

No. 14355

# Supreme Court of Illinois

JENNESON  
~~Jameson~~ et al.

---

VS.

Garden.

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71641  7

STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division.

No. 85

14855

Jenison  
vs  
Gardner

186

Presented

# SUPREME COURT OF ILLINOIS

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1862.

ROBERT J. JENESON and  
HULDAH L. JENESON,  
vs.  
GEORGE GARDEN.

} *Error to Will County Court.*  
IN CHANCERY.

BRIEF AND POINTS FOR PLAINTIFFS IN ERROR.

I.

The first point of error is abandoned.

II.

No disposition was made of the demurrers to the original bill.

The practice of the Court of Chancery would require them disposed of.

It is submitted that this is error.

III.

The demurrers standing on the record, stand to the amended bill, and the decree for that cause was erroneous, and should be reversed. The demurrers, until disposed of, were a sufficient answer.

IV.

But if, up to this point, no error intervened, and on the expiration of the rule of March 22nd, on March 27th, the defendants were in contempt for not answering, and were liable therefor, two courses were open perhaps to the complainants :

1st. Attachment and perhaps sequestration to compel the answer.

2nd. An order taking the bill *pro confesso*.

1 Dan. Ch. Pr. 544, 545.

Scates' Comp. Laws, pp. 139-141.

Possibly the plaintiff might resort to a third course :

3rd. A hearing upon *bill and answer, exhibits and proofs.*  
*Ottawa v. Walker*, 21 Ill. 610.

Neither of the courses were adopted, and under such circumstances it would seem impossible that the final decree should be otherwise than erroneous.

I. The entering a default cannot be claimed as taking an order that the bill be taken *pro confesso* under the statute.

*Dunn v. Keigan*, 3 Scam. 297.  
*Gault v. Crane*, 4 Scam. 155.  
 Scates' Comp. Laws, pp. 139, 140, 141.

II. The correct practice is laid down in *Miller v. Davidson*, 3 Gilm. 528. The court could, on default, have ordered the bill taken as confessed, and either with or without further evidence, have entered the final decree under the statute cited above.

This course was not adopted, and it is difficult to see how it is that the proceedings after the 27th of March can be vindicated of error. It was error to proceed to a hearing and render a decree—nothing was at issue. The 4th error is therefore well assigned.

The course pursued could not be justified either under the English or the New York practice, any more than under our own.

Adams' Equity (\*374) 666.

If the defendant did not answer after appearance, the whole process of contempt must be resorted to, and such was the course in New York prior to the statute of 1802, and then the bill was taken *pro confesso*.

Hoff. Ch. Pr. 184-194, and note, page 189.

## V.

But even if it were conceded that all the proceedings were regular, and no error appears in them up to the final decree, then the next question is, can the decree be sustained?

The rule is understood to be, that upon appeal or error, the case in this court stands as it did in the court below; and that all incompetent and improper evidence, in the Circuit Court and in this Court, is excluded. The case is heard here as it should have been heard in the Circuit Court.

If it was competent for the court below to proceed to an *ex parte* hearing, it could only be on competent proofs, or in some way known to the practice of chancery courts.

The decree purports (page 19,) to be upon "the report of the master, made and approved herein, and from the allegations and proofs therein." No mention is made therein of bill, or answer, or exhibits. It is only made upon the report and proofs therein. It is wholly based upon the master's report.

I. The evidence therein was wholly *ex parte*. There was no opportunity to cross-examine.

The complainant not having availed himself of his right to take the bill *pro confesso* under the statute, could only proceed, if he proceeded to a hearing, in the ordinary way, if at all, upon competent proofs.

Notice should have been given, and an opportunity to appear and cross-examine, or the proofs should be excluded. No decree should be predicated upon them; no notice appears, and no waiver of notice. The (Stat. 1845, ch. 21, § 19, Scates' Comp. p. 141, cannot aid the proceedings, for it was never invoked. The bill was not taken as confessed.)

*McClay v. Norris*, 4 Gilm. 370-386.

1 Barb. Ch. Pr., 502.

2 Smith's Ch. Pr. 147.

*Whiteside v. Pullian*, 25 Ill. 285-287.

There could in this case then be no discretion or latitude, such as that referred to in

*Manchester v. McKee*, 4 Gilm. 517.

*Ferguson v. Sutphen*, 3 Gilm. 547.

See pp. 564, 565, 571.

It is unnecessary to cite any authority upon the point, that an examination without notice and the opportunity to cross-examine is inadmissible. For this reason the testimony of both Lynd and Breckenridge should be excluded.

II. The evidence is secondary and incompetent.

Breckenridge's testimony as to the contents of the deeds and their respective dates, is clearly secondary, and not competent.

The deeds he refers to should have been produced, or their non-production accounted for.

Evidence of the admissions of Robert J., made Oct. 1861, are clearly not competent as against Huldah L. He would be incompetent as a witness against her, as his interest is clearly adverse to her; and even if not, his admissions are hearsay merely. His interest is that his wife's dower should pay his debt.

The whole evidence set out in the Master's report, as against Huldah L., except that Huldah L. is the wife of Robert J., and the last sentence in Breckenridge's testimony, should be excluded for the reasons suggested above; and cross-examination would have shown that this even was hearsay and inference; not on personal knowledge.

But even if this were all admitted, it would not have warranted the decree against Huldah L.

And, as to Robert J., it is secondary evidence, if not hearsay.

III. But if otherwise unobjectionable, it is not sufficient to sustain the decree.

The only evidence adduced appears to be that of Lynd and Breckenridge.

The note does not appear to have been exhibited to the Master, nor the mortgage, nor any other deed, paper or exhibit whatever; nor was there any proof thereof before Master or Court.

The order referring to the Master should be constantly borne in mind, (p. 17,) to wit:

"That the matters and things contained in said complainant's amended bill of complaint, be referred to the Master, to take proof in relation thereto, and report to this Court with all convenient speed."

Nothing then, was taken as confessed or by default; all was to be proved.

The original note, or substituted note and mortgage, should have been produced before the Master, and proved or accounted for.

*Stacy v. Randall*, 17 Ill. 467.

*Ross v. Utter*, 15 Ill. 405.

*Carr v. Fielden*, 18 Ill. 81.

*Lucas v. Harris*, 20 Ill. 165, 170.

*Gold v. Ryan*, 14 Ill. 53, 55.

The original note, or the substituted note, is the foundation of the claim, and unless exhibited or proved, there is no guaranty that it has not been paid since the date of the declaration of Robert J., in October, 1860, or that it is not negotiated and held by some other party.

IV. The note copied, if produced before the Master or Court, would not sustain the allegations in the bill, and should have been excluded. It is neither the original note, nor the note described in the bill as substituted.

The bill not being taken *pro confesso*, the record should, in some manner, contain and exhibit the facts proved essential to support the decree.

*Ward v. Owens*, 12 Ill. 283.

*White v. Morrison*, 11 Ill. 361.

*Moore v. School Trustees*, 19 Ill. 83, 88.

The only evidence which appears, is contained in the Master's report.

The decree purports to be made on the proof and *allegations* therein contained, and none other. (p. 19.)

Does the evidence contained in the report furnish sufficient basis for the decree?

*Truchard v. Wamey 18 Ill 142, 145.*

It will not be contended in the decree upon the *allegations* contained in a Master's report could be sustained.

The proof fails in the Master's report in sustaining the assumptions of the decree by competent testimony, as against Huldah L. Jeneson, they being mainly supported, if not entirely, by the declarations of her husband, who was interested against her.

The proof fails by the non-production and proof of the note and the mortgage. The note, at least, should have been produced and proved, in order to justify the decree against either.

#### VI.

But there are not the necessary allegations in the bill to sustain the decree.

*Morgan v. Smith*, 11 Ill. 200.

*McKay v. Bissitt*, 5 Gilm. 499.

*White v. Morrison*, 11 Ill. 366.

There is no sufficient allegation of any conveyance from Robert Jeneson and Susan Jeneson to Robert J., to which the proof can apply.

There is no sufficient allegation that the mortgage sought to be foreclosed was part of any other deed or transaction.

There is no sufficient allegation of the manner in which Robert J. Jeneson acquired seizin or title to the premises.

There is no sufficient allegation that the seizin or title of said R. J. Jeneson was acquired in the same transaction in which the loan and mortgage was made.

Dower attaches on the seizin of the husband.

The exception is, that seizin *for an instant* will not sustain dower.

But in order to prevent the dower attaching, the conveyance to the husband, and the conveyance from him, must be part of one and the same transaction, and so alleged, and proper allegations should show this in the bill, or the dower of the defendant Huldah L. should not have been barred.

*Gault v. Hoogland*, 25 Ill. 266.

*Root v. Curtis*, 20 Ill. 57.

*Holbrook v. Finny*, 4. Mass. R. 566.

The allegations and proof should correspond, which is not the case.

*Clafin v. Kimball*, 23 Ill. 36, 37, 38.

*McKay v. Bissitt*, 5 Gilm. 499.

*Rowan v. Bowles*, 21 Ill. 17.

*Gold v. Ryan*, 14 Ill. 53, 55.

#### VII.

As against Huldah L. Jeneson, the decree should have saved the right to redeem by her.

*Leonard v. Villars*, 23 Ill. 379.

*Gilbert v. Maggard*, 1 Scam. 471.

*Gold v. Ryan*, 14 Ill. 53, 55.

