

No. 14354

# Supreme Court of Illinois

Johnson<sup>T</sup>

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vs.

Thompson.

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STATE OF ILLINOIS,  
SUPREME COURT,

Third Grand Division.

14354

No. 242

*J. J. Thompson*  
*76*  
*Thompson*

*DePaul*

# SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM, 1862, AT OTTAWA.

JOSEPH H. JOHNSON  
vs.  
SAMUEL THOMPSON *et al.* } *Appeal from Marshall.*

## ABSTRACT OF RECORD.

PAGE  
Of Record.

- 1 Appellees file their bill of complaint in Marshall County Circuit Court, May 10th, 1860, alleging thereby that said Samuel Thompson, on November 1st, 1858, was indebted to Harmon, Aiken & Gale in the sum of \$733.28, upon a note of that date, and filed as Exhibit "A," page 18; and to Wadsworth & Wells in the sum of \$355.01, and gave to said James E. Aiken a note for that amount, which is filed as Exhibit "B," page 18.
- 3 To secure the payment of said two notes, said Thompson gave to said Aiken, a trust deed upon real estate, which was filed as Exhibit "C," page 37, upon lots 2, 3, 6 and 7, block 42, in city of Lacon. July 10th, 1857, said Thompson & William Fisher, as security, gave appellant their note for \$800, payable in one year, with ten per cent., being for money borrowed; on same day, gave their other note for \$80, with ten per cent., payable at same time—filed as Exhibit "D," page 16. Said last note has  
4 been fully paid. Said \$80 note was given without any consideration, but was made, executed and delivered upon a corrupt and usurious agreement between said Thompson and appellant, to cover up and conceal a contract  
4 for the payment of usury. To secure the payment of the two last mentioned notes, said Thompson and his wife executed to appellant their  
5 deed of trust (filed as Exhibit "E," page 32) upon lots above described.  
5 September 12th, 1859, said Thompson paid appellant the whole amount of interest due upon said note of \$800.00 to March 10th, 1860. Filed as  
5 Exhibit "F," page 16. According to the best of complainant's knowledge,

&c., said appellant has received from said Thompson, upon said note of \$800, from its date to March 10th, 1860, interest at the rate of 36 per cent. per annum, which exceeds the legal rate 26 per cent. per annum, amounting to \$768, which is wholly forfeited. As evidence of the payment of said usurious interest, they file Exhibits No. 1, 2, 3 and 4. Plead the statutes concerning usury as a bar to the extent of such forfeiture to any claim appellant may pretend to hold as a lien upon said premises, as against said Thompson, or the rights and interests of said Wadsworth & Wells, creditors of said Thompson, as aforesaid.

7 That complainants, Wadsworth & Wells, as lien creditors of said Thompson, have an interest in the real estate, hereinbefore described, to the full amount of the sums mentioned in their said notes.

8 That appellants had advertised said premises for sale on the 10th of May, 1860, to pay the sum of \$800, and 10 per cent. interest thereon, from the date of his said deed of trust.

That said complainants Wadsworth & Wells, have always been ready and willing and still are and offer to pay said appellant whatever may be justly, honestly and legally due him and they are ready and willing and offer to pay into court, such sum as the court may deem sufficient.

11 That said appellant be summoned to answer upon his corporal oath, &c.

13 Prayer for an injunction to restrain appellant from proceeding with said sale and that an account be taken of the amount justly, legally and equitably due to said defendant (appellant) upon his deed of trust, against said Thompson, deducting from said original note all payments made, and all forfeitures incurred, &c

14 Bill sworn to by Frederick C. Wells, one of the complainants.

21 May 10. 1860, writ of injunction issued.

23 Answer of defendant (appellant) filed September 17th, 1860.

Don't know as said Thompson was indebted to Harmon, Aiken & Gale or Wadsworth & Wells, has no knowledge of the mortgage executed to Aiken by Thompson.

24 July 10. 1857, said Thompson was indebted to appellant upon two notes one for \$800 and one for \$80, payable in one year with ten per cent interest. Said notes were executed by said Thompson & Fisher, and were given for money loaned to said Thompson, that said \$80 note has been paid and was not given without consideration or to cover up and conceal a usurious contract, as alleged in said bill, as he remembers the transaction, nor does the interest reserved in said note exceed the legal rate. Respondant (appellant) admits the execution and receipt by him of the trust deed as security for the payment of said notes; denies the payment of interest on said note to March 10, 1860—that the re-

ceipt marked exhibit "F" in page 16, complainant's bill, has reference to other and different transactions, and the money received was applied on other indebtedness. Denies the receipt of 36 per cent per annum, as alleged in said bill, or that he has received interest exceeding the legal rate, nor does the sum received by him amount to \$768.

26 The respondent (appellant) here demurs to the bill, inasmuch as it alleges that the usurious interest has already been paid and that the same cannot be recovered back either in law or equity—that Wadsworth & Wells cannot insist upon the forfeiture of such interest.

28 The answer admits the advertising of the real estate for sale as alleged in said bill, denies that said Wadsworth & Wells ever were ready and willing or ever offered to pay him (appellant) the amount due on his note and trust deed.

28 & That the consideration of said note of \$80,00 was money loaned by ap  
29 pellant to Thompson.

29 Does not recollect the exact amount paid at the date of the receipt of September 12, 1859, set forth in complainant's bill. That said Thompson gave him a note promising him to pay some money, which was discharged by an order on J. R. Chapman of the city of Lacon, or by some of the subsequent payments mentioned in said bill which one he cannot definitely recollect, but whatever was paid him at the time of the delivery of the receipt was to apply on other and different transactions. That the words at the foot of the receipt—16—(the above note signed by G. S. Thompson and William Fisher,) were written after the making and delivery of the receipt as he believes without his knowledge or consent.

30 That about \$379, was paid by said Thompson to appellant as evidence by exhibits 1, 2, 3 and 4 mentioned in said bill, page 6th, but the same, nor any portion thereof was not received as interest upon or in part payment of said \$800 note, except the one dollar mentioned in receipt No 2, endorsed on the back of the original trust deed. That all payments made to appellant by said Thompson are included in the foregoing exhibits, and said \$80 note, and that the same was paid to him upon other obligations held against said Thompson, and not upon said trust deed. That the consideration for the extension of payment on said trust deed was the payment by said Thompson of other indebtedness due to appellant, which were not secured, but were doubtful.

31 That none of said eight hundred dollar note has been paid, but the same and interest thereon remains wholly unpaid.

31 Affidavit of appellant attached to answer.

32 Replication filed October 10, 1860.

45 James E. Aiken for complainant, testified, in the fall of 1858, Thompson

told him he was owing Wadsworth & Wells, and wished to include that claim with Harmon, Aiken & Gale, and secure both upon one piece of property; the claim of Harmon, Aiken & Gale, on the 1st of May 1859, amounted to \$733,28; Wadsworth & Wells' claim was \$355,01. Two notes for the respective amounts were given to him, Aiken, and a mortgage upon  
46 a house and lot in Lacon, to secure the same. This testimony objected to.

On the 26th of July 1859, at Lacon, Johnson told me his claim was not fully paid, that Thompson had lately made a payment of the interest. Said Thompson had paid him between \$300 and \$400; that Thompson then owed him \$800.00; that he and Thompson had arranged the rate of interest between themselves, that he could not afford to loan his money at ten per cent; Johnson was paying him more.

48 May 9, 1860, I and Frederick C. Wells, met Johnson in Lacon. Johnson said he had transferred his claim to a man in Cincinnati. I offered to pay him the amount Thompson owed him in gold. He said he would accept the tender so far as he was concerned, but he had nothing to do with it; would see his attorney and let us know.

49 We had \$1200 American gold. I placed one bag of it on the table. Johnson said he would wait upon Thompson until October, if Harmon, Aiken & Gale, and Wadsworth & Wells, would guaranty the payment of his note and interest, and pay him 3 per cent a month, that was the best he could do.

58 Samuel Thompson never authorized his name to be used in this suit to my knowledge.

60 At the interview with Johnson in July 1859, he did not mention that he had any other indebtedness against said Thompson.

*Cross-Examination*

61 I am inclined to think that Johnson did mention a judgment to me that he held against Thompson.

62 Exhibit "A" Samuel Thompson's note for \$733,28 payable to James E. Aiken six months after date.

Trust deed executed by Samuel Thompson to James E. Aiken, November 1, 1858.

64 Exhibit "B" Samuel Thompson's note for \$355,01, dated November 1st 1858, payable to James E. Aiken 6 months after date, trust deed dated November 1, 1858 from Samuel Thompson to James E. Aiken,

75 Frederick C. Wells testified that on the 9th of May 1859, he and Aiken met Johnson in Lacon. Johnson said he had transferred his claim to a man in Cincinnati. He declined to give the name of the man in Cincinnati. Aiken told him he come prepared to pay his claim vs

- Thompson. Johnson said it would take gold to pay it. Aiken said he had come prepared for any emergency, and he would now make him the tender in gold of all that Thompson owed him, which was secured upon the property. Johnson said he would accept of the tender so far as he was concerned, but did not take the money, claiming that he had no interest in the matter. Said he would see his attorney, and see us again.—
- 77 About noon of the same day, Johnson told me he had not seen his attorney. I asked him what he would charge to wait until November; he said his money was worth three per cent. per month; that it made no difference to him what the facts were, he could get three per cent. per month; his money had always been worth more than ten per cent. to him. Mr. Aiken came up and commenced talking, and I went into the office. Witness furnished \$400 to make the tender for Wadsworth & Wells.
- 79
- 80 No money was counted.
- 81 I have no interest in the firm of Wadsworth & Wells, except to get my salary which may come out of the profits or the capital. Johnson would not give the man's name in Cincinnati to whom he had transferred his claim. I am under the impression he said there was about \$1200 due on the claim.
- 87 Wadsworth & Wells received a letter from Thompson since the com-
- 88 mencement of this suit, which letter was in substance as follows:

MOBILE, May 23d, 1860.

I have just received yours of the 14th instant. I received of Johnson \$800, for which I gave the two notes you speak of. For the 12 months extension, I paid 20 per cent. over and above the 10 per cent. in the note. I paid the \$80 note for all extension; after that and up to March 8th, 1860, I paid 3 per cent. per month. All was paid in money, except one city order for 7100. Johnson received a part from Robbins, a part from Chapman, and a part from myself. I know it was all paid.

- 87 The complainants and defendants reserved full benefit of objection to above testimony on trial.
- 90 J. R. Chapman testified: I paid the order, signed by Thompson, on me for \$50, in favor of Johnson, dated Sept. 10, 1859, payable at 60 days. (Objected to.)

*Cross-examination.*—Don't know on what indebtedness it was paid. I placed order in my drawer, and have not since been able to find it.

Enos V. Robbins testified: Paid Johnson for Thompson, July 14, 1859, \$100, and signed note with Thompson for \$135.07, payable in 60 days, and paid it afterwards.

Fred W. Gage rented of Johnson the premises described in trust deeds; paid him \$34.60, from Oct. 12, 1860, to January 1st.

91 Henry L. Crane (after record of judgment in favor of Johnson *vs.* Thompson and Fort, dated February 3, 1858, and all papers in the case were offered) testified that Johnson's receipt on execution, dated July 8, 1858, in full of judgment—that the amount of the judgment, \$425, was paid by Thompson in specie.

E. V. Robbins: Know of his buying wheat of Moore's estate; I furnished him \$600 to pay for it. Don't know of my own knowledge that he bought wheat with it.

Arch. Stevens: Thompson was in business from Dec. '57 to April '58; don't know of his buying any wheat; know of his giving order to mills to his men; don't know what wheat was worth.

16 Exhibit "F"—Receipt from Johnson for interest on his note up to 10th day of March, 1860.

Exhibit No. 1—Agreement by Thompson to deliver to Johnson, an order on the city of Lacon, for \$100.

Exhibit No. 2—Agreement by Johnson to extend time of payment on trust deed; that 10 per cent. interest is still to be paid; that no part of the \$800 note has been paid, either principal or interest; that the \$80 is paid.

17 Exhibit No. 3—Johnson, for \$176.01, extends payment of trust deed for 60 days from July 10, 1859.

Exhibit No. 4—Sept. 10, 1859, J. R. Chapman acceptance from Thompson \$100, 90 days after date.

*Defendants' Evidence.*—Note, dated July 10, 1857, of Thompson & Fisher to Johnson, for \$800, payable in one year, with ten per cent. interest; deed of trust, from Thompson and wife to Johnson, of same date, to  
92 secure \$880; agreement on back thereof to extend time of payment one year.

G. L. Fort: Was present when Exhibit 1 was made, Page 16. I wrote it. The agreement was given, in part, for some money Johnson claimed Thompson owed him on the suit of Johnson *vs.* Thompson & Fort. The judgment in said suit was offered in evidence by complainants. The agreement is the one offered in evidence by complainant. \$41.10 only of the agreement was given, on account of that judgment. He allowed, also, attorney fees in said suit. Don't know whether it was \$5, \$10, or \$15.—Balance of agreement Johnson paid Thompson in cash. The \$100 city order was paid in part settlement of suit of Johnson *vs.* Thompson. The transaction was July 30, 1858. The \$400 note was given for money borrowed by Thompson of Johnson, upon a transaction entirely from the deed of trust and note of \$800, given in connection with and from the \$80 note. I wrote Exhibit No. 2, page 17, dated July 30, 1858, and witnessed it. It

is same instrument, and to have same effect as extension on back of deed of trust did. It was written for Thompson, as he wanted one to keep.—  
 93 Wrote Exhibit No. 3, page 17, except the words hundred and seventy and figures \$176, with two ciphers over line—those words I did not write. I witnessed it. Johnson and Thompson were present when I wrote it, and both directed me to put one dollar as consideration. The interlined words are written in different ink. I know said words and figures were not there when I signed the instrument. Don't know certainly in whose hand-writing said words are. Think I would know Johnson's hand-writing; can't say whether Johnson wrote them or not.

*Cross-Examination.*—Don't know what Thompson gave Johnson for the extension; for all I know, the words might have been put in about same time. Exhibit 1 and 2, page 17, I think likely were made at same time.

*Re-examination.*—In the fall of 1859, Johnson, in the presence of Thompson, showed me a paper of the kind of Exhibit "F;" they then had a conversation about a wheat transaction. Johnson had bought some  
 94 land of King, and was to pay him \$300. Johnson and Thompson had been speculating in wheat a little. Johnson advanced to farmers, I think, over \$300, for partnership wheat, and wanted it back. Paper Exhibit "F" was then present. Don't know that I ever saw it. If I did, the memorandum at lower left hand corner was not upon it. It is in Thompson's hand writing. In wheat transaction, I understood from both of them that Thompson was indebted to Johnson over \$300, which indebtedness was not a part of the \$800. I drew the trust deed from Thompson to Johnson, and the \$800 and \$80 notes. Saw Johnson transfer to Thompson the \$880, in gold. Johnson had a note for the deficiency on the wheat matter—think it was over \$300. Johnson had another note of \$35 or \$37 that he had bought of some one.

