title was good ; says that Hawkins never came to see him

84 about the title to or value of said land. Decree filed and entered March 11th, 1862, for complainants, Ira Gorham and George W. D. Hawkins against James K. Stephenson, Thomas Newlan, Mary E. Scarlett, John Russ, Anor Richardson, William Scarlett, Francis Granger Adams, Daniel Garnett, Minson Garnett, Julius C. Burnham and Orsamus D. Day—provides : " That the Court

85 having heard read the bill and amended bill in this case, and the answers of the said defendants Newlan and Mary E. Scarlett, and the replications thereto, and after having heard read, and seeing the oral and written proofs, evidence and admissions of the respective parties made in the case on the trial thereof, and arguments of the counsel, and being fully advised in the premises, the

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| Page of Record. | said Court did then and there find and fix the amount due from the said George W. D. Hawkins to the said Ira Gorham, on the purchase price of the said land, situated in the town of Kaneville, in the said county of Kane and State of Illinois, and described in |
| 85 | said bills and hereinafter described at \$774 ; that the said complaint should and ought to have the first lien on the said premises |
| 86 | for that sum of money, or against the said defendants and their grantees and assigns ; that said Hawkins was owing said Gorham on the purchase price of the said premises the sum of \$774, and that his claim against said Hawkins be decreed to be a lien upon said lands the same as if it had been secured by a good, sufficient mortgage, bearing date on the day of the sale of the same to Hawkins, to wit : May 15th, 1855 ; that defendants have 90 days from date of decree to pay said sum of \$774 to said Gorham ; that if the same is not paid in said 90 days, then P. R. Wright, Esq, Master in Chancery, shall proceed to advertise and sell said |
| 87 | lands in Kaneville (describing them) for the purpose of making |
| 87 | the aforesaid sum of money and interest thereon, and the costs and expenses of said sale, and that he be clothed with full power to do so, and on the sale of said lands shall execute and deliver, as in other cases of sale made by foreclosure in this Court, certificates of purchase to the purchaser, and file one in Recorder's office of Kane county ; and if said lands be not redeemed by the said defendants as required by law on foreclosure of mortgages, then said Master in Chancery, or his successor, to execute and deliver to the holder of said certificate of purchase good and sufficient |
| 88 | deed of conveyance ; that if the same are not redeemed, and defendants or their heirs, executors, &c., refuse to surrender the possession of said premises on demand of the person entitled to possession, then on such person making affidavit of that fact, and filing the same with the clerk of said court, the said clerk shall at once issue out of said court a writ of possession directed to Sheriff of Kane county, directing him to put out of possession of |
| 89 | said premises all persons. |
| 89 | Defendants made a motion for a new trial and motion denied ; defendants except. |
| 90 | Appeal prayed and allowed March 12th, 1862. |
| 90 | Appeal Bond to be filed in twenty days, in penal sum of \$500. |
| 91 | March 29th A.D. 1862, Appeal Bond filed by William and |
| 91 | Mary E. Scarlett in penal sum of \$500 with Jehial H. Montgomery as surety, and approved ; signatures and seals ; Clerk's certificate and seal. |
| 92 | |

ERRORS ASSIGNED.

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| 93 | 1st. That the Bill of complaint filed in said cause and pur- |
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Page of
Record.

porting to be a supplemental Bill, is and was irregularly and im-
properly filed in said cause ; the same not being a supplemental
Bill, but in fact and substance a new and original Bill in favor of
only one of the complainants and against different parties, and
making a different and new cause of action.

2d. That the Circuit Court erred in giving judgment and de-
cree for said complainants and against the defendants in said cause.

3d. That the Circuit Court erred in rendering the said de-
cree against the defendants.

4th. That the Circuit Court erred in refusing to grant the
defendants a new trial on their motion therefor.

5th. That the said decree rendered in said cause was and is
contrary to the pleadings and proofs in said cause, and against
the law, and should be reversed.

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Supreme Court of the State of Illinois,

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1862.

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- 15 upon the statement of Stephenson that he had a good title to the premises and that they were worth \$2,000, and said Hawkins being desirous to trade, and upon said Stephenson stating that he got his title from C. W. Lee of Aurora, Kane County, Illinois,
- 15 and that by calling on him they could be fully advised as to the nature of his title and what it was worth, as Lee had been the owner of the land, the complainant Gorham then advised Hawkins to go and see said Lee and ascertain from him whether or not said Stephenson had a good title, and what it was worth.
- 16 That the next day Hawkins went to Aurora and saw Lee, as he informed complainant, who believed him and placed full confidence in his atements, and had made full inquiries of Lee as to the nature of Stephenson's title and the value, and found that Stephenson had a good and perfect title thereto, and that it was worth \$2000.
- That upon this statement and said Hawkins' desire to trade, the complainant Gorham consented to the trade and to convey to said Stephenson the Kaneville property, and Stephenson was to convey to Gorham by a good and sufficient warranty deed the Wisconsin land, and Gorham was to give Hawkins a bond to convey to him the Wisconsin land on his paying to Gorham \$600.
- 17 And believing that Stephenson had a good title, he, Gorham, made and executed to Stephenson a warranty deed of the Kaneville lands, which deed is attached to Bill and marked exhibit "B."
- 17 And thereupon Stephenson *did read* to said Hawkins a deed made and executed by him and his wife, dated September 11th, 1857, which complainant supposed was a warranty deed, it being

so headed, a copy of which deed is attached to Bill and marked Exhibit "C."

And Hawkins and his wife made and executed thereupon to Gorham a warranty deed of said Wisconsin land, and Gorham made and executed to Hawkins a bond to convey said land to Hawkins on his paying him the sum mentioned in the bond, said bond and deed marked Exhibits "D" and "E."

That said Stephenson immediately took possession of said Kaneville land, and on the 16th day of September sold and conveyed said land to one Samuel Stone. Copy of deed marked Exhibit "F."

19 Afterwards Stone became insolvent and conveyed to Asahel Newton, and Newton conveyed and quitclaimed the land to complainant October 12th, 1859. Copy of the last deed marked Exhibit "G."

19 That Stephenson is insolvent, and judgments against him in Kane County Circuit Court.

That Hawkins is insolvent and gone to California.

20 That Stephenson had no title to the Wisconsin land, and the land was and is worthless, and Stephenson knew it.

21 That the following judgments, according to the records of Kane County Circuit Court, were obtained against said Stephenson, to wit:

Orsamus D. Day, by cognovit, Feb. 7, 1857, recovered judgment for \$750 damages and \$5 65 costs. Unsatisfied.

Francis G. Adams. March 9th. 1857, recovered judgment against Stephenson for \$179 20 damages and \$7 75 costs. Not satisfied.

22 That Abraham Moore, who sues for the use of Julius C. Burnham, recovered in said Court, March 9th, 1857, a judgment against Stephenson for \$2 40 costs on demurrer, which was satisfied by sale of said Kaneville land to one Anor Richardson on the first day of May, 1858, and on the 29th day of May, 1857, said Moore, who sued for the use of said Burnham, obtained judgment in said Court for the sum of \$1,000 debt and \$266 64 damages and \$13 10 costs against said Stephenson, which was satisfied as to damages and costs by sale of the said Kaneville land to Anor Richardson on the 1st day of May, 1858.

On the 1st day of January, 1858, the Kaneville land was sold to Thomas Newlan for \$490 60 on an execution and Fee Bill issued out of Aurora Court of Common Pleas in favor of Thomas Newlan and against said Stephenson, on a judgment obtained September 14th, 1857, in said Court in favor of said Newlan.

| | |
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| Page of Record. | That William Scarlett or Mary Scarlett, his wife, claim to be the owner of said Kaneville land, and that he or she has put in possession of said land and appurtenances on rent Daniel Garnett and Minson Garnett. |
| 23 | |
| 24 | That what title the Scarletts have was got from the said Newlan, and Newlan's title was derived through the aforesaid sales of the land. That Stephenson intended to cheat and defraud Gorham and Hawkins in said trade. |
| 25 | That premises at time of trade were worth \$1,600 to \$1,800, but now not worth more than \$900. |
| 26 | Makes said Stephenson and William Scarlett and Mary Scarlett, Daniel Garnett, Minson Garnett, Thomas Newlan, Julius C. Burnham, Anor Richardson et als. defendants to said Bill. |
| 27 | Calls for Stephenson's answer not under oath. |
| 28 | Calls for Newlan's, William Scarlett's and Mary Scarlett's answers under oath, and the answers of the other defendants. |
| 28 | Prays that all of said judgments which are or have been liens on said Kaneville land be <i>reversed</i> and <i>taken off</i> said land and cease to be a lien thereon, and the sales made of said land on said judgments be set aside, and all deeds made by the Sheriff of Kane County on such sales be set aside and for naught held, and all title and interest acquired by virtue of such sales be discharged and set aside, and the deed from complainant to Stephenson be cancelled or set aside, and Stephenson be ordered to re-convey the said land to complainant free and clear from liens and incumbrances, or the creditors of said Stephenson be directed to pay complainant's demand of \$600, and such other relief, &c. |
| 29 | |
| 30 | Bill signed by Ira Gorham and Mayborn as solicitor. |
| 30 | Affidavit of Gorham to truth of bill, in usual form. |
| 30 | Exhibit "C," special warranty deed from Stephenson and wife to Hawkins of Wisconsin land, dated September 11th, 1857. |
| 33 | |
| 34 | Exhibit "E," bond from Ira Gorham to Hawkins to convey Wisconsin land, dated September 12th, 1857. |
| 35 | |
| 36 | Exhibit "G," quit-claim deed from Asahel Newton to Gorham of Kaneville land, dated October 12th, 1859. |
| 37 | |
| 38 | Exhibit "D," warranty deed from Hawkins and wife to Gorham of Wisconsin land, dated September 12th, 1857. |
| 39 | |
| 42 | Exhibit "F," deed from Stephenson and wife to Samuel Stone of the Kaneville land, dated September 16th, 1857. |
| 45 | |
| 46 | Exhibit "B," warranty deed from Ira Gorham and wife to James K. Stephenson, conveying the Kaneville land, dated September 12th, 1857. |
| 49 | |
| 50 | Summons vs. Stephenson, dated October 15th, 1857, served on N. J. Smith as attorney of Stephenson, Stephenson not found in county. |

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| Page of Record. | Summons dated December 20th, 1859, vs. Stephenson, William Scarlett, Thomas Newlan et als. |
| 51 | |
| 52 | Service of summons on the said defendants Day, Stephenson, Scarlett, Burnham, Newlan, Richardson, Russ, Daniel Garnett and Minson Garnett. |
| 53 | Exhibit "A," attached to William Scarlett's answer, being spe- cial warranty deed from Thomas Newlan and wife to Mary E. |
| 54 | Scarlett of the Kaneville land, dated September 7th, 1859. |
| 55 | Answer of William Scarlett, filed April 6th, A. D. 1860. |
| 56 | The defendant saving and reserving to himself all benefit and advantage of exception to insufficiencies of the bill for answer says : That Mary E. Scarlett, wife of defendant, is the owner of and has the title to the Kaneville land in bill of complaint men- tioned, that she acquired the title to said lands on the 7th day of September, 1859, from Thomas Newlan by deed from said New- lan, dated the said 7th day of September, 1859, conveying said |
| 57 | premises to said Mary E. Scarlett, her heirs and assigns forever, |
| 57 | a copy of which deed is attached to answer marked "A ;" that said Mary E. Scarlett is a good and bona fide purchaser of said lands, and purchased of said Newlan in good faith and for valu- able consideration ; that she, in consideration of the said sale and conveyance of said Newlan to her, sold and conveyed by deed to Newlan the following lands, situate in Aurora, Kane County, Illinois, to wit : Lockwood's sub-division of Block 14 in Stephe- nson's Extended Addition to Aurora, excepting and reserving lots 10, 19 and 20 in said block, and reserving the small wooden building now on Block 4, which last lands were valued by the parties at the time of sale at \$1,800, and the lands sold and con- veyed by Newlan to her were valued at the time of said sale at \$1,500, and the sum of \$275 was to be paid and was paid by Newlan to her in money to make up the difference ; that Newlan stated at the time of said sale and conveyance to her that his ti- tle to said Kaneville lands was good and there were no liens or claims against said lands, and she relied on such statements of Newlan and purchased said lands in good faith, supposing and believing the title of Newlan to be good to said lands. |
| 58 | Denies any notice or knowledge, at the time of said sale and conveyance from Newlan to Mary E. Scarlett of said Kaneville lands, on the part of said Mary E. Scarlett or William Scarlett, of any claim or interest, legal or equitable, of the said complain- ant or any other person in and to said lands ; denies all unlawful combination, &c. Signed by William Scarlett. |
| 59 | Answer sworn to in usual form by William Scarlett. |
| 61 | Exhibit A attached to Mary E. Scarlett's answer, being deed |

Page of
Record. from Newlan and wife to Mary E. Scarlett of the Kaneville lands,
dated September 7th, 1859.

62 Answer of Mary E. Scarlett filed July 3d, 1860, being precise-
63 ly the same as the answer of William Scarlett above set forth,
64 alleging the same facts in answer, and denying all notice or knowl-
edge of complainant's claim to said land at the time of the said
sale and conveyance of Newlan to her, and denies that the com-
plainant has any claim or interest in or to the said Kaneville lands,
and denies combination, &c. The answer signed by Mary E. Scar-
lett and sworn to by Mary E. Scarlett in the usual form.

65 Answer of Thomas Newlan, filed March 31st, 1860.
The defendant, saving and reserving all benefits of exception,
&c., for answer, says: That he has no knowledge, information or
belief relative to the negotiations, bargains and trades between
the said complainant and Hawkins and Stephenson, or in what
manner Stephenson obtained title to the lands in bill of complaint
66 described, except from the bill; that on or about September 14th,
1857, he, the defendant, recovered a judgment against Stephenson
in Aurora Court of Common Pleas for the amount charged in the
bill of complaint, and afterwards he directed the Sheriff to levy
upon and sell the said property as the property of Stephenson,
which sale took place at the time mentioned in the bill, and the
defendant received a certificate of sale therefor from the Sheriff
which he still holds; that said judgment was obtained on a note
given to defendant by Stephenson; that afterwards and after the
sale of said premises to said Anor Richardson as charged in the bill,
he, the defendant, purchased the certificate of sale held by
said Richardson, and took an assignment of the same, and after-
wards, after the expiration of the time of redemption, to wit:
on the 6th day of September, 1859, the defendant obtained a
Sheriff's deed of said lands, and the same was duly recorded in
the Recorder's office of said county, and afterwards, and before
67 the filing of the said supplemental bill herein, he sold and con-
veyed said premises to Mary E. Scarlett; denies all combination
&c. Signed by Thomas Newlan and sworn to by Newlan in the
usual form.

68 General replication of complainants Gorham and Hawkins to
the answers of Newlan and the Scarletts, filed February 3d, 1862.