2 Story's Eq. Jur. § 1023. § 1019

*Upham v. Brooks*, 2 W. & M. 407. 412

*Swannock v. Lyford* Amblew 6, 7, 8.

*Downe v. Lewis & Hau* 394

Com. Dig. Chaucery 4 A 4 Lib Ed pp 700, 701, 702

"The clear equity is to have redemption & stand in the place of the mortgage" - *Kmsoul v. Money* 3 Swant. 208

The only difficulty to prevent her redemption is that until the death of the husband, she has no present interest in the land, but non constat that he will not die within the year in which she clearly & equitably should have the right to redeem.

But *contra* 1 Gilm 506, 507 *Sink v. Smith*

85-89

Robert L. Emerson  
or day -  
George Larden

Points & Brief for  
R. L. in error

Geo. Herbert for  
R. L. in error

No 63.

Susan Farrison Dewry &c  
vs  
George Barton & Dalton et al

The clerk will ex-  
-ter an order staying the collection  
of execution and fees bills in the  
above entitled case so far as they  
are against <sup>Robert F Garrison and</sup> the Farrison, un-  
til the further order of the Court.  
Springfield Ill. Jany 27 1873. #

C. B. Lawrence

P. H. Walker

Wm. P. Reed

John A. Scott

Should not this order bear date  
Jany 27. 1873 #  
Signed

Susan Jenison  
to Army.  
Geo Gardner. & others

1435

over

Given Feb 3. 1873  
to D Dimble  
CMR



Robert J. Fenison

et al

No. 347

George Garden

WRIT OF ERROR.

This writ of Error is  
made a supersedeas  
as such is to be obeyed  
by all concerned

L. Leland Clerk  
by J. M. P. Deffen

FILED

May 2

A. D. 1861

L. Leland

Clerk.

Know all men by these presents  
that we Robert V. Emerson of  
Homer in the County of Will and  
State of Illinois as principals  
James K. Wilson and George Schlosser  
of Lockport in said County as  
securty are holden & stand  
firmly bound & obliged unto  
George Garden of said Homer in  
the full & just sum of Eighteen  
Hundred Dollars lawful money  
of the United States for the pay-  
ment of which well & truly to be  
made we bind ourselves our  
heirs Executors Administrators  
jointly & severally by these presents sealed  
with our seals and dated this  
second day of May in the year  
of our Lord Eighteen hundred  
and sixty one.

The execution of the fore-  
going obligation is such that  
whereas on the first day of April  
in the year of our Lord one  
thousand eight hundred & six years  
by the then order of the Circuit  
Court of said Will County begun  
and holden at Lockport in said  
County on the third Monday of  
March A. D. 1861 in a certain  
suit then & there pending on  
the Complaint of said George  
Garden Complainant against  
the said Robert V. Emerson and  
Huldah E. Emerson his wife

it was ordered and adjudged and  
decree'd by said Court that the  
said Robert J. Emerson pay to H  
Buller Master in Chancery  
of said Court or his successor in  
office, at his office in ~~the~~  
City of Joliet in said County by  
the 11<sup>th</sup> day of April A.D. 1861  
the sum of one thousand four hun-  
dred dollars with ten per cent  
interest thereon together with the  
costs & charges by him the said  
Complainant in this behalf ex-  
pended, and that in failure  
thereof the said premises described  
in said mortgage to wit the west  
half of the south west quarter of  
section nineteen (19) Township  
Thirt six (36) north of Range  
10<sup>th</sup> & Elmore (11) East of the third  
principal meridian be sold to  
pay the same according to the  
laws of this State regulating sher-  
iff's sales by the Master in Chancery  
of said Court and that upon  
failure of the said Robert J. Emerson  
or any subsequent mortgagee, or  
judgment creditor of the said  
of the said Robert J. Emerson to  
redeem the same as is by the  
laws of this State in such case  
made & provided that then the  
said Master or his successor  
in office make to the said  
purchaser or assignee of the  
purchaser his deed in fee simple <sup>forever</sup>

them also debarring the said Huldah S. Emerson from the right of dower in the said described premises forever" and whereunto ~~the said Robert S. Emerson & Huldah S. Emerson~~ have this day filed in the Clerk's office of the Supreme Court of the State of Illinois for the Third Grand Division a full & true & perfect copy of all the record of the proceedings had in said Circuit Court appertaining to or forming a part of said cause, now remaining in the office of the Clerk of said Circuit Court and a full true & perfect copy of all papers filed in said cause - and has also made his application for a writ of error from the said Supreme Court to said Circuit Court and that the same may be made a supersedeas to the said order judgment & decree of the said Circuit Court -

Now if the said supersedeas shall be granted & on error the said judgment of the said Circuit Court shall be affirmed & the said Robert S. Emerson and Huldah S. Emerson shall well & truly pay said judgment order and decree of said Circuit Court so affirmed and the costs, interest & damages which may be adjudged & decreed or ordered by the

Said Supreme Court on the affirma-  
ance thereof or that may otherwise  
legally accrue thereon then this  
obligation shall be void otherwise  
of full force & virtue -

Signed sealed &  
delivered in presence

of us — — —  
words "for ever" +  
"Nunc" interlined  
Geo. Herbert.

R. J. Amisou Seal

J. K. Willey Seal

Geo. Schloper Seal

85  
Supreme Court -  
F. Grundtvig  
Robert Severant  
Huldah & Jensen  
Grove Garden

Paid for  
\$18.00

Five May 2 1886  
L. Leland  
C.M.

State of Illinois  
Mill County, ss.

Supreme Court of Illinois  
Third Grand Division

Robert J. Ferguson & }  
Haldah L. General } Mort to the  
Group of } Circuit Court of  
Grove } Mill County -

George Schlosser of Lockport  
in the County of Mill being duly  
sworn on oath deposes & says  
that he is one of the parties who  
this day has signed & executed  
a certain bond in said cause  
with Robert J. Ferguson of N. Wilson  
as one of the securities, thereon  
that he is worth in real estate  
& personal property within the State  
of Illinois over two thousand  
dollars over and above all debts,  
which he owes & all encumbrances  
thereon what so ever - Said  
bond being date May 2, 1861.

Subscribed & sworn to }  
before me this 2<sup>nd</sup> May 1861 }  
1861 } Geo. Schlosser

W. A. Gooding  
Notary Public

State of Illinois  
Well County.

Supreme Court of Illinois  
Third Grand Division

Robert J. Ferguson & Ewon to the  
Sheldahl, Germany Circuit Court  
vs  
George Gardner of Well County

I, James K. Nelson of Lockport  
in the County of Well being  
duly sworn on oath to depose & say  
that he is one of the parties  
who this day has signed & executed  
a certain Bond in said cause  
with Robert J. Ferguson and George  
Schlosser as one of the securities  
thereon that he is worth in real  
estate & personal property within  
the State of Illinois over two  
thousand dollars over & above  
all incumbrances thereon  
and all debts which he owes  
whatssoever - Said bond being  
date May 2, 1861.

Subscribed & sworn to before me

On this 2<sup>nd</sup> May AD 1861

J. K. Tilsan

Notary Public

3157  
Superior Court  
Robert J. Ameron  
Esq  
Crown Garden.

Affidavit to  
justify security  
on the bond -

Filed May 2 1861

L. L. Linn  
clerk

State of Illinois } In the Supreme Court of  
La Salle County } the State of Illinois  
Of the April Term A.D., 1862

George Garden

advs. Erno to Bill

Robert J. Jenness ~~vs~~

Huldah L. Jenness

And now comes the said Defend-  
ant George Garden by Snapp & Breckenridge  
his Attorneys, and enters his appearance  
herein and expressly praying service of  
process herein authorize the Clerk or any  
officer of said Court to enter the appear-  
ance of his said Attorney on the Record  
in this case -

Snapp & Breckenridge  
Attorneys for Defendant

85

George Garden

adv

Jennison & wife

Appearance Entered

Filed Feb. 12. 1862

S. S. Wood

Clk.

Smapp & Breckinridge  
Attys for Def -

State of Illinois  
Third Grand Division

Supreme Court April Term 1861.  
Robert J. Emerson } Over to the  
Huldah L. Emerson } Will County  
George Garden } Circuit Court

Abstract

"Lockport March 29. 1857.  
\$1000. "One year from date for value"  
"received I promise to pay George Garden"  
"or order the sum of one thousand dollars"  
"with ten per cent interest of being for"  
"money actually loaned."

R. J. Emerson

2. Mortgage Robert J. Emerson of the first  
part to George Garden of the second  
part. dated Mar 29. 1856 and acknow-  
ledged by said Robert J. only same day  
witness as follows

"Whereas the said party of the first  
part is justly indebted to the party of the  
second part in the sum of \$1000. se-  
cond to be paid by one certain  
promissory note of even date herewith  
payable in one year from date with  
ten per cent interest being for money  
actually loaned". enclosing the land

land described in the Bill of com-  
plaint hereafter mentioned situate in  
Will County, with the usual defas-  
3 and in case of payment of said  
"sum of money & such interest thereon  
"at the time and in the manner specified  
"in the above mentioned promissory note  
"according to the true intent & meaning  
"thereof."

~~#~~ Geo. Garden Complainant declares his  
bill of Complaint to Hon. Jesse A. Norton  
Judge of the Chancery sitting against  
Robert J. Emerson & Souldah Emerson  
his wife defendants.