*Cross-Examination.*—Saw the other note for the wheat transaction in '58 or '59. Wheat transaction was when Thompson was carrying on his store. Saw note after Thompson left; saw it after judgment was rendered for \$400. Thompson and Johnson were together when I saw the note. I may be mistaken about that—I recollect seeing the note. Johnson wanted Thompson to pay King.

95 *Re-examined.*—Know of no other security Johnson had for any of the notes except trust deed and \$400 note. Was no other name on the wheat note. Heard Johnson and Thompson talk about getting the note not secured paid.

*Cross-Examination.*—I counted the \$800. Trust deed was first drawn, for \$800; Thompson took a notion that he wanted \$80 more, and I drew another note for it. (Objection.) Thompson talked with me about his contract to buy wheat with Johnson, before I saw the note.

95 A. S. Fishburne: Thompson, in the fall of 1859, went to New Orleans;

then went to near Mobile; has acted as Fishburne's agent since he left; received a letter from him, in substance as follows:

96

MOBILE, April 29, 1860.

"I received yours of the 6th instant. If Jos. Johnson does not wait, notify Aiken, of Chicago. Johnson demand was even \$800, on the 8th of last March.

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Upon the hearing, the Court found that Johnson had received, as usurious interest upon said \$800, the sum of \$439.75, and deducted the same from the \$800, and found to be due said Johnson the sum of \$360.25 only; and decreed that complainants pay the same by the 10th day of June, 1861, and complainants be substituted to, and vested with, all the rights that defendant Johnson has to collect the same; also, decreed that upon such payment, said Johnson should be perpetually enjoined, &c.

100 Defendant prays an appeal to the Supreme Court, and files his bond.

ERRORS ASSIGNED.

In admitting improper testimony.

In rendering a decree for complainants below.

In not finding a sufficient amount due defendant.

In reducing the amount of defendant's claim.

In enjoining defendant from selling the mortgage premises.

LELAND & BLANCHARD,

*For Appellant.*

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Jos. Ho. Johnston

vs

Samuel Simpson

~~Abstracts~~

Filed Apr. 23 - 1862

L. Leland

Clerk

1  
I was before the Circuit Court of Marshall County in  
the State of Illinois (on the Chancery side thereof) at a  
term thereof begun and holden at the Court House in  
the City of Lacon in said County on Monday the seventh  
day of May in the year of Our Lord One Thousand  
Eight Hundred and Sixty. Present

Hon. Mark Bangs, Judge of the 23<sup>rd</sup> Judicial Circuit  
of the State of Illinois, presiding.

Henry Meiller States Attorney for said Judicial Circuit

Thomas Ellis Sheriff of said Marshall County +

James Wescott Clerk of said Circuit Court

Thursday May 10<sup>th</sup> A. D. 1860

Samuel Thompson

Certius W. Madsworth } Du Chancery

+ George M. Wells

vs

Joseph H. Johnson

Be it remembered that on this  
tenth day of May A. D. 1860 came the com-  
plainants by Purple + Ramsey their so-  
licitors and file their Bill of com-  
plaint against the said defendant in the words and figures  
following to wit

In the Circuit Court of Marshall County

October Term 1860.

To the Hon. Judge of the Circuit Court of Marshall  
County in Chancery Sitting,

Complaining shew unto your Honor

Your Orators Samuel Thompson Tertius W. Wadsworth and George M. Wells that on the first day of November A. D. 1858. Your Orator Samuel Thompson being indebted to Edwin R. Harmon, James E. Aiken & Daniel W. Gale partners doing business under the name and firm of Harmon Aiken & Gale of Chicago Illinois in the sum of seven hundred and thirty three dollars and twenty eight cents upon a certain promissory note bearing date the day and year aforesaid and made payable to the said James E. Aiken a copy of which said note marked "A" is herewith filed as an exhibit and made part of this Bill - And your Orator the said Thompson being also indebted at the time aforesaid to Tertius W. Wadsworth and George M. Wells composing the firm of Wadsworth and Wells of the said City of Chicago in the sum of Three Hundred and fifty five Dollars and one cent then and there made his promissory note for the same sum payable also to the said James E. Aiken, a copy whereof marked "B." is also hereto attached and made part of this bill of complaint which said two promissory notes have since that time been duly assigned and transferred to the said complainants Wadsworth & Wells - Your Orators will produce upon the hearing of this cause.

And your Orator further Charges that on the said first day of November A. D. 1858 in order to secure the payment of the two promissory notes and interest due on them severally according

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to their terror and effect, your Orator said Thompson made executed and delivered to the said James C. Hiken a certain Trust deed upon the following described Real Estate to wit: Lots two (2) three (3) six (6) and seven in Block Forty-two (42) in the city of Lacon Marshall County, Illinois a copy whereof marked "C" is hereto attached as an exhibit and made part of this your Orators Bill of Complaint the Original your Orators will produce upon the hearing of this cause, which said deed of Trust since the making thereof has been duly assigned and delivered to your Orators Wadsworth and Mills,

And your Orators further state and shew unto your Honor that on the tenth day of July A. D. 1857 or about that time your Orator the said Thompson became indebted to one Joseph H. Johnson for money loaned in the sum of Eight Hundred dollars, for which said sum your Orator Thompson on the day and year last aforesaid gave to the said Joseph H. Johnson his promissory note signed by William Fisher as security for the sum of Eight Hundred dollars payable one year from date with ten per cent interest per annum. — And your Orators further charge that on the same day and year last aforesaid your Orator Thompson and, One William Fisher made executed and delivered to one Joseph H. Johnson a certain other promissory note for the sum of eighty dollars payable in one year from date with ten per cent interest a copy of which last notice is marked "D" and made part

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of this Bill of Complaint, the Original your Orators will produce upon the hearing of this cause and your Orators charge that said last note has been fully paid and taken up by your Orator Thompson; that the same was given without any consideration whatever, but was made executed and delivered for, and upon a corrupt and unlawful agreement then and there made between your Orator Thompson and the said Joseph H. Johnson to cover up and conceal a contract for the payment of usury and unlawful interest by the said Thompson to the said Joseph H. Johnson which said unlawful interest then and there reserved in said note exceeded the legal rate of interest allowed by the laws of this State in the sum and amount of the said note and interest thereon as specified in said note.

And your Orators further charge that the said note of Eight Hundred Dollars herein before mentioned is in the possession and power of the said Joseph H. Johnson so that your Orators can neither produce the same nor give a copy thereof; and your Orators crave that an order may be made upon the said Johnson to produce the same upon the hearing of this cause.

And your Orators further show that to secure the payment of the two last mentioned notes your Orator the said Thompson together with his wife Emma R. Thompson on the same day of the date of the said notes made

5<sup>th</sup> executed and delivred to the said Joseph H. Johnson this certain deed of Trust a copy whereof marked "F" is hereto attached duly certified & made part of this bill, the Original is in the possession of the said Johnson, who is notified to produce the same upon the hearing of this cause.

And your Orators shew that on the 10<sup>th</sup> day of September A. D. 1859, your Orator the said Thompson having as will hereafter be shown previous to that time paid a large amount of usurious interest to the said Johnson then and there paid to the said Johnson the whole amount of interest due on his said note of eight hundred dollars to March 10<sup>th</sup> 1860 and took his said Johnsons receipt therefor a copy whereof marked "F" is herewith filed and made part of this bill the Original will be produced upon the hearing of this cause.

And your Orators further charge that to the best of their knowledge information and belief that in pursuance of the corrupt and unlawful agreements to take and receive illegal and usurious interest from your orator the said Thompson, he the said Johnson has already taken and received interest on the said Eight Hundred Dollars<sup>90</sup> loaned by him to your said Orator from the day of the date of the said note and said deed of Trust up to the 10<sup>th</sup> day of March A. D. 1860 at the rate of thirty six per centum<sup>per annum</sup> on the whole of the said sum of eight hundred dollars which during that time exceeds the legal rate per centum per annum

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of interest allowed by law to be taken discounted or reserved twenty six per centum per annum and amounts to the sum of seven hundred and sixty eight dollars and which your Orators claim is by the laws of the State wholly forfeited, and they hereby set up, plead and insist upon the Statutes of this State concerning usury and interest as a bar to the extent of the said forfeiture to any claim the said Johnson may set up, or pretend to hold as a lien upon said premises as against your orator the said Thompson or as against the rights and interests of your orators the said Madaworth & Wells creditors of the said Thompson as aforesaid, — and your Orators as Evidence of the payment of the said usurious interest in part as aforesaid herewith exhibit and shew to the Court four certain papers and writings or copies thereof marked severally "No 1" "No 2" "No 3" "No 4" and which your Orators pray may be taken and considered as part of this bill. The Originals whereof your Orators will produce and prove upon the hearing of this cause in addition to which your Orators will upon the hearing of this cause prove and shew by other evidence that other sums of money not embraced in said papers or writings have been received as usurious interest as aforesaid, sufficient as they believe to satisfy the Court that the usurious interest <sup>herein</sup> before mentioned has been taken and

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received by the said Johnson, And your Orators further shew unto your Honor that your Orators Madsworth & Wells as lien creditors of the said Thompson have an interest in the real estate herein before described to the full amount of the sums mentioned in their said notes and deed of Trust aforesaid and all the interest accruing thereon, no part of which has ever been paid all which was well known to the said Joseph H. Johnson at the time of the committing by him of the grievances herein after complained of.

And your Orators further charge that the said Joseph H. Johnson well knowing the premises promised and agreed with the said James E. Riker who was then acting in part as agent of your Orators Madsworth & Wells that he would not sell said premises without notice to him in time for him to pay him the said Johnson whatever might be due him on his Deed of Trust in order to save the cost and expense of a sale of said premises which promise and undertaking he said Johnson wholly neglected and omitted to perform, and your Orators charge that notwithstanding his said Johnsons promise and agreement aforesaid and notwithstanding the forfeiture incurred by him for taking usurious interest as aforesaid, and notwithstanding the payment of the entire interest to the tenth day of March A. D. 1860 as before shown; against all equity

8 and good conscience he the said Johnson has advertised the said premises for sale on the 10<sup>th</sup> day of the present month of May A. D. 1860 for the purpose of paying the sum of Eight Hundred dollars and ten per cent interest thereon from the day of the date of his said deed of Trust and threatens to proceed & will unless restrained by this Court, proceed to sell said premises, at the time in said advertisement mentioned, to the manifest injury & prejudice of your orators in the premises

A copy of the said advertisement for the said sale is in the words and figures following to wit:

### Trust Sale

Notice is hereby given, that on the 10<sup>th</sup> day of July A. D. 1857 Samuel Thompson was indebted to Joseph H. Johnson in the sum of eight Hundred and eighty dollars and as evidence of said indebtedness gave his two certain promissory notes of the date aforesaid, payable to said Johnson, due in one year from the date thereof, with interest at ten per cent per annum, one for the sum of eight Hundred dollars and the other for the sum of eighty dollars, and to secure the punctual payment of said notes and interest, made and delivered to said Joseph H. Johnson his deed of Trust for lot No two "2", Lot No three "3", Lot No six "6" and Lot No seven "7" all in Block No Forty Two (42) in the City of Lacon Marshall County and State of Illinois, with the hereditaments and appurtenances thereto belonging in which Deed of Trust Emma R. Thompson his wife joined and released her right of Dower, and they both did in and by said deed of

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Trust authorize and empower the said J. H. Johnson, in case default should be made in the payment of said promissory notes according to the tenor and effect thereof on his own application, or that of the holder of said notes after having given ten days notice by publication in a public newspaper, printed in said county, to take possession of and sell the said premises or any part thereof at public sale at such time and place as the said Trustee should appoint and upon making such sale to make execute and deliver to the purchaser thereof a good and sufficient deed of conveyance in fee simple, and out of the money arising from such sale to pay all reasonable expenses of the trust aforesaid, and all taxes levied on said premises, and to pay said notes, and the overplus if any to the party of the first part. Among other provisions in said Trust Deed specified, which will more fully appear from said Deed of Record in Book 1<sup>st</sup> of the Record, in the office of the Recorder of said County on pages 543, 544. Now therefore, said promissory note of eight hundred dollars and interest thereon remaining wholly due and unpaid, I Joseph H. Johnson, Trustee as aforesaid being the owner of said promissory note will in pursuance of and in accordance with the powers vested in me by said Trust Deed on the 10<sup>th</sup> day of May next at the hour of ten O. Clock A. M. proceed to sell at public auction at the West door of the Court House in the City of Lacombe in said County of Marshall, to the highest and best bidder for cash in hand the above described real estate in said

deed mentioned and all the right, title, and interest of the said Samuel Thompson and Emma R. Thompson his wife therein or so much thereof as may be necessary to pay said note and interest and the cost of executing said Trust and the taxes assessed thereon as provided by said Trust Deed, and I will as empowered by said deed convey the premises so sold to the purchaser or purchasers thereof by a good and sufficient deed as aforesaid.

Lancaster April 23. A. D., 1860.

Joseph H. Johnson

And your Orators Madaworth & Wells further shew unto your honor that they had no knowledge or information, until the 3<sup>rd</sup> day of May last past that said premises had been advertised for sale by said Johnson; he the said Johnson having wholly failed and as they believe fraudulently omitted to give to the said Aiken or to your said Orators notice thereof as he was bound in honesty and good conscience under his promise and agreement to have done, and that since they received said notice there has not until this time been reasonable time consistent with other indispensable business until the present time to prepare this bill and to make the application to the Court for an injunction as hereinafter prayed for. And your Orators the said Madaworth and Wells further state and shew to the Court, that they have always been ready and willing and have offered and still are ready and willing and offer to pay to the said Johnson whatever

11 sum of money, may be justly, honestly, and legally due to him as this Court may determine the same, and they are ready willing and offer to pay into Court such sum of money as the Court may deem sufficient to pay the said Johnson whatever may be found so justly, honestly and legally due him upon his deed of Trust aforesaid insisting however, in case the Court shall be of opinion that they are legally entitled so to do upon the forfeiture incurred by the said Johnson for taking curious and illegal interest as aforesaid

And your Orators charge that the actings and doings of the said Joseph H. Johnson in the premises are contrary to equity and good conscience and tend to the manifest wrong and injury of your Orators in the premises.

