

13903

No. _____

Supreme Court of Illinois

Lawrence

vs.

Lane.

71641  7

State of Illinois, sct.

THE PEOPLE OF THE STATE OF ILLINOIS,

To the Clerk of the Circuit Court for the County of *Peoria* Greeting:

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of *Peoria* county, before the Judge thereof, between *Josiah Lane*

_____ plaintiff and *John Lawrence*

defendant it is said manifest error hath intervened to the injury of the aforesaid *defendant* as we are informed by *his* complaint, and we being willing that error, if any there be, should be corrected in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay, send to our Justices of our Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Springfield in the county of Sangamon, on the *fourth Monday in December inst* ~~next~~, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

WITNESS, the Hon. William Wilson, Chief Justice of our said Court, and the seal thereof at Springfield, this *seventh* day of *December* in the year of our Lord one thousand eight hundred and forty-*seven*

R.B. Stocumb
Clerk of the Supreme Court.

By South Dwelliss
Dep. Clk.

SUPREME COURT.

John Lawrence

Plaintiff in error,

Sosiah Lane ^{vs.}

Defendant in error,

Writ of error,

Filed. *Dec 7th 1847*

R.B. Slocumb C. S. C.

By Noah Divillos D. C.

John Lawrence } Supreme Court of the State of Illinois
 } December Term A.D. 1847
 } In Error to Peoria County
as }
Josiah Lane }

I Lincoln B. Knowlton one of the
solicitors for the said Josiah Lane who was the
complainant in the Court below do hereby agree
to waive the notice of the advertisement of the
non residence of the said defendant ~~Lane~~
and agree to enter the appearance of the said
~~Lane~~ in the Supreme Court and join
issues at the said term of Court
Peoria November 12th 1847

L. B. Knowlton

John Lawrence } Supreme Court of the State of Illinois
 } December Term A.D. 1847
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Peoria November 12th 1847

L. B. Knowlton

Supreme Court

John Lawrence
vs

Josiah Lane

Filed Dec 7th 1847
R.B. Hoey C. C.
By Arch Swelliss D. C.

Be it remembered that on the 17th day of October in the year 1843 there was filed in the office of the clerk of the circuit court in and for Preria county in the State of Illinois, a Bill in Chancery, Precepts, Bond for costs and copy of Mortgage, which are in the words and figures following, to wit.

State of Illinois } In Preria circuit court, October Term 1843.—
Preria County }

To the Honorable John Dean Eaton, Esquire,
Judge of the Ninth Judicial Circuit in & for
the State of Illinois. —

Humblly complaining sheweth unto your Honor, your Orator Josiah Lane of Lexington in the State of Massachusetts, late of Preria county in the State of Illinois, that John Lawrence formerly of Athens county Ohio, now of Preria county, Illinois, on the 27th day of July 1841, being justly indebted to your orator in the sum of four hundred and fifty dollars, specified in his two certain promissory notes of that date by him signed (to wit one for four hundred dollars & one for fifty dollars) payable (each) ninety days after date to Josiah Lane or order for value received, payable at Lowell in Mass. (Massachusetts state meaning) with six per cent. interest after maturity; and in order to secure the payment of said sum of money specified in said notes according to the tenor and effect thereof; he the said Lawrence on the 27th day of July 1841 aforesaid for and in consideration of the sum of four hundred and fifty dollars so due and owing to your orator as aforesaid by his certain deed of bargain and sale, signed with his hand and sealed with his seal and duly acknowledged and recorded in due form of law, the date whereof is the same 27th day of July 1841 last aforesaid, did convey to your orator in fee simple a certain tract of land, situate, lying and being in the County of Preria and State of Illinois aforesaid, and described as follows, to wit, The west half of the North East quarter of section No Twelve (12) in Township No Ten (10) North of the base line and range five (5) East of the fourth principal meridian containing eighty acres — also the South half of the North West quarter of the North West quarter of Town (4.) in Township No Ten (10) North of the base line, Range Six East of the fourth principal meridian, containing twenty acres. Subject nevertheless to a condition of defeasance on the payment of said sum of four hundred and fifty dollars specified in said notes according to the tenor and effect thereof with the interest thereon by the time limited for the payment thereof (which is now long since passed) as in and by said deed of mortgage, a copy of which is therewith