69 Deposition of James K. Stephenson, who swears:

71 That he went to trade with Hawkins, and showed him a deed
for some land in Wisconsin, which he told him he would trade
with him if they could agree; that he told Hawkins he had
never seen the land, but that he could see his deed was from L.
C. Lee, of Aurora; that he wanted \$1,600 for the land, which

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| Page of Record. | <p>was the consideration mentioned in the deed ; that he didn't want to say anything further about the land, being a party in the concern ; that Hawkins might go and see Lee, and if he wanted to trade, to come to his house in Aurora ; Hawkins came down the next day and traded the tavern stand for the land ; thinks he</p> <p>72 saw Gorham before he saw Hawkins, and Gorham seemed willing to have the trade made if his claim could be secured ; traded</p> <p>73 about the 12th of September, 1857, with Hawkins, and gave him the land in Wisconsin for the tavern stand in Kaneville, and</p> <p>74 called the land worth in the trade \$1,600 ; description in exhibit C is right ; had a quit-claim deed from Lee, and no other title ;</p> <p>75 did not deliver up the deed to Lee ; the deed was acknowledged before Parker, Justice of the Peace, but never recorded ; got the title to the tavern stand from Gorham, and the deed was record-</p> <p>76 ed ; supposed at the time that Lee's title to the 160 acres was good, but it has proved not good ; knew that Lee had nothing but a tax title.</p> <p>77 Don't think that he told Hawkins he had a good title to the land, but he knows he showed him his deed and referred him to Lee to get posted.</p> <p>78 Deposition of L. C. Lee, who swears :</p> <p>79 That he held a tax deed in 1857 of lands described in exhibit</p> <p>80 C attached to bill of complaint ; that in September, 1857, he made a quit-claim deed of said land to Stephenson to be perfected by acknowledging ; the deed was left with Parker, justice of the peace, not to be acknowledged until Stephenson procured a release of a mortgage on a house and lot in Aurora ; failing to do so, the deed was returned, but Stephenson was to have the right</p> <p>81 to take the deed to consummate the trade. The deed was never acknowledged or recorded. Stephenson returned the deed ; he,</p> <p>82 Lee, has sold the land since ; didn't regard his title good at that time ; the land would sell for from fifty cents to \$1 25 per acre if title was good ; says that Hawkins never came to see him</p> <p>83 about the title to or value of said land. Decree filed and entered</p> <p>84 March 11th, 1862, for complainants, Ira Gorham and George W. D. Hawkins against James K. Stephenson, Thomas Newlan, Mary E. Scarlett, John Russ, Anor Richardson, William Scarlett, Francis Granger Adams, Daniel Garnett, Minson Garnett, Julius C. Burnham and Orsamus D. Day—provides : "That the Court</p> <p>85 having heard read the bill and amended bill in this case, and the answers of the said defendants Newlan and Mary E. Scarlett, and the replications thereto, and after having heard read, and seeing the oral and written proofs, evidence and admissions of the respective parties made in the case on the trial thereof, and arguments of the counsel, and being fully advised in the premises, the</p> |
|--------------------|---|

Page of
 Record.

said Court did then and there find and fix the amount due from the said George W. D. Hawkins to the said Ira Gorham, on the purchase price of the said land, situated in the town of Kaneville, in the said county of Kane and State of Illinois, and described in

85 said bills and hereinafter described at \$774 ; that the said complaint should and ought to have the first lien on the said premises

86 for that sum of money, or against the said defendants and their grantees and assigns ; that said Hawkins was owing said Gorham on the purchase price of the said premises the sum of \$774, and that his claim against said Hawkins be decreed to be a lien upon said lands the same as if it had been secured by a good, sufficient mortgage, bearing date on the day of the sale of the same to Hawkins, to wit : May 15th, 1855 ; that defendants have 90 days from date of decree to pay said sum of \$774 to said Gorham ; that if the same is not paid in said 90 days, then P. R. Wright, Esq, Master in Chancery, shall proceed to advertise and sell said

87 lands in Kaneville (describing them) for the purpose of making

87 the aforesaid sum of money and interest thereon, and the costs and expenses of said sale, and that he be clothed with full power to do so, and on the sale of said lands shall execute and deliver, as in other cases of sale made by foreclosure in this Court, certificates of purchase to the purchaser, and file one in Recorder's office of Kane county ; and if said lands be not redeemed by the said defendants as required by law on foreclosure of mortgages, then said Master in Chancery, or his successor, to execute and deliver to the holder of said certificate of purchase good and sufficient

88 deed of conveyance ; that if the same are not redeemed, and defendants or their heirs, executors, &c, refuse to surrender the possession of said premises on demand of the person entitled to possession, then on such person making affidavit of that fact, and filing the same with the clerk of said court, the said clerk shall at once issue out of said court a writ of possession directed to Sheriff of Kane county, directing him to put out of possession of

89 said premises all persons.

89 Defendants made a motion for a new trial and motion denied ; defendants except.

Appeal prayed and allowed March 12th, 1862.

90 Appeal Bond to be filed in twenty days, in penal sum of \$500. March 29th A.D. 1862, Appeal Bond filed by William and

91 Mary E. Scarlett in penal sum of \$500 with Jehial H. Montgomery as surety, and approved ; signatures and seals ; Clerk's certificate and seal.

92

ERRORS ASSIGNED.

93 1st. That the Bill of complaint filed in said cause and pur-

Scarlett et al
vs

Gorham et al

Abstracts

23

the law, and should be reviewed.
consent to the pleadings and proofs
30. That the said decree rendered
defendants a new trial on their motion
31. That the Circuit Court erred in
also against the defendants.

32. That the Circuit Court erred in rendering the said de-
cree for said complainants and against
33. That the Circuit Court erred in rendering and re-
versing a different and new cause of action.

only one of the complainants and against different parties, and
Bill, but in fact and substance a new and original Bill in favor of
properly filed in said cases; the same not being a supplementary
porting to be a supplementary Bill, is and was irregularly and im-

Record
Page of

Filed April 30, 1862
L. Deland
Clerk.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM, 1862, AT OTTAWA.

WILLIAM SCARLET *et al.* }
 vs. } APPEAL FROM KANE.
IRA GORHAM }

I.

The first error assigned is that what purports to be a supplemental bill, was improperly filed, &c.

(1) By reference to the record, page 11, it will be seen that the copy of a paper there set out and extending, with certain exhibits, to page 49 of the Record, does not appear by the record to have ever been filed in said cause as a supplemental bill or anything else. If there was a supplemental bill, the record does not inform this Court what it was, and therefore this Court cannot determine whether it was improvidently and irregularly filed, or even filed at all. The papers are only copied into the record.

21 Ill. 31.

(2) No objection or exception to the filing of said Bill (if filed) was made by defts. in the Court below, but their answers to it were regularly filed and a full hearing had without objection. They cannot make such objection here for the first time.

25 Ill. 392.

23 Ill. 385.

22 Ill. 127.

II.

The second error assigned is that the Court erred in rendering the decree, &c.

No evidence whatever is preserved in the record, by bill of exceptions, but the

decree expressly states that proofs were had, both oral and by deposition. This Court cannot determine whether the decree was proper or not.

23 Ill. 90.
22 Ill. 415.
and numerous other cases.

III.

The third error assigned is the same in substance as the 2d, and the same answer applies.

IV.

The 4th error assigned is that the Court erred in overruling the motion for a new trial.

As nothing appears in the records except the pleadings and order of Court, and there is nothing in them to entitle the defendants to their new trial, this Court must presume that the Court below did not err in overruling the motion.

23 Ill. 90.
22 Ill. 415.

V.

The 5th error assigned is comprehended in the 4th, and the same answer applies.

In fact, the Record in this case is so very imperfect that we are not able to come to any conclusion whatever as to what sort of a case was made below.

[1] The Record does not purport to set out the pleadings properly.

[2] It sets out no evidence whatever, for it only states that the depositions of Stephenson and Lee were *filed* in the Clerk's office.

So that this Court is left entirely in the dark, and still is asked to say that the Court below erred, and to reverse the cause therefor.

We think the case must be affirmed.

GLOVER, COOK & CAMPBELL,
For Appellees.

227
Scarlet
no
Gotham
Appellus Pomi's

Filed May 8, 1842
J. L. Clark
Clerk

THE COURT OF COMMONS, IN SENATE, AT THE CITY OF NEW-YORK, ON THE 10TH DAY OF MAY, 1842.

1842, May 10

III

And the said Court, upon the reading of the report of the Committee on the subject of the petition of the said Appellus Pomi, do hereby resolve, That the said Appellus Pomi be and he is hereby appointed a Justice of the Peace for the County of New York, to hold office until the next meeting of the said Court.

VI

And the said Court, upon the reading of the report of the Committee on the subject of the petition of the said Appellus Pomi, do hereby resolve, That the said Appellus Pomi be and he is hereby appointed a Justice of the Peace for the County of New York, to hold office until the next meeting of the said Court.

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1842, May 10

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JOSEPH C. CAVALLERI

1842, May 10

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM, 1862, AT OTTAWA.

WILLIAM SCARLET *et al.* }
vs. } APPEAL FROM KANE.
IRA GORHAM }

I.

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25 Ill. 392.
23 Ill. 385,
22 Ill. 127.

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and numerous other cases.

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The third error assigned is the same in substance as the 2d, and the same answer applies.

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The 4th error assigned is that the Court erred in overruling the motion for a new trial.

As nothing appears in the records except the pleadings and order of Court, and there is nothing in them to entitle the defendants to their new trial, this Court must presume that the Court below did not err in overruling the motion.

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22 Ill. 415.

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We think the case must be affirmed.

GLOVER, COOK & CAMPBELL,

For Appellees.

227
Scarlet
vs
Gorham
Appellee Pombo

Goins cannot determine whether the parties are before or not
because expressly states that books were put away and not returned

1862

Filed May 8, 1862
S. Deane
clerk.

and dangerous after cases
III
The trial was conducted in the Court in accordance with the rules and the same
were observed.
IV
The defendant's evidence is that the books were in possession of the witness for a
long time.
V
The Court being informed that the Court below did not see the records, the motion
and order is granted in order to certify the defendants to their own trial, the
defendant's evidence is that the books were in his possession and under the control
of the Court.
VI
The defendant's evidence is that the books were in possession of the witness for a
long time.
VII
The Court being informed that the Court below did not see the records, the motion
and order is granted in order to certify the defendants to their own trial, the
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VIII
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22
11
11
11

The Court being informed that the Court below did not see the records, the motion
and order is granted in order to certify the defendants to their own trial, the
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IX
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WILLIAM COOK & CARROLL

For Plaintiff

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM, 1862, AT OTTAWA.

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GLOVER, COOK & CAMPBELL,
For Appellees.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM, 1862, AT OTTAWA.

WILLIAM SCARLET *et al.* }
vs. } APPEAL FROM KANE.
IRA GORHAM }

I.

The first error assigned is that what purports to be a supplemental bill, was improperly filed, &c.

(1) By reference to the record, page 11, it will be seen that the copy of a paper there set out and extending, with certain exhibits, to page 49 of the Record, does not appear by the record to have ever been filed in said cause as a supplemental bill or anything else. If there was a supplemental bill, the record does not inform this Court what it was, and therefore this Court cannot determine whether it was improvidently and irregularly filed, or even filed at all. The papers are only copied into the record.

21 Ill. 31.

(2) No objection or exception to the filing of said Bill (if filed) was made by defts. in the Court below, but their answers to it were regularly filed and a full hearing had without objection. They cannot make such objection here for the first time.

25 Ill. 392.
23 Ill. 385,
22 Ill. 127.

II.

The second error assigned is that the Court erred in rendering the decree, &c. No evidence whatever is preserved in the record, by bill of exceptions, but the

decree expressly states that proofs were had, both oral and by deposition. This Court cannot determine whether the decree was proper or not.

23 Ill. 90.
22 Ill. 415.
and numerous other cases.

III.

The third error assigned is the same in substance as the 2d, and the same answer applies.

IV.

The 4th error assigned is that the Court erred in overruling the motion for a new trial.

As nothing appears in the records except the pleadings and order of Court, and there is nothing in them to entitle the defendants to their new trial, this Court must presume that the Court below did not err in overruling the motion.

23 Ill. 90.
22 Ill. 415.

V.

The 5th error assigned is comprehended in the 4th, and the same answer applies.

In fact, the Record in this case is so very imperfect that we are not able to come to any conclusion whatever as to what sort of a case was made below.

[1] The Record does not purport to set out the pleadings properly.

[2] It sets out no evidence whatever, for it only states that the depositions of Stephenson and Lee were *filed* in the Clerk's office.

So that this Court is left entirely in the dark, and still is asked to say that the Court below erred, and to reverse the cause therefor.

We think the case must be affirmed.

GLOVER, COOK & CAMPBELL,
For Appellees.

Page 1.

United States of America 1856
State of Illinois Kaw County

Pleas before the Honorable Isaac
G. Wilson judge of the 28th judi-
cial circuit of the State of Illinois
and presiding judge of the circuit
court of Kaw County in the State
aforesaid at a regular term of said
court begun and held at the Court
House in Geneva in said County
on the third day of February in
the year of our Lord One Thousand
eight hundred and sixty two and of
the independence of the United
States the eighty-fifth.

Present Honorable Isaac G. Wilson, Judge.
Charles J. Metzger, State Attorney
Demarcus Clark, Sheriff.

Attest.

Thomas C. Moore.
Clerk.

Be it remembered that here-
tofore to wit on the 15th day of October A.D.
1857 the following paper was filed in
the office of the clerk of said court.

page 3.

valuable land in the State of Wisconsin which he had a good ^{and} perfect title to free ^{and} clear of all incumbrances which he was anxious ^{and} desirous to trade with your orator Barkins for the property mentioned in said bond marked "A". The property marked "a" was ^{and} is a tavern stand at the village of Kauville county of Adams ^{and} state of Illinois. That his said Stephensen's Wisconsin land was very valuable land ^{and} would make a good farm ^{and} worth three dollars ^{and} a half per acre.

And your orator Barkins relying upon the statements of said Stephensen concluded to trade with said Stephensen providing he could get the consent of your orator Gorham by securing your orator Gorham for the purchase money still back on the property in schedule "A" described ^{and} your orator Gorham agreed to give said Stephensen a good warranty deed of said property in schedule "A" described ^{and} take a lien upon said Wisconsin land.

And your orator further shew unto your Honor that they two ^{and} they agreed to trade with said Stephensen the land in schedule "A" mentioned for the land in Wisconsin hereinafter described. The said Gorham to give said Stephensen a deed for the land in schedule "A" ^{and} the said Stephensen to give a deed with full covenants of

Warranty to said Gorham of the lands in the schedule hereinafter mentioned and described marked "B." to which reference is had and your orator would further show that said Stephenson ought shortly after a Deed to your orator signed by him and his wife of said Wisconsin land which your orator thought was a Warranty Deed and your orator then and then accepted said Deed of Stephenson which your orator supposed and believed to be a good Warranty Deed from its length and also from its being printed at the head of said deed "Warranty Deed" which said Deed was to your orator Hankins as granted therein. And your orator Hankins then and then conveyed said Wisconsin land to your orator Gorham and took back from Gorham a bond transfer and your orator Gorham then and then gave said Stephenson a good Warranty Deed of said land in schedule "A" described to said James A. Stephenson.

And your orator would further show unto your Honor that they subsequently found out that said Deed from Stephenson to your orator Hankins was and is only a special Warranty Deed, with only covenants of warranty that said Stephenson had not incumbered the same and which said Stephenson passed off on to your orator as a Warranty Deed.

And your orator would further

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show unto your Honor that said James B. Stephenson at ^{and} before the making of said Deed to your orator hearkens of said land in schedule "B" described had no title at law or in equity to said land had no shadow of title, ^{and} that said Stephenson well knowing the same comprises said land as aforesaid to your orator hearkens fraudulently intending to cheat ^{and} defraud your orators out of said land in schedule "A" mentioned ^{and} to deprive them of the same well knowing he could give no title to the land in schedule "B" mentioned ^{and} described but intending to cheat them.

And your orator would further show that said Stephenson is a man as they are informed ^{and} believe ^{and} so charge the fact to be entirely destitute of means that nothing could be collected of him.

And your orator would further show as they are informed ^{and} believe ^{and} so charge the fact to be that said Stephenson is trying to sell said land in schedule "A" mentioned as to mortgage the same ^{and} to get the same when it cannot be reached by your orator. All of which actings ^{and} doings are contrary to equity ^{and} good conscience ^{and} tends to the great excessive ^{and} irreparable injury of your orators.

On tender consideration whereof ^{and} for as much as your orators are remedied

in the premises by the strict rules ^{and} principles of the common law ^{and} can only have adequate relief in this honorable court when matters of this ^{and} like character are properly cognizable ^{and} relivable.