Forasmuch then, as your Orators are without relief in a Court of Law, and can only have redress in Chancery where such matters are properly cognizable and relievable they pray that the said Joseph H. Johnson may be made dependant to this Bill, that he may be summoned to answer the same, and each and every part of the charges and allegations therein contained fully and particularly upon his corporal oath, and to the best of his knowledge recollection information and belief, and most particularly that he may answer and state fully what was the true and real consideration for which the said

eighty dollar note made by said Thompson to him  
 & herein before set forth was given; how much money or  
 other thing the said Thompson paid him at the date  
 of the receipt of September 10<sup>th</sup> 1857 Marked "F<sup>o</sup>" and  
 herein before referred to and how much money or other  
 thing in value was paid by said Thompson and secured  
 to be paid at the times, or about the time of the dates of  
 the several writings papers and documents, marked sever-  
 erally "No 1" "No 2" "No 3" & "No 4" and attached heretofore  
 made and severally executed by the several and res-  
 pective parties to the same and whether the same were  
 not taken, and received by him and paid or secured to be  
 paid by the said Thompson as interest upon said loan of  
 Eight Hundred dollars and for no other purpose, or for  
 his forbearance and giving time, for the payment of the  
 principal sum borrowed by the said Thompson as afore-  
 said, and also that the said Johnson may be compelled  
 as aforesaid to answer and state fully and to the best of  
 his knowledge and recollection what amount of money  
 either of interest usury or otherwise, and what amount,  
 in value; of property, and of what kind and character  
 the said complainant Thompson has paid to the said  
 defendant Johnson since the 10<sup>th</sup> day of July A. D. 1857 the  
 date of his said defendant's Trust Deed, and upon what  
 account, and also what per cent per month and what  
 rate of interest per centum per annum the said Thoms-

son at the time or since the making the said trust deed contracted ~~and~~ ~~agreed~~ and agreed to pay and did in fact pay to the said defendant, for the loan or forbearance of the said sum of eight Hundred dollars aforesaid.

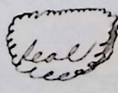
And may it please your honor to grant unto your Orators the People's writ of Injunction to be issued out of this Honorable Court, commanding enjoining and restraining the said defendant from proceeding to sell the whole or any part of the said Real Estate so offered and threatened to be sold by him until the further order of this Court in the premises. That in the meantime an account may be ordered to be taken of the amount justly legally and equitably due to the said defendant upon his deed of Trust and note aforesaid, against your Orator Thompson deducting from said original note all payments made and all the interest and principal paid upon the same, and also all forfeitures, incurred by the said defendant for taking or contracting to receive illegal and usurious interest as aforesaid and that your orators or some of them may be permitted to pay the balance so found due as aforesaid as this Court may direct and as to justice and equity shall appertain.

Your Orators pray also for the usual process of subpoenas against the said defendant, and for such other, and

further relief as to Justice & Equity shall appertain  
& they will pray &c

Silas Ramsey	}	Tertius W. Wadsworth
N. H. Purple		George M. Wells &
Complainants		Samuel Thompson by
Solicitors		Silas Ramsey & N. H. Purple
		their solicitors

State of Illinois }  
Marshall County } ss. Frederick C. Wells being duly sworn ac-  
cording to law deposes and says that the foregoing bill of com-  
plaint has been read to him, that he is acquainted with  
the facts and statements therein made which purport to  
be made upon the knowledge of the complainants and  
that so far as they purport to be so made said state-  
ments are true and that so far as the same purport  
have been made upon information and belief they are true  
to the best of his knowledge, information and belief, and further  
saith not

Subscribed & sworn to	}	Frederick C. Wells
before me this 10th day		
of May A. D. 1860		
H. J. Crane J. P. 		

15  
15-

Tertius W. Wadsworth  
George M. Wells +  
Samuel Thompson  
vs  
Joseph H. Johnson

In the Circuit Court of Marshall  
County October Term 1860

I do hereby enter myself security for costs in this cause  
and acknowledged myself bound to pay or cause to be  
paid all costs which shall accrue in this action either  
to the opposite party or to any of the officers of this court  
pursuant to the laws of this State

Dated May 10, 1860.

Silas Ramsey

\$ 800.00

July 10th A. D. 1857

One year after date we promise to pay to the order  
of Joseph H. Johnson Eight Hundred Dollars.

Value Received - with ten per cent interest per annum  
the same being cash borrowed,

Due

Samuel Thompson

Wm Fisher

Exhibit "II" "Recd of Samuel Thompson the interest on his note to me up to the 10th day of next March  
Lacon 12th Sept 1859

the above note signed by } J. H. Johnson "  
S. Thompson & Wm Fisher }

July 10th A. D. 1857

Exhibit "D" \$80.00

One year after date we promise to pay to the order of Joseph H. Johnson Eighty Dollars - value received with ten per cent interest per annum the same being cash borrowed

"Paid this note to J. H. Johnson by S. Thompson & Wm Fisher"

Samuel Thompson  
Wm Fisher "

Exhibit No 1.

"I promise and agree to procure and deliver to J. H. Johnson an order on the City of Lacon for one Hundred Dollars to be due and payable by said March 1st 1859 which order I promise to so deliver by the fifth day of August next Lacon July 30th 1858. So "

For and in consideration of one Dollar to me paid by Samuel Thompson, I do hereby extend and continue a certain Trust Deed from him to me, Dated July 10th 1857, and Recorded in the Recorder's office of Marshall County in Book "F" at pages 573 & 574, on the 11th day of

Exhibit "Recd of Samuel Thompson the interest on his note to me  
" II " up to the 10<sup>th</sup> day of next March

Lacon 12<sup>th</sup> Sept 1859

the above note signed by } J. H. Johnson "  
S. Thompson & Wm Fisher }

July 10<sup>th</sup> A. D. 1857

Exhibit # 80.00

" D " One year after date we promise to pay to the order of Joseph H. Johnson Eighty Dollars - value received with ten per cent interest per annum the same being cash borrowed

"Paid this note to J. H. Johnson by S. Thompson & Wm Fisher"

Samuel Thompson  
Wm Fisher "

Exhibit " I promise and agree to procure and deliver to J. H. Johnson an order on the City of Lacon for one Hundred Dollars to be due and payable by said March 1<sup>st</sup> 1859 which order I promise to so deliver by the fifth day of August next Lacon July 30<sup>th</sup> 1858. La "

For and in consideration of one Dollar to me paid by Samuel Thompson, I do hereby extend and continue a certain Trust Deed from him to me, Dated July 10<sup>th</sup> 1857, and Recorded in the Recorder's office of Marshall County in Book "F" at pages 573 & 574, on the 11<sup>th</sup> day of

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Exhibit

No 2

July 1857. for the term of one year from the 10<sup>th</sup> day of July 1858 which year will end on the 10<sup>th</sup> day of July A. D. 1859 - and the first note mentioned in said Trust Deed of eight hundred dollars to be & continue at ten per cent interest no part of which principal or interest has been paid and the last note mentioned in said deed for eighty Dollars is paid the receipt whereof is hereby acknowledged as per rec<sup>d</sup> on said said Trust Deed

Lacon July 30<sup>th</sup> 1858

In presence of

G. L. Fort

J. H. Johnson

\$176<sup>00</sup>/<sub>100</sub>

In Consideration of the

Exhibit

No 3

sum of one hundred and seventy six described Trust Deed, and the notes therein described for sixty days from this date

Lacon July 10<sup>th</sup> 1859.

Witness

G. L. Fort

J. H. Johnson

" Lacon Sept 10<sup>th</sup> 1859.

Exhibit

No 4

Mr J. R. Chapman

Ninety days after date pay the bearer J. H. Johnson

the sum one hundred Dollars and charge to acct of Rec<sup>d</sup> of S. Thompson

Chicago Nov. 1<sup>st</sup> 1858\$733 <sup>28</sup>/<sub>100</sub>

Exhibit

"A"

Six months after date for value received I promise to pay to James E. Aiken or order the sum of seven hundred Thirty Three <sup>28</sup>/<sub>100</sub> Dollars with interest at 10% after maturity  
 Endorsed as follows Samuel Thompson

"Without recourse to me"

James E. Aiken

Chicago Nov 1<sup>st</sup> 1858\$355 <sup>00</sup>/<sub>100</sub>

Exhibit

"B"

Six months after date for value Received I promise to pay to James E. Aiken or order the sum of Three hundred fifty five <sup>00</sup>/<sub>100</sub> Dollars with interest after maturity at 10% per annum. Samuel Thompson

Endorsed as follows

"Without recourse to me"

James E. Aiken

Thereupon Mark Bangs judge of the 23<sup>rd</sup> Judicial District in the State of Illinois ~~and~~ makes the following order in substance as follows "to wit"

State of Illinois

Marshall County

} Let an injunction issue pursuant to

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the prayer of the complainants bill, upon their filing the foregoing Bill of Complaint in the office of the Clerk of the Circuit Court of the County aforesaid, and upon said complainants filing a bond in due form of law, executed to the defendant & signed by J. W. Wadsworth, E. J. Wadsworth Frederick Tuttle, in the penal sum of Thirteen Hundred Dollars conditioned that complainant shall pay all such costs in said suit and all such damages as shall be awarded against them, in any suit or suits which may hereafter be brought for wrongfully removing the said injunction

May 10, 1860.

Mark Bangs  
Judge of Judicial District  
Illinois

### Injunction Bond

Know all men by these presents, That We, J. W. Wadsworth Frederick Tuttle E. J. Wadsworth & are held and firmly bound unto Joseph H. Johnson in the penal sum of Thirteen Hundred Dollars lawful money of the United States for the payment of which said sum, well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally by these presents

Sealed with our seals, and dated this 10<sup>th</sup> day of May A. D. 1860

The condition of the above obligation is such, that whereas, Bertius W. Wadsworth, George M. Wells and Samuel Thompson have on the day of the date hereof prayed a writ of Injunction out of the Circuit Court of the County of Marshall State of

Illinois against the above named Joseph H. Johnson upon a Bill of complaint filed therein and the same being about to be sued out of said court, returnable on the first Monday of October next, to the term of the said Court then to be holden. Now, if the said Tertius W. Wadsworth, George M. Wells and Samuel Thompson shall prosecute their said suit with effect, or in case of failure therein, shall well and truly pay and satisfy the said Joseph H. Johnson all such costs in said suit, and such damages as shall be awarded against the said Tertius W. Wadsworth George M. Wells and Samuel Thompson their, executors or administrators, in any suit or suits which may hereafter be brought for wrongfully suing out the said injunction then the above obligation to be void; otherwise to remain in full force and effect

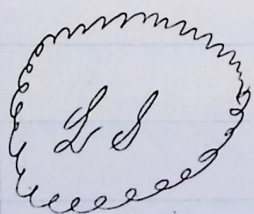
Signed Sealed and  
Delivered in presence of

J. W. Wadsworth   
 G. J. Wadsworth   
 Frederick Tuttle 

State of Illinois }  
 Marshall County } The People of the State of Illinois to Joseph  
 H. Johnson his agents and attorneys and  
 all persons acting by through or under him,  
 Whereas Tertius W. Wadsworth, George M. Wells and

21

Samuel Thompson have filed in the Clerk's office of the Circuit Court, of Marshall County Illinois their Bill of complaint against Joseph H. Johnson praying that an injunction issue restraining the said Joseph H. Johnson from selling the whole or any part of the town Lots described in a certain Trust Deed executed by the said Samuel Thompson & Emira B. Thompson to Joseph H. Johnson on or about the tenth day of July A. D. 1857 to wit: Lots two (2) Three (3) Six (6) and seven (7) in Block forty two (42) in the City of Lacon Marshall County Illinois And Whereas Hon. Mark Bangs Judge of the 2<sup>nd</sup> Judicial Circuit of the State of Illinois has ordered that an injunction issue according to the prayer of said bill. Now therefore we command you the said Joseph H. Johnson that you desist from, and you are hereby enjoined and restrained from selling or attempting to sell said town lots as before described or any part thereof until the further order of the court in the premises. This you will in no wise omit under the penalty of what the law directs. Witness James Wescott Clerk of said Circuit Court and the seal thereof at Lacon this tenth day of May A. D. 1860



James Wescott Clerk

To the Sheriff of Marshall County to Execute  
On which writ there appears the following Indorsement

To wit:

State of Illinois }  
 Marshall County } ss. I have served this writ by reading  
 and delivering a true copy of the same to <sup>the</sup> within named  
 Joseph H. Johnson on this 10<sup>th</sup> day of May A. D. 1860  
 Thomas Ellis Sheriff M. C.

Monday May 14<sup>th</sup> A. D. 1860. May Term  
 Samuel Thompson, Tertius W. Wadsworth  
 & George M. Wells }  
 vs } Bill for Injunction & Relief  
 Joseph H. Johnson } ss. On this day this cause the De-  
 fendant by Richmond & Burns his solicitors and entered  
 a motion to dissolve the injunction herein and to  
 dismiss the complainants Bill of Complaint

Tuesday May 15<sup>th</sup> A. D. 1860.  
 Samuel Thompson }  
 Tertius W. Wadsworth } Bill for Injunction & Relief  
 & George M. Wells }  
 vs } On this day this  
 cause came on to be heard upon motion  
 Joseph H. Johnson } of the Defendants to dissolve the injunction gran-  
 ted herein and to dismiss the complainants Bill and was  
 argued by counsel and the court being fully advised in the prem-  
 ises doth order that said motion be and the same is

23 hereby overruled

Thereupon on the 17<sup>th</sup> day of September A. D. 1860, came the Defendant by his solicitor, and filed his answer to the Complainants Bill of Complaint, in the words & figures following to wit,

States of Illinois  
Marshall County, and Circuit Court thereof

Of the October Term A. D. 1860

Tertius W. Wadsworth George M. Wells & Samuel Thompson vs Joseph H. Johnson	}	Bill for Infraction  The answer of Joseph H. Johnson the defendant in the above entitled cause to the bill of complaint of the above named complainants filed in the Circuit Court of said County
---	---	--

The said defendant Joseph H. Johnson saving all manner of exception to the said bill of complaint on account of the many informalities errors and insufficiencies therein contained for answer thereto nevertheless or to so much as he deems material for him to answer says, that he does not know whether the said Samuel Thompson was on the first day of November 1858, indebted to one Edwin R. Harmon, James C. Hiken & David W. Gale in the sum of seven Hundred & thirty three Dollars & twenty eight cents or not, nor does he know whether said Thompson

executed to them his notes therefore, nor is he informed whether said Thompson at the time aforesaid was indebted to Tertius W. Wadsworth and George M. Wells, in the sum of Three hundred and fifty five dollars and one cent or whether he executed his promissory note therefor payable to the said James C. Aiken nor does he know whether said promissory notes have been assigned to the complainants Wadsworth and Wells, nor is he informed whether or not said Samuel Thompson did on the said first day of November 1858 in order to secure the payment of said notes & interest execute and deliver to said James C. Aiken a Trust Deed upon Lots two, three, six and seven in block forty two in the City of Lacon Marshall County Illinois therefore he requires strict proof thereof as he has no information sufficient upon the subject to come to any conclusion.