filed and made a part of this bill, will more fully appear -
It was also agreed by the parties, that one of said notes, last mentioned
in said mortgage, which was given by said Lawrence to said Lane
or order for fifty dollars was to be exchanged within ninety days from
its date for another good note due within six months or a year
bearing interest, and which said note never was so exchanged, and
to exchange the same as aforesaid the said Lawrence although
often requested so to do hath hitherto wholly neglected and refused -
And it was further agreed that in case of failure in the payments
of the notes to which this instrument is intended for security, the party of
the first part (said Lawrence meaning) shall forfeit and pay to the party
of the second part (said Lane meaning) his heirs or assigns the sum of
twenty five dollars. - Your Orator further shows unto your Honor, that
the said sum of Four hundred and fifty dollars specified in said
promissory notes as well as in said mortgage, or any part thereof was
not paid to your orator or to any other person on his account at
the time and place limited in that behalf nor at any other time or
place whereby the legal estate in and to the premises aforesaid,
became vested in your orator redeemable nevertheless in equity on payment
of the principal and interest due and to become due thereon
and twenty five dollars damages for a failure in making the payments
according to the tenor and effect of said notes. - That the said sum of
Four hundred and fifty dollars & a large arrear of interest thereon being
due, he applied to the said Lawrence and requested him to pay the same
to your orator, which he the said Lawrence has wholly hitherto neglected
& refused to do. - Your orator therefore prays that the People's summons
may issue against the said John Lawrence, that he may be
made defendant to this Bill and compelled to answer all and
singular the matters and things hereinbefore stated as fully and
particularly as if the same were again repeated and set forth -
that an account may be taken of what is due to your orator for principal
and interest upon said mortgage and damages for failure in
making payment as aforesaid - that said mortgaged premises may
be sold and the proceeds thereof applied to the satisfaction of the said
principal and interest & damages & costs, and that the said John
Lawrence & all persons claiming by through or under him, or his assigns
may be forever foreclosed of and from all equity of redemption & claim
of in and to said mortgaged premises and that your orator may have
such other & further relief as equity & good conscience may require -
Dated this 13th day of September 1843 - Henry S. Austin, solicitor of complainant.

filed and made a part of this bill, will more fully appear -
It was also agreed by the parties, that one of said notes, last mentioned
in said mortgage, which was given by said Lawrence to said Lane
or order for fifty dollars was to be exchanged within ninety days from
its date for another good note due within six months or a year
bearing interest, and which said note never was so exchanged, and
to exchange the same as aforesaid the said Lawrence although
often requested so to do hath hitherto wholly neglected and refused -
And it was further agreed that in case of failure in the payments
of the notes to which this instrument is intended for security, the party of
the first part (said Lawrence meaning) shall forfeit and pay to the party
of the second part (said Lane meaning) his heirs or assigns the sum of
twenty five dollars. - Your Orator further shows unto your Honor, that
the said sum of Four hundred and fifty dollars specified in said
promissory notes as well as in said mortgage, or any part thereof was
not paid to your orator or to any other person on his account at
the time and place limited in that behalf nor at any other time or
place whereby the legal estate in and to the premises aforesaid,
became vested in your orator redeemable nevertheless in equity on payment
of the principal and interest due and to become due thereon
and twenty five dollars damages for a failure in making the payments
according to the tenor and effect of said notes. - That the said sum of
Four hundred and fifty dollars & a large arrear of interest thereon being
due, he applied to the said Lawrence and requested him to pay the same
to your orator, which he the said Lawrence has wholly hitherto neglected
& refused to do. - Your orator therefore prays that the People's summons
may issue against the said John Lawrence, that he may be
made defendant to this Bill and compelled to answer all and
singular the matters and things hereinbefore stated as fully and
particular as if the same were again repeated and set forth -
that an account may be taken of what is due to your orator for principal
and interest upon said mortgage and damages for failure in
making payment as aforesaid - that said mortgaged premises may
be sold and the proceeds thereof applied to the satisfaction of the said
principal and interest & damages & costs, and that the said John
Lawrence & all persons claiming by through or under him, or his assigns
may be forever foreclosed of and from all equity of redemption & claim
of in and to said mortgaged premises and that your orator may have
such other & further relief as equity & good conscience may require -
Dated this 13th day of September 1843 - Henry S. Austin, solicitor of complainant.

"The following is a copy of the mortgage named in the above Bill with the acknowledgment and certificate of record." This Indenture made this 27th day of July in the year of our Lord one thousand eight hundred and forty one, Between John Lawrence of Athens County Ohio of the first part, and Josiah Lane of the County of Peoria and State of Illinois of the second part, witnesseth, That the said party of the first part for and in consideration of the sum of four hundred and fifty dollars paid by the said party of the second part, the receipt of which is hereby acknowledged do by these presents grant, bargain and sell unto the said party of the second his heirs and assigns all those certain tracts or parcels of land situated in the County of Peoria and State of Illinois, viz. The West half of the North East quarter of section No Twelve (12) in Township No. Ten (10) North of the base line and Range five (5) East of the fourth principal containing eighty acres. Also the South half of the Northwest quarter of the North West quarter of section Four (4) in Township No Ten (10) North of the base line, Range six East of the fourth principal meridian, containing twenty acres. Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining. To have and to hold the said premises as above described with the appurtenances unto the said party of the second part his heirs and assigns forever. And the said party of the first part for himself and his heirs do hereby covenant and agree to and with the said party of the second part his heirs and assigns that he is well seized of the premises above conveyed as of a good and indefeasible estate in fee simple, and has good right to sell and convey the same in manner and form as aforesaid; and that the above bargained premises in the quiet and peaceable possession of the said party of the second part his heirs and assigns against the claim of all persons whomsoever will forever warrant and defend. Provided always that if the said John Lawrence - heirs, executors or administrators shall pay to the said Josiah Lane, his heirs, executors, administrators or assigns, the sum of Four hundred dollars in ninety days from this date as specified in a certain note bearing date herewith - also fifty dollars in ninety days from this date, as specified in a note of this date - the last mentioned note is agreed by the parties to be exchanged within ninety days from or a year bearing interest, together with the interest that may accrue thereon, in manner particularly specified in these certain