4 Bill states that on or  
about Mar 29, 1856. Deft. Robert J.  
purchased the west 1/2 of Sec. 14. of Sec.  
19 Town 36 N 11 Range East of 3<sup>d</sup> prin-  
cipal Meridian in Will County, for two  
dollars "and to secure the pay-  
ment of the same". ~~That~~ Deft Robert J.  
gave his promissory note for the sum  
of \$1000, with 10 percent interest per-  
annum "and also executed <sup>and gave</sup> at the  
"same time" deed of mortgage of the said  
"described premises to Complainant to  
"secure the payment of the purchase money  
"aforesaid which said mortgage is here to

"attached and made an exhibit and  
"part of this bill."

~~Also state~~ that defendant  
Huldah L. at the time of said  
purchase was the wife of def<sup>t</sup> Robert J.

5. 1857. said def<sup>t</sup> Robert J. paid \$100. in-  
terest on note & gave new note for the  
sum of \$1000 dated March 27<sup>th</sup> 1857  
at 10 per cent interest  
per annum "in the place of the first  
note and for the purchase money de-  
scribed in said mortgage."

Also that "said note" <sup>has</sup> since  
become due & payable & the same  
still remains due & unpaid, & that  
defendant Robert J. has not paid  
said note nor any portion thereof.

"To the end therefore that the  
"said defendant" may be decreed  
"to pay the said amount in the said  
"promissory note specified together with  
"the interest thereon according to the  
"tenor & effect thereof and that in default  
"thereof that the said premises described  
"in said Bill mortgage may be decreed  
"to be sold according to law and  
"the practice of this honorable court  
"and that the said Huldah L. be

"Deft be forever bound her rights of Dower in  
"said lands"

"May it please your honors to grant  
"the process of summons & such other further  
"relief as to your honor may seem meet"

6 Subpoena entitled in Chancery,  
7 dated Nov 8, 1860 duly served Nov 17, 1860

8 ~~Pleas before the Hon. Justices of the  
9 Court re Dec 3, 1860~~

8 Deft. Robert J. Dec 3<sup>1860</sup> files his  
9 special demurrer. ~~entitled in Chancery,~~  
10 by Geo. Herbert Solr.

10 Deft. Huldah L Dec 3<sup>1860</sup> files  
her general demurrer by Geo. Herbert Solr  
do heritor. ~~entitled in Chancery.~~

11 Dec 6, 1860. Rule returned on  
defendants to file answer by 2 o'clock  
P.M. today.

On motion of Compt Solr.  
a default was entered & rendered &  
reference ordered to Master to compute  
the amount due on mortgage & report.

Dec 15 1860 on motion of Compt  
default set aside & it is further ordered  
in said Complainant's motion that he  
have leave to amend his bill.

12 Erelly 11, 1861 "The following amend-  
ed Bill was filed" ~~as of the papers~~

~~in the cause in words & figures as follows to wit;~~

~~Added to & commenced as in the original Bill. Entitled "The amended Bill."~~

Amended Bill Shows that on or about March 29. 1856. deft Robert J. purchased of Robert & Susan Jensen his wife the premises described in the original Bill for the sum of about \$4000.  
" And the said Robert J. (defn.) to make  
" Payment for the same to the said Robert Jensen & Susan Jensen his wife borrowed from the Complainant the sum of \$1000. and the said Robert J. did then & there pay the said Robert Jensen the said sum of \$1000. so borrowed as aforesaid from this Complainant to be used as purchase money & for no other purpose  
" And the said Robert J. did also there & there execute & give to this Complainant his promissory note for said sum of \$1000 with 10 per cent interest per annum and also at the said time the said Robert J. Jensen executed gave a deed of mortgage of the said described premises to this Complainant to secure the payment

" of the aforesaid purchase money  
" which said mortgage is attached to &  
" made an exhibit a part of this origin  
" al bill in this cause. ~~Shoemaker~~"

13 Also that Deft Huldah L  
wa, wife of said Deft Robert J.  
at the time of said purchase  
& contract aforesaid.

Also that Robert J. afterward  
" about 29th March 1857 paid Com  
" plaint \$100. interest which was  
" due on said note and gave a  
" new note for the said original sum  
" of \$1000. dated March 27th 1857 at  
" ten per cent interest per annum  
" the said last note was given in  
" the place of the said first note and  
" for the purchase money aforesaid."

Also " that the only object ~~of~~  
" in giving up the original note  
" & taking the new note one last above  
" named was to show the payment  
" of the said one hundred dollars  
" & about money as set forth and  
" that at the time of the said exchange  
" of notes the said Robert J. Jernigan expressly  
" agreed that the security that is the  
" mortgage should remain valid &

and unimpaired and stand as security for the payment of said note."

~~Also~~ "that said note has long since ~~has~~ become due and payable & the same remains due & unpaid although complainant has requested its payment. No part of it has been paid.

"To the note" & c. concluding ~~precisely~~ after this precisely in the language of the original bill & c. p. 14 it does not pray summons.

March 21. 1861. defendant was ruled to answer amended bill tomorrow morning.

"March 22 1861" "And now come the said defendants by Lyette, " and Parker who appear in behalf " of Robert Solicitor for said defendants and on their motion it is " ordered by the Court that the rule to " answer heretofore entered be & hereby " is extended till Wednesday morning " next."

March 27. 1861. On complainant's " motion " defendants " were ordered now to be called; " whereupon the

"said defendants were three  
times solemnly called but come  
not neither themselves nor any  
person for them nor have they  
filed their answer to said Com-  
plaints amended Bill of  
Complaint but of this they fail  
and make default which by  
order of Court is taken & entered  
of record."

"Whereupon on motion of said  
Complainant it is ordered further  
by the Court that the matters and  
things contained in said Complain-  
ant's amended Bill of Complaint be  
referred to Judge A. Parleton Esq.  
Master in Chancery of said Court  
to take proof in relation thereto  
and report to the Court with all  
convenience speed."

March 30<sup>th</sup> 1861. Master's report  
filed

16. Said report contains evidence  
of Gro. M. Lynd, <sup>to wit</sup> that said Spaldah  
L was the wife of Robert. and that  
deft Robert J. in month of October  
1860 admitted that the sum of \$1000  
which he borrowed of Complainant

in 1856 and which he gave his  
note & mortgage to secure the  
payment of was borrowed expressly  
as purchase money for the  
land described in the mortgage  
and that he paid it as soon as  
he received it to his father Robert  
Sperry mentioned in the bill a part  
of the purchase money of said land  
that about a year thereafter he went  
over to Gardner's house & pay him  
\$100 which was then due on the \$100  
note that at the time of the payment of  
the \$100 - the old note was given  
up & the new note for the sum  
of \$1000 was given parties agree-  
ing that the mortgage should  
stand as security therefor that  
said Sperry stated that the debt  
of \$17 was just & ought to be paid & that  
the money was loaned him  
only on consideration that it should  
be applied & used as purchase  
money on the premises described  
in the mortgage. <sup>and that</sup>  
also recorded S. L. Guethenidge <sup>of</sup> testified  
"that from examination he has  
discovered that the date of the mat-

1 q. 19. In this suit involved and  
2 the date of the deed from Robert  
3 Susan Joneson to Robert Joneson  
4 as stated in the bill of complaint  
5 is the same to wit the 29<sup>th</sup> March  
6 1856. He further says that the money  
7 aforesaid was simply loaned by the  
8 Compt. to said Robert J. for the  
9 purpose of being used as the pur-  
10 chase money in the purchase of  
11 the premises aforesaid and that  
12 the money was so used & applied  
13 and that it was agreed by and  
14 between Compt. & said Robert J.  
15 at the time of said money being  
16 loaned that a mortgage should  
17 be executed to secure the same  
18 by the said Robert J. to the said  
19 Laiden on the premises to be pur-  
20 chased as aforesaid.

1 Master reports \$1400<sup>00</sup> due  
2 on said note at date of report Mar-  
3 29. 1861

2 "That said note was given  
3 in lieu of the original note, and  
4 parties agreed specifically that  
5 it is secured by the mortgage aforesaid  
6 in like manner as the original note.

And 3<sup>o</sup> submits whether it was  
purchase money as to bar Huldah  
& J. G. Mason's dower to Court on the  
facts above reported —

Rule March 30<sup>th</sup> 1861 That said  
defendants do show cause instanter  
why masters report should not be approved  
and confirmed. Thereupon defendants,  
18 were three times called & do not come  
& no cause being shown why report  
should not be approved & confirmed.

"I therefore ordered by the  
Court that the said Report this day  
filed herein be & hereby is ratified  
& confirmed."

19 ~~Masters report & decree are en-~~  
titled in Chancery, Decree entered  
April 1, 1861 one of the days of the  
March 7, 1861. Notes —

I. That the case came on to be heard.

II. That defendants did not ap-  
pear although ruled to plead and  
of the said defendants refusing  
to plead or answer & being called  
came not & made default herein.

III. And after an order to said  
Court that said cause be referred to  
a Master to take proofs herein. —

# V. It appears from said report of Master made & approved herein and the allegations and proof therein

(1) That Debt Robert J. was justly indebted on the 29 day of March 1856 to Compt in the sum of \$1000. And that

(2) he executed his note for the same with 10 per cent interest thereon it being for money actually loaned -

(3) ~~(1)~~ That at the same time he the said Robert J. Debt executed & delivered to Garden to secure the sum of money in said note mentioned a mortgage of the premises in said bill described.