Nor can he state from his knowledge or information whether or not said notes & Trust Deed have been assigned & transferred to said Wadsworth & Wells therefore he asks that the same may be proven to the satisfaction of this Honorable Court.

Respondent further answering says, that on the 10th day of July A.D. 1857, said Thompson was indebted to him in the sum of eight hundred & eighty dollars and gave to respondent his two promissory notes therefor, one signed by him said Thompson and William Fisher for eight hundred dollars payable one year after date with ten per cent interest per annuus and that on the same day last aforesaid, said Thompson & Fisher made & delivered to Respondent their other promissory note, payable

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in one year from date with ten per cent interest & that both of said notes were given for money loaned by respondent to said Thompson which eighty dollar note has been paid Respondent denies that said eighty dollar note as he remembers the transaction was given without consideration, or to cover up and conceal a usurious contract between said Respondent & said Thompson as alleged in complainants bill of complaint nor does the interest reserved in said note exceed the legal rate of interest, allowed by law in the sum or amount of said note as he believes.

Respondent says said eight hundred Dollars note is in his possession & that he is ready to produce the same as this court may direct,

Respondent admits that to secure said two last mentioned promissory notes said Samuel Thompson & Emma R Thompson his wife on the day of the date of said notes made executed & delivered to respondent a deed of Trust which is in possession of respondent and which he is ready to produce as this Honorable Court may direct to secure the payment of said last mentioned notes which original note and Trust Deed he prays may be made part of this his answer.

Respondent says that he denies that said Samuel Thompson did on the 10<sup>th</sup> day of September A.D. 1859 pay to respondent the whole amount of interest due on said eight hundred Dollars note up to March 10<sup>th</sup> 1860 as specified in said bill of complaint that the receipt marked Exhibit "A" in complainants bill

has reference to other and different transactions between said Thompson & Respondent than the said note last aforesaid and that the money then & there received by respondent was applied by him on other indebtedness from said Thompson to him as he remembers the transactions.

Respondent denies that he has taken or received as ~~an~~ ~~interest~~ interest on the said eight hundred dollars loaned by him to said Thompson from the day of the date of said note & Trust deed up to the 10<sup>th</sup> day of March A. D. 1860 at the rate of thirty six per centum per annum on the whole of said sum of Eight hundred Dollars, nor does the interest which he has received, nor does the interest which he has received exceed the legal rate of interest allowed by law to be taken discounted or reserved twenty six per centum per annum, nor does the same amount to the sum of seven hundred & sixty eight dollars, and respondent saith that said complainant's bill of complaint is not sufficient in law to require the said respondent to answer the same inasmuch as it alleges usurious interest to have been paid by said Samuel Thompson to said Respondent upon the contract of loaning money mentioned between them and that the same has been paid over to said Johnson & applied by him & said Thompson as interest for the forbearance of the said money loaned from time to time after the making of the original contract and having been paid over

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Respondent says the same if exceeding the legal rate of interest allowed <sup>by law</sup> cannot be recovered back either in law or equity whence once paid over and applied; nor can the said Wadsworth & Wells insist upon a forfeiture of such interest, That the forfeiture only accrues in case of suit at law to recover the illegal interest.

Respondent says he does not know whether said Wadsworth & Wells are creditors of said Thompson bona fide or not they have any interest in said real estate named & described in said bill, nor does he know whether said Thompson has paid them any part of the sum mentioned in their deed of Trust & notes.

Respondent says he has no recollection of agreeing with said James C. Aiken as the agent of complainants Wadsworth & Wells that he would not sell the said real estate without notice to them in time for them to pay the amount due Respondent on his Trust deed; and if any such agreement was made he denies that such agreement would bind them to give any other notice of the sale of such real estate than is provided for in Respondents Trust Deed; which notice he has given. He alleges that said Aiken & said Complainants were bound to take notice when Respondents notes & Trust deed became due & were bound to pay them without other or farther notice than was given as aforesaid.

Respondent admits that he has advertised to sell the real

estate in complainants bill described in pursuance of the notice exhibited in complainants bill of complaint on the 10<sup>th</sup> day of May 1860 to satisfy the said note and interest thereon as alleged in complainants bill as he had a right to do said note and interest remaining due and unpaid as mentioned in said notice.

Respondent says he does not know when complainants Wadsworth & Wells first learned that he had advertised said real estate for sale, but he alleges that he gave the only notice which he was required to give by publication as aforesaid on the 2<sup>nd</sup> day of April A. D. 1860 as will appear from said notice attached to said Bill, and he denies that he wrongfully or fraudulently concealed his proceeding from said Aiken, or from the complainants, and he alleges that complainants have had ample time since said note became due, respondents, & since the giving of said notice, to have paid said note and interest & prevented the advertisement for sale of said real estate.

Respondent denies that said Complainant Wadsworth & Wells have always been ready & willing & offered to pay Respondent what is due him on his note & Trust Deed, but on the contrary they and all the complainants have heretofore & still do refuse to pay him the same, or any part thereof.

Respondent further answering says the the consideration for the said eighty Dollar note mentioned in complainants bill of Com-

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plaint was money loaned by the defendants to the said Samuel Thompson one of the complainants at or about the time of the execution and delivery of said note.

Respondent says he does not now recollect the exact amount in money or other property paid by him said Thompson at the date of the receipt of September 12<sup>th</sup> 1859 set forth in complainants bill of complaint but he believes there was no money paid by said Thompson to him at that time but that said Thompson gave him respondent a note promising to pay him same money which he believes was paid by delivery to him respondent of an order on J. R. Chapman, or an order on the City of Lacon or some of the subsequent payment mentioned in complainants Bill which of said subsequent transactions was a satisfaction or discharge of said note last given, respondent cannot now definitely state, but respondent says that whatever was paid him at the time of the delivery of the receipt last aforesaid was to apply on other transactions between him respondent & said Thompson & not to apply as payment of usurious interests on said eight hundred dollar note as alleged in complainants Bill of complaint as he recollects the same.

Respondent says the words at the foot of the receipt last aforesaid (the above note signed by S. Thompson & William Fisher) were written without his knowledge or consent and after the

making and delivery of said receipt as he believes.

Respondent says that the amount paid by said Thompson to respondent at the time of the execution and delivery of the several exhibits marked Nos 1-2-3+4, in Complainant's Bill of complaint & about that time were in the aggregate Three hundred & seventy seven Dollars or thereabouts being the same mentioned in the said writings, receipts orders & according to his recollection, but that none of the moneys or other property so received as last aforesaid & evidenced by the said exhibits 1-2-3+4 were received as interest upon the said eight hundred Dollars note or as part payment thereof except the said one dollar mentioned in receipt, No 2, endorsed on the back of the Original, Trust Deed made to Respondent by said Thompson.

Respondent further says that all the sums of money or by said Thompson are mentioned in the foregoing exhibits in Complainant's Bill of Complaint & in said eight dollar note mentioned in said bill and that all of said moneys & other valuable things as aforesaid other valuable things ~~paid to him~~ were paid to him respondent on other notes & obligations held by said Respondent against said Thompson for money loaned by said respondent to said Thompson & interest thereon; and was not received by him respondent as usurious interest upon the money loaned as mentioned in said Trust deed of said Respondent that the consideration for the extension of the time of the payment of the monies mentioned in said Trust Deed of Respondent was the payment by said Thompson to said Respondent of other indebtedness by said Thompson to said respondent which he

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said Thompson owed to respondent, which was not secured to respondent, but were contingent & doubtful claims That Respondent does not now recollect the amount of interest charged by him or collected by him upon the other claims not mentioned in said Trust Deed nor does he recollect the amount of money and other property received by him of said Thompson upon the claim last aforesaid, That none of said Eight Hundred Dollar note was paid by said Thompson, to said respondent but, that the same with the interest thereon remains wholly due to respondent That as to any other matter or thing in complainants Bill of Complaint, not herein before responded to, Respondent says he has no knowledge recollection, opinion or belief with relation thereto. And having fully answered the allegations therein contained he asks to be discharged with his costs &c

} Joseph H. Johnson  
 } By Richmond Burns and Fort  
 } his Solicitors

State of Illinois }  
 County of Marshall } ss. In Circuit Court of said County Joseph H. Johnson the above named defendant being first duly sworn deposes and saith that he has read the foregoing answer to the Complainants Bill, and that the same is true in substance form and in fact as therein set forth and alleged.

Subscribed and sworn to before me this 5<sup>th</sup> day of Sept. A.D. 1860.

J. H. Johnson

G. L. Ford C. Judge.

And in pursuance on the 10<sup>th</sup> day of October A. D. 1860, by leave of the Court come the complainants and filed the replication to Defendants answer in the words and figures following to wit,

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Samuel Thompson and others

vs  
Joseph H. Johnson

Circuit Court Marshall County  
Oct Term 1850

And now comes the complainants and for replication to said answer of Deflt says the said Bill is true in all particulars

S. Ramsey

for complainant

And the said complainants comes and says that the matters and things set forth, in their said Bill of complaint are true in substance and in fact and that the matters and things set forth, in the answer of the said defendant, contrary thereto are untrue, and this they are ready to make appear as by the Court shall be directed

S. Ramsey

Complainants Solicitor

This Indenture. Made this Tenth (10<sup>th</sup>) day of July in the year of our Lord one thousand eight hundred and fifty Seven between Samuel Thompson and Emma R. Thompson his wife of the City of Lacon County of Marshall and State of Illinois of the first part and Joseph H. Johnson of the City County and State aforesaid of the second part Witnesseth, That the said Samuel Thompson is justly indebted unto the said Joseph H. Johnson in the sum of eight

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Exp. Subst. "E."

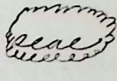
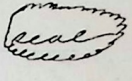
Hundred and eighty dollars (\$180.00) secured to be paid by two promissory notes one for Eight Hundred Dollars and the other for eighty Dollars, each due in one year from date and executed by said Samuel Thompson & William Fisher and drawing ten per cent interest per annum Now Therefore, These presents Witness, That the said party of the first part in order to secure, the prompt and punctual payment of the said promissory notes herein before specified, according to their tenor and effect, and in consideration of one dollar to the said party of the first part paid the receipt whereof is hereby confessed do hereby confessed, do hereby confessed do hereby grant, bargain, sell and convey unto the said party of the second part and to his heirs and assigns, all the following described premises, situate lying and being in the County of Marshall and State of Illinois to Wit: Lot No Two (2) Lot No Three (3) Lot No Six (6) and Lot No Seven (7) in Block No Forty Two (42) in the City of Lacon being the same lots purchd of Mark Bangs and upon which Lot No Two (2) is situated a dwelling house erected by said Bangs. Together with all and singular the tenements, hereditaments and appurtenances, thereunto belonging or in anywise appertaining: To have and to hold the above described premises unto the said party of the second part, and to his heirs, or assigns in Trust nevertheless for the following purposes to Wit: In Trust, in case default shall be made by the said party of the first part his heirs, executors, or administrators to

pay the said notes above mentioned, according to the tenor and effect thereof, then on application of the said Joseph H. Johnson or the legal holder or holders of said promissory notes and having first given Ten (10) days notice, by publishing the same in a public newspaper printed in the County where said premises are situated, then it shall and may be lawful for the said party of the second part his executors administrators, or attorney duly authorized to take possession of the premises aforesaid and to sell the same, or any part thereof, at Public Sale, at such hour and place as said party of the second part, his executors, administrators or attorney may appoint, or to adjourn said sale from time to time and upon making sale as aforesaid to make and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance, in the law for the same in fee simple; and out of money arising from such sale after first paying all reasonable expenses growing out of the execution of the trust aforesaid, and all taxes and assessments levied on the premises aforesaid, or on such part thereof as may be sold for the purpose aforesaid, to pay the said promissory notes to Joseph H. Johnson his representatives executors or administrators, or the legal holder or holders thereof, the amount which may then be due on said promissory notes above mentioned, for principal and interest rendering the overplus of the proceeds of such sale (if any

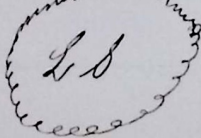
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there should be) unto the said party of the first part or his heirs, executors, or administrators. In case no default is made in the payment of the aforesaid promissory notes then this conveyance shall be null and void. In case the aforesaid promissory notes, and all costs and reasonable expenses of the said trust shall be satisfied by the sale of part of the premises aforesaid then the title to, and the right of entry in the unsold residue of the premises aforesaid, shall vest absolutely in the party of the first part and the said unsold residue shall be fully discharged from all liens created by the trust aforesaid. And the said Samuel Thompson party of the first part for himself and his heirs, executors and administrators, does hereby covenant, to and with the said party of the second part, and his executors or administrators, and to and with the purchaser or purchasers at the sale aforesaid, that at the time of the executing and delivery of these presents, he is well seized of the premises above conveyed, as of an indefeasible estate of inheritance in the law, in fee simple; and that the same are free from all incumbrances of what nature so ever; and against all and every person or persons lawfully claiming or to claim the whole or any part thereof will forever warrant and defend; and that he will during the continuance of these presents pay all taxes and assessments levied on the above described premises, or any part thereof, before any advertisement or charges accrue against, the said premises. In Witness

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

Signed sealed and delivered } Samuel Thompson   
 in presence of G. L. Ford } Emma R. Thompson 

State of Illinois } ss. I Greenberry L. Ford a Notary Public  
 Marshall County } within and for said City do certify that  
 City of Lacon } on this day personally appeared before  
 me Samuel Thompson and Emma R. Thompson his wife  
 whose names appear subscribed to the foregoing deed  
 of Trust as having executed the same, who are personally  
 known to be the real persons who and in whose names  
 the acknowledgement is proposed to be made and, acknowledged the execution thereof as their voluntary act and deed, for the uses and purposes therein expressed. And the said Emma R. Thompson wife of the said Samuel Thompson having been by me made acquainted with the contents of said deed and by me examined separate and apart from her said husband whether she had executed the same and relinquished her dower to the lands and tenements therein mentioned acknowledged that she had voluntarily and freely and without compulsion of her said husband, and do not wish to retract

 G. L. Ford

Given under my hand and seal of office

37

at Lacon this tenth (10) day of July A. D. 1857.