In case of a failure in the payments of the notes to which this instrument is intended for security, the party of the first part shall forfeit or pay to the party of the second part his heirs or assigns the sum of twenty five dollars

notes or obligations bearing even date herewith, executed by the said John Lawrence to the said Josiah Lane, then and from thenceforth these presents shall be null and void, otherwise they shall remain in full force and virtue. In testimony whereof, the said John Lawrence has hereunto set his hand and seal, the day and year first above written.

John Lawrence *ES*

signed, sealed and delivered in presence of Jas. M. Wiley
David H. Lane

State of Illinois } I, John F. Wiley a Justice of the Peace for said
Preria County ss: } County do certify, that on this day appeared before
me John Lawrence, whose name appear signed to the foregoing deed of
conveyance and who is personally known to me to be the identical person,
whose name is subscribed to said deed as having executed the same, and
acknowledged that he had executed the same as his voluntary act
and deed for the uses and purposes therein expressed. - Given under
my hand and seal at Preria county this twenty seventh day of July
eighteen hundred and forty one - John F. Wiley *ES* Justice of the Pa.

State of Illinois }

County of Preria } Recorder's Office

I Charles Kettelle recorder of the said county of Preria hereby certify the within mortgage and certificate of proof are duly recorded in said office in Book M, pages 5-87. and 5-88. on this 4th day of August A. D. 1841. Charles Kettelle *R. P. Sec.*

"Josiah Lane } I hereby enter myself security for all costs, that
as } may accrue in this cause & acknowledge myself
John Lawrence } bound to pay, or cause to be paid all costs which
may accrue in this action either to the opposite party or to any of the
officers of this court in pursuance of the laws of this state. -
Dated this 13th day of December 1843. - Henry C. Austin

"Josiah Lane } Preria Circuit Court - Oct. Term 1843 ●
as } In Chancery - to foreclose Mortg.
John Lawrence } Clerk will please issue summonses in pursuance
of the prayer in within Bill, retb. at Oct. Term
aforesaid

Sept 13^c 1843

Enowton & Austin
Solr for Compl^t

And thereupon the clerk of said court issued a summons under the seal of said court, which with the return of the Sheriff of Peoria County endorsed thereon is in the words and figures following, to wit:

"The People of the State of Illinois, To the Sheriff of Peoria County Greeting. We command you to summon John Lawrence if he may be found in your county, to appear before our Circuit Court on the first day of the term thereof, to be held at Peoria, within and for the said County of Peoria, on the third Monday of October instant then and there in our said Court to answer the matters and things contained in a certain Bill in Equity exhibited against him in our said Court on the Chancery side thereof by Josiah Lane to foreclose Mortgage -- and make return of this writ with an endorsement of the time and manner of serving the same, on or before the first day of the term of the said Court to be held as aforesaid. Witness William Mitchell, Clerk of our said Court and the Seal thereof at Peoria this 12th day of October in the year of our Lord one thousand eight hundred and forty three -
William Mitchell, Clerk"

"State of Illinois
Peoria County of The within writ did not come at hand in time for service Oct 16th A.D. 1843 -
Smith Gray, shff.
By C C Wood, Dep. shff."

And afterwards on the fourth day of March A.D. 1844 at the Special March Term A.D. 1844 of said Court the following proceedings were had therein in said suit, to wit:

"Josiah Lane
vs
John Lawrence
to foreclose mortgage

On motion of the complainants solicitor it is ordered that an alias summons issue against the defendant returnable to the next term of this Court."

And at the same term on the ninth day of March A.D. 1844 the following proceedings were had to wit: "Josiah Lane

vs
John Lawrence
to foreclose mortgage

It is ordered by the Court, that this suit be continued to the next term of this Court."

And thereupon the clerk of said court issued an alias summons under the seal of said court, which with the return of the sheriff of Peoria County thereto-
endorsed thereon, is in the words and figures following, to wit,

"The People of the State of Illinois, To the Sheriff of Peoria County Greeting:
We command you as we have heretofore commanded you to
summon John Lawrence if he may be found in your County, to
appear before our circuit court, on the first day of the term thereof, to be
held at Peoria, within and for the said County of Peoria, on the fourth
Monday of May next, then and there in our said court to answer the
matter and things contained in a certain Bill in equity to foreclose Mortgage
exhibited against him by Josiah Lane in our said court on the Chancery
side thereof - and make return of this writ with an endorsement of
the time and manner of serving the same, on or before the first
day of the term of the said court to be held as aforesaid. Witness
William Mitchell, clerk of our said court, and the seal thereof, at Peoria
this fifteenth day of April in the year of our Lord one thousand
right hundred and forty four.