(4) <sup>20</sup> ~~(4)~~ That said sum has long since become due -

(5) ~~(5)~~ That there is now due thereon unpaid \$1400 -

(6) ~~(6)~~ That \$1000. was loaned by Compt to said Robert J. (Debt) to be applied to the purchase of the mortgage premises.

(7) ~~(7)~~ That said mortgage was given to secure the same.

(8) ~~(8)~~ That at the time & as part of the same transaction between Robert J. & Susan J. Susan his wife grant and the said Robert J. J. & Susan

21 22 23 24

" granted in fee simple of said premises  
" as described in said mortgage  
(9) " and that no part of the  
" principal <sup>of said</sup> debt has <sup>ever</sup> been paid.  
(10) " and that said Huldah  
" is the wife of the said Robert  
" J. Emerson "

It is therefore ordered and  
judged & decreed by this Court that  
the defendant Robert J. Emerson pay  
to Fred ~~H.~~ Parthson Master in Chancery  
of this Court or his successor in office  
11th April 1861 the said sum of \$1400 -  
with ten percent interest thereon & costs.

And that in failure thereof  
the mortgage premises be sold to  
pay the same according to the laws  
of this State regulating Sheriff's sale  
by the Master in Chancery of said  
Court.

And that upon the failure  
of the said Robert J. Emerson or  
any subsequent mortgagor or <sup>Judgment</sup> creditor  
to redeem the same as by the laws  
2) of this State provided that the Master  
or his successor make to the purcha-  
ser or assignee of the purchase his  
 deed in fee simple for ever. Therein

also depriving the said Huldah  
C. Jensen from the right of dower  
in the said described premises  
forever.

This certificate is that "the above  
is a full true & perfect copy of all  
the papers filed in this cause and  
that the foregoing is the full true  
& perfect copy of all the record of pro-  
ceedings had in said Court affecting  
to or forming a part of said cause  
now remaining in my said office."

W. Herbert, Solicitor  
for Plaintiff.

State of Illinois

3<sup>d</sup> Grand Division

Robert L. Emerson &  
Huldah L. Emerson

vs  
George Gaiden.

Error to the Will County Circuit Court

And the said Robert L. Emerson  
and Huldah L. Emerson come by  
their attorney jointly & severally &  
say that ~~there is~~ manifest error  
hath intervened in the proceedings  
whereof the foregoing is a record to their  
injury & the injury of each of them

(1) In that it does not appear that  
the proceedings were on the Chancery  
side of the Court.

(2) The demurrers of the said Plain-  
tiff in error were not disposed of in the  
Court below.

(3) The Court below erred in  
not dismissing the bill upon the  
hearing.

(4) The Court erred in rendering  
a final decree upon the hearing  
against the plaintiffs in error or  
either of them.

Nothing

(5) For that the court below erred in rendering a decree absolutely that the said Robert L. Gray pay the sum of \$1400 - and not in the alternative that unless the sum be paid the property mortgaged should be sold.

(6) For that the decree rendered does not provide for any redemption by the said Huldah L. Gray.

(7) For that the said proceedings and the said decree and all the ~~demands~~ ~~of~~ ~~the~~ ~~same~~ ~~are~~ ~~un~~ ~~law~~ ~~ful~~ and manifest errors to the injury of the said Plaintiffs and error & each of them -

Wherefore the said plaintiffs and each of them pray judgment &c -

By their Solicitor.

Geo. Herbert

85 347  
Supernic Court  
Robert J. Greene  
15 St. Ux.  
Grove Garden

Abstract

Herbert for  
Plym. Enor.



due and unpaid; that defendant Robert J. has not paid said note, nor any portion thereof.

To the end, therefore, that the said defendant may be decreed to pay the said amount in the said promissory note specified, with the interest thereon, according to the tenor and effect thereof, and that in default thereof, the said premises described in said mortgage may be decreed to be sold, according to law and the practice of this honorable Court, and that the said Huldah L. Jeneson, defendant, be forever barred her rights of dower in said lands.

May it please your Honors to grant the process of summons, and such other and further relief as to your Honors may seem meet.

6 Subpœna, dated Nov. 8, 1860, duly served Nov. 17th, 1860.

7  
8 Defendant Robert J., Dec. 3, 1860, files his special demurrer by Geo. Herbert, his solicitor.

10 Defendant Huldah L., Dec. 3, 1860, files her general demurrer by Geo. Herbert, her solicitor.

11 Dec. 6, 1860, rule entered on defendants to file answer by 2 o'clock, p.m., to-day.

On motion of complainant's solicitor, a default was entered and recorded, and reference ordered to Master to compute the amount due on mortgage, and report.

Dec. 15, 1860, on motion of complainant, default set aside, and it is further ordered, on said complainant's motion, that he have leave to amend his bill.

12 February 11, 1861, amended bill was filed, as follows, to wit:

Amended bill shows, that on or about March 29, 1856, defendant Robert J. purchased of Robert and Susan Jeneson, his wife, the premises described in the original bill, for the sum of about \$4,000, and the said Robert J. to make payment for the same to the said Robert Jeneson and Susan Jeneson, his wife, borrowed from the complainant the sum of \$1,000, and the said Robert J. did then and there pay the said Robert Jeneson the said sum of \$1,000, so borrowed as aforesaid from this complainant, to be used as purchase money, and for no other purpose, and the said Robert J. did also then and there execute and give to this complainant, his promissory note for said sum of \$1,000, with 10 per cent. interest per annum; and also, at the said time, the said Robert J. Jeneson executed and gave a deed of mortgage of the said described premises to the complainant, to secure the payment of the aforesaid purchase money, which said mortgage is attached to and made an exhibit, and part of this original bill in this cause.

13 That defendant, Huldah L., was wife of said defendant, Robert J., at the time of said purchase and contract aforesaid.

"Also that Robert J. afterwards, about 29th March, 1857, paid complainant \$100 interest, which was due on said note, and gave a new note for the said original sum of \$1,000, dated March 27th, 1857, at ten per cent. interest per annum. The said last note was given in the place of the said first note, and for the purchase money aforesaid."

"That the only object in giving up the original note and taking the new one last above named, was to show the payment of the said one hundred dollars interest money as set forth, and that at the time of the said exchange of notes the said Robert J. Jeneson expressly agreed that the security (that is the mortgage) should remain valid and unimpaired, and stand as security for the payment of said note."

"That said note has long since become due and payable, and the same remains due and unpaid," though complainant has requested its payment. No part of it has been paid.

14 To the end, &c., concluding after this precisely in the language of the original bill, except it does not pray summons.

March 21, 1861, defendants ruled to answer amended bill to-morrow morning.

March 22, 1861. "And now came the said defendants, by Tucker & Parker, who appear in behalf of Herbert, solicitor for said defendants, and on their motion it is ordered by the Court that the rule to answer heretofore entered be, and hereby is, extended till Wednesday morning next."

15 March 27, 1861. On complainant's motion defendants were ordered now to be called, "whereupon the said defendants were three times solemnly called, but came not, neither themselves nor any person for them, nor have they filed their answer to said complainant's amended bill of complaint, but of this they fail and make default, which, by order of Court is taken and entered of record."

"Whereupon, on motion of said complainant, it is ordered further by the Court that the matter and things contained in said complainant's amended bill of complaint be referred to Fred. A. Bartleson, Esq., Master in Chancery of Will County, to take proofs in relation thereto, and report to this Court with all convenient speed."

March 30th, 1861, Master's report filed.

16 Said report contains evidence of Geo. M. Lynd, to effect that said Huldah L. was the wife of Robert J., and that defendant, Robert J., in month of October, 1860, admitted that the sum of \$1,000, which he borrowed of complainant in 1856, and which he gave his note and mortgage to secure the payment of, was borrowed expressly as purchase money for the land described in the mortgage, and that he paid it as soon as he received it to his father, Robert Jeneson, mentioned in the bill as part of the purchase money of said land; that about a year thereafter he went over to Garden's house to pay him \$100, which was then due on the \$1,000 note; that at the time of the payment of the \$100 the old note was given up and the new note for the sum of \$1,000 was given, parties agreeing that the mortgage should stand as security there-  
17 for; that said Jeneson stated that the debt was just and ought to be paid, and that the money was loaned him only on consideration that it should be applied and used as purchase money on the premises described in the mortgage.

Also evidence of T. L. Breckenridge, who testified "that from examination he has discovered that the date of the mortgage in the suit involved, and the date of the deed from Robert and Susan Jeneson to Robert J. Jeneson, as stated in the bill of complaint, is the same, to-wit: the 29th March, 1856. He further says that the money aforesaid was expressly loaned by the complainant to said Robert J., for the

purpose of being used as the purchase money in the purchase of the premises aforesaid, and that the money was so used and applied, and that it was agreed, by and between complainant and said Robert J., at the time of said money being loaned, that a mortgage should be executed to secure the same, by the said Robert J. to the said Garden, on the premises to be purchased as aforesaid."

1. Master reports \$1,400 due on said note at date of report, March 29, 1861.

2. That said note was given in lieu of the original note, and parties agreeing specifically thereto, is secured by the mortgage aforesaid, in like manner as the original note. And

3. Submits to the Court whether it was purchase money, so as to bar Huldah L. Jensen's dower on the facts above reported.

18 Rule March 30th, 1861, that said defendants do show cause instanter why Master's report should not be approved and confirmed. Thereupon defendants were three times called, and do not come, and no cause being shown why report should not be approved and confirmed.

Therefore, it is ordered by the Court, that the said report this day filed herein, be and is hereby ratified and confirmed.