Greenberry L. Fox

Notary Public

State of Illinois

Marshall County

ss. J. James Wescott Clerk of the Circuit Court and Ex-Officio Recorder in and for the County of Marshall and State of Illinois do certify

that the foregoing is a correct copy of a Deed of Trust and the certificate of acknowledgement thereof as the same appears of record on Pages 543 and 544, in Book T, the same being one of the land records of said county.



In Witness Whereof I have hereunto set my hand and affixed the Seal of said Court at Lacon this Ninth day of May A. D.

1860.

James Wescott Clerk

By Lewis B. Sutton Deputy

This Indenture, Made this first day of November in the year of Our Lord, One Thousand eight Hundred and fifty eight Between Samuel Thompson & Emma R his wife of the County of Marshall & State of Illinois party of the first part and James E. Biken of the County of Cook & State of Illinois party of the second part; Witnesseth: That Whereas the said party of the first part

is firstly indebted to the said party of the second part, in the sum of ten Hundred eighty eight  $\frac{29}{100}$  Dols (\$1028  $\frac{29}{100}$ ) Dollars secured to be paid by two certain promissory notes of even date herewith one for seven hundred Thirty Three  $\frac{29}{100}$  Dollars (\$733  $\frac{29}{100}$ ) + one for three Hundred fifty five  $\frac{04}{100}$  Dols (\$355  $\frac{04}{100}$ ) both due in six months from the date hereof 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 notes above mentioned; And also in consideration of the further sum of one dollar to him 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 conveyed and by these presents does grant, bargain sell and convey unto the said party of the second part, his heirs and assigns forever all the following described property lying and being in the City of Lacon County of Marshall & State of Illinois wit- Lots number Two (2) Three (3) six (6) + seven (7) in Block forty two (42) in the City of Lacon. This mortgage is subject to a mortgage or Trust Deed given upon the same property dated July 10<sup>th</sup> 1857 to J. H. Johnson of Lacon which mortgage was due on the 10<sup>th</sup> of July 1858, but by written agreement extended to July 10<sup>th</sup> 1859. by said Johnson. To Have and to hold the same, together with all and singular, the tenements, hereditaments privileges and appurtenances thereunto belonging or in any

Exhibit "C"

wise appertaining: And also all the estate, interests and claim whatsoever in law as well as in equity, which the party of the first part have 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.

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 administrators or assigns the aforesaid sum of money with such interest thereon, at the time and in the manner specified in the above mentioned notes according to the true intent and meaning thereof then and in that case, these presents and every thing herein expressed, shall be absolutely null and void. But it is further provided and agreed, that if default be made in the payment of said notes either of principal or of interest, on the days whereon the same shall become due and payable, the whole of said principal and interest secured by the said notes in this mortgage mentioned shall thereupon become immediately due and payable, And this mortgage may be immediately foreclosed to pay the same by said party of the second part his heirs executors administrators or assigns, or the said party of the second part, his heirs executors, administrators, or assigns after publishing a notice in a newspaper printed in the City of Chicago, ten days before the day of such sale, may sell the said premises and all right and equity of redemption of the

said party of the first part his heirs and assigns therein at public Auction at the Court House Door in said Chicago, to the highest bidder, for cash, at the time mentioned in such notices. And the said party of the first part specially covenants and agrees to and with the said party of the second part to waive his right of equity and redemption, and further agrees that he will neither assert or claim any such right on a sale of the property mentioned herein by virtue of this Mortgage. And the said party of the second part make execute and deliver to the purchaser or purchasers thereof, a deed or deeds for the premises so sold; and out of the proceeds of such sale to pay all costs and expenses incurred in advertising and selling said premises, also the principal and interest due on said notes, any thing herein or in said notes to the contrary notwithstanding. In Witness Whereof, The party of the first part hereunto set his hand and seal the day and year first above written.

Signed Sealed and delivered  
in presence of

Samuel Thompson



Emma R. Thompson



State of Illinois

County of Marshall

ss. I Mark Rango a Notary Public in and for the said County, in the State aforesaid do hereby certify that Samuel Thompson and Emma R. Thompson who are personally known to me as the same persons whose names are subscribed to the within deed appeared before me

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this day in person, and acknowledged that they executed and delivered the said instrument of writing as their free and voluntary act, for the uses and purposes therein set forth. And the said Emma R. Thompson wife of the said Samuel Thompson having been by me examined separate and apart and out of the hearing of her said husband and the contents and meaning of the said instrument of writing having been by me fully made known and explained to her, acknowledged that she had freely and voluntarily executed the same and relinquished her dower and all right title and interest in and to the lands and tenements therein mentioned, without compulsion of her said husband, and that she does not wish to retract the same

L S

Given under my hand and notarial seal  
at Lacon this Eighth day of November A.D. 1858

Mark Bangs

Notary Public

For value received I hereby assign the within deed of Trust and all my interest right and title in and to the same to Tertius W. Wadsworth and George M. Wells of Chicago Cook County Illinois to have and to hold the same, and all my right title and interest to them the said Wadsworth & Wells their heirs and assigns forever. Witness my hand and seal this 9th day of May 1860

James E. Aiken

seal

State of Illinois  
 Marshall County & The Circuit Court Thereof To The  
 January Term A. D. 1861

J. W. Madeworth  
 Geo. W. Wells &  
 Samuel Thompson } In Chancery  
 vs  
 Joseph H. Johnson }

To the above named defendants or to  
 Richmond & Burns & G. S. Fort his attorney you will take no-  
 tice that on the 23<sup>d</sup> day of January (Inst.) we shall take  
 the depositions of James G. Aiken and Frederick C. Wells Witnesses  
 residing in the City of Chicago in the County of Cook and  
 State of Illinois before John A. Cross a Notary Public  
 residing in said City of Chicago in said State at his office  
 at his Office in said City of Chicago in said State of Il-  
 linois, said deposition will be taken between the hour of  
 10 O'clock A. M. and 6 O'clock P. M. of said day and will  
 continue from day to day until all are taken at the  
 same place and between the same hours when and where

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you can attend and cross-examine if you see fit.

Respectly Yours

Silas Ramsey

Comptrol Solicitor

Lacon January 2<sup>nd</sup> 1861

We admit service of the within notice and waive a copy of the same and agree that no exceptions, shall be taken to the depositions on account of their being taken before John A.

Brass a Notary Public

Lacon January 2<sup>nd</sup> 1861

Richmond Burns

Defts Atty

G. L. Ford atty for Deft

J. W. Madaworth

Geo. M. Wells

Samuel Thompson

vs

Joseph W. Johnson

Circuit Court of Marshall County

United States

State of Illinois

Cook County

ss. Be it Remembered that on the twenty third day of January A. D. 1861 personally appeared at my Office No 17 Lamon Block in the City of Chicago in the County & State aforesaid before me John A. Brass a Notary Public in and for the County of Cook

and State of Illinois James E. Aiken, to testify and the truth to say, on the part and behalf of the complainants in a certain suit or matter of controversy now depending and undetermined in the Circuit Court of the County of Marshall in the State of Illinois wherein J. W. Wadsworth George M. Wells & Samuel Thompson are the complainants and Joseph H. Johnson is defendant,

And the said witness being of lawful age, and having been by me first cautioned and sworn to testify the truth, the whole truth and nothing but the truth in the matter of controversy aforesaid did thereupon depose, testify and say as follows, viz:

Question 1 What is your name, age occupation and place of residence?      Answer - my name is James E. Aiken I am thirty seven years of age - I reside in Chicago, I am a Merchant by occupation -

Question 2 Are you acquainted with the parties to this suit, and if so how long have you known them or each of them? —  
 Answer - I am acquainted with the parties to this suit I have known Wadsworth & Wells eight or nine years, have known Mr. Thompson one of the complainants since January 13<sup>th</sup> 1858. Have known Mr Johnson the defendant since July 26<sup>th</sup> 1859.

Question 3  
45

What do you know of Samuel Thompson the Complainant being indebted to Wadsworth & Wells <sup>Other</sup> the Complainants — and what securities do they hold if any for such indebtedness

Answer: In the fall of 1858 Mr Thompson told me that he was owing Wadsworth & Wells he wished to include their claim with Harmon Aikin & Gale and give security for both of them on one piece of property. I was at that time a member of the firm of Harmon Aikin & Gale their indebtedness against Thompson was two promissory notes one for \$441.68. and the other for \$209.25, which with the interest up to May 1<sup>st</sup> 1859, amounted to \$733.28. Wadsworth & Wells claim was something like four hundred dollars — I do not know the exact amount, something less than four hundred I think — In November 1858, Mr Thompson gave me a mortgage upon a house and lot in Lacon to secure these two claims for which two notes were taken one bearing date Chicago November 1<sup>st</sup> 1858 — to order of James C. Aikin for \$733.28. six months after date — this note was for claim of Harmon Aikin & Gale — to which was attached a warrant of atty to confess a judgment the other is of the same date, and time with the first, and to the same order for \$353.01. with a warrant of attorney attached the exhibits hereto attached marked "A" & "B" are copies of the originals, the note last mentioned was for account of Wadsworth & Wells — these notes have been transferred by me to Wadsworth & Wells. The

above question and answer to the same objected to  
by Counsel for Deft, G. L. Ford.

- 4 Did you see Johnson in July 1859 if so, at what time  
and where and what conversation did you have with  
him, state what was said and done?

Answer— Yes I saw him  
on the 26<sup>th</sup> day of July 1859 at Lacon. I called upon Mr  
Johnson to know the condition of the claim he held against  
Thompson secured upon the same property, upon which  
our mortgage was his being a prior claim— I told him  
my name and place of residence and that I had a  
mortgage upon Thompsons property, that was due and  
unpaid, that I believed he had a mortgage upon the  
same property— he said he had and that he knew some  
one in Chicago had a mortgage upon it but did not  
know the name— I told him I understood that his was  
not paid he said it was not fully, I asked him if Thomp-  
son had paid him any part of it, he said he had lately  
paid a payment on it of the interest, I asked him  
how much he had paid him, he said between three and  
four hundred dollars I asked him what amount, Thomp-  
son then owed him he said eight hundred dollars  
I asked him if Thompson paid him all money, he said  
not all but had arranged it to his satisfaction—  
I told him I wanted to know if he was going to force

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the collection of his claim as I had learned there was not much prospect of Thompsons paying it just, now if he did it would compel us to protect ourselves, he said he didnt care for the money, as it was well secured if he only had his interest, I asked him what rate of interest Thompson had paid him, or was paying him, he said they arranged that between themselves I told him we had rather pay his claim than have the lien upon the property increased more than the rate of ten per cent per annum if he thought Thompson would not pay it— He said he could not afford to let his money at ten per cent, that he could get more for it— That Thompson had been paying him more, and he thought he would pay him as he had agreed and that he would be able to pay the debt in the fall— I told him we would be glad to have it remain if Thompson would pay the interest, but if he was going to foreclose at any time because the interest was not paid, I wished he would let me know, that I would rather pay his lien + save costs, he said he should do nothing at present and <sup>would</sup> let me know if when he must have <sup>his</sup> money. I think that is the substance of the conversation we had at that time

5

When did you next see him— Where was it— under what circumstances was it, and what was said and done?— Answer— On the 9th

48

of May 1860 I met him Mr Johnson in the Street of Racine I was in company with Mr Frederick, C Wells - I told him I had learned that he had advertised Thompsons property for sale, upon which I had a mortgage, and I wanted to see him about it - he took us to his house - I then told him I was surprised he did not let me know he was going to sell as he had agreed to do - he said he had given all the notices the law required, that he did not know he was obliged to tell me his business, I told him we were prepared to pay him and save costs, as I told him we would the summer before, he said he had no interest in the matter now as he had conveyed it to a man in Cincinnati - I told him I thought by the advertisement that he claimed more than he told me in July last, and that we were prepared to pay him all that Thompson owed him, he said nothing but gold would pay the debt - I told him I thought it was hard to exact the gold of us that we had come prepared for any emergency, and that I would now make him a tender of the gold of all that Thompson owed him, he said he could not receive it, I asked him if he would accept it as a tender - he said I will so far as I am concerned but I have nothing to do with the claim, he said he would see his attorney & let us know what he would do.

6<sup>th</sup> How much money had you, what kind was it - and what tender if any did you make of it? and what did John

48

of May 1860 I met him Mr Johnson in the Street of Lacon I was in company with Mr Frederick, C Wells - I told him I had learned that he had advertised Thompsons property for sale, upon which I had a mortgage, and I wanted to see him about it - he took us to his house - I then told him I was surprised he did not let me know he was going to sell as he had agreed to do - he said he had given all the notices the law required, that he did not know he was obliged to tell me his business, I told him we were prepared to pay him and save costs, as I told him we would the summer before, he said he had no interest in the matter now as he had conveyed it to a man in Cincinnati - I told him I thought by the advertisement that he claimed more than he told me in July last, and that we were prepared to pay him all that Thompson owed him, he said nothing but gold would pay the debt - I told him I thought it was hard to exact the gold of us that we had come prepared for any emergency, and that I would now make him a tender of the gold of all that Thompson owed him, he said he could not receive it, I asked him if he would accept it as a tender - he said I will so far as I am concerned but I have nothing to do with the claim, he said he would see his attorney & let us know what he would do.

6<sup>th</sup> How much money had you, what kind was it - and what tender if any did you make of it? and what did John

49 now say or do?

Answer— We had twelve hundred dollars in American gold, I took one portion of it, one bag of it out of my pocket and placed it on the table, At the same time I asked him whether he would accept of it as a tender— His reply was that he would accept the tender so far as he was concerned— I asked him if he would accept it as a tender he said he would so far as he was concerned, but he had nothing to do with the claim.

Q<sup>th</sup> Where did you next see him, and what conversation was had between you?— Answer; I saw him at the Hotel in Lacon the same day about noon— I asked him if he was prepared to tell us how he would settle with us, he said he was not, that his attorney had been engaged in Court and he had not had an opportunity to see him and talk it over, I told him that I understood that Thompson had lately written to a friend of his saying that he would be back to Lacon in October requesting him Johnson to wait until that time & not see his property— that he might have the rent of the house upon which he had security, if he would wait— that he could get \$250 for the rent of it— he said he did not want to be troubled with the house, that he must have his money on the property— I asked him then what interest he would want to wait upon Thompson until October providing Harmon Aiken & Gale & Madewell & Wells would guaranty the payment of his note and interest— he said he did not know he wanted to know how much we would

give, I said it was for him to say, not me, he said he would wait, if we would give him three per cent a month interest. I told him that was altogether too much, he said that was the best he could do, - nothing more that I remember.