W.M.

William Mitchell, Clerk."

"The within named John Lawrence not found in the County -

Smith Brye Sheriff."

And afterwards the clerk of the said court issued a pluries summons under the
seal of said court, which with the return of the sheriff of said Peoria County
endorsed thereon is in the words and figures following, to wit,

"The People of the State of Illinois, To the Sheriff of Peoria County, Greeting:
We command you as we have heretofore often times commanded you
to summon John Lawrence if he may be found in your County, to
appear before our circuit court, on the first day of the term thereof,
to be held at Peoria in and for the said County of Peoria, on the second
Monday of October next then and there in our said court to answer
the matters and things contained in a certain Bill in equity to foreclose
Mortgage exhibited against him by Josiah Lane in our said court on
the Chancery side thereof - and make return of this writ, with
an endorsement of the time and manner of serving the same, on or
before the first day of the term of the said court to be held as aforesaid.
Witness William Mitchell clerk of our said court, and the seal thereof,
at Peoria this twenty third day of July in the year of our Lord one
thousand eight hundred and forty four.

W.M.

William Mitchell, Clerk"

"State of Illinois }
Peoria County }"

I have served the within writ on the within

named John Lawrence by delivering a true & correct copy of the same to him this 19th day of September 1844.
Smith & Goye, sheff, by C. B. Wood, Deputy.

And afterwards at the October term of said court A.D. 1844 the following proceedings were had therein, to wit: "Monday, October 14th 1844,

Josiah Lane
vs
John Lawrence
to foreclose mortgage

On motion of complainant's solicitor, the defendant is ordered to answer by Thursday morning next."

"Friday, October 18th 1844

"Josiah Lane
vs
John Lawrence
to foreclose mortgage

On motion of complainant's solicitor the sheriff has leave to amend his return on the summons last issued in this cause and the rule to answer is extended until Tuesday next."

And afterwards on the 21st day of October A.D. 1844 filed in said court his answer to said Bill of complaint, which with the affidavit thereto attached is in the words and figures following, to wit:

"Josiah Lane
vs
John Lawrence
Circuit Court Peoria county, October Term A.D. 1844

Answer of John Lawrence to the Bill of complaint of Josiah Lane = The said John Lawrence saving and reserving all and all manner of exceptions to the many errors and imperfections in said Bill of complaint, for answer thereto or to such part thereof as he is advised it is material for him to answer unto says: That true it is as alleged in said Bill he made and executed the mortgage upon the premises contained in said Bill and made and delivered his notes as described therein, but this respondent states and shows, that on the fifteenth day of August A.D. 1842, a writ of attachment at the suit of Arthur Gappan, Lewis Gappan, Alfred Edwards, William E. Whiting and Charles Surfer against Alexander P. Lane was issued out of the office of the clerk of the Circuit Court for said county of Peoria and directed to the Sheriff of said county to execute commanding the said Sheriff to attach so much of the real and personal estate of the said Alexander P. Lane as should be found in his county, which would be sufficient to

satisfy the debt and costs according to the complaint, and also commanding the said sheriff to summon this respondent as garnishee, which said writ of attachment was on the sixteenth day of August A.D. 1842 duly served upon this respondent, as by the said writ of attachment and the sheriff's return thereon remaining of record in said court will more fully appear and which said writ and return are here referred to and made a part of this answer. And this respondent further states and shows that such proceedings were thereupon had upon said attachment suit, that the plaintiffs in said suit at the October Term of said Court A.D. 1842 recovered judgment against the said Alexander P. Lane for the sum of twenty one hundred and fifty one dollar and 42 cents debt and three hundred dollars and fifty cents damages and costs of suit, and that the said plaintiffs filed in said suit his interrogatories in said suit to be answered by this respondent touching and concerning his indebtedness to the said Alexander P. Lane, to which said interrogatories this respondent filed his answer, which said interrogatories and answer and all of the record and proceedings in said suit, this respondent refers to and makes a part of this answer. This respondent further shows, that upon the filing of his said answer to the interrogatories in said suit, that such proceedings were thereupon had, that on the twelfth day of October at the said term of said Court a judgment was rendered against this respondent as the garnishee of the said Alexander P. Lane for the sum of four hundred and fifty dollars as by the record in said case more fully appears, to which he refers, which said sum of four hundred and fifty dollars was the sum due at the time of filing his answer in said case and which is the same money for which this respondent executed to the said Josiah Lane his notes & mortgage. — This respondent further shows, that on the seventeenth day of November A.D. 1842 an execution was issued upon said judgment so rendered against this respondent as aforesaid directed to the sheriff of said Proria County to execute and that by virtue of said execution Smith Gray sheriff of said County of Proria on the twenty fourth day of November in said year last aforesaid levied upon the premises as described in said complainant's Bill and afterwards, to wit, on the twenty second day of December A.D. 1842 after advertising the same according to law struck off and sold the said premises to Elisha N. Powell and William F. Bryan for the sum of four hundred and ninety one $\frac{36}{100}$ dollars, they being the highest and best bidders therefor as by the said levy upon the said execution and the return of the said sheriff and which is