19 Decree entered April 1, 1861, one of the days of the March term, 1861, recites,

I. That the case came on to be heard ;

II. That defendants did not appear, although ruled to plead, and the said defendants refusing to plead or answer, and being called came not, and made default herein ;

III. And after an order to said Court that said cause be referred to a Master to take proofs herein,

IV. It appearing from said report of Master, made and approved herein, and the allegations and proofs therein.

(1.) That defendant Robert J. was justly indebted, on the 29th day of March, 1856, to complainant, in the sum of \$1,000, and

(2.) That he executed his note for the same, with 10 per cent interest thereon, it being for money actually loaned.

(3.) That at the same time, he, the said Robert J., defendant, executed and delivered to Garden, to secure the sum of money in said note mentioned, a mortgage of the premises in said bill described.

20 (4.) That said sum has long since become due.

(5.) That there is now due thereon and unpaid, \$1,400.

(6.) That \$1,000 was loaned by complainant to said Robert J., (defendant), to be applied to the purchase of the mortgaged premises.

(7.) That said mortgage was given to secure the same;

(8.) At the time, and as part of the same transaction between Robert Jeneson and Susan Jeneson, his wife, grantors, and the said Robert J. Jeneson, grantee, in fee simple of said premises described in said mortgage.

(9.) And that no part of the principal of said debt has ever been paid.

(10.) And that said Huldah L. is the wife of the said Robert J. Jeneson.

It is therefore ordered, adjudged and decreed, by this Court, that the defendant Robert J. Jeneson, pay to Fred. H. Bartleson, Master in Chancery of this Court, or his successor in office, 11th April, 1861, the said sum of \$1,400, with ten per cent. interest thereon, and costs.

And that in failure thereof, the mortgaged premises be sold to pay the same, according to the laws of this State regulating sheriff's sales, by the Master in Chancery of said Court.

21 And that upon the failure of the said Robert Jeneson, or any subsequent mortgagee or judgment creditor, to redeem the same, as by the laws of this State provided, that the Master, or his successor, make to the purchaser, or assignee of the purchaser, his deed in fee simple forever therein, also debarring the said Huldah L. Jeneson from the right of dower in the said described premises forever.

The certificate is, that the above is a full, true and perfect copy of all the papers filed in this cause, and that the foregoing is the full, true and perfect copy of all the record of proceedings had in said Court, appertaining to or forming a part of said cause, now remaining in my said office.

#### ASSIGNMENT OF ERRORS

by the said Robert J. and Huldah L. and each of them :

1st. In that it does not appear that the proceedings were on the Chancery side of the Court. *with dower*

2nd. The demurrers of the said plaintiffs in error were not disposed of in the Court below.

3rd. The Court below erred in not dismissing the bill upon the hearing.

4th. The Court erred in rendering a final decree, upon the hearing, against the plaintiffs in error or either of them.

5th. For that the Court below erred in rendering a decree absolutely, that the said Robert J. pay the sum of \$1,400, and not in the alternative, that unless the sum be paid, the property mortgaged should be sold.

6th. For that the decree rendered does not provide for any redemption by the said Huldah L. Jeneson.

7th. For that the said proceedings, and the said decree, and all the record aforesaid, contain other and manifest errors, to the injury of said plaintiffs in error, and each of them.

GEO. HERBERT, Sol'r for Plff's in Error.

15

85- - 39

Pemison vs Gardner

Abstract

Filed April 22<sup>nd</sup> 1862

L. Leland

Clerk

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM, 1862, AT OTTAWA.

GEORGE GARDEN,  
ROBERT J. JENESON & <sup>and</sup> HULDAH L JENESON. } ERROR TO WILL.

1ST. When it appears from the record that substantial justice has been done between the parties, the Court, on Writ of Error, will not disturb the decree because of unimportant defects on the record. The Court will presume the proceedings to have been regular.

19 Ill., 59. 1 Equity, 304.

2ND. Where an original bill is fully answered, and amendments are afterwards made to which the Defendant does not answer, the whole record may be taken *pro confesso* generally.

1 Dan. Ch. prac., 456 & note. 8 Paige, 589.

3D. Any amendments, however trivial, authorizes a defendant to put in a new answer.

1 Dan. Ch. 468. 14 Ill., 5, 6.

4TH. Leave to amend a Declaration on terms, renders the Demurrer useless, and is equivalent to a withdrawal.

12 M. & W., 718,

5TH. Where a Defendant pleads to a bill, it is of course for the Plaintiff to amend, and it is not necessary that the plea should be first argued.

Exchequer Digest, 679. 1 Y. & Z., 195.

The application to amend should be made as soon as discovered.

3 Eq. Digest, 214, 222, 292.

6TH. Renewal of note no bar to mortgage.

4 John., Ch. Rep. 65.

7TH. The party who furnishes a whole or a part of the purchase money, has a lien therefor upon the purchased premises, and in bar of dower.

4 Wheaton, 292. 20 Ill. 57.

1. Gilman, 502. 4, Kent's Com., 39.

8TH. That the record does not show that the bill was taken *pro confesso* is an error of the Clerk below, and is no cause of error in this court.

The Court may or may not compel proof on default.

4 Gilman, 411. 417. *3 Gilman 571*

9TH. The note and mortgage form a part of the record, and this Court will presume that all the papers were before the Master.

10TH. A decree *pro confesso* concludes the party only as to the averments in the bill, and he cannot in error allege the want or insufficiency of testimony.

25 Ill. 268. 4 Gilman 511, 517. 15 Ill., 98.

11TH. If the final decree is correct, no irregularity in any interlocutory order will have the effect of reversing the decree. Nor will it be reversed for any irregularity which cannot prejudice either party.

2 A. K. Marsh, 574. 4. Dana, 445.

12TH. The points accompanying Plaintiff's brief are entirely different from the points furnished, and the attention of the Court is particularly called thereto.

The attention of the Court is also called by Plaintiff to the record in the cause as a full answer to the alleged errors.

SNAPP & BRECKINRIDGE,  
For Defendants in Error.

13 The bill contains every material allegation necessary for the relief granted in the Decree

85-39  
Gardner  
and  
generous et al.

Deeds  
Brief &  
Argument,

Filed Apr. 25-1862  
L. Lorland  
Clk

State of Illinois } In the Supreme Court  
Third Grand Division } April Term A.D. 1862

George Garden

vs } Error to Bill County Circuit Court

Robert J. Jenson &

Huldah de Jenson

And now comes the said  
Defendant in Error - George Garden by  
Snapp & Breckenridge his attorneys and  
says there are no such errors ~~the~~ in the  
said record of the said Court as alleged  
by said Plaintiffs in Error but that  
the said record is in all its particu-  
lars correct and ought to be affirmed  
by this Court

Snapp & Breckenridge  
Atys for Defendant,  
in Error;

85

George Gardner

vs

Robert J. Jensen

And David L. Jensen

Jointly in Error

Filed April 23<sup>rd</sup> 1862

L. Leland

Clerk

Snapp & Breckenridge  
for Defendant

State of Illinois Supreme Court  
Third Grand Division April Term 1862

George Garden  
ad vs } Envs to Bill  
Robert J. Jensen  
Hubert L. Jensen

For further argument herein  
Snapp & Breckenridge for the  
Defendant says,

1st

That even if  
the record does not show that the  
Deceit Order pro Confesso was taken  
that is no ground for the rever-  
sal of the Decree, for

1st

It does appear from the record  
that the Default was properly  
entered &

2<sup>d</sup>

A default is substantially a  
pro Confesso order, as in  
Bergusson vs Stephen B. Gibman  
Page 556 the 4<sup>th</sup> point made  
by J. Butterfield for Appellant  
was

"4 There was no answer put in by the  
" unknown heirs of Taylor and  
" no order taking the bill pro con-  
" fesso against them and still  
" there was a Decree against them,

The Court upon that point same  
Case page 571 say

" It is also insisted that the Decree

"Was unauthorized as to the heirs and  
" devisees of Taylor, the proofs having  
" been taken before they were made  
" parties to the suit,  
" Failing to answer the bill &  
" put its allegations in issue  
" No proof was necessary as to  
" them,  
" It was purely a matter of dis-  
" cretion with the Court, whether  
" it would require the Complain-  
" ant to make proof against the  
" Defendants in default,

2<sup>d</sup>

"The words "Default" & "pro confesso"  
in Equity are synonymous terms  
as,  
" A Decree pro confesso is like a  
" Default at law,  
" Murphy vs American Life Ins Co, 25  
" Wend, 250; Dunn v Keegin 3 Scam  
" 297; Clapton v Morris 10 Johns 538  
" 7 Paige 509.

The above we deem sufficient  
upon this point & as your  
Honor suggested this is  
the only point in the case

Tracy & Breckinridge  
for Defendant

85-39

Robt. J. Jensen & wife

vs

George Gardner  
~~vs~~

Argument for  
Defendant

Filed Apr. 28, 1862  
J. Siland  
Clk.