8<sup>th</sup> When the conversation last referred to commenced was Mr Johnson in company with or engaged with any other person if so state whom, and state who was present during said conversation? — Answer — Mr Johnson was in company with Mr. Frederick C. Wells when the conversation first commenced. — He was conversing with him when I first went into the room.

9<sup>th</sup> Had you any means, and if so what was your means of knowing, what the amount was which was due to Mr Johnson from Mr Thompson at the time the tender was made? — Answer; I did not have any means at that time except Mr Johnsons statement to me the July previous, when he told me it was eight hundred dollars and the interest on it from that time.

10<sup>th</sup> What was the Original debt of Harmon Aiken & Gale for? Answer; It was for Merchandises — It was contracted January 13<sup>th</sup> 1858 \$ 441.68. and February 5<sup>th</sup> 1858 \$ 209.25

### Cross Examination

By G. L. Ford

11<sup>th</sup> Was the goods, the first amount all purchased at one time?

51 Answer; You mean the \$441.68; it was

2<sup>d</sup> Were the Goods for which the 2<sup>d</sup> note was given all purchased at one time?

Answer; they were

3<sup>d</sup> Did Mr Thompson give his notes for said goods when he purchased them?

Answer; I dont remember that he gave them at the time or not? we had his notes

4<sup>th</sup> Are the notes of which you make exhibits the notes given for said goods?

Answer; They are not

5<sup>th</sup> State the amounts, date, of the first notes given and what disposition was made of them?

Answer; The first note was for \$441.68 dated January 13<sup>th</sup> 1858 payable four months after date, the other was for \$209.25 dated February 5<sup>th</sup> 1858 at four months, these notes were sued & we obtained judgment upon them in 1859, and this note of \$733.28. is for the judgments costs and interests obtained upon these notes —

6<sup>th</sup> State what the consideration was for the note of \$355.01 secondly exhibited to you

Answer; It was for Madeworth & Wells claim against Thompson

said interest.

7<sup>th</sup> State the reason it was made payable to you and your order?

Answer; because I was made Trustee in the mortgage.

8<sup>th</sup> Is that the only reason?

Answer; I know of no other reason.

9<sup>th</sup> State what rate per cent of interest, Thompson was ever charged, or paid your firm which is contained in either of these notes. — Answer; The notes upon which judgment was obtained were drawing ten per cent interest — I don't know what rate of interest was figured after judgment was obtained

10<sup>th</sup> Did Thompson ever pay you, or allow you on settlement of either of these claims any greater rate per cent of interest, than ten per cent, or did he ever pay or allow you any other sum whatever for forbearance, or time on said claims? Answer; He never did to my knowledge —

11<sup>th</sup> Have you an account of said goods sold to Thompson, if so please attach a copy of the same to said deposition.

Answer; I have not a copy with me — I will attach a copy to my deposition.

12 Do you know where Samuel Thompson now is, if to state

52  
53

fully, & particularly where he has been since this suit was commenced?— Answer, I do not know of my own knowledge where he is now.

13<sup>th</sup> Have you seen or conversed or had any correspondence with Samuel Thompson since these two notes were given if so state when, where, and what the conversation, or correspondence was.— Answer, I have not seen him.— I have had one letter from him— I think about the first of May 1859, about the time of the maturity of the notes— I will attach the letter to this deposition if I can find it.

14<sup>th</sup> What place in Lacon did you have the first conversation <sup>with</sup> Johnson & who was present, describe the place and any person that might have been present, particularly— answer; he was in his Orchard in the South part of the town mowing some grass, during this conversation I was sitting on the fence no one was present.

15<sup>th</sup> Did Johnson or yourself have any mortgages, notes, or papers present, If so describe them, fully.

Answer— There were none exhibited.

16. Did Johnson tell you that Thompson had paid him between three & four hundred dollars on this claim for which he had a lien on the property in question— or was

53

54 the same or part of the same, paid on some other claim

Answer - It was upon this claim as I understand it.

17<sup>th</sup> Did he tell you that he had other notes judgments & claims against Thompson - Answer - He did not.

18<sup>th</sup> Did he say anything about any other claim against Thompson, if so state what it was?

Answer: He did not -

Adjourned until 11<sup>th</sup> O Clock P. M.

John A. Brass

Notary Public

11<sup>th</sup> O Clock P. M. examination resumed

John A. Brass N. P.

19<sup>th</sup> For Whom did you represent yourself to act? at the time you had the first talk with Johnson?

Answer: for

Harmon Aiken & Lake & Madsworth & Wells

20<sup>th</sup> What time did you transfer your claim to Madsworth & Wells.

Answer - I think the small note was transferred

55 in the Winter or Spring of 1859.

21<sup>st</sup> Is that the time that you made the endorsement on the notes of which you make Exhibits

Answer; that was the time when the small note was endorsed

22<sup>nd</sup> Where was it done and who was present?

Answer— In Harmon Aiken & Gales Store in the presence of F. W. Madaworth one of the complainants, there were others present in the Store, in the office. I could not name with certainty who they were

23<sup>rd</sup> What did you receive in consideration for the transfer whether money or property.

Answer; There was no consideration as I had only acted as agent in taking the note

24<sup>th</sup> State When & Where you made the transfer of the note for \$733.28. State who was present if any one?

Answer— In Lacon  
On the 9<sup>th</sup> of May 1860, In presence of Mr & C. Wells and Judge Purple—I think he was present, I dont remember of any one else being present.

25 What did you receive in consideration of the transfer state particularly and fully.

Answer - The consideration was Six Hundred and fifty Dollars.

26 Did you ever receive any \$650. in money or any other sum, or any property from Wadsworth & Wells in payment of said transfer

Answer - Harmon Aiken & Gale received the money - received Wadsworth & Wells check for the money, some partner Mr Harmon told me

27 Has said Check ever been paid

Answer - I suppose it has

28 Where was said Check passed,

Answer - I suppose in our Store, don't know of my own knowledge

29 Will you attach a copy of said check to your deposition  
answer - I will endeavor to do so.

30 Will you attach a copy of your books showing any account of said sum having been paid by Wadsworth & Wells to your firm, Answer - I will

57 <sup>57</sup> 31 Have you ever seen such accounts on your books  
Answer - I have not.

32 Were Madeworth & Wells aware of  
the fact at the time you transferred said note to  
them, and was it done by their consent.

Answer - Not that I know  
of the transfer was made with their agent Mr J. C.  
Wells

33. Did the note of \$ 733.28 belong to your firm bona fide  
when you went to Lacon in May 1860.

Answer: It did

34 Did you transfer said note as aforesaid, until you were  
advised so to do by your counsel, in order to have this  
suit commenced?

Answer - I don't remember whether he said any  
thing about it or not at the time.

35 Does your firm hold any claim or demand against  
Madeworth & Wells for said note or any part of it.

Answer - Not to my knowledge

36 Did you make any agreement or contract with  
any attorney to prosecute this suit? and was your  
concerned in any way about the same? Answer -  
I was not. - I made no contract.

37 Have your firm ever paid or agreed to pay any part

them of the expenses of the suit, answer— No sir

38 Did Samuel Thompson ever authorize you, or any other person to your knowledge to use his name as one of the Complainants in this suit, if so state fully— answer He has not to my knowledge—

39 State what conversation was had if any, at the time, <sup>this suit was commenced</sup> about making Samuel Thompson a party? answer—

I don't remember that I had any conversation with any one, I heard a conversation between Mr Wells and the attorneys, I heard Mr Wells ask Mr Ramsey if he was an attorney for Thompson, he said he was— and would act as his attorney in this suit— he said he would.

40 Did you ever pay or agree to pay Silas Ramsey anything to attend to the business of this suit?

answer.— not that I remember—

41 Are you or is your firm interested in the result of this suit? answer— We have no pecuniary interest in it.

42 Did you tender to Joseph H. Johnson any specific sum of money, and if so, state what sum it was.— answer— Only

them of the expenses of the suit, answer— No sir

38 Did Samuel Thompson ever authorize you, or any other person to your knowledge to use his name as one of the Complainants in this suit, if so state fully— answer He has not to my knowledge—

39 State what conversation was had if any, at the time, <sup>this suit was commenced</sup> about making Samuel Thompson a party? answer—

I don't remember that I had any conversation with any one, I heard a conversation between Mr Wells and the attorneys, I heard Mr Wells ask Mr Ramsey if he was an attorney for Thompson, he said he was— and would act as his attorney in this suit— he said he would.

40 Did you ever pay or agree to pay Silas Ramsey anything to attend to the business of this suit?

answer— not that I remember—

41 Are you or is your firm interested in the result of this suit? answer— We have no pecuniary interest in it.

42 Did you tender to Joseph H. Johnson any specific sum of money, and if so, state what sum it was.— answer— Only

5-9-59 took a bag of gold out of my pocket without counting it, and without mentioning any amount.

43

Did Johnson at that time state to you specifically what amount was due to him? Answer, I think not he said he didn't own the claim, he had transferred it to a party in Cincinnati.

44

Did you at that time compute the amount due on the Johnson claim? Answer— I did not—

45

Did you ever pay or did any of the complainants ever pay said Johnson any thing in consideration that he should wait on his claim, and that he should give you notice when he attempted to collect it? Answer— I never paid him any thing and the complainants never did to my knowledge.

46,

Did you take down at the time any written memorandum of what Johnson said to you in those two conversations?— Answer— I did not—

47

When did you make the written notes or memorandum you held in your hand and referred to while you were being examined in chief? Answer— I made them last Monday Evening I think—

48 Will you attach them, or a copy of them to your deposition - Answer - I will -

49 Was this proceeding commenced before you left Lacow. Answer - yes Sir

50 Was the endorsement of the \$733.28, note and the transfer of the same to Madaworth & Wells a bona fide transaction on your part - Answer, it was,

Direct Examination resumed

By Mr Helmer

1. At your interview with Mr Johnson in July 1859, was there any other indebtedness of Samuel Thompson, than the debt to Mr Johnson, and the one held by yourself secured upon the same property spoken of between you,

Answer - Not that I know

of

2<sup>d</sup> Did he at that time say anything about having any other indebtedness against Thompson at that time or any other previous time secured upon that property,

Answer - He did not.

3<sup>d</sup> At the time this tender was made did Mr Johnson consent to accept of the money in payment of the debt, which he held against Samuel Thompson

61 or did he merely consent to accept of your offer to pay it as a tender, Answer;

He accepted the offer to pay it as a tender, he accepted it as a tender so far as he was concerned.

4 Were not the notes or minutes of conversation with Johnson referred to by you in your deposition, prepared by yourself in your own handwriting and prepared from your own recollection of the conversation which passed between you & Johnson— Answer—

They were—

5 What suggested to you in advance, to write out those notes of those conversations—

Answer— That list of points shown me by Mr Wells, attached hereto as an exhibit.

### Cross Ex. Resumed

1 Did not Mr Johnson mention a judgment to you which he held against Mr Thompson in the first conversation—

Answer— I am inclined to think he did, or I have heard that he had one for a small amount—

20 Do not your Books show that money has been paid to Purple, Ramsey, or some other attorney for prosecuting this suit? Answer - I think not -

Sworn to & subscribed to this 20<sup>th</sup> } James E. Aiken  
day of January A. D. 1861. }

John A. Brass. Notary Public

Exhibit "A"

73320

Chicago Nov 1. 1858

Six months after date, for value received I promise to pay to James E. Aiken, or order, the sum of Seven Hundred thirty three <sup>28</sup>/<sub>100</sub> Dollars with interest.

Signed Samuel Thompson


Know all men by these Presents, That whereas the Subscriber Samuel Thompson is justly indebted to James E. Aiken upon a certain promissory note bearing even date herewith, for the sum of Seven Hundred thirty three <sup>28</sup>/<sub>100</sub> dollars and twenty eight cents; made payable to the said James E. Aiken or order, and due six months after date. Now

63, 68

Therefore, in consideration of the premises and of the sum of one dollar to one in hand paid by the said James E. Hiken, the receipt whereof is hereby acknowledged I do hereby make constitute and appoint Nelson & Clark or any attorney or any attorney in any Court of record to be my true and lawful attorney, irrevocably for me and in my name place and stead, to appear before any Justice of the peace or in any Court of Record, in Term time or vacation, in any of the States or Territories of the United States, at any time after the date hereof to waive service of process and confess a judgment in favor of the said James E. Hiken or his or their assignee or assignees upon the said note for the above sum, or for as much as appears to be due, according to the tenor and effect of said note with interest thereon, together with costs; also for usual attorneys fees to be added to the amount due on entering up judgment; also to file a cognovit for the amount that may be so due with an agreement therein, that no writ of error or appeal shall be prosecuted upon the judgment entered by virtue hereof, nor any bill in equity, filed to interfere in any manner with the operation of such judgment, and to release all errors that may intervene in the entering up of such judgment, or issuing the execution thereon and also to consent to immediate execution upon such judgment. Hereby ratifying and confirming all that my said attorney

may do by virtue hereof. Witness my hand and seal  
this first day of Novr A D. 1858.

In presence of

Signed Samuel Thompson 

\$355 <sup>94</sup>/<sub>100</sub>

Chicago Novr 1<sup>st</sup> 1858

Six months after date, for value Received & prom-  
ise to pay to James C. Aiken or order, <sup>the sum</sup> three hundred &  
fifty five <sup>of</sup> 100 Dollars with interest after maturity a  
10% per annum

Exhibit "B"

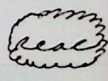
Signed Samuel Thompson

Know all men by these presents, That whereas the sub-  
scribed Samuel Thompson is justly indebted to James  
C. Aiken upon a certain promissory note bearing even date  
herewith, for the sum of Three hundred fifty five dollars  
and one cent; made payable to the said James C. Aiken, or  
order, and due in six months from the date hereof.

Now therefore in consideration of the premises, and of the sum  
of one dollar to me in hand paid by the said James C. Aiken  
the receipt whereof is hereby acknowledged I do hereby make  
constitute and appoint Helms & Clark or any attorney in  
any Court of Record to be my true and lawful attor-  
ney, irrevocably for me, and in my name place and stead  
to appear before any Justice of the Peace, or in any

6565 Court of Record in Term time or vacation in any  
of the States or Territories of the United States, at any  
time after the date hereof, to waive service of process  
and confess a judgment in favor of the said James E. Hiken  
or his or their assignee or assignees upon the said note for  
the above sum, or for as much as appears to be due accor-  
ding to the tenor and effect of said note, with interest  
thereon, together with costs; also for usual attorneys fees  
to be added to the amount due on entering up judgment; also  
to file a cognovit for the amount, that may be so due with  
an agreement therein, that no writ of error or appeal shall  
be prosecuted upon the judgment entered by virtue hereof  
nor any bill in equity filed to interfere in any manner  
with the operation of such judgment, and to release all errors  
that may intervene in the entering up of such judgment  
or issuing the execution thereon and also to consent to  
immediate execution upon such judgment. Hereby rat-  
ifying and confirming all that my said attorney may do  
by virtue hereof. Witness my hand and seal this first day of  
November A. D. 1858.