The writ of attachment, return of the sheriff endorsed thereon, Interrogatories to garnishers, Answer of John Lawrence to said interrogatories and the Record of the judgment of said Circuit Court in favor of Gappan and others and the execution issued thereon against said Lawrence with the return of the sheriff thereto endorsed on said execution, which are referred to and made part of said answer, are in the words and figures following to wit,

"The People of the state of Illinois, To the Sheriff of Proria County Executive, Whereas Elisha N. Powell hath complained on oath to the clerk of the Circuit Court of the said county of Proria, that Alexander P. Lane justly indebted to Arthur Gappan, Lewis Gappan, Alfred Edwards, William E. Whiting and Charles Surfee in the sum of two thousand two hundred and ninety six ⁵⁰/₁₀₀ dollars; and oath having been also made that the said Alexander P. Lane has departed from this State with the intention of having his effects and personal estate removed without the limits of the said State of Illinois, and the said plaintiffs having given bond and security according to the directions of the act in such case made and provided; We therefore command you that you attach so much of the estate real or personal of the said Alexander P. Lane to be found in your County as shall be of value sufficient to satisfy the said debt and costs, according to the complaint; and such estate so attached in your hands to secure, or so to provide, that the same may be liable to further proceedings thereupon, according to the law, at the term of the said Circuit Court to be held at Proria in and for the said County of Proria, on the Thursday next after the first Monday of October next so as to compel the said Alexander P. Lane to appear and answer the complaint of the said plaintiffs, Arthur Gappan, Lewis Gappan, Alfred Edwards, William E. Whiting & Charles Surfee:— and that you also summon John Lawrence and William H. Bessenden as garnishers to be and appear at the said court on the said Thursday next after the first Monday in October next then and there to answer to what may be objected against him, when and where you shall make known to the said Court how you have executed this writ; and have you then and there this writ.

Witness William Mitchell, clerk of our said Court and the seal thereof,
at Proria, this 15th day of August in the year of our
Lord one thousand eight hundred and forty two.
William Mitchell, clerk.

"By virtue of the within writ to me directed I have this day served the within named John Lawrence as garnisher by reading to him the within named writ to appear and answer on the day and at the place in said writ named as by the same writ I was directed. No property found in

my county whereon to levy August 16th 1842.

Smith Gray, Sheriff of Peoria County."

Arthur Gappan
Lewis Gappan
Alfred Edwards
William E. Whiting
Charles Durfee
or
Alexander P. Lane

Circuit Court, Peoria County, October Term A.D. 1842

Interrogatories to be propounded to John Lawrence and William H. Gessenden, who were summoned as garnishees in the above entitled case -

First - What lands, tenements, goods, chattels, or effects or estate of any kind had you or either of you at the time of the service of the garnishee process upon you respectively or at any time since, really and bona fide belonging to Alexander P. Lane and in your possession, custody or charge or from you or either of you really due and owing to said Alexander P. Lane, and what is the amount you really ^{owe} unto the said Alexander P. Lane?

Second - Do you know of any person or persons being indebted to the to the said Alexander P. Lane? If so, state in what amount in what manner and what are their names? or any person or persons having any effects in their hands of any kind whatever.

Powell Bryan, atty's for plaintiff"

Arthur Gappan
Lewis Gappan
Alfred Edwards
William E. Whiting
Charles Durfee
or
Alexander P. Lane

Circuit Court, Peoria County
October Term A.D. 1842

The answer of John Lawrence, summoned as garnishee in the above entitled case

The said John Lawrence for answer to the Interrogatories filed in said case says, that he has no lands, tenements, goods, chattels, effects or estate of any kind in his possession or under his control at the time of the service of the garnishee process or at any time since, nor does he know of any one who has any such, nor of any person or persons who is or are indebted to him the said Lane.

This respondent further says, that on or about the month of August A.D. 1841, he purchased from Josiah Lane the father of the said Alexander P. Lane a tract of land for eight hundred dollars and paid part down and gave his promissory notes for four hundred and fifty dollars, one of which was for \$400. - payable in three months from date or in about that time and the other for fifty dollars payable in good promissory notes on

other persons - That the land purchased was purchased from Josiah Lane and the deed taken from him, but this respondent has no doubt but that the said Alexander P. Lane was the real and bona fide owner of said land and that the sale was made by him and for his benefit and that the ~~said notes~~ ~~were~~ taken in his father's name were for his benefit and that it was so done to keep his creditors from reaching it and that the amount due upon the said notes is really and bona fide due to ^{said} Alexander P. Lane - This respondent further shows to the court, that the amount due from this respondent to said Lane now amounts to the sum of four hundred and fifty dollars, there having been payments made which leave that sum now due and further this respondent saith not.

John Lawrence.

Subscribed & sworn to before me this 8th October A.D. 1842

William Mitchell, clk."