Ready

Snapp & Breckenridge

"\$1000,00"

Lockport March 29<sup>th</sup> 1854

"On Year from date, for value  
received. I promise to pay George Gardner  
or order. the sum of One thousand Dollars  
with two per Cent interest, it being for  
Money actually loaned

"R J Jewson"

1

2  
"This Indenture, made this 29<sup>th</sup> day of March in the  
"Year of Our Lord One thousand Eight Hundred and  
"fifty Six. Between Robert J. Inneson of the County  
"of Cook & State of Illinois party of the first part and  
"George Garden of the County & State aforesaid party  
"of the second part,"

"Whereas the said party of the first  
"part is justly indebted to the said party of the second  
"part in the sum of One thousand Dollars  
"secured to be paid by one certain promissory note  
"of even date herewith & payable in one year from date  
"with ten per cent interest, being for money actually  
"loaned"

"Now Therefore this Indenture witnesseth, That  
"the said party of the first part, for the better securing  
"the payment, of the money aforesaid, with interest  
"thereon, according to the tenor and effect of the  
"said promissory note, above mentioned. And also  
"in consideration of the further sum of One dollar & nine  
"in hand paid by the said party of the second part, at  
"the delivery of these presents, the receipt whereof is hereby  
"acknowledged, has granted, bargained sold, and con-  
"veyed, and by these presents do grant, bargain and  
"sell and convey unto the said party of the second part,  
"his heirs and assigns Forever all"

"The West half  
"of the South west quarter of Section No Nineteen (19)  
"Township thirty six (36) North of Range No Eleven (11)  
"East of the Third (3) principal Meridian."

"To have and to hold, the same, together with all  
"and singular the tenements, hereditaments, privileges, and  
"appurtenances therunto belonging, or in anywise appertaining,  
"and also all the estate, interest and claim whatsoever  
"in Law as well as in Equity, which the party of the first  
"part, has in and to the premises hereby conveyed unto  
"the said party of the second part, his heirs and  
"assigns, and to their only proper use benefit and  
" behoof"

2  
"Provided Always, and these presents are upon

"This Express Condition. That if the said party of the  
 "First part, his heirs Executors or administrators, shall  
 "well and truly pay, or cause to be paid, to the said  
 "party of the Second part, his, heirs Executors or ad-  
 "ministrators, or assigns, the aforesaid sum of money  
 "with such interest thereon, at the time and in the  
 "manner specified in the above-mentioned proviso.  
 "Not, according to the true intent and meaning thereof  
 "that then and in that case these presents and anything  
 "herein expressed, shall be absolutely null & void"

"In witness whereof, The said party of the first  
 "part hereunto set his hand and seal the day and  
 "Year just above written" "R J Joneson" <sup>Esq</sup>

"Signed Sealed and  
 "delivered in presence  
 "of G A Gooding

"State of Illinois }  
 "Will County }  
 "County in the State of aforesaid, do hereby certify, That R J  
 "Joneson personally known to me as the person whose name  
 "is subscribed to the aforesaid Mortgage appeared before  
 "me this day, in person, and acknowledged that he signed  
 "sealed and delivered the said instrument of writing as  
 "his free and Voluntary act for the uses and purposes  
 "therein set forth"

"And the said \_\_\_\_\_ wife of the  
 "said \_\_\_\_\_ having been by me examined  
 "separately and apart and out of hearing of her husband  
 "and the contents and meaning of the said instrument  
 "of writing 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  
 "in 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 & seal Notarial on 29<sup>th</sup>  
 "day of March in the year of our Lord One  
 "Thousand Eight Hundred and fifty six

Seal

G A Gooding  
 Notary Public

To the Honorable Jesse Norton Judge of the  
Eleventh Judicial Circuit Court of Will County in  
Chancery sitting

The Bill of Complaint of George Gardner  
Complainant against Robert J. Jamison and  
Huldah L. Jamison wife of said Robert J.  
Jamison defendants

Humbly complaining your  
Orator shows to your Honor that on or about the  
twenty ninth day of March, in the year of our  
Lord, One thousand eight hundred and fifty six  
the above named Robert J. Jamison purchased  
the the west half of the South west quarter of section  
Number nineteen in Township Thirty six North of  
Range Number Eleven East of the third principal  
Meridian in the County of Will and State of Illinois  
for the sum of about two dollars and to  
secure the payment of the same the said Jamison  
gave his promissory note for the sum of One  
Thousand dollars with ten per cent interest per  
annum and also at the same time the said  
Jamison executed and gave a deed of mort-  
gage of the said described premises to the said  
Gardner to secure the payment of the aforesaid pur-  
chase money which said mortgage is hereto  
attached and made an exhibit and part of  
this bill to which for greater certainty your orator  
prays leave to refer, And your orator further shows  
that at the time of the said purchase the said  
Huldah L. Jamison was the wife of the said  
Robert J. Jamison and prays that the said  
Huldah L. Jamison may be made a party  
defendant to this your Orator bill of  
complaint

Your Orator further shows that on  
or about, the twenty ninth day of March in  
the year of our Lord One Thousand Eight  
hundred and fifty seven the said Robert

5 I Lemmon paid One hundred dollars of interest  
which was due on said note and gave a new  
note for the sum of One thousand dollars, dated  
the twenty seventh day of March in the year of  
Our Lord One thousand Eight hundred and  
fifty seven at two per cent interest per annum  
the said last note was given in the place of  
the first note and for the purchase money  
discussed in said mortgage.

And further your  
Orator shows to your Honor that the said note  
has long since become due and payable and  
the same still remains due and unpaid. And  
your Orator had well hoped that the said defen-  
dant, would have paid you Orator, but so  
it is may it please your Honor, that the  
said defendant Robert I Lemmon thought  
after requested so to do, has not paid said  
note nor any portion thereof. To the end  
therefore that the said defendant, may be  
decreed, to pay the said amount, in the said  
promissory note specified together with the  
interest thereon according to the tenor and  
effect thereof, And that in default thereof, the  
said premises described in the said mortgage  
may be decreed to be sold according to law and  
the practice of this Honorable Court, And that  
the said Huldah I Lemmon be forever barred  
of her rights of dower, in said lands.

May it please your Honor to grant  
the process of Summons and Quoto Otheo and further  
relief as to your Honor may seem meet, and  
your Orator will ever pray &c.

George Gardner  
By W Snapp Solicitor

6. "State of Illinois  
 "Will County } } "The Clerk will please give  
 "Bill + Issue Summons de  
 "George Gaudes } }  
 "no } } "W Snapp Solic"  
 "Robert J Lemison } }  
 "Huldah L Lemison } }  
 "In Chancery } }  
 "In the Will County Circuit } }  
 "Court } }

"State of Illinois } }  
 "County of Will } } "The People of the State of Illinois  
 "Do the Sheriff of Said County Greeting  
 "We Command you, that you summon  
 "Robert J Lemison, & Huldah L Lemison if they  
 "shall be found in your County, personally to be and  
 "appear before the Circuit Court of Will County on the  
 "first day of the next term thereof, to be holden at the  
 "Court House in the City of Joliet, in Said County  
 "on the first Monday of December next, to answer  
 "unto George Gaudes fully, truly and directly all and  
 "singular the matters & things, allegations and  
 "charges contained in his certain bill to Gaudes  
 "lately filed in our said Court, on the Chancery side  
 "thereof, and to stand to, abide by, and perform  
 "whatsoever order or decree our said Court, shall make  
 "in the premises, None of said nor, or a decree will be  
 "entered against you by said Court."  
 "And have you them and them this witness.

Seal

"Attest, Alexander M. Intosh Clerk of s.  
 "Court, and the Seal thereof, hereunto affixed  
 "at his Office, in the City of Joliet aforesaid  
 "this 8 day of November A.D. 1860  
 "A. M. Intosh Clerk.

7 On the back of which summons is the following  
return to wit

"I return this writ served by delivering  
true copies thereof, and by reading the same to the within  
named Robert I. Linnerson and Huldah I. Linnerson  
the 17<sup>th</sup> day of November 1860.

"Alonzo Leach Sheriff"  
"by P. P. Scavitt Deps"

Will County Circuit Court

Monday December 3<sup>rd</sup> A.D. 1860

United States of America )  
State of Illinois ) ss.  
County of Will

"Pleas before the Honorable Jesse  
"O. Boston Judge of the Eleventh Judicial Circuit of the State  
"of Illinois and sole presiding Judge of the Will County  
"Circuit Court at a Term thereof began and held at the Court  
"House in the City of Joliet in said County and State on the first  
"Monday (the same being the third day) of December in the year of  
"Our Lord One Thousand Eight Hundred and Sixty and of  
"the Independance of the United States the Eighty Fifth

Present

"Honorable Jesse O. Boston Judge of the Eleventh Judicial Circuit of the State of Illinois  
"Henry Logan States Attorney  
"William W. Bartlett Sheriff of Will County

Attest

Alexander McIntosh Clerk

And on the third day of  
December in the Year of Our Lord One Thousand Eight Hundred  
and Sixty, there was filed in the Office of our Clerk of our  
Circuit Court the Demurrer of Robert J. Jennesson in words  
and figures following to wit

"State of Illinois )  
"Will County ) vs " Circuit Court Will County  
"George Garden " In Chancery "

vs  
"Robert J. Jennesson & Caldwell L. Jennesson"

"The demurrer of  
"Robert J. Jennesson one of the defendants to the bill of complaint  
"of George Garden in above cause"

"This defendant by protestation  
"not confessing or acknowledging all or any of the matters and

9

Things in the said bill of complaint contained to be true in such manner and form as the same are therein and thereby set forth and alledged doth demur in law to the said bill and for cause of demurrer sheweth that the said complainant hath not by his said bill made such a case as entitles him in a Court of equity to any discovery or relief from or against this defendant touching the matters contained in the said bill or any of such matters

"1<sup>st</sup>" for that the said complainant hath not by his bill which seeks a decree against the above defendants that they pay the amount in a promissory note in the said bill mentioned and in default thereof that certain lands in said bill described be sold under the mortgage to said bill annexed thereon any consideration for the notes described in said bill of complaint to whom the note secures the payment of which it is ~~alleged~~ <sup>alleged</sup> in & by the said bill the said mortgage was made was given or how the complainant became the possessor thereof and what title he ~~has~~ <sup>has</sup> thereto

"2<sup>nd</sup>" That the said complainant hath not shown by his said bill when the notes in said bill of complaint mentioned or either of them became due and payable or that the same were so due and payable at the time of the filing of the complainants bill of complaint

"3<sup>rd</sup>" That it appears in and by the said complainants said bill of complaint that the alledged or pretended purchase money of the said lands and the note to secure which as is therein alledged the said mortgage was executed has been fully paid and satisfied

Wherefore and for divers other good causes of demurrer appearing in the said bill of complaint and for the want of form & uncertainty thereof this defendant doth demur to the said bill and to all the matters and things therein contained and prays the judgment of this honourable Court, whether he shall be compelled to make any further ~~answer~~ or other answer to the said bill and he humbly prays to be hence dismissed with his reasonable costs in this behalf sustained

George Herbert  
Sol<sup>r</sup> for said def<sup>t</sup>.