In presence of

Signed Samuel Thompson 

Chicago January 13<sup>th</sup> 1858

Mr. S. Thompson Esq

Edwin R Harmon }  
 James C Aiken } Terms:  
 David W. Gale }

Bought of Harmon Aiken & Gale

Wholesale Dealers in Staple & Fancy Dry Goods

Cases—Bales—Bundles. 53. Lake Street.

Exhibit "6"

4	prs	Great Falls J <sup>a</sup> Shirting	141 <sup>2</sup>	10	14	15
4	"	" " " "C" "	134 <sup>2</sup>	9	12	11
3	prs	Shoe Laces	2 <sup>f</sup>			75
1		Pack Pins	60			60
1 1/8	3	prs Velvet Ribbon	42 <sup>2</sup>		1	27
1 1/8	4	" " "	4 <sup>f</sup>		2	"
1 1/2	4	" " "	55		2	20
2	2	" " "	5 <sup>f</sup>		1	25
2 <sup>1</sup> / <sub>2</sub>	2	" " "	70		1	40
1		Doz Birdies	12 <sup>f</sup>		1	50
1		" " "	20 <sup>f</sup>		2	50
4		Rubber Buff Combs	60		2	40
10	2	" SS "	11 <sup>f</sup>		2	75
1	1	" " " "	12 <sup>f</sup>		1	50
1		" F. L. Gloves	22 <sup>f</sup>		2	75
1		" Linnen Adm <sup>W</sup>	20 <sup>f</sup>		2	50
1		" " " (Gents)	500		5	00
3/4		" Merino Drawers	1000		7	50

6767

	2	for Blankets	22 <sup>1</sup> / <sub>2</sub>	5 50
	2	" 9 1/4 "	26 <sup>1</sup> / <sub>2</sub>	6 50
	2	" 11 1/4 "	47 <sup>5</sup> / <sub>8</sub>	9 50
	1	for De Reize	49 <sup>3</sup> / <sub>8</sub> 10 <sup>2</sup> / <sub>8</sub>	5 23
	1	" " "	58 <sup>1</sup> / <sub>8</sub> 17	8 62
	3	Pacific De Lains	56 <sup>1</sup> / <sub>8</sub> 19	10 69
1330	1	Hamilton De Lains	31 19	5 89
	2	" " " "	61 <sup>2</sup> / <sub>8</sub> 18	11 07
	12	Print	458 <sup>2</sup> / <sub>8</sub> 10	45 85
	2	Fannens & Mecho Cassimere	69 <sup>8</sup> / <sub>8</sub> 35	24 41
	1	Bro Cassimere	26 <sup>1</sup> / <sub>8</sub> 65	17 06
	1	Sattinett	25 <sup>2</sup> / <sub>8</sub> 5 <sup>1</sup> / <sub>8</sub>	15 94
	1	BLK Velvet	15 <sup>2</sup> / <sub>8</sub> 38	5 11
	1	Selicio	30 <sup>3</sup> / <sub>8</sub> 1 <sup>1</sup> / <sub>8</sub>	3 84
	2	Paper Cambrie	88 <sup>2</sup> / <sub>8</sub> 8 <sup>2</sup> / <sub>8</sub>	6 80
	1	for Slate Pap Comb	40 9	3 60
	1	" " "	85 7 <sup>2</sup> / <sub>8</sub>	2 68
	2	Cold Drill	76 <sup>1</sup> / <sub>8</sub> 10	7 62
	3	Hickory	134 <sup>3</sup> / <sub>8</sub> 11	14 88
	1	White Flanel	25 <sup>3</sup> / <sub>8</sub> 46	11 84
	1	Blue	48 35	16 80
	2	Beverly De Lains	103 <sup>2</sup> / <sub>8</sub> 9 <sup>2</sup> / <sub>8</sub>	9 88
	2	Hanover "	90 11 <sup>2</sup> / <sub>8</sub>	10 35
	4	Yantis "	170 <sup>2</sup> / <sub>8</sub> 11	19 04
25	1	Irish Linen	12 35	4 20

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716	1	ps Irish Linen	13	45	5 85
517	1	" " "	28	5/2	17 65
4	"	Lansdale Bleached	180	14	25 20
2	"	Bro Drill	78	92	7 41
	"	Same Bro	400	88	35 26
		Ind on Bro			1 18
		2 cases of 1 do 3/4 ctg 3/4			2 25
					<u>\$441 68</u>

Chicago Feb 5th 1858

Mr S. Thompson

Bought of Harmon Aiken &amp; Gale

Edwin R. Harmon } Wholesale Dealers in Staple + Fancy Dry Goods  
 James C. Aiken }  
 Daniel W. Gale } Terms:

Cases	Bales	Bundles	53 Lake Street	
25	2	Lbs Holdsworths Lin Thread Eppiait "5"	85	1 70
41	2	" " " "	125	2 56
	1	Box Black Cravats	12.50	12 50
	2	" Linen Hdks	14/2	3 50
	1	Box Pearl Buttons	6/6	81
2 1/4	4	ps Velvet Ribbons	70	2 80
	3	" Black Cambric	106	7 95
518	1	" Irish Linen	28 5/2	17 51
710	1	" " "	14 3/4	5 25

25	1	ps Irish Lamin	13 33	4 29
1	"	Mohair De Beige	49' 17	8 37
1	"	Taconey Print	35 92	3 33
1	"	Briggs "	29 92	2 81
2	"	" Wide	81 10	8 15
3	"	Rockingham "	106' 92	10 09
17	"	Fancy "	618' 10	61 82
4	"	Lonsdale Bleached	132 82	11 26
4	"	Shep Hill "	152 11	16 81
4	"	Great Falls "C" Bro	134 9	12 06
4	"	" " "J" "	142 10	14 25
		Box of Ctg 34		1 13
				<hr/>
				\$209 25

Exhibit "E"

Lacomb May 30<sup>th</sup> 1899

Mr James E. Aiken

Dear Sir — your note against me is overdue & I am unable to meet it. I wish to have you hold on to your mortgage that is, not to close until Sept. I will arrange Johnston, due in July & pay yours in the month of Sept next, if you can do this, you can have an agent here, to see that I do take care of the first mortgage in season, and if you wish extra interest or damage I will endeavor to make it all satisfactory. Truly yours  
 G. Thompson  
 P.S. I should have written you before, but have been

absent some six weeks, had spoken to Mr Bangs to  
write, do not learn as he did. J. J.

### Exhibit "F"

- 1<sup>st</sup> My name is Jas. E. Hiken age 37, occupation Merchant
- 2<sup>nd</sup> knows all of them Woodworth & Wells 8 years. — Thompson  
since Jan'y 13, 1858, Johnson since July 26, 1859.
- 3 Thompson on the 13<sup>th</sup> Jan'y 1858 Boyd of N. B. & Co. \$ 441<sup>69</sup> & on  
July 5 1858 \$ 209<sup>25</sup> which sums with int amounted to \$ 733<sup>28</sup>  
Nov 1<sup>st</sup> 1858 for which security was given on a House & Lot in  
Lacoin known as the Bangs House (Note here described) at the  
same time, security was taken for W. Wells for the amt of their  
claim <sup>against</sup> ~~against~~ Thompson all in my name, I believe the  
claim a first one & was so acknowledged to be by Thompson  
said notes <sup>✓ Vouchers</sup> ~~xxx~~ ~~xxx~~ as described, were due in May 1859, and are  
or were at the commencement of this suit unpaid,
- 4 I saw Johnson July 26, 1859, in Lacoin, I told him I had a  
demand against Thompson secured on a H. & Lot upon  
which I believed he had a prior lien, he said he had a mort-  
gage on the property, he said he knew some one in Chicago  
had a Mortgage on the House property but did not know  
what the name was. I told him ours was due & unpaid & I had  
come to find out how the matter stood, as I supposed his  
was due, he said it was — I asked him if Thompson had

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paid him any part of <sup>it</sup> he said he had lately had a payment from Kevin of the interest, I asked him how much, he said between \$300 & \$400 - I asked him how much Thompson then owed him he said \$800, I asked him if he paid money, he said not all - that he had arranged it to his satisfaction - I wished to know whether he was going to force collection, as I had learned that there was not much prospect of T. paying just now - If he did, it would compel us to pay it to protect ourselves. - He said he thought T. an Honorable man, <sup>and would pay</sup> He also said he did not care for his money as long as he had his interest, as it was well secured. I asked him what rate of interest T. was paying him, he said they arranged that between themselves. I said I had rather pay his mortgage than have the debt increased more than 10% per annum if he thought T. would not pay the interest in future - He said he could not afford to lend his money at 10% he could get more for it, That T. had paid him more & he thought he would as he had agreed that he would pay the note all up after Harvest,

I gave him the name of E. V. Robbins as reference, and requested him to let me know when he was going to force collection by sale of the property - if he had to do so, and <sup>we</sup> would pay him & save costs, But we would like it if T. could have more time, He said he should do nothing for the present & would let me know when he did.

5th I saw him on the 9th day of May 1860 in company with Mr

F Wells - We met him in the Street I think. I said we had learned he was going to sell the Thompson property upon which we had a lien & wanted to see him about it, he asked us to his house, I then told him I was surprised, he did not let me know, he was going to sell as he had agreed to do, he said he had given all the notice the law required, that he did not know as he was obliged to tell me his business.

I told him we now proposed to pay him & save costs as I had told him we would the ~~same~~<sup>summer</sup> before. He said he had no interest in the matter - now, He having conveyed it to a man in Cincinnati, I told him I thought from the advertisement that his claim was more than he told me in July last, and that we were prepared now to pay him all Thompson owed him - He said nothing but gold would pay it. I said I thought it hard to exact the gold of us. I told him we had come prepared for any emergency, and that I would now make him a tender of the gold, - all that Thompson owed him - He said he could not receive it, - I asked him if he would accept it as a tender - he says I will as far as I am concerned - but I have nothing to do with the claim - He said he would see his attorney and let us know what he would do.

6<sup>th</sup> I saw Mr Johnson in the reading room of the Hotel

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just before dinner— I asked him if he was prepared to settle with us.— he said his atty had been engaged in a suit at Court & he had not been able to have any talk with him:— I then said to him, I understand that Mr Thompson has just written to you through a friend here—that he will be home in <sup>Oct</sup> next & will then pay you all & wants you to wait on him till then & that if you will do so, you may have the rent of the houses which you can get \$250— for waiting he said he did not want to be troubled with the house that he must have the money or the property. I then asked him what interest he would want if H. A. & G. & M. & M. would guaranty the payment in 6 mos he wanted to know how much we would give— I said he was the one to say— & he said 3% per month, I told him that was too much— He said, well that is the best I will do.

Jrs

Chicago May 11<sup>th</sup> 1860

J. Granger Adams

44 Clark Street

Pay Messrs Garrison Aiken &amp; Gale or bearer

Six Hundred and fifty Dollars and charge the same to account of

\$650,

Wadsworth Wells

Copy of Original  
Check

United States }  
 State of Illinois } ss. Be it remembered that on the twenty  
 County of Cook } third day of January A. D. 1861. personally  
 appeared at my office No 17, La Salle Block, in the City of Chi-  
 cago in said County, before me John A. Brass, a Notary  
 Public in and for the County of Cook & State aforesaid  
 bail etc. Frederick C. Wells to testify, and the truth to  
 say, on the part and behalf of the complainant in a cer-  
 tain suit or matter in controversy now depending and unde-  
 termined in the Circuit Court for Marshall County, in the  
 State aforesaid wherein J. M. Wadsworth et al, are the com-  
 plainants and Joseph H. Johnson is defendant

And the said witness, being of lawful age, and having been by  
 me first cautioned and sworn, to testify the truth, -  
 in the matter of controversy aforesaid did thereupon, de-  
 pose, testify, and say as follows, viz:

Question 1 What is your name, age, occupation, and place  
 of Residence?

My name is Frederick C. Wells, I am  
 thirty years of age - I am in the employ of Wadsworth  
 & Wells. I reside in Chicago.

2 Do you know the parties to this suit, & if so  
 how long have you known them, Answer:

I know all the par-

75 ties: I have known Wadsworth & Wells several years  
I have known Mr Johnson since the day before the com-  
mencement of this suit - I have known Mr Thompson  
since the Winter or Spring of 1855.

3 Did you see Mr Johnson the defendant on the 9th of May  
1860, if so state where under what circumstances, and what  
was said and done in your presence, Answer,

I did see him on  
the 9th of May 1860 I think Mr Aiken & myself met him  
first in the street at Lacon, from there we went to his  
house in Lacon. Mr Aiken told him that he was surprised  
that he should attempt to sell the property without  
him letting him know as he had agreed to let him know

Mr Johnson said that he did not that he was, was obliged to  
inform Mr Aiken of his business, the substance of the conversa-  
tion was this - that he had done in the case all the law al-  
lowed - that so far as he was concerned, he had no interest  
in the claim, having transferred ~~all his interest~~ all his  
interest in the claim to a man in Cincinnati - I then  
asked Mr Johnson who this Man in Cincinnati was - what  
was his name, and when he made the transfer to which he  
gave me no answer, Mr Aiken says that we came down  
prepared to settle this matter - and that he would like  
to pay the claim that Mr. Thompson owed him in full and  
<sup>stop</sup>  
any more costs being made upon it. - Mr Johnson says

it is necessary to have the gold - that he loaned Mr Thompson the gold, and it would take gold to pay it - Mr Aiken remarked that it was rather hard to exact gold but that he had come prepared for any emergency and that he would now make him the tender in gold of all that Mr Thompson owed him which was secured upon this property - Johnson replied it was nothing to him he having assigned the claim - Mr Aiken remarked asking him if he would receive it or accept it as a tender - Johnson replied yes, so far as he was concerned, but did not take the money, claiming that he had no interest in the matter - Mr Johnson said that he would see his attorneys - and see us again - that is in substance I think all the conversation at that time.

4 What was said if any thing at that time, as to the amount by Mr Johnson due him upon his Trust DEED or mortgage - Answer - I think Mr Aiken expressed some surprise to learn from his advertisement that he claimed so much, more due him than he did the last summer when he was there.