"At a circuit court begun and held at the court-house in the town of Peoria within and for the County of Peoria and State of Illinois on the Thursday next after the first Monday of October in the year of our Lord one thousand eight hundred and forty, it being the sixth day of said month, Present the Honorable John Dean Catton associate Justice of the Supreme Court and Judge of the Ninth Judicial Circuit, to-wit,

Wednesday, October 12th 1842

Arthur Gappan. Lewis Gappan
Alfred Edwards. William C. Whiting
Charles Duffee

vs

debt - attachment

Alexander P. Lane

This day came the plaintiffs by Powell & Bryan their attorneys and the defendant by Knowlton his attorney, and the said defendant by his attorney withdraws his plea and appearance, whereby the said plaintiffs remain herein undefended against the said defendant and being now three times solemnly called came not but made default, and it appearing to the court that publication of the pendency of this action has been made in the Peoria Democratic Press, a paper printed and published in Peoria, Peoria County Illinois, for four weeks successively, the date of the first publication being August 31st 1842, whereupon it is considered by the court that the said plaintiffs ought to recover of the defendant the sum of two thousand one hundred and fifty one dollars and forty two cents the debt in the declaration mentioned and assess the damages in reason of the detention of said debt to three hundred and five dollars and fifty cents: Therefore it is considered by the court that the said plaintiffs have and recover of the

said defendant the said sum of two thousand one hundred and fifty one dollar and forty two cents debt and three hundred and five dollars and fifty cents damages aforesaid in form aforesaid assessed, together with their costs and charges by them about their suit in this behalf expended and that a special issue therefor to be levied upon the property attached. And it appearing to the court by the answer of William H. Besunder one of the garnishees in the attachment, that he is really indebted to the said defendant in the sum of Eighty dollars, and also by the answer of John Lawrence, who is also one of the garnishees in this case, that he is indebted to the said defendant in the sum of four hundred and fifty dollars: therefore it is considered by the court that the said plaintiffs have and recover of the said William H. Besunder the sum of Eighty dollars the amount confessed by him to be due as aforesaid, and also that they recover of the said John Lawrence the sum of four hundred and fifty dollars the amount confessed by him to be due as aforesaid and that execution issue therefor and when collected to apply towards satisfying the debt, damages & costs aforesaid."

"The People of the State of Illinois, To the Sheriff of Peoria County, Greeting:
Whereas by the consideration of our Circuit Court held at Peoria in and for the County of Peoria, on the 12th day of October in the year of our Lord one thousand eight hundred and forty two, Arthur Gappan, Lewis Gappan, Alfred Edwards, William E. Whiting and Charles Surfer recovered judgment against John Lawrence for the sum of four hundred and fifty dollars (as garnishee in the case of Gappan vs. Alex^r P. Lane) damages, and also for the further sum of fifteen dollars and Eighty one $\frac{1}{4}$ cents costs of suit, as appears of record: We therefore command you that of the goods and chattels, lands or tenements of the said John Lawrence you cause to be made the aforesaid sums of money, together with interest on said judgment at the rate of six per centum per annum from the time of recovering the same as aforesaid until paid; and that you have the same ready as soon as may be, to render unto the said Gappan Brothers according to law. Hereof fail not, and make return of this writ, with your doings, ninety days after the date hereof. Witness William Mitchell, Clerk of our said court, and the seal thereof, at Peoria, this 17th day of November in the year of our Lord one thousand eight hundred and forty two. William Mitchell, Clerk."

"By virtue of the written writ I have this day levied upon West half of the North East quarter of section Number Twelve in Township Number Ten North of the Base line of Range Number five East of the fourth principal meridian and the South half of the North West of the Northwest quarter of section

Number Four in Township Number Ten North of the Base line of Range Number Six East of the fourth principal meridian as the property of the within named John Lawrence this 24th day of November A.D. 1842.

By virtue of the within execution, I Smith Goye, sheriff of Peoria county, did on the twenty second day of December A.D. 1842, after having duly advertised the time and place of holding the sale hereinafter mentioned, by putting up written printed notices thereof in three of the most public places in said county, expose to public sale at the door of the Court-house in said county between the hour of nine o'clock in the morning and four o'clock in the afternoon the following described tracts of land, to wit, The west half of the North East quarter of section Twelve in Township Ten North, Range five East of the fourth meridian and there being no bidder for the same, I thereupon offered for sale the South half of the Northwest quarter of the Northwest quarter of section four in Township Ten North, Range Six East of the fourth principal meridian, and there being no bidders for the same, I thereupon offered both of the above described tracts for sale at the time and place above said and Edwin N. Powell & William F. Bryan having bid therefor the sum of four hundred and ninety one $\frac{36}{100}$ dollars, and that being the highest and best bid for the same, the said tracts of land were thereupon struck off and sold to said Powell & Bryan for said sum, and a certificate of purchase executed to them according to law. Dated this 22nd day of December A.D. 1842. Smith Goye, sheriff A.C.