And also on the same day aforesaid was filed the demurrer of Huldah L. Jenneson which is in words and figures following to wit:

Circuit Court Mill County  
"State of Illinois)"  
"Mill County) ss  
George Garden

vs  
"Robert L. Jenneson & Huldah L. Jenneson  
"The Demurrer of Huldah L. Jenneson one of the defendants to the bill of complaint of George Garden in above cause

"This defendant by protestation not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained to be true in such manner and form as the same are therein and thereby set forth and alleged doth demur in law to the said bill and for cause of demurrer sheweth that the said complainant hath not by his said bill made such a case as entitled him in a Court of equity to any discovery or relief from or against this defendant touching the matters contained in the said bill or any of such matters

"Wherefore and for divers other good causes of demurrer appearing in the said bill of complaint this defendant doth demur to the said bill and to all the matters and things therein contained and prays the judgment of this honorable Court whether she shall be compelled to make any further or other answer to the said bill and she humbly prays to be hence dismissed with other reasonable costs in this behalf sustained

Geo. Herbert  
Att<sup>y</sup> for said defendant

And afterwards it was on the 6<sup>th</sup> day of December in the year of Our Lord One Thousand Eight Hundred and Sixty Six being one of the regular days of the December Term of said Court for the year aforesaid the following proceedings were had and entered of record by said Court in words and figures following to wit:

11.  
2554

George Garden

vs

Robert J. Jenness & Walden L. Jenness

Bill to foreclose

"This day comes  
said Complainant by Henry Snapp his Solicitor on whose  
motion it is ruled by the Court that said Defendants file  
their answer to said Bill by 2 o'clock P.M. of today

And again comes said Complainant by Henry Snapp  
his Solicitor on whose motion it is ordered that said Defendants  
be now called Whereupon said Defendants were three  
times solemnly called but came not nor any one for them  
nor have they filed their answer to said Complainant's bill  
in obedience to a rule of Court this day entered herein requiring  
them so to do but if this fail and make default which by order  
of Court is taken and entered of Record"

"Whereupon on motion it is further ordered that this  
cause be and is hereby referred to Fred A. Bartleson Master in  
Chancery for Will County Illinois to compute the amount  
due and owing on said Mortgage mentioned in said  
Complainant's bill of Complaint and report to this Court  
with all convenient speed"

and afterwards do Wit  
on the 15<sup>th</sup> day of December in the year of our Lord One  
Thousand Eight Hundred and Sixty the same being one of  
the regular days of the December term of said Court for  
the year aforesaid and said Court being then duly  
organized and sitting for the adjudication of business  
the following proceedings were then taken and entered  
of record in words and figures following to Wit:

George Garden

vs

Robert J. Jenness & Walden L. Jenness

Bill to foreclose

And now at this day  
comes said Complainant by Henry Snapp his Solicitor and  
on whose motion it is ordered by the Court that the default  
previously entered herein be set aside and it is further  
ordered on said Complainant's motion that he have leave to  
amend his bill herein

2554

And afterwards to His Honor the 11<sup>th</sup> day of February, A.D. 1861 The following amended Bill was filed out of the papers in this cause in words and figures as follows To Wit:

"To the Hon<sup>ble</sup> Jesse O. Hartness Judge of the Eleventh Judicial Circuit Court of Mill County,

"In Chancery sitting the Amended Bill of Complaint - Complainant of George Gardner Complainant against Robert F. Jennesson and Huldah L. Jennesson wife of the said Robert F. Jennesson Defendants,

"Humbly complaining your Orator shews to your Honor That on or about the Twenty Ninth day of March in the year of Our Lord One Thousand Eight Hundred and Fifty Six the above named Robert F. Jennesson purchased from Robert Jennesson & Susan Jennesson wife of said Robert Jennesson the West half of the South West Quarter of Section Number chuesteen in Township Thirty six North of Range number Eleosen East of the Third principal Meridian in the County of Mill and State of Illinois for the sum of about Four Thousand Dollars and the said Robert F. Jennesson to make payment for the same to the said Robert Jennesson & Susan Jennesson his wife borrowed from this Complainant the sum of One Thousand Dollars (and the said Robert F. Jennesson did then & there pay to the said Robert Jennesson) the said sum of One Thousand Dollars so borrowed as aforesaid from this Complainant to be used as purchase money for the above described premises and for no other purpose

"And the said Robert F. Jennesson did also then & there execute and give to this complainant his promissory note for the said ~~money~~ sum of One Thousand Dollars with ten per cent interest per annum and also at the said time the said Robert F. Jennesson executed and gave a deed of Mortgage of the said described premises to this Complainant to secure the payment of the aforesaid purchase money which said Mortgage is attached <sup>to</sup> made an exhibit and part of this <sup>original</sup> ~~attached~~ bill in this cause to which for greater certainty your Orator prays leave to refer"

12

"And your Orator further shews that at the time of the said

"purchase and contract aforesaid the said Huldah Jennesson  
 was the wife of the said Robert G. Jennesson and prays that the  
 said Huldah G. Jennesson may be made a party Defendant  
 to this Bill of Complaint "

"Your Orator further shews that on or about the Twenty sixth  
 day of March in the Year of Our Lord One Thousand Eight Hundred  
 and fifty Seven the said Robert G. Jennesson paid to this  
 Complainant One Hundred Dollars of interest which was due  
 on said note and gave a new note for the said Original sum  
 of One Thousand Dollars dated the Twenty seventh day of  
 March in the Year of Our Lord One Thousand Eight Hundred  
 and fifty Seven at ten per cent interest per annum the said  
 last note was given in the place of the said first note and  
 for the purchase money as aforesaid

"Your Orator further sheweth unto your Honor that the  
 only object in giving up the original note and taking the new  
 one last above named was to show the payment of the said One  
 Hundred Dollars interest money as above set forth & that at  
 the time of the said exchange of notes the said Robert G. Jennesson  
 expressly agreed that the security ~~that the security~~ that is the  
 said Mortgage should remain valid & unimpaired and  
 stand as security for the payment of the said note "

"And further your Orator sheweth unto your Honor that the  
 said note has long since become due and payable and the same  
 still remains due and unpaid though your Orator hath here-  
 before often requested the said Robert G. Jennesson to pay the same  
 and your Orator hath well hoped that the said defendant would have  
 paid your Orator the just amount so due your Orator—but so  
 it is may it please your Honor that the said Defendant  
 Robert G. Jennesson though often ~~so~~ requested so to do has not  
 paid the said note nor any portion thereof

"To the said therefore that the said defendant may be decreed to  
 pay the said amount in the said promisory note specified together  
 with the interest thereon according to the tenor and effect thereof—  
 and that in default thereof that the said premises described ~~therein~~  
 in the said Bill of Mortgage may be decreed to be sold according to  
 law and the practice of this Honorable Court—and that the said  
 Huldah G. Jennesson be forever barred of her right of dower in said

14 And May it please your Honor to grant such other and further relief as to your Honor may seem meet and as in duty bound your Obedience will ever pray &c

George Gardew  
By Snapp & Brockwidge  
Solicitor

And afterwards to Wit On the 21<sup>st</sup> day of March in the Year of Our Lord One Thousand Eight Hundred and Sixty One the same being one of the regular days of the March Term of said Court and said Court being duly organized and sitting for the adjudication of business the following proceedings were then and there had and entered of record by said Court in words and figures as follows to Wit:

George Gardew

Bill to foreclose

"2554"

Robert G. Jennesson & Weldon L. Jennesson

And now at this day comes said Complainant by Snapp & Brockwidge his Solicitors on whose motion it is ruled by the Court that said Defendants do file their answer to said Complainants amended Bill of Complaint by tomorrow morning

And afterwards to Wit:

On the 22<sup>nd</sup> day of March in the year of our Lord One Thousand Eight Hundred and Sixty One the same being one of the regular days of the March Term of said Court for the year aforesaid and the Court being duly organized and sitting for the adjudication of business the following proceedings were then and there had and entered of record in words and figures following to Wit:

"2554"

George Gardew

Robert G. Jennesson & Weldon L. Jennesson

Bill to foreclose

And now at this day comes said Defendants by Snapp & Brockwidge who appear in behalf of Herbert Solicitor for said Defendants and on their motion it is ordered by the Court that the rule to answer heretofore entered be and hereby is extended until Wednesday morning next