Do the ends therefore that the said James R. Stephenson may full true ^{and} perfect answers make to all ^{and} singular the matters ^{and} things above charged stated alleged ^{and} set forth (without oath his answers upon oath being hereby expressly waived). Your orator pray ^{and} your orators ask that the Dued of the lands in schedule "A" described from your orator Gorham to said Stephenson may be set aside ^{and} declared null ^{and} void. ^{and} that the title to said lands may become again vested in your orator as though no such Dued had ever been made.

And your orator asks that a writ of injunction may issue out of ^{and} under the seal of this honorable court directed to the said James R. Stephenson his agents servants attorneys solicitors &c restraining ^{and} enjoining the said James R. Stephenson his agents servants attorneys solicitors from selling mortgaging incumbering or disposing of said lands in schedule "A" described ^{and} upon a final hearing that such injunction may be made perpetual ^{and} for such other ^{and} further relief as shall be agreeable to equity ^{and}

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good consciences and thus they will ever
pray &c.

P. B. Parks
Sols for Complaints

Geo Gorham
George W. D. Hankins
P Parks

State of Illinois
Kane County

George W. D. Hankins
being duly sworn on oath doth depose and
say that he has heard read the foregoing
bill of complaint and knows the contents
thereof and that he is one of the complainants
that the same is true of his own knowl-
edge except as to the matters stated upon
information and belief and as to those matters
he really believes the same to be true.

G. W. D. Hankins
Sworn and subscribed before me
this 12th day of October A.D. 1857
Charles J. Metzger
Notary Public

To the Clerk of Kane
County Circuit Court.

Let an injunction issue
according to the prayer of the within bill
upon the Complainants entering into bond
in the penal sum of One Hundred Dollars
to the defendant according to law with
security according to the approval of

the clerk.

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Chas. P. Wells

Master in chancery

five \$3 - paid by complainant.

Know all men by these presents, that
J. A. Gorham of the first part of the County
of Kamnd State of Illinois am held^{and}
firmly bound unto G. M. D. Hankins of Morgan
Township of the County of Kamnd State of
Illinois party of the second part in the penal
sum of Five Thousand Dollars, to be paid
unto the said party of the second part his
his executor administrators^{and} assigns, to
which payment will^{and} truly to be made I
bind myself my heirs executor^{and} adminis-
trator^{and} every of them firmly by these
presents. Sealed with my seal this fif-
teenth day of May A. D. one thousand
eight hundred^{and} fifty five.

The condition of the above obligation
is such, that whereas the above bounden
J. A. Gorham has this day sold to the
said party of the second part his heirs
^{and} assigns for the sum of Fourteen
hundred Dollars payable as follows;
Four hundred Dollars down when
he takes possession. \$400.00
Ten hundred Dollars in bond at

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\$2.50 per acre within two years. \$200.00
 Two Hundred Dollars the
 15th day of May 1856. 200.00
 Two Hundred Dollars the
 15th day of May 1857. 200.00
 Two Hundred Dollars the
 15th day of May 1858. 200.00
 Two Hundred Dollars the
 15th day of May 1859. 200.00
 with annual interest on all not \$1400.00
 paid down

All my right, title, and interest in the following described lot or parcel of Land, to wit: Being a part of Section 26th in Township 39, North, of Range 6 East of 3rd principal meridian and bounded as follows to wit: North by center of State road and lands owned by H. Remington, East by lands owned by H. Remington and James Lewis Jr. South by lands owned by Samuel McHain and J. S. Roberts and West by J. S. Roberts and School House lot in the village of Kameville Kame County State of Illinois, containing something less than one acre of Land More or less, (Schedule "A") Upon the payment of said sum being made at the time and in the manner aforesaid notes being given for said payments the said Dr. Graham his heirs executors and assigns covenant and agree to and with the said party of the second part his heirs executors administrators and assigns to execute

Page 10. a good and sufficient Deed of Conveyance in full compliance free from all incumbrances with full and proper covenants of Warranty for the above described premises. Now upon payment being made as aforesaid if the said Ora Yorkham shall well and truly keep, observe, and perform the said covenants and agreements herein contained on his part then this Obligation is to be void otherwise to remain in full force and virtue.

Signed sealed and delivered } Ora Yorkham (Ct)
in presence of }
James Lewis Jr }

This Deed is taken up in September 1857. in full.

G. W. D. Hankins.

Schedule "B." Wisconsin Land.

The following described lots pieces or parcels of land situated in the the county of Oneida and State of Wisconsin to wit; the east half of the north West quarter of Section No 200 in Township No 20 North of Range one east. Also the west half of the north west quarter of Section No 150 in Township No 20 North of Range 3 east.

Filed Oct 15th 1857. }
P. R. Wright. }
Clerk, }

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State of Illinois }
Kane County ss. }

In Chancery Before His
Honor the Hon. J. G.
Hiland Judge of the 13th

Judicial district of the State of Illinois
and Judge of the Kane County Circuit Court
in the Chancery side then sitting.

Supplemental Bill of
Dra Gorham.

Umbley complaining shew-
eth unto your Honor that your orator Dra
Gorham on the 13th day of October A. D.
1857 with one George H. D. Harkins as
complainants made and filed with the
Clerk of the Kane County Circuit Court this
Bill of Complaint against one James H.
Stephenson, which said suit is still pend-
ing in the said Court, that since the filing
of said bill of complaint in said Court
the said Harkins has left the said State
of Illinois and gone to the State of California
where he now is and that since filing of said
bill as aforesaid for some cause to your
orator unknown, but few if any steps have
been taken therein to perfect and accomplish
the object and purposes for which that suit
was instituted. And your orator further
sheweth unto your Honor that on the 13th day
of May A. D. 1855. he was the legal owner
of the following piece and parcel of land sit-
uated in the said County of Kane and State
of Illinois and known and designated as follow-
to wit; Being a part of Section 26th in Township

Page 12. No. 39. north of Range Six east of the third
A. M. and bounded as follows to wit. North by
the center of State Road. ^{and} lands owned by
H. Remington. East by lands owned by H.
Remington ^{and} James Lewis Jr south by
lands owned by Samuel M. Fair ^{and} J. S.
Roberts ^{and} west by J. S. Roberts ^{and} school house
lot in the village of Kanawille in said
county ^{and} State ^{and} containing something less
than one acre of land more or less with
the appurtenances thereto. And on the said
15th day of May 1855. your orator sold said land
to said Bankings for the sum of \$1400. pay-
ments to be made according to the tenor ^{and}
effect ^{and} in the manner set forth in a certain
bond made executed ^{and} delivered by your orator
to said Bankings ^{and} dated the day 15th 1855, a
copy of which said bond is set out in the
Schedule of Exhibits hereto attached ^{and} marked
^{and} designated as Exhibit "A" which your
orator prays may be made ^{and} taken as a
part of this his supplemental bill ^{and} that
said Bankings had paid on the 15th day
of May 1857. Eight hundred dollars with
the interest on the purchase price up to that
time ^{and} thus leaving due six hundred dollars
on the purchase price. And your orator fur-
ther sheweth unto your - that on or about
the Eleventh day of September A. D. 1857. he
said James A. Stephens called on said
Bankings at Kanawille in said County ^{and}
represented to him said Bankings (as he

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has been informed by said Hankings ^{and}
he believes the same to be true ^{and} so charges
the fact to be that the said Stephenson was
the owner in fee simple of a certain piece
of land of one hundred ^{and} sixty acres situa-
ted in the county of Dorra. in the State of
Missouri ^{and} that the said land was worth
at least two ^{and} a half dollars per acre
^{and} that the said land was clear of all in-
cumbrances whatever. ^{and} that he would
like to trade or exchange it for the said
land ^{and} appurtenances mentioned in this
bill ^{and} then occupied by said Hankings
^{and} the same as sold to him said Hankings
by your orator on 13th day of May 1855.

As aforesaid that said Hankings advised
^{and} informed the said Stephenson that he
could not do so, for the reason that he had
not yet fully paid for it ^{and} that the title
was still in your orator, ^{and} the nature ^{and}
condition of it, ^{and} the same yet unpaid
thence to your orator, upon being so in-
formed as to the condition of things ^{and} as to
the said Kanville land the said Stephe-
son made inquiries after your orator ^{and}
upon his being informed that your orator
was in the said village of Kanville he
requested said Hankings to go with him
to your orator ^{and} even if there could not be
some arrangement made that would be
satisfactory to all ^{and} a trade made, that in
compliance with the wishes ^{and} request of said

Stephens then said Bankings in company with said Stephens called on your orator and introduced him to your orator, and then also stated and informed him of said Stephens business and of his wish to trade said land in Wisconsin for said property in Kanville, also stating that the said Bankings would like to make said trade and thought that it would be a good and advantageous one for him, and that he wanted to get a good piece of land and go on to it and make a farm of it your orator listening to the statements of the said Stephens on being advised and informed by him that said land was worth at least twelve dollars per acre, and that it was an excellent and good and valuable piece of land for farming purposes, and that he had a good and full title thereto in fee simple and that same was free from all incumbrances whatever and that he was willing to trade it for the said Kanville property provided he could get a good and unincumbered title thereto the same as he said he could give to said Wisconsin lands, and would and should if a trade was made your orator at first declined to do anything in the matter unless the balance of the purchase money to wit, the said six hundred dollars and interest thereon was paid to him from the 15th day of May 1837. up to that time as he disliked changing securities the said Bankings could

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not do as all his means ^{and} money was invested in said land at Kanawille, ^{and} he did not wish to change his security on Wisconsin lands ^{and} he was well satisfied with his present security, but after considerable conversation ^{pro} ^{and} ^{con} ^{and} the repeated statements of Stephenson that he had a good title to said land as aforesaid ^{and} that it was worth some two thousand dollars at least ^{and} was good security for that sum of money ^{and} the said Bankings being very anxious to make the trade, if things were as represented by said Stephenson, ^{and} upon the said Stephenson stating that he got his title from C. W. Lee, then ^{and} now a resident of the city of Aurora in the said County ^{and} State ^{and} that by calling on him they could be fully advised, if they doubted his statements as to the nature of his title in ^{and} to said land, ^{and} what it was worth per acre, as he had been the owner of said land ^{and} he had got his title to said land from him said Lee, but that if a trade was made he wanted to do so at once or he should make exchange for other property, if he did not trade with Bankings. Your orator thus advised the said Bankings to go ^{and} see said Lee, ^{and} ascertain from him if he could, whether or not said Stephenson had got a good title to said land, as he represented he had, he being a stranger to your orator ^{and} what it was worth per acre

page 16. that the next day or the day thereafter said
Bankins did go to Annas for the purpose
of seeing said Lee as aforesaid and saw
him, he advised ^{and} informed your orator
on his return, and he believed the same
true ^{and} placed full confidence in his state-
ments ^{and} that he had seen said Lee ^{and}
had made full inquiries respecting said
land as to the nature of the title of said
Stephens in said land ^{and} its value, that
said Lee advised ^{and} informed him that he
knew all about the land ^{and} the title to it ^{and}
that said Stephens had a good ^{and} per-
fect title to it ^{and} he sold it to him ^{and} that
it was worth at least two thousand dollars
upon this statement ^{and} the said Bankins
desire to make said trade ^{and} to oblige
him he consented to his making the
trade with said Stephens, ^{and} conveying
the title to said Kanawille property to said
Stephens ^{and} said Stephens was to
convey to your orator by a good ^{and} suf-
ficient Warranty Deed in fee simple the
Missouri land ^{and} then your orator was to
give to said Bankins a bond for a deed
for the said Missouri land on his pay-
ing to him said six hundred dollars as
in said bond mentioned, and on the said
Stephens stating that it would take
some two or three weeks to send to the reg-
ister's office ^{and} get an abstract of the title
to said land, if any trade was made it

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must be made then, he consented to the arrangement, fully believing that said Stephenson had a good title as he represented to said lands and that it was worth some three or thirteen dollars per acre as aforesaid and in furtherance and pursuance of this arrangement so agreed on between said Stephenson and Bankins he was induced to and did make execute and deliver to said Stephenson a good and sufficient Warranty Deed of the said lands so sold to said Bankins on the 15th day of May 1855. a copy of which said Deed is set out in said schedule of exhibits hereto attached and it is marked and designated therein as exhibit "B." which your orator also prays may be made and taken as a part of this his Supplemental Bill. And therein said Stephenson did read to said Bankins a deed all ready made and executed by him and his wife and dated September 11th 1857. while that of your orator was dated September 12th 1857. which said deed from said Stephenson and wife to said Bankins your orator supposed was a Warranty Deed and was so advised and informed and was lead to believe and more particularly from the fact that at the head of said deed and in printed letters is the words "Warranty Deed" a copy of which said Deed is also set out in Schedule of exhibits hereto attached

and thus marked and designated as Exhibit "6" which your orator also prays may be made and taken as a part of this his supplemental bill herein and thus upon said Hankins and his wife made executus and delivered to your orator a warrantis deed of the said Wisconsin land so sold and conveyed to them by said Stephenson as aforesaid and thereby conveying to him said land on he made executus and delivered to them a bond thereby agreeing to convey to the said land to them on they paying to him the said sum of money mentioned in said bond a copy of which said deed and bond is also set out in said schedule of exhibits herunto attached and marked by letters "D. & E." which your orator also prays may be made and taken as a part of this bill.

And your orator further sheweth unto your Honor that said Stephenson at once took possession of said land and premises in Kauwille, and your orator had at once forwarded the said deed of Stephenson and Hankins for Record and that on the sixteenth day of September the said Stephenson sold and conveyed said land so conveyed by your orator to him to one Samuel Stone a copy of which said deed also is set out in said schedule of exhibits and is marked and designated herein as Exhibit "7" which your orator also prays may be

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made ^{and} taken as a part of his bill
 herein. And afterwards the said Steno
 became insolvent ^{and} made his deed of as-
 signment to one Asahel Newton his assign-
 ee ^{and} afterwards the said Asahel Newton
 as the said assignee of said Steno sold ^{and}
 conveyed by quit-claim deed all the right
 title ^{and} interest of the said Steno ^{and} his as-
 signee in said land at Kanawille to your
 orator which said deed is dated Oct 13th
 1839 a copy of which said deed is also set
 out in said schedule of Exhibits ^{and} it is
 therein marked ^{and} designated as letter
 "E." which your orator also prays may be made
^{and} taken as a part of this his bill herein.