The certificate of purchase, assignment thereon endorsed and the deed from the sheriff to David Shane referred to in the said answer and made part thereof are in the words and figures following, to wit. (being copied from the Records and files of the Recorder's office of said county of Peoria)

"I Smith Goye, sheriff of the county of Peoria and State of Illinois, do hereby certify, that by virtue of a writ of execution dated the 17th day of November A.D. 1842 to me directed, from the clerk of the Circuit Court of the county of Peoria and State of Illinois, issued upon a certain judgment rendered by the said Court at the October Term A.D. 1842 in favor of Arthur Gappan, Lewis Gappan, Alfred Edwards, William Whiting & Charles Durfee vs. John Lawrence for the sum of four hundred and fifty dollars, I did on the 22nd day of December A.D. 1842 expose to public sale in the town of Peoria two certain tracts or lots of land lying, being and situate in the county and state aforesaid, to wit, the west half of the North East quarter of section Number Twelve in Township Number Ten North of the base line of Range Number five East of the fourth principal meridian and the South half of the

Northwest of the Northwest quarter of section Number four in Township Number Ten North of the Base line, of Range Number Six East of the fourth principal meridian, and that Elisha N. Powell & William G. Bryan bid the sum of four hundred and ninety one $36\frac{1}{100}$ Dollars therefor; which being the highest and best bid, the said tracts or lots of land were struck off to them, the said Powell & Bryan, and that the said Powell & Bryan will be entitled to a deed for the premises so sold on the twenty second day of March A.D. 1844 unless the same be redeemed according to law. Given under my hand and seal this 22nd day of December A.D. 1842.

Smith Frye, Sheriff Peoria County, Ill.?

"For value received we hereby assign and set over to David Shane all our right, title and interest in and to the lands described in the within certificate of purchase, and we hereby authorize and request the sheriff to execute to the said David Shane a deed for the said lands.

March 22nd 1844-

E N Powell
Wm G Bryan."

"Whereas Arthur Capping, Lewis Capping, Alfred Bankards, William B. Whiting and Charles Duffer did at the October Term A.D. 1842 of the Circuit Court of the county of Peoria and State of Illinois recover judgment against John Lawrence for the sum of Four hundred and fifty dollars and costs of suit upon which judgment an execution was issued dated on the seventeenth day of November A.D. 1842 directed to the sheriff of Peoria County to execute and by virtue of said execution the said sheriff levied upon the lands hereinafter described and the same was struck off and sold to Elisha N. Powell and William G. Bryan, they being the highest and best bidders therefor and the time and place thereof having been duly advertised according to law. And the said Elisha N. Powell and William G. Bryan having duly assigned their certificate of purchase to David Shane - Now therefore know all by this deed, that I Smith Frye sheriff of said County of Peoria in consideration of the premises have granted, bargained and sold and do hereby convey to the said David Shane his heirs and assigns the following described tracts of land, to wit, The West half of the North East quarter of section Twelve in Township Number Ten North of the base line, of Range Number Five East of the fourth principal meridian - and the South half of the Northwest quarter of the Northwest quarter of section Number Four in Township Ten North of the Base line of Range Number Six East of the fourth principal meridian, to have and to hold the said premises with all the appurtenances thereto belonging to the said David Shane his heirs and assigns forever. Witness my hand

and seal this the third day of September in the year of our Lord one thousand eight hundred and forty four. Smith Grye, Sheriff Proia County.

State of Illinois
Proia County ss: This day personally appeared before me William Mitchell clerk of the circuit court of said county, Smith Grye personally known to me to be the real person whose name appears subscribed to the above deed of conveyance as having executed the same as sheriff of said county and acknowledged the execution thereof to be his free act and deed for the uses and purposes and in the capacity therein set forth - In testimony whereof I have hereunto set my hand and seal of said court at Proia this third day of September A.D. 1844. Said William Mitchell, clerk.

And afterwards at the said October Term of said court A.D. 1844 the following proceedings were had therein to wit:

" Friday, October 25th 1844

" Josiah Lane

vs

to foreclose mortgage

John Lawrence

It is ordered by the court, that this cause be set for hearing on Bill and answer at the next term of this court."

And afterwards there was filed in the office of the clerk of said court a demurrer to said answer, which is in the words and figures following, to wit:

" State of Illinois

Proia County ss

} Proia Circuit Court - May Term 1847 -
In Chancery

Josiah Lane

vs

John Lawrence

} And the said complainant to the answer of the said respondent in the above cause comes and demurs to the answer of said respondent and for ground of demurrer shows, that the said respondent has not by his said answer shown such a cause of defense as entitles him to the relief of a court of equity in the premises &c.

Pennington & Austin
Sols. for complainant."