14

And afterwards to Wit on the 27<sup>th</sup> day of March in the year of our Lord One Thousand Eight Hundred and Sixty

One the same being one of the regular days of the March Term of said Court for the year aforesaid and the Court being then duly organized and sitting for the adjudication of business the following proceedings were then had and entered of Record by said Court in words and figures following to wit:

"2554" "George Gardner Robert J. Fennerow & Hulda L. Fennerow

Bill to foreclose "And now again comes said Complainant by Henry Snapp his Attorney and whose motion it is ordered by the Court that said Defendants be now called Whereupon said defendants were three times solemnly called but come not neither themselves nor any person for them nor have they filed their answer to said Complainant's amended bill of complaint but of this they fail and make default which by Order of Court is taken and entered of Record"

Thereupon on motion of said Complainant it is ordered further by the Court that the matter and things contained in said Complainant's <sup>amended</sup> bill of complaint be referred to Fred. C. Baughman Esq. Master in Chancery for Hill County to take proofs in relation thereto and report to this Court with all convenient speed"

And afterwards To Wit:

On the 30<sup>th</sup> day of March in the year of Our Lord one Thousand Eight Hundred and Sixty One the same being one of the regular days of said March Term of said Court for the year aforesaid and the Court being duly organized and sitting for the adjudication of business the following proceedings were had and entered of Record by said Court in words and figures following to wit:

"2554"

George Gardner } Bill to foreclose " Robert J. Fennerow & Hulda L. Fennerow

"And now at this day again comes said Complainant by Henry Snapp his Attorney and files the Report of the Master in Chancery hereto ~~and on his petition it is ruled by the Court that said Defendants show cause in support of any thereof why said Report should not be approved~~ which Report is in words and figures following To Wit:

Hill County Cir. Ct.

17 and the money was loaned him only on consideration that it should be applied and used as purchase money ~~described~~ on the premises described in the Mortgage.

"J. L. Brienbridge being examined states that from examination he has discovered that the date of the Mortgage in this suit involved and the date of the deed ~~involved~~ from Robert & Susan Jennesson to Robert G. Jennesson as stated in the Bill of Complaint is the same to wit: the 29<sup>th</sup> March 1856. He further says that the money aforesaid was expressly loaned by the Compt to said Robert G. for the purpose of being used as purchase money in the purchase of the premises aforesaid, and that the money was so used and applied, and that it was agreed by and between Compt and said Robert G. at the time of said money being loaned that a mortgage should be executed to secure the same by the said Robert G. to the said Garden on the premises so to be purchased as aforesaid."

"The undersigned reports

1<sup>st</sup> That there is due upon said note at the time of the date hereof fourteen hundred dollars (\$1400)

2<sup>nd</sup> That said note being given in renewal of original note, and parties agreeing specifically thereto is secured by the Mortgage aforesaid - in like manner as the original note.

3<sup>rd</sup> And the undersigned reports the facts above set forth in detail that the Court may determine whether the same establish that the consideration of said note & Mortgage was purchase money in such a sense as to debar the wife of the Mortgagee the said Bullock L. Jennesson dower in & to the said premises."

F. W. Bartleson

Joliet March 29 1861

Master in Chancery

Master's fee \$5.

And on motion of said Complainant Solicitor it was ruled by the Court that said Defendants to do show cause instantiated if any cause there be why said report of the Master in Chancery should not be approved. Whereupon said Defendants were three times solemnly

18 called but came not nor any person for them  
neither is any cause shown why said Report should  
not be approved and confirmed?

"Therefore it is ordered by the Court that the  
said Report this day filed herein be and hereby is  
ratified and confirmed"

"And afterwards to wit 10  
On the 1<sup>st</sup> day of April in the year of our Lord one  
Thousand Eight Hundred and Sixty One the same  
being one of the regular days of the March Term of said  
Court for the year aforesaid and the Court being duly  
organized and sitting for the adjudication of business  
the following proceedings were then & there had and entered  
of Record by said Court in words and figures as follows  
To wit: 10

Deer

19 George Garden  
vs  
Robert J. Sumner  
Huldah J. Sumner

Will County Circuit Court  
Of the March Term AD 1866  
Chancery Side thereof

"And now at this day, it being  
one of the days of the March term of the Will County  
Circuit Court in the Year of Our Lord One Thousand and  
Eight Hundred and Sixty One Now Jesse C  
Wortow presiding, the Case of George Garden  
vs Robert J. Sumner and Huldah J. Sumner  
Came on to be heard and the defendants not  
appearing either by themselves or by Counsel and  
after a rule had been entered by said Court, that  
the said defendants should plead to said Bill  
of Complaint and if the said defendants refusing  
to plead or answer, and being three times solemnly  
called came not, but made default herein, and  
after an order of said Court, that said Cause  
be referred to F. A. Battison the Master of said  
Court, to take proofs herein & it appearing to  
said Court, from the report of said Master made  
and approved herein & from the allegations and  
proofs therein, That, on the 29<sup>th</sup> day of March  
AD 1856, Robert J. Sumner one of the defendants  
in this Suit was justly indebted to George Garden  
the Complainer in this Suit in the Sum of One  
Thousand Dollars, and that he executed his Note  
for the same with two per cent interest thereon it  
being for money actually loaned, and that at  
the same time he the said Robert J. Sumner  
executed and delivered to the said George Garden  
to secure the payment of said Sum of money and  
interest in said Note mentioned a mortgage of the  
of the following premises to wit. The West half of  
the South West quarter of Section No. 11 in  
Township Thirty Six (36) North of Range No. 10  
(11) East of the third principal Meridian, and  
it further appearing to said Court that said

19

Sum of money has long since become due and that there is now due and unpaid on said debt the sum of One Thousand Four Hundred dollars and is further appearing to said Court that said sum of One Thousand dollars was loaned to said Robert J. Summerson by said George Garden to be applied in the purchase of the aforesaid mortgaged premises and that the said mortgage was given to secure the same at the time and as a part of the same transaction between Robert Summerson and Susan his wife Grantor and the said Robert J. Summerson Grantor of the fee simple of said premises described in said mortgage, and that no part of the principal of said debt has ever been paid, and that the said Huldah L. is the wife of the said Robert J. Summerson;

It is therefore Ordered, Adjudged and decreed by this Court, that the said Robert J. Summerson pay to J. A. Bartleson Master in Chancery of this Court, or his Successor in Office or his Officer in the City of Solon said Court by the 11<sup>th</sup> day of April A.D. 1861, the said sum of One Thousand Four Hundred dollars with two per cent, interest thereon together with the cost and charges of him the said Complainant in the behalf expended, and that in failure thereof the said premises described in said mortgage to wit, the West half of the South West quarter of Section Nineteen (19) Township Thirty six (36) North of Range 10<sup>th</sup> East of the Third (3<sup>d</sup>) principal Meridian, be sold to pay the same according to the laws of this State regulating Sheriff's Sales, by the Master in Chancery of said Court, and that upon failure of the said Robert J. Summerson or any subsequent mortgagor or Judgment Creditor of the said Robert J. Summerson to redeem the same as is by the laws of this

21

in such cases made & provided  
State made and provided, that then the said  
Master or his Successor in office make to the  
purchaser or assignee of the purchaser his due  
in Geo Simpley Garcon, therein also debarment  
the said Huldah L Inneson from the rights  
of claim, in the said described premises for ever.

State of Illinois }  
County of Hill } ss.

I Benjamin F. Russell Clerk  
of the Hill County Circuit Court in and for said  
County in the State aforesaid do hereby certify the above  
the above and foregoing to be a full true and perfect  
copy of all the papers filed in said cause And I do also  
further certify that in the foregoing is is the full true and  
perfect copy of all the Record of the proceedings had in  
said Court appertaining to or forming a part of said Cause  
now remaining in my said Office

In Witness Whereof I have hereunto set my  
hand and affixed the Seal of our said  
Court at Office in the City of Joliet  
this 25<sup>th</sup> day of April A.D. 1861

B. F. Russell Clerk  
By G. H. Ward Supt

State of Illinois  
J. Grand Juror

Robert L. Inneson &  
Huldah L Inneson

vs  
George Gardner

Shir to will County Circuit Court  
and the said Robert L. Inneson & Huldah  
L Inneson come by their attorney & jointly &  
separately say that manifest error hath  
intervened in the proceedings aforesaid

The foregoing is a record to their injury and to the injury of each of them.

In that

(1) It does not appear that the proceedings were on the chancery side of the Court below.

(2) It does not appear that the demands of the plaintiffs in error were disposed of -

(3) The Court below erred in not dismissing the bill -

(4) The Court erred in rendering a final decree against the plaintiffs in error or either of them -

(5) For that the Court below erred in rendering a decree absolutely for the payment of the money claimed on the mortgage, and not rendering it in the alternative that unless the sum be paid the property should be sold.

(6) For that the decree rendered does not provide for any redemption by the said Huldah L.

(7) For that the said proceeding and the said decree and the view aforesaid contain other & manifold error to the injury of the said plaintiffs in error & each of them - Wherefore the said defendants, plaintiffs in error pray judgment  
re. J. S. Herbert

Solicitor for  
Plaintiffs in error.

347  
2 Will County Circuit  
Court

George Garden

vs

Robert J. Simmons  
& Huldah L. Simmons

Transcript.

Filed May 2. 1861  
L. Leland  
Clerk