And your orator further prays that your
 honor ^{and} so charges the fact to be that said
 Stephens is largely in debt ^{and} hopelessly
 insolvent ^{and} that there is judgment upon
 judgment against him unpaid ^{and} unsat-
 isfied now standing in said Kanaw County
 Circuit Court ^{and} that he was so insolvent at
 the time ^{and} had been for a long time before
 the making of said trade of said land
^{and} that this fact was also unknown to your
 orator ^{and} he was a stranger to your orator
^{and} he was wholly unacquainted with the
 man or his circumstances ^{and} affairs, that
 said Bankins has failed ^{and} is insolvent
^{and} gone to California as aforesaid ^{and} made
 no ^{and} could make no provision to pay said
 six hundred dollars so that he has no

hope of collecting it off him, or of recovering
 of him the said six hundred dollars ^{and}
 interest due him on the purchase price of
 the said Kanville land as aforesaid ^{and}
 that same remains due ^{and} unpaid ^{and}
 in no way secured said ^{and} except by said
 Land in Wisconsin so sold to him by said
 Stephenson as aforesaid ^{and} to which said
 Stephenson had no title whatever ^{and} never
 had as appears by the records of the
 Register's office of the said County of Iowa
 in said State of Wisconsin ^{and} the said
 land so conveyed by the said Stephenson
 to said Barkins as aforesaid ^{and} to which
 he represented ^{and} assented to your orator
^{and} said Barkins that he had a good
^{and} perfect title in fee simple as aforesaid
 when in truth ^{and} in fact he never had any
 title to it whatever ^{and} the same had been
 sold time ^{and} again, as your orator is ad-
 vised ^{and} informed ^{and} he believes the same true,
 for taxes, by Joseph Leon Register of Deeds
 in ^{and} for the said County of Iowa where
 said land is situated. ^{and} your orator
 further sheweth unto your honor ^{and} so changes
 the fact to be that said land is wholly worth-
 less ^{and} of no value whatever for farm-
 ing or other purposes whatsoever even if
 said Stephenson had a good title ther-
 to ^{and} it is not worth paying the taxes on
 as he is advised by those who live
 near the said land ^{and} know its value

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and that he believes the same true and so charges the fact to be, and that said Stephen also knew this fact at the time he made said trade, and this was one of the reasons why he was so very desirous to make and close up the trade at once and not that he had a chance to sell it to others and he did not want to lose the opportunity if he did not make the said sale to Hankins as he asserted and pretend to your orator, and said Hankins

And your orator further sheweth unto your Honor that the Records of the said County Circuit Court show that the following judgments have been obtained there against the said defendant Stephen to wit; Oramus D. Day by writ return'd February 7. 1857. return'd against said Stephen's judgment for \$775.00. damages and costs of \$3.65 which is not satisfied, that Francis Branger Adams on the ninth day of March A.D. 1857 return'd a judgment in said Court against said defendant Stephen for the sum of \$179.20 damages and \$7.75 costs which is not satisfied. That Abraham Moore who sues for the use of Julius C. Pumpham return'd in said Court on the said ninth day of March 1857 a judgment in an action of Debt against the said Stephen for \$2.40 costs on demurrer on which said judgment

was satisfied by sale of said land situated in Kanawille as aforesaid on the first day of May 1858. to one Ann Richardson. & that on the 29th day of May 1857 said Morn who sued for the use of said Burnham, obtained judgment in said Court for the sum of \$1000 debt and \$266.64 damages and 131.10 costs said judgment was satisfied as to damages and costs by sale of the said land by Kanawille to Ann Richardson on the first day of May 1858. in the case of C.D. Day, as said Stephenson on the judgment of \$7.75 damages and \$3.15 costs with fee Bill of \$1.45. issued February tenth A.D. 1857. bond given to Geny E. Comin the sheriff of said County which has not been returned and the records do not show what disposition has been made of it. and the judgment remains unsatisfied and on the second day of January 1858 the said land at Kanawille was sold on an execution and fee bill issued out of the Court of Common Pleas of the City of Aurora in favor of Thomas Newlan and against said Stephenson on a judgment obtained September 14th 1857. said land was sold to Thomas Newlan for the sum of \$490.60 cents by G.E. Comin. said land was also sold on the 3rd day of February A.D. 1859. on two executions and fee bills issued out of

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the court of Common Pleas of the City
 of Annapolis dated November 19. 1558
 in favor of John Rop^{and} against
 said Stephenson^{and} sold for \$358.66.
 by Ethan J. Allen Sheriff^{and} that now Mr
 Williams Scarlet or Mary Scarlet his
 wife of the city of Annapolis in the said coun-
 ty of Anne claims to be the owner of said
 premises or land but through whom he or
 she claims title your orator is not ad-
 vised or informed nor is he informed of
 the nature of his title that he or she claim
 said premises^{and} that he or she has put
 in possession of the said land or realty
 the same with the appurtenances there-
 on to Daniel Gamut^{and} Minew Gamut as
 your orator is advised^{and} informed but
 how or on what time^{and} conditions he
 or she has rented the same to them or
 for how long your orator is not informed
^{and} has no knowledge, but he believes
^{and} so charges the fact to be that what-
 ever title the Scarlet or Mary Scarlet has
 got was got of^{and} from the said Newlan
^{and} that Newlan's title was derived by
^{and} through the sale of said land afore-
 said. And your orator further sheweth
 unto your orator^{and} so charges the fact
 to be that said Stephenson, insolvent
^{and} worthless at the time that he made
 said trade^{and} still is,^{and} that there is
 now standing against^{him} as the Records

page 24. of the Kaw County Circuit Court ^{and} the
Records of the Court of Common Pleas of
the City of Anna from judgments to
large amounts of money to wit; Two thousand
said dollars, which are unpaid and
unsatisfied ^{and} an a lien on ^{and} against
said land at Kawville ^{and} that he can
not pay as your orator is advised ^{and}
believes true a deduction of two cents on
the dollar to his creditors on his in-
debtedness. ^{and} that intended to ^{and} it
was his design to cheat ^{and} defraud
your orator at the time he made said
trade ^{and} also to cheat ^{and} defraud said
Bankins that did not then have ^{and}
now has been the hold. of the legal
or equitable - to said land or the owner
thereof that he pretend. he was at the
time he made ^{and} pretend - to sell ^{and}
trade it with said Bankins ^{and} that he
pretend. to convey by said deed dated
the eleventh day of September 1857
^{and} situated in said County of Iowa
in said State of Wisconsin. ^{and}
that he also then knew that it was wholly
worthless ^{and} of no value whatever for
any purpose ^{and} that was his object ^{and} purpose
to cheat ^{and} defraud your orator ^{and} Bankins
^{and} get the title to said Kawville prop-
erty for nothing ^{and} then sell ^{and} convey
it to others as he did do, so that they
could not get it back or set aside the

conveyance so obtained by him with-
 out consideration ^{and} thylight fraud ^{and}
 misrepresentation ^{and} that said lands ^{and}
 the appurtenances so sold ^{and} delivered
 to him in the said town of Kaurillo
 as aforesaid was worth at that time
 from fifty to Eighty thousand dollars
 but that they have been neglected ^{and}
 allowed to deteriorate in value for the
 want of repairs ^{and} proper care together
 with the general depressing of the
 value of the real ^{and} now the same are
 not worth more than five hundred
 dollars all of which actings ^{and} doings
 of the said defendant Stephenson ^{and} the
 said William Scarlet ^{and} Mary Scarlet,
 Daniel Gamut, Minew Gamut, Oreamus
 D. Day, Francis Ganger Adams, Julius
 C. Dunham, Thomas Newlan, Amos
 Richardson, John Cup, all of whom
 your orator prays may be made party
 defendants to this his supplemental
 bill, are contrary to Equity ^{and} good
 conscience ^{and} tend to the manifest wrong
 injury ^{and} oppression of your orator.
 In tender consideration whereof ^{and}
 for as much as your orator is without
 remedy in the premises at common law
 and can not have adequate relief ex-
 cept in a court of equity when matters
 of this sort are properly cognizable ^{and}
 relievable. In the end therefore that the

said defendant Stephenson may according to the best ^{and} utmost of his knowledge remembrance information ^{and} belief full true perfect ^{and} distinct answer make to all ^{and} singular the matters aforesaid ^{and} that as fully ^{and} particularly as if the same was here repeated ^{and} he therein distinctly interrogated (his answer being put in under oath is hereby expressly waived, ^{and} more particularly ^{and} fully answer ^{and} state what consideration of the amount ^{and} actual value of the money or property that was paid for said land in Wisconsin ^{and} the nature ^{and} character of that title ^{and} why if he had any that he never put it on record ^{and} if he has not recovering all the title he ever had or pretended to have to said land to said Luy for the sum of two dollars if not for that sum what was the consideration so paid him for it. ^{and} who have obtained ^{and} hold judgments against him show moreover the amount of judgments when obtained ^{and} in what courts now they obtained ^{and} he did not state ^{and} inform said Bankins ^{and} complainant at the time of making said trade or exchange of property that he had a good title worth in fee ^{and} the land worth two thousand dollars when he knew that it was not worth a dollar ^{and} if he is not a bankrupt ^{and} unable

page 27.

to pay his debts or even two cents on the dollar on the amount that he owes and whether he did not offer said Rankins five hundred dollars if he would go away and not appear against him as witness in this matter or in a certain judgment obtained against him in the Kaw County Circuit Court for fraud and obtain property under false pretenses. And that said defendants William Scarlet and Mary Scarlet, Daniel Gamut, Minnow Gamut, Francis Granger Adams, Julius C. Burnham, Thomas Newland, John Russ, Amos Richardson, and Orsamus D. Day, each and all of them may fully state and disclose of their respective personal oaths the nature and extent of their interest in and title to said lands at Kanville and how and in what manner they acquired any interest therein and by and through whom if any they have, and when, and on what claims and who against, and if by and through sale under execution and in Bill against said Stephenson they state when and how they acquired and obtained said judgments and in what courts, Did the date of each of the respective judgments and the amount of the same and on what claims or indebtedness such judgment was obtained and when such claims and indebtedness

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was made ^{and} time ^{and} place ^{and} the consideration thereof.

And your orator prays that by the judgment order ^{and} decree of this honorable court made herein all of the said judgments entered up in said court of Common Pleas of the city of Aurora in said county of Kaw in said state of Illinois ^{and} in the Kaw County Circuit Court in said state that an or have been a lien on said lands so sold to said defendant Stephens ^{and} may be reversed ^{and} taken off said lands ^{and} cease to be a lien ^{and} all sales made of said lands by virtue of such judgments may be set aside ^{and} annulled ^{and} held for naught ^{and} all deeds or deeds may executed by the sheriff of Kaw County by virtue of such sales may ^{and} be set aside ^{and} held for naught ^{and} every species of title or interest of every kind acquired in and to said lands or any ^{and} all liens therein by virtue of ^{and} through any judgment decree or order obtained or made against said Stephens be discharged ^{and} set aside ^{and} held for naught ^{and} all sales made by virtue of such judgments decrees or orders ^{and} all deeds made ^{and} executed based upon such sales be set aside discharged ^{and} held for naught ^{and} never to be a lien

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or incumbrance on said land ^{and} that
the deed from your orator to said Ste-
phens be cancelled ^{and} set aside ^{and}
held for naught ^{and} the title of said land
be again restored ^{and} invested in your
orator the same as it was before ^{and} at the
time that he conveyed the same to said
Stephens, unincumbered ^{and} free ^{and} clear
from any lien or incumbrance whatsoever
acquired under or through said Stephen-
son or growing out of or through him
or by reason of his having ever been
the owner thereof or that the said cred-
itors of said Stephens by the order ^{and}
judgment of this honorable court be di-
rected to pay your orator's demands ^{and}
claim of six hundred dollars with
interest thereon ^{and} all the costs ^{and} expenses
that he has been put to with reasonable
attorney ^{and} solicitors fees ^{and} charges therein
^{and} also the sum named in said quit-
claim deed that he had to pay to said
assignee of said Samuel Stone. ^{And} your
orator also prays that the proper writ of
Symmons may be issued out of this
honorable court under the seal thereof
directed to the proper officer to execute
according to the statute in case made ^{and}
provided. ^{And} that such other ^{and} further
order judgment ^{and} decree may be made
in the premises as agreeable to Equity
^{and} good conscience ^{and} he will ever

J. W. Maybrow }
Sols for Complainant }

Dra Gorham.

State of Illinois }
Kane County ss }

Ira Gorham the complainant in the foregoing supplemental bill of complaint being first duly sworn doth depose ^{and} say on oath that he signed the same ^{and} that he has heard, read ^{and} knows the contents thereof ^{and} that he of his own knowledge knows the matters ^{and} things therein stated to be true except as to such matters ^{and} things as he states on information ^{and} belief ^{and} that he believes to be true.

I am ^{and} subscribed to before }
me this 22^d day of November }
A. D. 1854. }
P. R. Wright clk }

(Special Warranty Deed)

This Indenture made this eleventh day of September in the year of our Lord one thousand eight hundred ^{and} fifty seven between James R. Stephens ^{and} Louisa

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Exhibit "C" referred to in the annexed Bill of Complaint.

M. his wife of Aurora in the County of
 Kane ^{and} State of Illinois party of the
 first part ^{and} George M. Hankins of Kane
 ville in the County ^{and} State aforesaid party
 of the second part. Witnesseth that the
 said party of the first for ^{and} in consider-
 ation of the sum of Five thousand (\$2000.)
 Dollars lawful money of the United
 States of America to them in hand
 paid by the said party of the second
 part at or before the executing ^{and} deliv-
 ery of these presents the receipt whereof
 is hereby acknowledged have aliened
 resigned released ^{and} conveyed ^{and} con-
 firmed ^{and} by these presents doth alien
 remise release convey ^{and} confirm unto the
 said party of the second part ^{and} to his
 heirs ^{and} assigns forever all the following
 described lots pieces ^{and} parcels of land
 situate in the County of Iowa ^{and} State
 of Wisconsin to wit; The east half of the
 North west quarter of Section number two
 (2) in Township Number Four (4) North of
 Range One (1) East also the West half of the
 North west quarter of Section number fif-
 teen (15) in Township Number six (6) North
 of Range Three East.

Together with all ^{and} singular the ten-
 ements incidents ^{and} appurtenances
 therunto belonging or in anywise apper-
 taining ^{and} the reversions ^{and} reversions re-
 mainder ^{and} remainder rents issues ^{and}

profits thereof ^{and also} ^{all} estate right title ^{and}
 interest property possessions claims demands
 whatsoever as well in law as in equity
 of the said party of the first part of in or
 to the above described premises ^{and} every
 part ^{and} parcel thereof with the appurte-
 nances or have ^{and} to hold all and singu-
 lar the above mentioned ^{and} described prem-
 ises together with the appurtenances unto
 the said party of the second part his
 heirs ^{and} assigns forever.

And the said James K.
 Stephenson for himself his heirs execu-
 tors and administrators doth hereby cov-
 enant promise ^{and} agree to ^{and} with the
 said party of the second part his heirs
^{and} assigns that he hath not made done
 committed executed or suffered any act or
 act thing or things whatsoever whereby or
 by means whereof the above mentioned
^{and} described premises or any part or par-
 cel thereof nor now or at any time hereafter
 shall or may be impeached charged or
 incumbered in any manner or way what-
 soever.

In witness whereof the said
 party of the first part have hereunto
 set their hands ^{and} seals the day ^{and}
 year first above written.

Signed sealed ^{and} delivered (J. K. Stephenson Seal
 in presence of (M. S. Stephenson Seal
 Daniel Eastman
 Clemma Stephenson)

State of Illinois }
 Kaw County ss }

J. Daniel Eastman a
 Justice of the Peace in and

for said County in the
 state aforesaid do hereby certify that James
 K. Stephens and Louiza M. his wife who are
 personally known to me as the same persons
 whose names are subscribed to the above
 deed as having executed the same appeared
 before me this day in person and acknowl-
 edged that they signed sealed and delivered the
 said instrument of writing as their free and vol-
 untary act for the uses and purposes therein
 set forth and the said Louiza M. wife of the said
 James K. Stephens having been by me ex-
 amined separately and apart and out of the
 hearing of her husband and the contents and
 meaning of the above deed having been by
 me made known and fully explained to her
 acknowledged that she has freely and
 voluntarily executed the same and relin-
 quished her dower to the lands and ten-
 ements therein mentioned without compul-
 sion of her said husband and that she
 does not wish to retract the same

Given under my hand
 and seal this eleventh day of September
 in the year of our Lord one thousand
 eight hundred and fifty seven.

Daniel Eastman Seal
 Justice of the Peace.

Exhibit "C" referred to in the annexed Bill.

I now all men by these presents that I Ora Gorham of Kansas of the County of Kaw ^{and} State of Illinois am held ^{and} firmly bound unto George W. D. Hawkins of Sugar Grove of the County of Kaw ^{and} State of Illinois in the penal sum of Ten thousand dollars to be paid unto the said George W. D. Hawkins his heirs executors administrators or assigns to which payment well ^{and} truly to be made I bind myself my heirs executors ^{and} administrators and every of them firmly by these presents. Sealed with my seal this twelfth day of September A. D. 1857.