Proceedings in Chancery in the Circuit Court begun and held at the Court-house in the city of Proia in and for the county of Proia in the State of Illinois on the fourth Monday of May in the year of our Lord one thousand eight hundred and forty seven, it being the twenty fourth day of said month

Present the Honorable John S. Caton, associate Justice of the Supreme Court of the State of Illinois and presiding Judge of the Ninth Judicial Circuit in said State, to wit,

"Saturday June 5th 1847

"Josiah Lane

vs
John Lawrence
to foreclose Mortgage

And now on this 5th day of June A.D. 1847 came the said complainant by H. S. Austin his solicitor and the said John Lawrence by C. N. Powell his solicitor and this cause now being heard on Bill and answer thereto by the said defendant - and the court being now fully advised in the premises; and on motion of said complainant's solicitor, it is ordered, adjudged and decreed by the court herein, that the said defendant John Lawrence pay unto the said complainant Josiah Lane on or before the first day of July next the sum of five hundred and eighty two dollars and fifty five cents with the interest thereon from this date and also his complainant's costs and charges in this proceeding expended and all costs of this suit, which have or may accrue in this suit, and it is further ordered and decreed, that in case the said John Lawrence shall make default in the payment of the said sum or sums of money or any part thereof or parts thereof by the day specified in this decree, that the Master in Chancery, first giving notice as is required by law for the sale of Real Estate under execution by the sheriff, proceed to sell at public auction at the door of the Court-house in Peoria to the highest and best bidder for cash the following described land named in said Mortgage, to wit, the west half of the North East quarter of section number Twelve (12) in township number Ten (10) North of the Base line & Range five (5) East of the fourth principal meridian containing eighty acres of land - Also the South half of the Northwest quarter of the Northwest quarter of section four of Township number Ten North of the Base line, Range Six East of the fourth principal meridian containing twenty acres of land, and from the proceeds of said sale the said Master shall pay and discharge the costs as aforesaid and then pay to said complainant the amount or balance of said sum of five hundred and eighty two dollars and fifty five cents with the interest thereon as aforesaid, and in case there should be a surplus of funds after paying the aforesaid sum and interest and costs, that the said Master hold the same subject to the further order of this court - And it is further ordered and decreed that in the event of such a sale of the mortgaged premises being made the said defendant and all persons claiming under him shall be forever barred

of and from all equity of redemption of the same from and after fifteen months after and from the time of said sale - And it is further ordered and decreed, that in case the said sale by the Master shall become absolute the said defendant or any person claiming by through or under him shall surrender the full and peaceable possession of the said premises to the purchaser or purchasers thereof without let or hindrance, or the committing waste or destruction of timber, hereditaments or appurtenances in any case or under any pretence. - And it is further ordered that in such case of said sale becoming absolute by the Master, the said defendant shall deliver unto the said complainant or the purchaser thereof all the title papers and evidences of title in his possession. - And it is further ordered and decreed that the said Master report his proceedings and doings herein to this court at the next term thereof to which time this cause stands continued."

State of Illinois
 County of Provia f I Jacob Gale clerk of the Circuit Court in and for said Provia County do hereby certify the foregoing to be a correct transcript of and truly copied from the records and proceedings in the said circuit court in a certain cause therein on the Chancery side thereof, wherein Josiah Lane is complainant and John Lawrence is defendant, as the same remains of record and on file in my office, except the certificate of purchase, assignment thereof and Sheriff's deed referred to in the answer, which were truly copied by me from the files and records of the Recorder's office of said Provia County.

In testimony whereof I hereto set my hand and affix the seal of said court at my office in Provia this twelfth day of November in the year of our Lord one thousand eight hundred and forty seven.

Jacob Gale, clerk.

clerk's fees: for transcript 14.50
 cert. & seal to do. .50

\$15.00

Received payment of debt.
 Jacob Gale.

John Lawrence } Supreme Court State of Illinois
vs } December Term A.D. 1827
Josiah Lane } Error to Fines

And the said plaintiff in error by E. N. Powell his attorney comes and says that in the record and proceedings aforesaid and in the rendition of the decree aforesaid there is manifest error in this to wit that the decree was rendered in favor of the said defendant in error and against the said plaintiff in error when by the law of the land the said decree should have been rendered in favor of the said plaintiff in error and against the said defendant in error and the said Bill described

And the said plaintiff in error assigns the following special errors therein

1st The said Circuit Court erred in reviewing the decree aforesaid as the answer clearly showed that there was ^{an} other person ^{to wit David Thorne} who was in possession of the property in controversy in this suit and whose rights were not made parties hereto and whose rights may be affected by said decree.

2nd The said Circuit Court erred in rendering a decree of fore closure against the person claiming the land in said Bill under said Lawrence as disclosed by said answer he said David Thorne not being made a party to said suit and having no day in Court.

3rd The said Circuit Court erred in rendering a decree for the surrender of the possession of the said premises as against the said plaintiff or the said Thorne

Wherefore for the errors aforesaid in the record and proceedings aforesaid and in the rendition of the decree aforesaid the said plaintiff in error prays that the said decree may be reversed

annulled and for nothing returned and that
he may be restored to all things which he has lost
by the decree aforesaid

E. N. Powell
atly for Plaintiff

And the Defendant in error says in
Seyam non est errandus

knowltn
by Defendant in error

Superior Court

John Lawrence

vs

Isiah Lane

Transcript

Filed Dec 7th 1847

W. B. Hoar

Book Entries D.C.

Rec. of Powell, W.B.S.
by H. Swallow

Supreme Court

John Lawrence

vs

Josiah Sans

Record

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affirmed
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May-18

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