The condition of the above obligation is such that whereas the above bounden Ora Gorham has this day sold to the said George W. D. Hawkins his heirs ^{and} assigns for the sum of Eight Hundred ^{and} eighty six ^{34/100} Dollars all the following described lot or parcel of lands in the County of Iowa ^{and} State of Wisconsin ^{and} described as follows to wit: The east half of the north west quarter of Section No. two (2) in Township No. 24 N. of Range One (1) East; also the west half of the north west quarter of Section No. Fifteen (15) in Township No. Six (6) north of Range One (1) East containing one hundred ^{and} sixty acres more or less. The above specified amount secured by 2 notes bearing

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even date herewith made by said G. W. D. Barkins and payable to Dr. Gorham at his house in Randolph. - One of \$416.90 due April 1st 1859, and one of \$479.44 due April 1st 1860.

Upon the payment of the said sums being made at the time and in the manner aforesaid, Dr. Gorham his heirs executors and assigns covenant and agree to and with the said George W. D. Barkins his heirs executors administrators and assigns to execute a good and sufficient deed of conveyance in fee simple free from all incumbrances with full and proper covenants of warranty for the above described premises.

Now if the said Dr. Gorham shall well and truly keep observe and perform said covenants and agreements herein contained on his part then this obligation is to be void otherwise to remain in full force and virtue.

Sealed signed and delivered in presence of
Dr. Gorham Seal
James Lewis Jr

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E. J. Allen Sheriff.

I further executed this writ December 26th 1859 by delivering a true copy hereof to each of the within named Defendants to wit, James R. Stephenson, William Scarlett, Julius C. Buncher, Thomas Newlan, Ann Richardson and John Russ.

E. J. Allen Sheriff.

By J. D. Andrus Deputy.

I further executed this writ February 6th 1860 by delivering a true copy hereof to each with names, Daniel Garnet, Minson Garnet.

E. J. Allen Sheriff.

By C. M. Hartwell Deputy.

Filed July 9th 1860. }
P. R. Wright. }
Clerk. }

This Indenture made this first day of October in the year of Our Lord one thousand eight hundred and fifty nine between Asahel Newton of the town of Omero Kendall County in State of Illinois and assignor of Samuel Stone also of Omero in said County and State of the first part and Dr. Gorham of Knoxville in the County of Knox and State of

Exhibit "G" referred to in the annexed Bill.

Illinois of the second part, Witnesseth, that the said party of the first part for ^{and} in consideration of the sum of Three hundred Dollars to the said party of the first part in hand paid by the said party of the second part, the receipt whereof is hereby confessed ^{and} acknowledged, has remised released conveyed ^{and} quit-claimed ^{and} by these presents does remise release convey ^{and} quitclaim unto the said party of the second part, his heirs ^{and} assigns forever, all the right, title, interest, claim ^{and} demand which the said party of the first part has in ^{and} to the following described lot or parcel of land situate lying ^{and} being in the county of Kaw ^{and} State of Illinois to wit: Being a part of section No. 26 in township No. Thirty nine (39) of Range six (6) East of 3^d. P. M. ^{and} bounded as follows to wit: On the north by center of State road ^{and} lands owned by H. Amington on the East by land owned by St. Amington ^{and} James Sims Jr on the south by lands owned by Samuel Mc Nair ^{and} J. S. Roberts ^{and} on the West by said J. S. Roberts ^{and} the old school house lot in the village of Kawville in said county ^{and} State. Do have ^{and} to hold the same, together with all ^{and} singular the appurtenances ^{and} privileges therunto belonging, or in any wise thereto pertaining, ^{and} all the estate, right, title interest ^{and} claim whatsoever of the said

Dr.

party of the first part, either in law or equity, to the only proper use benefit and behoof, of the said party of the second part his heirs and assigns, forever.

In testimony whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

Signed sealed and delivered in presence of } Asahel Newton Seal
witness of } apique of Samuel Stone

State of Illinois } ss. J. Wright Murphy a
Kendall County } Justice of the Peace

in and for said County in the State aforesaid, do hereby certify that Asahel Newton, who is personally known to me to be the real person whose name is subscribed to the above Deed, appeared before me this day in person and acknowledged that he executed and delivered the said Deed as his free and voluntary act for the use and purposes therein set forth. And the said - wife of the said - having been by me examined separately and apart and out of the hearing of her husband, and the contents and meaning of said Deed, having been by me made known and fully explained to her, acknowledged that she had freely and voluntarily executed the same and relinquished her dower to the lands and tenements therein mentioned, without

compulsion of her said husband and that she does not wish to retract the same.

Given under my hand and seal this 15th day of October in the year of our Lord one thousand eight hundred and fifty-nine.

Wright Murphy, Seal
Justice of the Peace.

This Indenture made this twelfth day of September in the year of our Lord One thousand Eight hundred and fifty-seven between Benjamin George W. D. Barkins and Adelaide R. his wife of Stann County State of Illinois party of the first part and Ard Gorham of Afton County and State of the second part: Witnesseth, that the said part for and in consideration of One thousand Dollars in hand paid by the said party of the second part (the receipt whereof is hereby acknowledged) and the said party of the second part forever released and discharged therefrom) have granted, bargained, sold, remise, released, aliened, and confirmed, and by these presents do grant, bargain, sell, remise, release, alien, and confirm unto the said party of the second part and his heirs and assigns forever all the

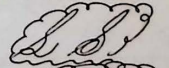
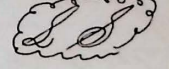
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Exhibit "D" referred to in the annexed Bill of Complaint.

following described lot piece or parcel of Land situate in the county of Iowa and State of Wisconsin and known and described as follows to wit: The east half of the north west quarter of section No. Two (2) in Township No. Four (4) north of Range one (1) east. Also the west half of the north west quarter of section No. Fifteen (15) in Township No. Six (6) north of Range two east containing in all One Hundred and Sixty acres of Land more or less. Together with all and singular the tenements and appurtenances therunto belonging or in anywise appertaining; and the reversion and reversions, remainders and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, claim or demand whatsoever of the said party of the first part, either in law or equity, of, in, and to the above bargained premises, with the tenements and appurtenances; do have and to hold the said premises above bargained and described, with the appurtenances unto the said party of the second part, his heirs and assigns forever. And the said George H. D. Campion and Adelaide R. Hankins party of the first part for themselves their heirs executors and administrators do covenant, grant, bargain and agree to and with the said party of the second part, his heirs and assigns, that at the time of the executing and delivery of these presents they

new well seized of the premises above con-
 veyed as if a good, sure, perfect absolute
 and indefeasible estate of inheritance in
 law, in fee simple, and ha. good right full
 power and lawful authority to grant, bargain
 sell and convey the same in manner and form
 aforesaid; and that the same are free and
 clear from all former and other grants, bar-
 gains, sales, liens, taxes assessments, and
 incumbrances of what kind or nature soever;
 and the above bargained premises, in the quiet
 and peaceable possession of the said party
 of the second part, his heirs and assigns,
 against all and every person or persons law-
 fully claiming or to claim the whole or any
 part thereof, the said party of the first
 part, shall and will warrant and forever
 defend.

In testimony whereof, the said party of
 the first part hereunto set their hands and
 seals the day and year first above written.

G. W. D. Hankins 
 Adelaide R. Hankins 

Signed sealed and Delivered
 in presence of
 James Lewis Jr
 J. R. Stephens.

State of Illinois } ss. J. James Lewis Jr a
 County of Kam } Justice of the Peace in
 and for said county in
 the State aforesaid, do hereby certify that

James Lewis Jr

George W. D. Hankins who is personally known to me as the real person whose name is subscribed to the above Deed, appeared before me this day in person, and acknowledged that he executed and delivered the said Deed, as his free and voluntary act for the uses and purposes therein set forth.

And the said Adelaide R. Hankins wife of the said George W. D. Hankins having been by me examined separately and apart and out of the hearing of her husband, and the contents and meaning of the said Deed having been by me made known and fully explained to her, acknowledged that she had freely and voluntarily executed the same and relinquished her dower to the lands and tenements therein mentioned, without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and seal this 13th day of September in the year of our Lord one thousand eight hundred and fifty seven.

James Lewis Jr. J.P. Seal

This Indenture made this sixteenth day of September in the year of our Lord One thousand Eight hundred and fifty-seven between James K. Stephens and Maria S. his wife of the county of Row and State of

Illinois party of the first part ^{and} Samuel
 Stow of Kendall County Illinois party of the
 second part: Witnesseth, that the said party of
 the first part, for ^{and} in consideration of One
 Thousand Dollars in hand paid by the
 said party of the second part, (the receipt
 whereof is hereby acknowledged, ^{and} the said
 party of the second part forever released ^{and}
 discharged therefrom) have granted, bar-
 gained, sold, remise, released, aliened, ^{and}
 confirmed, ^{and} by these presents do grant, bar-
 gain, sell, remise, release, alien, ^{and} confirm,
 unto the said party of the second part, ^{and}
 to his heirs ^{and} assigns forever, all the fol-
 lowing described lot piece or parcel of land
 situated in the County of Kane ^{and} State of
 Illinois, ^{and} known ^{and} described as follows
 to wit; Being a part of Section twenty-six
 (26) in Township thirty-nine (39) North
 Range six (6) East of the third Principal Me-
 ridian ^{and} bounded as follows to wit; North by
 the center of the State Road ^{and} Land owned
 by Nathan Merrill East by said — ^{and}
 J. D. Sathrop's South by lands owned by
 Samuel W. Fair ^{and} J. D. Roberts ^{and} West by
 J. D. Roberts ^{and} school house lot in the village
 of Kamrillo containing something less
 an acre of land more or less. Together with
 all ^{and} singular the hereditaments ^{and}
 appurtenances therunto belonging or in
 anywise appertaining; ^{and} the reversions
^{and} remainders, remainders ^{and} remainders, unto

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Exhibit "D" referred to in the annexed Bill of Complaint.

issues and profits thereof; and all the estates, right, title, interest, claim or demand whatsoever of the said party of the first part either in law or equity, of, in, and to the above bargained premises, with the hereditaments and appurtenances; do have and to hold the said premises, above bargained and described, with the appurtenances, unto the said party of the second part, his heirs and assigns forever. And the said James K. Stephens party of the first part for himself his heirs executors and administrators, do covenant grant bargain and agree, to and with the said party of the second part, his heirs and assigns, that at the time of the executing and delivery of these presents he is well seized of the premises above conveyed as of a good, sure, perfect, absolute and indefeasible estate of inheritance in law, in fee simple, and has good right, full power and lawful authority to grant, bargain sell and convey the same in manner and form aforesaid; and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, and incumbrances of what kind or nature soever; and the above bargained premises, in the quiet and peaceable possession of the said party of the second part, - heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part, shall and will warrant and favour defend.

In testimony whereof the said party of the first part hereunto set their hands and seals the day and year first above written.

Signed Sealed and Delivered in presence of
Mr. R. Parker.

J. R. Stephenson Seal
Mara^{her} S. Stephenson Seal
mark

State of Illinois } ss. J. Mr. R. Parker a Jus-
Kane County } tice of the Peace in and
for said County in the
State aforesaid do hereby certify, that James
R. Stephenson and Mara S. Stephenson who
are personally known to me as the real per-
sons whose names are subscribed to the
above Deed, appeared before me this day
in person and acknowledged that they executed
and delivered the said Deed as their free and
voluntary act for the uses and purposes therein
set forth. And the said Mara S. Stephenson
wife of the said James R. Stephenson having
been by me examined, separately and apart
and out of the hearing of her husband, and
the contents and meaning of the said Deed
having been by me made known and fully
explained to her, acknowledged that she
had freely and voluntarily executed the same,
and relinquished her claim to the lands and
tenements therein mentioned, without com-
pulsion of her said husband and that she
does not wish to retract the same.
Given under my hand and seal this 16th day

page 46 of September in the year of Our Lord Our
thousand eight hundred and fifty-seven.
Wm R. Parker. J. P. Seal.

This Indenture made this 2nd day
of September in the year of Our Lord Our
thousand eight hundred and fifty-seven. Be-
tween John Gorham and Samantha his wife of
Kane County State of Illinois party of the
first part and James K. Stephens of County
and State aforesaid, of the second part;
Witnesseth, that the said party of the first part
for and in consideration of Ten thousand Dollars in
hand paid by the said party of the second part
(the receipt whereof is hereby acknowledged and
the said party of the second part forever released
and discharged therefrom) have granted, bar-
gained, sold, released, released, aliened and
confirmed and by these presents do grant bar-
gain sell remise release alien and confirmed
unto the said party of the second part, and to
- heirs and assigns forever, all the following
described lot piece or parcel of Land, situ-
ated in the County of Kane and State of Illinois
and known and described as follows to wit: Being
a part of section Twenty-six (26) in Township
thirty-nine (39). North Range six (6) East of the
3^d principal meridian and bounded as follows,
to wit: North by Centre of State road and Land
owned by Nathaniel Merrill. East by said

Merrill land and J. D. Lathrop South by
 land owned by Samuel McMain and J. E.
 Roberts and school house lot in the village
 of Kauwills containing something less
 than one acre of land more or less.
 Together with all and singular the heredit-
 aments and appurtenances therunto belonging
 or in anywise appertaining; and the reversions
 and reversion, remainder and remainders, rents
 issues and profits thereof; and all the estate
 right, title, interest claim or demand what-
 soever of the said party of the first part
 either in law or equity, of, in, and to the above
 bargained promise, with the hereditaments
 and appurtenances; do have and to hold the said
 promise above bargained and described, with
 the appurtenances unto the said party of the
 first part, his heirs and assigns forever. And
 the said Ora Gorcham and Samantha Gor-
 cham party of the first part for themselves
 their heirs executors and administrators do
 covenant grant bargain and agree to and with
 the said party of the second part his
 heirs and assigns, that at the time of the en-
 sealing and delivery of these presents they are
 well seized of the premises above conveyed as
 of a good and perfect absolute and indefeasible
 estate of inheritance in law, in fee simple,
 and have good right, full power and lawful
 authority to grant bargain sell and convey
 the same in manner and form aforesaid
 that the same are free and clear from all former

Exhibit "D" referred to in the within and annexed Bill.

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and other grants, bargains, sales, limes, taxes, assessments, ^{and} incumbrances of what kind or nature ever; ^{and} the above bargained premises, in the quiet ^{and} peaceable possession of the said party of the second part his heirs ^{and} assigns, against all ^{and} every person or persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part, shall ^{and} will warrant ^{and} forever defend.

In testimony whereof, the said party of the first part hereunto set their hands ^{and} seals the day ^{and} year first above written.

Signed sealed ^{and} delivered } Ora Gorham Seal
In presence of } Samantha Gorham Seal

State of Illinois } ss. J. James Lewis Jr a
Kane County } justice of the Peace in
and for said County, in the
State aforesaid, do hereby certify that Ora
Gorham who is personally known to me as
the real person whose name is subscribed
to the above Deed, appeared before me this
day in person ^{and} acknowledged that he
executed ^{and} delivered the said Deed as his free
^{and} voluntary act for the use ^{and} purposes
 therein set forth. ^{And} the said Samantha
Gorham wife of the said Ora Gorham hav-
ing been by me examined, separate ^{and} apart
^{and} out of the hearing of her husband ^{and}
the contents ^{and} meaning of the said Deed
having been by me made known ^{and} fully

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explained to her acknowledged that she
has fully and voluntarily executed the same
and relinquished her dower to the lands and
tenements therein mentioned without com-
pulsion of her said husband and that
she does not wish to retract the same.

Given under my hand and seal, this 12th
day of September in the year of our Lord
one thousand eight hundred and fifty seven

James Lewis Jr. J. P. Seal

Witness. Dec 20. 1859.

P. R. Wright.

Clerk.

page 50.

State of Illinois } ss The People of the State
Kane County } of Illinois to the Sheriff
of said county, Greeting:

We command you that you summon James K. Stephenson if he 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 Genoa, in said County on the second Monday of November next to answer unto George W. D. Hankins bill of complaint filed in the chancery side of said court for relief, ^{and} Injunction. And have you show ^{and} shew this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness, Paul R. Wright, Clerk of our said Court ^{and} the seal thereof at Genoa in said County this 15th day of October A. D. 1857.

L. D.

P. R. Wright.
Clerk.

Which summons is endorsed as follows to wit:
Executed this writ by delivering a copy of the same to A. D. Smith Esq who agreed to accept service of the same as the attorney of the said J. K. Stephenson. The defendants not found in my County.

October the 17. 1857. } H. E. Cornish.
Filed Nov 7. 1857. } Sheriff.
P. R. Wright. clk. }

State of Illinois. } ss. The People of the State of
Kane County. } Illinois to the Sheriff of
said County, Greeting:

We command you that you summon
James S. Stephenson, William & Charles Davis,
Garret, Minnow Garret, Oramus D. Day,
Francis Granger Adams, Julius C. Buchanan,
Thomas Seylan, Amos Richardson ^{and} John
Russ, 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 Geneva in said County
on the third Monday of February next to
answer unto the Supplementary Bill of com-
plaint of Ora Gorham complainant filed
in said Court on the Chancery side thereof.
And have you ^{and} then this writ, with
an endorsement thereon, in what manner
you shall have executed the same.

Witness, Paul R. Wright, Clerk of our
said Court, ^{and} the Seal thereof at Geneva
in said County, this 30th day of December
A. D. 1859.



P. R. Wright.
Clerk.

Which summons is enclosed as follows to wit:
Executed this writ December 23rd 1856 by deliv-
ering a true copy thereof to the within nam-
ed Oramus D. Day.

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E. J. Allen, Sheriff.

I further executed this writ December 26th 1859. by delivering a true copy hereof to each of the within named Defendants to wit; James K. Stephenson, William Scarlett, Julius C. Burnham, Thomas Newlan, Amos Richardson and John Russ.

E. J. Allen, Sheriff.

by J. D. Ambrose, Deputy.

I further executed this writ February 6th 1860. by delivering a true copy hereof to each with named David Garret, Minson Garret

E. J. Allen, Sheriff.

by C. M. Bartlett, Deputy.

Filed Febry 7th 1860. }
P. R. Wright. }
Clerk. }

And afterwards, to wit: on the 6th day of April A. D. 1860, the following answer was filed in the office of the Clerk of said Court, to wit:

(A)

This Indenture, made this seventh day of September in the year of Our Lord One Thousand Eight Hundred and fifty nine, Between Thomas Knowlan and Mary, his wife, of Aurora, County of Kane and State of Illinois, party of the first part, and Mary E. Scarlett, of the same place, party of the second part, Witnesses, That the said party of the first part, for and in consideration of the sum of Fifteen Hundred Dollars, lawful money of the United States of America, to - in hand paid by the said party of the second part, at or before the enrolling and delivery of these Presents, the receipt whereof is hereby acknowledged, have aliened, remised, released, conveyed and confirmed, and by these presents do - alien, remise, release, convey and confirm unto the said party of the second part, and her heirs and assigns forever, all the following piece or parcel of land, lying and being in the County of Kane and State of Illinois, to wit: Being part of Section Twenty six (26) Township (39) Thirty nine, North Range (6) six East of the third principal Meridian, and bounded as follows: North by the Center of the State road, and land owned by Nathan Merrill, East by said - + J. F. Linnrip, South by lands owned by Samuel McHarr + J. S. Robert, west by J. S. Roberts and School - house

Page 54. lot, in the Village of Kancoville, containing something less than one acre of land, more or less,

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also, all the Estate, right, title and interest, of said Newlin in and to the property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the above described premises, and every part and parcel thereof; with the appurtenances: To have and to hold, all and singular the above-mentioned and described premises, together with the appurtenances, unto the said party of the second part, her heirs and assigns forever.

And the said Thomas Newlin for himself, - heirs, executors and administrators, does hereby covenant, promise and agree, to and with the said party of the second part, her heirs and assigns, that he has not made, done committed, executed or suffered any act or acts, thing or things whatsoever, whereby, or by means whereof, the above mentioned and described premises, or any part or parcel thereof, now and, or at any time hereafter shall or may be impeached, charged or incumbered, in any manner or way whatsoever.

In Witness Whereof, The said party of the first part have hereunto set their hands and seals the day and year first above written,
Signed, Sealed ^{and} Delivered } Thomas Newlin Seal
in presence of } Mary Newlin Seal
Lynnan Baldwin.

State of Illinois, } ss.
Kane County, }

J. Lyman Baldwin
a Justice of the Peace, in and for said County, in
the State aforesaid, do hereby certify, that Thomas
Newlan and Mary, his wife, who are personally
known to me as the same persons whose names are
subscribed to the above Deed, as having executed
the same, appeared before me this day in person,
and acknowledged that they signed, sealed and de-
livered the said instrument of writing, as their
free and voluntary act, for the uses and purposes
therein set forth. And the said Mary Newlan
wife of the said Thomas Newlan having been by
me examined seprate and apart, and out of the
hearing of her husband, and the contents and
meaning of the above Deed having been by me made
known and fully explained to her, acknowledged that
she had freely and voluntarily executed the same,
and relinquished her dower to the lands and ten-
ements therein mentioned, without compulsion of her
said husband, and that she does not wish to retract
the same.

Given under my hand and seal,
this seventh day of September in the year of our
Lord One Thousand Eight Hundred and fifty
nine.

Lyman Baldwin (seal)
Justice of the Peace.

State of Illinois, }
Kane County, } ss. Kane Co. Cir. Court.
May Term A. D. 1860.
In Chancery sitting;

Ira Gorham
vs
Thomas Newlan
William Scarlett
et al

The answer of William Scarlett, one of the above defendants, to the Bill of complaint of Ira Gorham the above complainant;

This defendant now and at all times hereafter saying and reserving to himself all manner of benefit and advantage of ~~exception~~ to the many errors and insufficiencies in the complainants said Bill of complaint contained, for answer therunto or unto so much or such parts thereof as this defendant is advised is material for him to make answer unto, does answer and say: that Mary E. Scarlett the wife of this defendant is the owner of, and has the title to the said lands in the Complainants said Bill of complaint mentioned and described as being in the Town of Kaneville, in the County of Kane and State of Illinois, that the said Mary E. Scarlett acquired the title to said lands on the seventh day of September, A. D. 1859, from one Thomas Newlan, by deed from said Newlan dated the said seventh day of September, A. D. 1859.

Conveying the said premises to the said

Page 57.

Mary E. Scarlett her heirs and assigns forever, a copy of which Deed is hereunto annexed and marked ("A") and which this defendant prays may be made & taken as a part of this his answer. And this defendant further answering says, that the said Mary E. Scarlett is a good and bona fide purchaser of said lands and that the same were purchased by the said Mary E. Scarlett of the said Thomas Newlan in good faith and for a good and valuable consideration, that the said Mary E. Scarlett, in consideration of the said sale & conveyance by said Newlan to said Mary E. Scarlett, on the said 7th day of September, A. D. 1859, sold and conveyed by Deed to said Newlan the following lands situate in Aurora, Kane County Illinois, to wit: Lockwoods subdivision of Block 14, in Stephensons extended addition to Aurora, excepting and reserving the Lots 18, 19 & 20, in said Block & reserving the small wooden building now on lot 14 in the above named block, which last mentioned lands were valued by the said parties at said time of sale, at the sum of \$1800.00; that the said lands sold and conveyed by said Newlan to said Mary E. Scarlett as aforesaid, were valued by the said parties in the trade at the time of said sale, at the sum of \$1500.00, and the sum of \$275.00 was to be paid by said Newlan to said Mary E. Scarlett in money to make up the difference between the two pieces of land traded as aforesaid. And this defendant further answering says, that at the time of said trade & of the conveyance of the said lands in the complainants Bill

Page 58 of complaint mentioned, by the said Newlan to said
Mary E. Scarlett as aforesaid, the said Newlan stated to
& enjoined this defendant that his said Newlan's title to
said Premises was good and that there were no liens or
claims against the same, and this defendant & the said
Mary E. Scarlett relied upon the said statement of said
Newlan and thereupon the said Mary E. Scarlett purchased
the said lands in good faith relying upon the said
Newlan's Warranty Deed of the same, and supposing
and believing the title of said Newlan to the said
lands to be good, and this defendant further states
that at the time of the purchase of the said lands
of the said Newlan & at the time of the conveyance
of the same to said Mary E. Scarlett as aforesaid,
neither this defendant nor the said Mary E. Scarlett,
had any knowledge or notice whatsoever of any claim or
interest or legal or equitable whatsoever of the said Com-
plainant, or any other person whatsoever in and to
the said lands aforesaid & in the complainant's said
bill mentioned. And this defendant desires all
unlawful combination &c. All which matters
& things this defendant is ready to aver, maintain &
prove as this Hon. Court shall direct; and humbly
prays to be heard dismissed with his reasonable
costs &c.

Chas Wheaton }
Solicitor for Def. }
Scarlett }

Wm Scarlett

State of Illinois } ss.
Kane County } On this 6th day of April,
A. D. 1860, before me, personally appeared the above

page 57.

named William Scarlett & made oath that he has heard, the above answer subscribed by him, read & knows the contents thereof & that the same is true of his own knowledge, except as to the matters therein stated to be on his information & belief & as to those matters he believes it to be true.

Subscribed and sworn to before me this 6th day of April, A. D. 1860 } W^m Scarlett
Jas G. Barr
J. P.

And afterwards, to wit: on the 3rd day of July A. D. 1860, the following answer was filed in the office of the Clerk of said Court, to wit:

(A)

This Indenture, made this seventh day of September in the year of Our Lord One Thousand Eight Hundred and Fifty nine. Between Thomas Keolan and Mary, his wife of Aurora, County of Kane & State of Illinois - party of the first part, and Mary E. Scarlett of the same place party of the second part; Witnesseth, that the said party of the first part, for and in consideration of the sum of fifteen hundred dollars, lawful money of the United States of America to - in hand paid by the said part - of the second part, at or before the enrolling and delivery of these presents, the receipt whereof is hereby acknowledged, have aliened, remised, released, conveyed and confirmed, and by these presents do alien, remise, release, convey and confirm

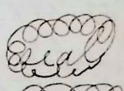
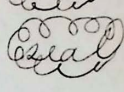
Page 60 unto the said party of the second part, and her heirs and assigns forever, all the following piece or parcel of land lying and being in the County of Kane and State of Illinois, to wit: Being a part of Section twenty six (26) Township thirty nine (39) North range six East of the third principal Meridian & bounded as follows: North by the Center of the State Road and land owned by Nathan Merrill, East by said — & J. F. Sathrop, South by lands owned by Samuel McKair, & J. S. Roberts, West by J. S. Roberts and School House lot, in the Village of Saverille, containing less than one acre of land more or less. Together with all and singular the tenements, hereditaments and appurtenances thereto belonging, or in anywise appertaining; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also, all the estate, right, title and interest, of said Hewlan in and to the property possession, claim and demands whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the above described Premises, and every part and parcel thereof, with the appurtenances. Do have and to hold, all and singular the above mentioned and described Premises, together with the appurtenances, unto the said party of the second part, her heirs and assigns forever. And the said Thomas Hewlan for himself heirs, executors and administrators, does hereby covenant, promise and agree, to and with the said party of the second part, her heirs and assigns that he has not made, done committed, executed or suffered any act or acts thing or things whatsoever, whereby, or by means thereof, the above mentioned and described premises, or any part or parcel thereof, now

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are, or at any time hereafter shall or may be impeached, charged or incumbered, in any manner or way whatsoever,


In Witness Whereof. The said party of the first part have hereunto set their hands and seals the day and year first above written.

Signed, Sealed and Delivered in presence of Lyman Baldwin

Thomas Newlan 
Mary Newlan 

State of Illinois. } ss.
Kane County. }

I, Lyman Baldwin a Justice of the Peace, in and for said County, in the State aforesaid, do hereby certify, That Thomas Newlan and Mary his wife who are personally known to me as the same persons whose names are subscribed to the above Deed, as having executed the same, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument of writing, as their free and voluntary act, for the uses and purposes therein set forth, And the said Mary Newlan wife of the said Thomas Newlan having been by me examined separate and apart, and out of the hearing of her husband, and the contents and meaning of the above Deed having been by me made known and fully explained to her, acknowledged that she has freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned, without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and seal, this seventh day of September in the year of our Lord one thousand eight hundred and fifty nine, Lyman Baldwin 
Justice of the Peace

State of Illinois, } ss.
 Kane County. }

Kane County Circuit
 Court, July special Term
 A. D. 1860. in Chancery Sitting

Ira Gorham

vs

Thomas Newlan,
 William Scarlett,
 Mary E. Scarlett et als

The answer of Mary E. Scarlett one of the above defendants to the Bill of complaint of Ira Gorham the above complainant:

This defendant now and at all times hereafter saving and reserving to herself all manner of benefit and advantage of exception to the many errors and insufficiencies in the Complainant's said bill of complaint contained, for answer therunto ~~or unto~~ as much or such part thereof as this defendant is advised is material for her to make answer unto, does answer and say; that this defendant is the owner of, and has the title to, the said lands in the Complainant's said bill of complaint mentioned and described as being in the town of Kaneville, in the County of Kane and State of Illinois, that she, the said defendant, acquired the title to said lands on the seventh day of September A. D. 1859, from one Thomas Newlan, by deed from the said Newlan bearing date the said seventh day of September, A. D. 1859, conveying the said premises to her, the said defendant, her heirs and assigns forever - a copy of which deed is herunto annexed marked (A) and which this defendant prays made by made & taken as part of this her answer, And this defendant

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further answering says, that she, the said defendant, is and was a good and bona fide purchaser of said lands and that the same were purchased by her of the said Newlan in good faith and for a good and valuable consideration, that she, the said Mary E. Scarlett, in consideration of the said sale and conveyance by the said Newlan to her, on the said 7th day of September, 1859, sold and conveyed by deed to said Newlan the following land, situate in Aurora Kane County, Illinois, to wit: Lockwoods Subdivision of Block 14, in Stephensons extended addition to Aurora, excepting & reserving Lots 10, 19 & 20, in said Block & reserving the small wooden building now on Lot 4 in the above named Block, which last mentioned lands were valued by the said parties at said time of sale at the sum of \$ 1800. 00; that the said lands sold and conveyed by said Newlan to this defendant as aforesaid were valued by the said parties in the trade at the time of said sale at the sum of \$ 1500. 00, and the sum of \$ 245. 00 was to be paid and was paid by said Newlan to this defendant in money to make up the difference between the two pieces of land traded, as aforesaid. And this defendant further answering says, that at the time of said trade & of the conveyance of the said lands in the Complainants ~~bill~~ bill of complaint mentioned, by the said Newlan to this defendant as aforesaid, the said Newlan stated that his said Newlans, title to said premises was good and that there were no liens or claims against said premises, and this defendant relied upon the said statement of the said Newlan and upon the said Newlan giving a Warranty Deed of the said

premises & thereupon purchased the said lands in good faith, supposing and believing the title of the said Keolan to be good. And this defendant further states that at the time of the purchase of said lands of the said Keolan as aforesaid and the conveyance of the same as aforesaid to this defendant, this defendant had no knowledge or notice whatever of any claim or interest or interest legal or equitable whatsoever of the said complainant or any other person whomsoever in & to the said lands in the said complainant's bill mentioned. And this defendant does not now know that the said complainant has any claim or interest in or to the said premises, but this defendant denies that the said defendant has any claim or interest whatsoever in or to said premises in said bill of complaint mentioned, And this defendant denies all unlawful combinations &c. All which matters and things this defendant is ready to aver, maintain and prove as this Hon. Court shall direct humbly prays to be hence dismissed with her reasonable costs &c.

Chas. Wheaton,

Sol. for defendant }

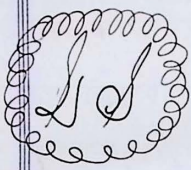
Mary E. Scarlett

State of Illinois } ss.
Hawthorn County }

On this 27th day of July, A. D. 1860, before me personally appeared the above named Mary E. Scarlett & made oath that she has heard read, the above answer subscribed by her & knows the contents thereof & that the same is true of her own knowledge, except as to the matters therein stated to be on her information & belief, and as to those matters she believes it to be true.

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Subscribed & sworn to
before me this 2nd day
of July, A. D. 1860.



Gas. E. Carr
Clerk Court Common
Plen. of the City of Terra.

Mary E. Scarlett

And afterwards, to wit: on the 31st day of
March, A. D. 1860. the following, amongst other answers,
was filed in the office of the Clerk of said Court, to wit:

State of Illinois }
 } ss.
Kane County

Kane County Circuit Court
In Chancery

The answer of Thomas Newlan one
of the defendants to the Supplemental Bill of Com-
plaint of Ira Gorham, complainant-

This defendant now and at all times here-
after saving to himself, all and all manner of ben-
efit or advantage of exception or otherwise that can
or may be had or taken to the many errors and im-
perfections in the said Bill contained, for answer there-
to, or to so much thereof as this defendant is advised
it is material or necessary for him to make answer
to, answering saith, that he has no knowledge, in form-
ation or belief relative the negotiations, bargains and
trades between the said complainant, George W. D.
Newkins and the said James K. Stephenson, or in what
manner the said Stephenson obtained title to the land
described in complainants Bill, except what this defen-
dant derived from the Bill of Complaint filed herein

page 66, and therefore neither admits or denies the same, but leaves the complainant to his proof-

This defendant further answering says, that on or about the 14th day of Sept. A. D. 1857 this defendant recovered a judgment against the said Stephenson in the Court of Common Pleas of the City of Aurora, for the amount charged in the said Bill of complaint, and that afterwards, this defendant directed the Sheriff to levy upon and sell the said property, as the property of Stephenson, which sale took place at the time stated in the said Bill, and this defendant received from the Sheriff a certificate of sale therefor, which this defendant still holds. That the said judgment was obtained upon a note, given to this defendant by the said Stephenson the precise date of which this defendant cannot state, for and in consideration of an incumbrance which this defendant was obliged to pay upon some property purchased of said Stephenson, for which he gave this defendant his Warranty Deed and the said note was the amount thus paid.

That afterwards, and after the sale of said premises to the said Anor Richardson as charged in the complainants Bill, this defendant, ^{purchased} the certificate of sale held by the said Richardson, and took an apigment of the same and afterwards, after the expiration of the time for redemption to wit on the 6th day of Sept. A. D. 1859, this defendant obtained a Sheriff's Deed for the said lands and the same was duly recorded in the Recorders Office of said County - That afterwards and before the filing of the complainant supplemental Bill herein, this defendant sold and conveyed all of his interest

book no 1

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in and to said premises to Mary E. Scarlett -
acquired by virtue of said sales and deeds -

And this defendant denies all and all manner
of unlawful combinations conspiracy, wherewith he
is by the said Bill charged, without this, that there is
any other matter, cause or thing in the said Com-
plainants Supplemental Bill of Complaint contained
material or necessary for this defendant to make an-
swer unto, and not herein sufficiently answered,
confessed or denied is true, to the knowledge or be-
lief of this defendant - all of which said matters
and things this defendant is ready to maintain &
prove &c. and prays to be hence dismissed with
his costs &c

Plato ~~of~~ away
Depts Solrs

Thomas Newlan

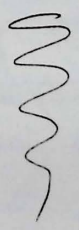
State of Illinois } ss
Kane County }

Thomas Newlan being duly sworn
on oath deposes and says, that all
the several matters and things set forth in the fore-
going answer, as from information of others, I believe
to be true, & all the other matters therein set forth are
true in substance and in fact.

Subscribed & sworn to before me this
30th day of March A.D. 1860.

Wm. H. Miller,

Notary Public.



And afterwards, to wit: on the 25th day of May, A.D. 1861, the following Deposition was filed in the office of the Clerk of said Court, to wit:

Deposition of James K. Stephenson aged about forty six years, taken by P. R. Wright, master in chancery in & for the County of Kane, Illinois on the third day of April, A.D. 1861, at the office of J. H. Maybom Esq. in General in said Kane County, in a certain cause pending in the Circuit Court of Kane County, on the chancery side thereof, wherein Ira Gorham and George N. D. Hawkins are complainants and James K. Stephenson, William Scarlet, Mary E. Scarlet, Daniel Garnet, Minson Garnet, Orsamus D. Day, Francis Branger Adams, Julius B. Burnham, Thomas Hewlaw, Anor Richardson & John Russ. are defendants, in the person of J. H. Maybom, Solicitor for the complainants, on the part of ~~the~~ said Complainants.

James K. Stephenson being first duly sworn deposes & says to interrogatories as follows

Interrogatory 1st

What is your name, age, place of residence & occupation.

Ans^r. My name is James K. Stephenson, my age forty six years, I reside in General, I have been doing a commission business abng back.

Interrogatory 2^d

Are you acquainted with the complainants Ira Gorham & George N. D. Hawkins or either of them & with the defendants, James K. Stephenson, William Scarlet, Mary E. Scarlet, David Garnet, Minson

page 70. Garnet, Francis Granger Adams, Julius B. Burnham, Thomas Kuolan, John Russ, Anor Richardson and Orson D. Day, or either of them? If yes, how long and when did you become acquainted with them or either of them, state.

Answer, I have seen Mr. Gorham a few times, am not particularly acquainted with him, some three or four years ago I first saw him, I am partially acquainted with Hawkins, became acquainted with him about the same time, I suppose I saw the defendant Stephenson. I am acquainted with Mr. Kuolan & Mr. Russ have been acquainted with Kuolan some 8 or 9 years & Mr. Russ four or five years, am acquainted with Mr. Scarlet some and have seen Mrs. Scarlet; I was acquainted with O. D. Day and think I know Mr. Burnham, I don't think I know the other defendants,

Interrogatory 3^d Did you call upon one George H. D. Hawkins or e of the complainants in the original Bill in this suit, at Kanoville, in the county of Kauai in the State of Illinois, on or about the tenth day of September A. D. 1857, for the purpose of negotiating with him in regard to the exchange of a certain Tavern Stand & the lands thereunto belonging, for some lands situate in County of Iowa State of Wisconsin, If yes state,

Answer,
ansr, I can say yes to all that only he did not live in Kanoville at the time but about a mile out,

Interrogatory 4th State as near as you can recollect, the conversation that occurred between you & said Hawkins at that

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time, the property that you wanted to buy or exchange property for, and what property you wanted to sell or exchange in payment for it, and where the same was situated;

ansr;

I went to Mr. Hawkins's house with a man by the name of Hiram Clark. I asked him if he owned a Tavern Stand in Kaneville, I think he told me he did. and I proposed to trade with him for it, I showed him a deed for some land in Wisconsin that I told him I would trade if we could agree. He asked me if I had ever seen the land & I told him that I never had. I told him that he could see who my deed was from, from Mr. S. C. Lee of Aurora, He asked me what I wanted for the land & I told him Sixteen Hundred Dollars, that was the consideration in the Deed, it was a Quit Claim Deed, I told him that I didnt want to say anything further about the land - that I was a party in the concern, that he might go & see Mr. Lee, and if he wanted to trade to come to my house in Aurora & I would trade with him, I lived at Aurora at the time, He come down, I think, the next day and said he would trade with me, He said he would give me the Tavern Stand for the land & there was an incumbrance on it, he said. I dont recollect whether I made over the Deed to Mr. Gorham or Mr. Hawkins but I think it was made over to Mr. Hawkins.

Hawkins deeded it to Mr. Gorham & took back a bond for a deed upon certain payments, This is all I recollect of at that time, This was about the 12th of September I think.

Interrogatory 5th
Page 72.

Did you have any conversation with Gorham in regard to the exchange of property with Hawkins before it was made. If so state what Gorham said or that subject, & was Hawkins by?

Answer,

I think I saw Mr Gorham before I saw Hawkins, I told him that I was going to see Hawkins, I think I remarked that I had learned that Mr Gorham had a lien on the property and wanted to know if he was willing I should make a trade with Hawkins, Mr Gorham seemed willing to have this trade made if he could only be secure in his claims on the property, Mr. Hawkins was not by.

Interrogatory 6th

Did you not state in that conversation that you & Hawkins were talking of making a trade for the Dorem Stand. that you had offered Hawkins 160 acres of land in Wisconsin worth sixteen hundred Dollars, if Hawkins could give you a good title to the Dorem Stand, and that you had a good title to the property & that Hawkins wanted to make the trade, & would if he was willing, and did not Gorham reply that his claim on the Dorem Stand was between seven & eight hundred Dollars, that he was satisfied with that security & did not want to change it, but said if it would oblige Hawkins & he was anxious for the trade & he could be made secure that he would try and accommodate him: & assent to it?

Answer,

I can't remember all the conversation, I don't recollect that I did make all of them statements, I said that I had bought the land of Mr Lee & paid him sixteen hundred Dollars for it, I don't recollect the

Page 73. Conversation with Mr Gorham, I think he said his claim was about seven or eight hundred Dollars, on the Tavern Stand, I think I showed him my Deeds.

Interrogatory 7th Did you not represent & state to Gorham that you had a good title to the land, that you was going to trade for the Tavern Stand, if you traded, & that it was worth Sixteen hundred Dollars & that you could ~~should~~ ^{should} give a good title to it if the trade was made, and you should expect & require a good & clear title to the Tavern Stand?

Ans: I think I said my price for the land was sixteen hundred Dollars & if I sold it I should have that for it. I would not swear to what conversation I did have with Gorham, because I am not positive, & don't remember it.

Interrogatory 8th Did you make sale of the land in Wisconsin with Hawkins for the said Tavern Stand? ^{if so when was it} & what was the terms & conditions of the sale?

Ans: I traded about the 12th of September 1857, with Hawkins, made an even trade, gave him the land in Wisconsin for the Tavern Stand,

Interrogatory 9th What did you call the land worth in that trade?

Ans: Sixteen hundred Dollars

Interrogatory 10th Look at Exhibit C, in the Schedule of Exhibits

Page 74, attached to the complainant Gorham's amended Bill (handing to witness the Exhibit) and state whether that is a copy of the Deed & contains a correct description of the lands sold by you to said Hawkins in exchange for said Farm Stand.

Answer, The description is right, and it is a copy of the Deed as far as I have examined it.

Interrogatory 11.th Did you ever have a good title to that land? If yes of whom did you get it?

Answer, I have what Mr Lee calls a Quit claim Deed from S. L. Lee.

Interrogatory 12.th Where did said Lee reside at that time & where does he now?

Answer, In Aurora. Name Lee Ills

Interrogatory 13.th Did you ever have any other or different title to said land than what you obtained through Luther L. Lee of Aurora?

Answer, No sir.

Interrogatory 14.th Did you not subsequently to the making of this sale to Hawkins deliver up said Deed to said Lee?

Answer, No sir. I did not.

Interrogatory 15.th What has become of said Deed and ^{who} now has it?

Page 75,
MSX.

I think it is in Mr. Lee's possession.

Interrogatory 16th Was that Deed ever acknowledged or recorded?

Answer. That Deed was acknowledged but never recorded. It was acknowledged before William C. Parker Justice of the ^{Peace} at Aurora.

Interrogatory 17th To whom did you sell the Tavern Stand after obtaining a title to it, and how soon after you obtained title?

Ans^r. I didn't sell the Tavern at all, but I made out a Deed to Samuel Stone,

Interrogatory 18th What was the character of that Deed that you received?

Ans^r. I was going to borrow a thousand Dollars on it.

Inty. 19th What was the character of the Deed that you received from Gorham conveying to you the Tavern Stand.

Answer. I can't say whether it was a Warranty Deed or not.

Interrogatory 20th From whom did you receive the title to ^{said} the Tavern Stand and did you put ~~it~~ ^{the} Deed on Record?

Ans^r. I think I got the title from Mr Gorham and I think the Deed is Recorded.

Interrogatory 21st What was the Tavern Stand worth & the land conveyed with it, at the time it was conveyed?

Answer. I don't know what it was worth, but they told me
Page 76, it was worth sixteen hundred Dollars.

Interrogatory 22nd From your knowledge of Lee's title to the said 160
acres of lands by him pretended to be sold & conveyed
to you, was it good & of any value.

Answer. From my knowledge I couldn't say whether it was
good or not, I suppose it was good at the time, but
time has proved that it was not good. Tax titles in
Wisconsin, I find on investigation, to be worthless
for anything only the amount of money paid into
County Treasury, & interest.

Interrogatory 23rd Did not Lee advise you that he only claimed a
Tax title to said land, and did you not know that
fact at the time you sold the land to Hawkins?

Ans: I did sir, know all that.

Interrogatory 24th Have you not been indicted in the Kane County
Circuit Court for an attempt to swindle in this
very same matter, in obtaining property under false
pretences?

Ans: Well, there was an Indictment, & I afterwards
showed Hawkins the Deed and he never appeared a-
gainst me.

Interrogatory 25th Did you not offer Hawkins Seven hundred Dollars
if he would leave the State & not appear against you as
a witness?

Page 11

Page 77.

Answer,

No Sir. I told Hawkins that I wasn't afraid to meet the ipuo & showed him my Deed, but that I didn't want him to lose the property and I would give him something as soon as I could get at it.

Interrogatory 26th

Didn't Hawkins soon after this conversation leave the country & go to California

Answer,

I couldn't say whether he did or not sir.

Interrogatory 27th

Didn't you tell Hawkins that you held & could & would give a good title to said land if the trade was made?

Answer,

I don't think I told him any such thing, I know I showed him my Deed and refered him to Lee to get posted,

Interrogatory 28th

Will you swear that you did not.

Answer,

No sir, I wouldn't swear about it at all, but it is my impression that I did not.

J. H. Stephenson

State of Illinois

Yes.
Kane County

I, Paul R. Knight, Master in Chancery in & for said County do hereby certify that the above deposition was taken by me at the time & place mentioned in the caption thereof; that the said witness was first duly sworn and that the said deposition was carefully read to the witness and signed & sworn to by him.

Dated this 3rd day of April A.D. 1861.

Master Fees \$3.00

P. R. Knight

Master in Chancery

Page 78.

Deposition of Luther C. Lee aged about thirty four years, a witness in a certain cause now pending in the Circuit Court of Kaw County, State of Illinois in Chancery wherein Bra Gorham ^{and} George H. D. Perkins are complainants ^{and} James K. Stephenson, William Scarlet, Mary E. Scarlet, David Gamut, Minnow Gamut, Oramus D. Day, Francis Granger Adams, Julius C. Burnham, Thomas Newlan, Ann Richardens ^{and} John Russ, are defendants taken by Paul R. Wright Master in Chancery in ^{and} for the County of Kaw, Illinois at his office in Geneva in said County on the 3rd day of April A.D. 1861. in the presence of J. H. Mayberry Esq Solicitor for the complainants on the part of said complainants.

Luther C. Lee being duly sworn deposes ^{and} says in answer to Interrogatories as follows.

Interrogating 1st

Are you acquainted with the complainants Bra Gorham, George H. D. Perkins ^{and} the defendants James K. Stephenson, O. D. Day, Thomas Newlan, Mary Scarlet, William Scarlet, David Gamut, Minnow Gamut, Francis Granger Adams, Julius C. Burnham, John Russ ^{and} Ann Richardens, or either of them? if yes, how long?

Ans. With complainants, No. Am acquainted
page 79. with defendants except Mary Scarlet, D.
Gamet. Minew Gamet. Francis Granger
Adams, ^{and} Julius C. Burnham. - The others
with exception of Scarlet ^{and} John Aues.
I have been acquainted with from ten
to fourteen years, ^{and} with Mr Scarlet ^{and}
John Aues about five years.

Interrogatory 2^d. What is your name age ^{and} place of
residence?

Ans. Luther C. Lee. Thirty-four. Aurora Kan
lev. Ill.

Interrogatory 3^d. Look upon Exhibit "C" attached to the
complainant Dr. Exchange annexed Bill in
Schedule of Exhibits ^{minutes} attached
(handing the Bill ^{and} Exhibits to Witness) ^{and}
state whether you ever was the owner of
the lands mentioned ^{and} described in said
Exhibit? If yes, when?

Ans. I held a Tax Deed in the year 1857. From
the fall of 1856. to some time in 1857. of
the lands described in that Exhibit.

Interrogatory 4th. When ^{and} to whom ^{and} for what consid-
eration did you sell ^{and} convey your in-
terest in said land? if you ever did sell it.

Ans. In the fall of 1857. I think in the early

page 80.

part of September. I made a Quit-claim Deed of said lands to James R. Stephenson one of the defendants, which Deed was to be perfected by acknowledging. The consideration of said Deed was that said Stephenson was to release a Mortgage upon a certain house and lot situated in Aurora. He transferred to me a Bond for a Deed of the house and lot and was to procure a Release of a Mortgage on the house and lot to make the title good, but failing to do which the deed was returned to me. The Deed was left with Wm. R. Parker, but was not to be acknowledged until Stephenson had consummated his agreement by procuring the Release of the Mortgage but Stephenson was to have the right to take the Deed and show it for the purpose of consummating the trade.

Interrogatory 5th Do you know who said Stephenson was negotiating with and endeavoring to sell the said lands to?

Ans. Not by name, but to parties owning a tavern stand at Kanawille in Kanaw County.

Interrogatory 6th What was done with the Deed that you made running to Stephenson?

Ans. It is either in my possession or has been destroyed. I can't say which. I haven't

Page 81. seen it for a long while.

Interrogating 7th Was it ever acknowledged, delivered, or Recorded?

Ans. Never acknowledged, delivered or recorded, but delivered as before explained.

Interrogating 8th Who returned you the Deed, and when was it returned?

Ans. James K. Stephenson, either in the fall of '57 or early in the Spring of '58.

Interrogating 9th Have you since the time of making said Deed of said land to Stephenson, sold and conveyed your interest in said land to any other person? If yea, state to whom, when, and the consideration.

Ans. Yea either to E. R. Allen or Arthur Brittan & cant say which together with 320 acres more for Seventy five Dollars for the whole, during the Spring or Summer of '58.

Interrogating 10th Do you know the pecuniary condition of the defendant James K. Stephenson now and in the years '60. '59. '58. '57? If yea, state.

Ans. I dont know, only by common report.

Page 82.

Interrogatory

11th Have you any knowledge of the value of the said lands described in said Exhibit "C." per acre? If yes, state it.

Ans.

My idea is that the land would sell for from fifty cents to one dollar and a quarter per acre, according to the location in that vicinity, if the title was good. The particular location of this land I do not know.

Interrogatory

12th Did you regard your title to the said land as good or of much value?

Ans.

No. Not at that time. When I first got it I supposed it was.

Interrogatory

13th What reason had you to suppose that it was not as good then as when you first got it?

Ans.

Upon learning the law of Wisconsin I found that it would cost more to perfect a tax title, when it could be perfected than the land was worth and of uncertain value at best.

Interrogatory

14th What is your business or occupation?

Ans.

I have formerly been in the jewelry business, and am now raising small fruits.

Interrogatory

15th Have you any recollection of any

George Hankins calling upon you on or about the 12th day of September 1837. and making any inquiry of you as to the value of said lands or of the title of the defendant Stephens in and to the said lands.

Ans. No Sir, and furthermore I know positively that he never passed a word with me on that subject.

Interrogating

16th Dec Stephens ever acquired any title in and to said land under and through you by virtue of said Dec. and was it not understood and agreed between you and him that he was not to and that the dec was to be cancelled and delivered up unless he satisfied and discharged the mortgage on the property in Aurora that was the consideration of the sale?

Ans. In the first, whether he ever acquired a title virtually. No. to the other. Yes.
Luther C. Lee.

State of Illinois }
Kane County ss. }

I do hereby certify that the foregoing deposition was taken by me at the time and place mentioned in the caption thereof. that the said witness was first duly sworn and that said deposition was carefully read to the witness and signed and sworn to by him.

Dated this 3rd day of April 1861. } P. R. Wright
Master in Chancery }
Master fee \$ 1.50.

Opuntia ^{and} Filus May 23rd 1861. }
D. B. Mrow. }
Clerk. }

and afterwards to wit, on the 11th day of March A. D. 1862, the same being one of the days of the February term, of said court the following amongst other proceedings were had and entered of record in said court.

Kanawha Circuit Court.

Geo Gorham ^{vs} Genl W. D. Hopkins

vs.

James K. Stephenson, Thomas Newlan, Mary E. Scarlet, John Russ, Amos Richardson, William Scarlet, Francis Bronner Adams, Daniel Gamut, Wilson Gamut, Julius C. Burnham, and Oranus D. Day.

Final Decree.

5879.

In Chancery of the February term of the said court for 1862.

Be it remembered that on the tenth day of March 1862, it being one of the days of the said February term of the Kanawha County Circuit Court for 1862 the above entitled cause on motion of J. H. Maybourn the Solicitor for the complainants was brought on for final hearing before his Honor the Hon J. S. Wilson then sitting as Chancellor in the said County. On the Bill, answers, replication and proofs taken in the case and the proof heard and produced on the trial of the cause, and the admissions of the parties made in open Court and on the trial of the said cause.

And it appearing to the court that default had been made, therefore entered ^{and} taken in this said cause as to the said defendants, James R. Stephenson, John Russ, Orasmus D. Day, William Scarlet, Daniel Gamet, Minster Gamet, Amos Richardem, Julius G. Burnham, ^{and} Francis Branger Adame, for the want of an answer ^{and} the Bills as to them ^{and} each of them having been taken as confessed, ^{and} answers having been filed only by the said Defendants Averlaw ^{and} Mary E. Scarlet. And the court having heard read the Bill ^{and} amended Bill in this case ^{and} the answer of the said Defendants Averlaw ^{and} Mary E. Scarlet, ^{and} the replication thence ^{and} after having heard read ^{and} seeing the oral ^{and} written proof ^{and} evidence, ^{and} admissions of the respective parties made in the case on the trial thereof, - and argument of the counsel in the case for the respective parties ^{and} being fully advised in the premises, - the said court did, then ^{and} there find ^{and} fix the amount due from the said George W. D. Hawkins to the said Ora Burnham on the purchase price of the said lands situated in the town of Kanawille in the said County of Kanaw ^{and} State of Illinois ^{and} described in said Bills ^{and} hereinafter described at \$774. ^{and} that the said complainant should ^{and} ought to have the first lien on the premises hereinafter described for that sum of money or against the said Defendants

And so.

and their Grants and Assigns. Therefore it was ordered adjudged and decreed by the said Court in this suit that the said George W. D. Hankins was owing the said John Gorham on the purchase price of the lands and premises hereinafter described the sum of Seven hundred and Seventy four Dollars and that his claim against the said Hankins as aforesaid be decreed to be a lien upon said lands the same as if it had been secured by a good sufficient Mortgage heretofore bearing date on or of the day of sale of the same to the said Hankins. to wit the fifteenth day of May 1835. And that the said Defendants have ninety days from the date of this decree to pay the said sum of \$774. to the said Gorham and if the said sum of \$774. is not paid to the said Gorham in ninety days from this date of this decree with legal interest thereon, from date with the mts in this suit. That then P.R. Wright Esqr the Master in Chancery in this Court in the said Court shall proceed to advertise and sell the following described lot piece and parcel of land situated in the County of Kane and State of Illinois, with the appurtenances thereunto known and described as follows to wit; Being a part of section No. 26. in the Township No. thirty-nine (39) North of Range No. Six east of the third P.M. and bounded as follows, to wit; North by the center of the State Road and lands owned by

page 87. W. Remington and James Lewis Jr and South by
lands owned by Samuel McPhair and J. S.
Roberts and West by J. S. Roberts and the school
house lot in the village of Kaurville, for the
purpose of obtaining and making the aforesaid
sum of money and interest thereon and the
costs in this suit and expenses of each sale
and the said master shall proceed to do so
and take the same steps and have to be clothed
with all the power in selling said lands
that he would or could have had had this
been a suit instituted to foreclose a mortgage
by Bill in this court. and on sale of the said
lands he shall execute and deliver as in other
cases of sale made by foreclosure in this
court certificate of purchase to the purchaser
and file on in the Office of the Recorder of the
said county as is required by law in sale of
lands under execution and if the said land
sold shall not be redeemed by the said
defendants their executors, administrators
or assigns as is required by law on sale
of lands on foreclosure of mortgage then
said Master or his successor in
office shall on application of the legal
holder of said certificate of purchase make
execute and deliver to him or them a good and
sufficient Deed of conveyance of the said premises
as in case of sale and foreclosure of mort-
gage when the same have not been redeemed
as required by law. And if the said premises
are not redeemed and the possession still

Page 88.

remains in the said defendants or either of them or their heirs, executors administrators or assigns or in their tenants or any part thereof ^{and} they or either of them refuse to surrender or deliver up the full possession of the said premises to the said person holding such Debt ^{and} who is entitled to the possession of the same on demand then on such person making affidavit of this fact ^{and} filing the same with the clerk of this Court or the said clerk of this Court shall at once issue out of this Court under the seal thereof a writ of possession directed to the Sheriff of the County of Hann ^{and} State of Illinois requiring him to put out all persons in possession of said premises or any part or portions thereof ^{and} put such person in the full possession of the above described premises with the appurtenances thereon.

State of Illinois, } p.
Kane County, } I, Thomas C. Moore, Clerk
of the Circuit Court in and for the County of Kane
in the State aforesaid, do certify the foregoing to be
true and complete copies, of all the papers filed, and
orders, of Court, made and entered of Record in a
cause lately pending and determined in said
Court, wherein Ira Gorham and George W. D.
Watkins are plaintiffs and James K. Stephenson
et. al. are defendants.

Witness Thomas C. Moore Clerk
of said Court and the seal thereof
at Genoa in said County this
17th day of April A.D. 1862.

Thomas C. Moore
Clerk.

And afterwards to wit; on the 11th day of March A.D. 1862, the same being one of the days of the February term of said Court the following amongst other proceedings were had ^{and} entries of Record in said Court.

Dr. Gorham ^{and}
George H. Perkins
C.

5897.

James K. Stephens,
William Scarlet, John Russ,
Amos Richards, Mary
E. Scarlet, Francis Granger
Adams, Daniel
Garnet, Minnie Garnet
Julius C. Cumhaiss ^{and}
Oranus D. Day.

Bill.

This day again came the defendants, by Wheaton their solicitor, ^{and} enter their motion for a new trial herein, the Court being fully advised overruled said motion, to which overruling of the Court, the defendants by their counsel except, ^{and} pray an appeal herein, to the Supreme Court, which prayer of the defendants is allowed by the Court. And it further ordered by the Court that defendants file their Bill of exceptions herein within twenty days, ^{and} also that the defendants file an appeal bond in the sum of Five Hundred Dollars within twenty days said appeal bond to be approved by the Clerk of this Court.

And afterwards, to wit; on the 29th day of March A. D. 1862, the following bond was filed and approved in the Office of the Clerk of said Court.

Know all men by these presents that we William Scarlet, Mary E. Scarlet and Jehias G. Montgomery of the County of Kane and State of Illinois, are held and firmly bound unto Dr Gorham in the penal sum of Two Hundred Dollars, lawful money of the United States for the payment of which well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly, severally, and firmly by these presents. Witness our hands and seals this 28th day of March A. D. 1862.

The condition of the above obligation is such, that whereas the above named Dr Gorham at the February term A. D. 1862, of the Kane County Circuit Court in a certain action then and in said Court then depending on the Chancery side thereof, wherein the said Dr Gorham was complainant and James R. Stephens, Thomas Newlan and the above bounden William Scarlet and Mary E. Scarlet and others were defendants, did obtain a decree against the above bounden William Scarlet and Mary E. Scarlet and the other defendants in said suit to set aside certain Deeds and Conveyances of certain real estate in the bill of complaint in said cause mentioned and described and certain judgments as liens on the said real estate as in said bill

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of complaint set forth ^{and} described ^{and} that
 said William ^{and} Mary E. Scarlett should do ^{and}
 perform certain things in said decree set
 forth, ^{and} whereas the above bounden William
 Scarlett ^{and} Mary E. Scarlett have taken an
 appeal from the said decree of the said Circuit
 Court in said cause, to the Supreme Court of the
 State of Illinois. Now if the above bounden Wil-
 liam Scarlett ^{and} Mary E. Scarlett shall pro-
 secute their said appeal with effect, ^{and} shall
 pay all costs interest ^{and} damages which may
 be awarded or decreed against them in case
 said decree of the said Circuit Court shall be
 affirmed, or in the trial ^{and} dismissal of said
 appeal ^{and} shall abide by ^{and} perform whatever
 decree the said Supreme Court shall render
 on the trial or dismissal of said appeal.

That this obligation to be void, otherwise
 to remain in full force ^{and} virtue.

Mary E. Scarlett Seal
 Wm Scarlett Seal
 J. H. Montgomery Seal

Did ^{and} approved March 29th 1862
 D. C. Moon Clerk

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State of Illinois)
Kane County J. A. Thomas, C. Moore.
Clerk of the Circuit Court in and for the
County of Kane in the State aforesaid
certify the foregoing to be true and complete
copies of all the papers filed, and all orders
of Court made and entered of Record in
a cause lately pending and determined in
said Court wherein Ira Gotham and
George H. D. Hawkins were complain-
ants, and James K. Stephenson, William
Scott, John Russ Orr Richardson,
Mary C. Scott, Francis Granger Adams,
Daniel Gamet Winsor Gamet, Julius C.
Punkhiss and Osamus D. Day, were
defendants.

Witness Thomas C. Moore,
Clerk of said Court, and the
seal thereof at Geneva in said
County this 19th day of April
A. D. 1862.

Thomas C. Moore
Clerk

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William
Thomas

Scarlett, May E. & Scarlett
Arnold James W. Stephenson & c.
is appellants
Gorham & George W. D. Hawkins
Appellees

The Supreme Court
of the State of Illinois
Third Grand Session
April Term 1862
Appeal from Kane Co. Cir. Court

Afterwards to wit on the 9th day of the said
Term before the justices of the Supreme Court
came the said ~~James W. Stephenson~~, William Scarlett May
E. Scarlett, Thomas Arnold and James W. Stephenson
& Plots their attorneys And say that there is manifest error
in the foregoing record that is to say

1st That the Bill of Complaint filed in said cause and
purporting to be a Supplemental Bill is and was
^{or improperly} irregularly filed in said cause the same not being
a Supplemental Bill, but in fact and in substance a
new & original bill in favor of only one of the complainants and
against different parties and making a different and
new cause of action

2nd The Court erred in giving judgment and decree for the
said Complainants ^{below} and against the defendants ^{below} in said
cause in said Kane County Circuit Court

3rd The Court erred in rendering a decree against defendants
^{below}

4th The Court erred in refusing to grant the defendants ^{below}
a new trial on their motion therefore

5th That the said decree rendered in said cause
was & is contrary to the pleadings & proofs and against the law
& evidence which they are ready to verify & pray that the said
cause be reversed &c

Wharton & Plots
Sols for appellants

136-227

~~G. H. Mearns~~

Ara Gorham

et al.

William Scarlett et al.

James B. Stephenson

et al.

Filed Apr. 23. 1862

L. Selous

Clk.

Dues \$30.50

C. Mearns
Amvra