5 When & where did you next have a conversation with Mr Johnson & what was said & done? - Answer -

I don't remember having any conversation with him until about noon of

the same day when I met him in the reading room of  
 the Marshall House I told him that I would like  
 to fix this matter up some way, as it was now evident  
 to my mind that he was the man to get it fixed up  
 with and asked him if he had seen his attorney  
 He remarked that he had not seen him - his attorney  
 being busy - I asked him what he would charge and let  
 this matter lay until November at which time it was  
 expected that Mr Thompson would return - He said  
 his money was worth three per cent a month to him  
 I told him that if Harmon Aiken & Gale & Madsworth  
 & Wells would guaranty him in all Mr Thompson  
 owed him it would make a guaranty that would not be  
 worth three per cent interest a month, also told him  
 there were other facts he ought to take into consideration  
 and he remarked that it did not make any dif-  
 ference what the facts were he could get three per  
 cent a month for his money - I then said, that I supposed  
 one could always get over ten per cent per annum  
 for his money, he said that it had always been worth  
 more than that to him - I told him that Harmon, Aiken  
 & Gale & Madsworth & Wells were not paying more than  
 ten per cent - at that time I think Mr Aiken came up and  
 commenced talking with him and I believe, I went into  
 the Office. (5 O Clock P. M.) Examination adjourned  
 until 8 O Clock to-morrow morning

John W Brass  
 Notary Public

January 24, 1861. Examination Resumed

John A. Brass

Notary Public

6th What do you know of Samuel Thompson one of the complainants having been, and being yet indebted to Madaworth & Wells the other complainants, Answer—

I know that Samuel Thompson was indebted to Madaworth & Wells, is yet indebted to Madaworth & Wells for merchandise and interest on the same, as by this note referred to in the deposition of James E. Aiken marked Exhibit "B". Our previous indebtedness was given to Hannon Aiken & Gale or put in their hands to secure and collect and return the proceeds to us. The note for \$355.01. referred to was the note returned to us by James E. Aiken of the firm of Hannon Aiken & Gale

7th Do Madaworth & Wells hold & own any other note of Samuel Thompson, if so state what note it is?

Answer; They do, — they hold & own the note referred to in Mr Aikens deposition a copy of which is marked Exhibit "A" and is for the sum of \$733.28

8 Do they hold any security for said notes, or either of

79 79 them, if so, state what?

Answer: Both of the notes referred to are secured by mortgage described as follows; mortgage made on the first day of November 1858 between Samuel Thompson and Emma R. his wife party of the first part to James C. Aiken party of the second part upon Lots No 2, 3, 6, & 7, in Block 42, in the City of Lacon in the County of Marshall in the State of Illinois, filed for Record on the 9th of November 1858 and Recorded in Book K at pages 313-14-15

### Cross Examination by Mr Fort

- 1 In what capacity did you represent yourself to act at the time you saw Mr Johnson at his house on the 9th of May 1860?

Answer: Well, I think Mr Aiken gave me an introduction to Mr Johnson as the representative of Madson & Wells.

- 2 Did you state to him, that you was their agent or attorney?

I don't <sup>know</sup> that I did in that language

- 3 Did you have any thing to do with the tender spoken of by you, in your previous testimony; if so state what it was;

Answer: Well Mr. Aiken does all the talking with regard to the tender, I furnished some of the money to make the tender

with for Wadsworth & Wells.

4 How much money did you furnish and whose money was it? Answer; four hundred dollars of Wadsworth & Wells money.

5 Did you count or see or hear ~~any other person~~ any other person, count any other sum of money during that interview. Answer; No I think there was no money counted.

6 At that time who owned and controlled the claim contained in this note of \$733.28? spoken of by you in your testimony— Answer; I suppose the firm of Harmon Aiken & Gale owned it, but it was controlled by Mr James E. Aiken

7 Who then composed who now compose that firm? Answer; Edwin R. Harmon, James E. Aiken & Samuel M. Gale. I suppose to be the firm of Harmon Aiken & Gale

8 Who then composed and who now compose the firm of Wadsworth & Wells?

Answer; Tertius W. Wadsworth & George W. Wells.

81  
9 Were you ever a member of that firm or ever hold any interest in the same, or receive or contract to receive any of the profits of the firm?

Answer: I never was a member of the firm, all the interest I ever had in it was to get my salary, which may come out of the profits or the Capital.

10 What relation do you bear to any of said firm?

Answer: I am first cousin to George M. Wells,

11 How long have been in their employ?

Answer: <sup>Ever</sup> Since the firm existed, I think in 1854

12 Did not Mr Johnson say that he had at one time turned his claim over to his brother in Law in Cincinnati?

Answer: Johnson said that he had assigned all his interest in his claim against Thompson secured upon the same property to a man in Cincinnati when I asked him the mans name he would not tell me, and did not tell me.

13 Did Mr Johnson tell you the amount, claimed to be due on his claim against Thompson?

Answer: Well he claimed to have no interest in it whatever, but I am under

the impression he said there was about \$1200 due on it.

14 Did you know at that time what sum was due on the Johnson claim, if so state what it was;

Answer I did not, positively.

15 Where was the transfer made of the note of ~~the note of~~ \$733.28 by James E. Aiken to Wadsworth & Wells? State time, place, & who was present & all the particulars?

Answer; It was made at the "Marshall House" kept by Mr. Kealey, sometime in the early part of the evening of the 9th of May I think I don't know whether the Judge Purple was present or not at the transfer of the mortgage to secure the notes— I handed the mortgage to Judge Purple and requested him to write an assignment of the mortgage to Wadsworth & Wells I had been talking with Mr Aiken that day at different times about taking his claim, I told Mr Aiken at different times that in case we couldn't make a settlement, that Wadsworth & Wells would buy his claim— after having conversation with Judge Purple, Wadsworth & Wells attorney, and stating the facts of the case to him— He asked me how I was going to prove these facts— I told him that I had spoken to Mr Aiken about Wadsworth & Wells buying their claim, and I proposed that we should buy Mr Aiken's claim without recourse upon Mr Aiken and make him a wit-

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mess— he said that would be all right I had better do it.

16

Had Aiken & yourself ever had any conversation about the said transfer, before that day, if so, state when & where it was, and who was present?

Answer I dont remember that we had,

17

Did Wadsworth & Wells ever give you any directions to negotiate for said claim?

Answer, I dont know that they did.

18

Did you make any propositions to Aiken to sell him the Wadsworth & Wells claim

Answer, I dont remember distinctly as I did,

19

Why not?

Answer, because I dont remember any such conversations

20

Why did you not propose to sell the claim on Thompson to Mr Aiken.

Answer, The idea did not suggest itself to me— I didnt suppose that he would buy it any more than any other man

21

Was there any money or valuable thing passed from you to Mr Aiken or to his firm for said claim— Answer— After our return to Chicago probably the next day, I know of my own knowledge

83  
84

that Madsworth & Wells check was delivered to the firm of Harmon Hiken & Gale — I believe, I handed it to Mr Harmon, the check was for \$650.

22 Did you not remain in Lacon two or three days after said suit was commenced?

Answer: It is my impression that I left the same night.

23 How many days did you remain in Lacon during that visit? Answer:

I think that I arrived there on the morning of the 9<sup>th</sup> of May and I think I left Lacon on the evening of the 10<sup>th</sup> perhaps it was on the morning of the 11<sup>th</sup>.

24 Was said check ever paid bona fide?

Answer: I don't know whether it was paid or not.

25 Was it a bona fide purchase by you, of the Harmon Hiken Sale claim against Thompson — Answer — It was most emphatically.

26 Are you interested directly or indirectly in the result of this suit?

Answer — No Sir.

27 Have you ever executed any bond agreements or papers for the payment of any damages costs or expenses, that might accrue in this court? if so state when and where you did it and what they are? Answer- I think not

28 Did Mr Aiken or his firm pay or furnish any money to Purple or Ramsey or other attorney or expenses for the prosecution of this cause?

Answer: I think I borrowed some currency of Mr Aiken which I paid out to Attorneys and took their receipts Aiken also paid some taxes on those lots for Wadsworth & Wells & took receipts in the name of Wadsworth & Wells.

29 State when & how much money you borrowed of Aiken to pay Purple & Ramsey? Answer; I could not pay

30 Was at the time you were of Lacon, & about the time this cause was commenced? Answer - yes sir -

31 Did you have any authority to use Thompsons name as one of the complainants in this cause?

Answer; I dont think I used Thompsons name in said cause.

32 Did you pay or agree to pay Silas Ramseys fees or did Mr Aiken pay, or his firm <sup>agreed to</sup> pay the same if he would act as the attorney of Thompson? Answer; I met Mr

Ramsey and asked him if he was Mr Thompsons general attorney, Mr Ramsey said that he had been employed & was in the employ I think of Mr Thompsons. I then told Mr Ramsey the great sacrifice that I supposed this Johnson was going to make of Mr Thompsons property and asked him if he felt authorized to represent Mr Thompsons interest - He said he did - I told him that I thought it was unjust to take advantage of Mr Thompson in his absence - I told him that as far as pay was concerned that I would pay his fees or Madeworth & Wells would rather pay his Attorneys fees & look to Mr Thompson the Judge, Ramsey replied that he had been Mr Thompsons attorney, and so far as he was concerned it would be all right, I think yes, I know I gave Judge Ramsey ten dollars, I think that ten dollars is charged to Thompson.

33. Do you know where Mr Thompson was, when this suit was commenced - has been since - and is now?

Answer; I believe at the time the suit was commenced he was somewhere in the vicinity of Mobile Alabama - I dont, now of my own knowledge know where he is.

34 Have you had any correspondence with Mr Thompson since this suit was commenced? If so please attach a copy hereto? Answer; I believe that Madeworth

87 Wells have received a letter <sup>from</sup> Mr Thompson since that time which if found I will attach to my deposition and mark Exhibit "A."

85 Was it represented to Mr Johnson that you did or did not belong to the firm of Madsworth & Wells or that you was, or was not a member of said firm?

Answer; I don't know that there was any thing said about it only from the introduction of Mr Aiken who introduced as representative the house of Madsworth & Wells

Sworn & subscribed to this }  
24<sup>th</sup> day of January A.D. 1861 } Frederick C. Wells  
before me John A. Broop, Notary Public

Defendant by his counsel objected to each of the complaints interrogatories and the answers thereto made severally and separately as the interrogatories were propounded and the answers made and the complainants by their counsel reserves a like full benefit of objection to all the cross interrogatories of the defendant and the answers thereto

Chicago January 24, 1861. John A. Broop  
Notary Public

8888

Mobile May 23<sup>d</sup> 1860

Messrs Wadsworth & Wells

Dear Sirs

I have just received yours of the 14 inst. In answer to which I say that I received of Mr Johnson \$800 Dollars for which I gave the two notes you speak of. For the 12 months extension I paid 20 per cent over and above the 10 per cent, in the note. I paid the \$80 note for all extension after that and up to March 8<sup>th</sup> 1860. I paid 3 per cent a month ~~xxxxxxx~~

All of the above was paid in money except one city order for \$100, paid by myself, or on my order. Mr Johnson received a part from Mr Robbins and a part from Jason A Chapman, and a part from myself. I know it was all paid. I shall be at your place in Nov

Yours Truly

Samuel Thompson

Exhibit. III

J. W. Wadsworth  
Et. al,

vs

Joseph H. Johnson

Circuit Court of Marshall County

United States

Northern District of Illinois } ss.

I John A. Rapp a Notary Public

in and for the County of Cook in the State of Illinois, Do hereby certify that the reason for taking the foregoing deposition, and the fact is, that the same were taken upon a written notice (for complainants) by complainants to defendants to take the same at the office of said Notary in Chicago on the 23<sup>rd</sup> day of January A. D. 1861, & continue the same if necessary from day to day. I further certify, That said notification of the time and place of taking said deposition was made out and ~~signed~~ <sup>sworn</sup> which is hereto annexed. I further certify, That on the 23<sup>rd</sup> day of January A. D. 1861 I was attended by Henry J. Helm Esq of counsel for the said Complainants Madaworth & Wells and by Mr G. L. Fort <sup>of counsel</sup> for Defendants and by the witnesses who were of sound mind and lawful age, and the witness having been in accordance with law by me carefully examined and cautioned, and sworn <sup>in accordance with law</sup> to testify the whole truth, the depositions were by me reduced to writing in the presence of the witness who subscribed the same in my presence and I have retained the said depositions in my possession for the purpose of transmitting the same by mail to the Court, for which the same was taken.

I further certify, That I am not of counsel or attorney for either of the parties in the said deposition or caption ~~or in any way interested in the event of the~~ said cause in testimony whereof I have subscribed my name and affixed my seal, this 24<sup>th</sup> day of January A. D. 1861.

*(Circular seal containing the initials "L. B.")*

John A. Basso, Notary Public

J. R. Chapman Sworn, Testified

He knows Saml Thompson have known him for 8 or 10 years, he lived in Lacon, here off and on since 52 or 53. dont know when he left, think it was a year ago last fall (order to Chapman offered shown witness) I paid the order.

I paid the order signed by Thompson on me for \$50 in favor of Johnson - dated Sept 10, 59 payable at 60 days objected to.

Cross Examined

Fifty Dollar order was in writing, dont know on what indebtedness from Thompson to Johnson <sup>to</sup> was paid.

Re Ex. I placed order in my drawer, and I have not since been able to find it.

Onas V. Robbins - Sworn, testified that he knows Thompson. I paid Johnson for Thompson in July, 14, 59, one hundred cash and signed note with Johnson for \$135, seven cents payable in sixty days and paid it afterwards in about 3 months

Fred. M. Gage

Have rented house and lot that Trust Seed are now rented of Johnson paid Johnson \$34.60, rent from Oct. 12, 60 to 1<sup>st</sup> January on said house

4) 13750  
3460

91 Henry L. Crane <sup>being</sup> Sworn, Testified  
(After the Record of Judgment in favor of Johnson vs  
Thompson & G. L. Ford dated July 3, 1858 for \$415  
and all papers in the case <sup>were</sup> as follows) offered. Johnsons receipt on  
Execution dated 8 July 58 in full of Judgment  
that Judgment was paid by Thompson in specie all  
at one time the amount was \$425,

### E. V. Robbins Recalled

Know of his having bought wheat of Moores Estate  
he bought some seed wheat, I furnished him 600 dollars  
to pay for it — I dont know of my own knowledge  
of his buying wheat with it.

Arch. Stevens. —

Thompson was in business  
from Dec 57. to April 58, dont know of his buying  
any wheat, dont know of any wheat being taken in  
during that time knew of his giving order to Mills to his  
men. — I started for Liles Seal two years ago last May  
or April — dont know what wheat was worth of wheat

### Defendants Evidence

note dated 10 July 57 of Thompson & W<sup>m</sup> Fisher  
to Johnson for \$800. with 10 per cent interest payable in  
one year after date

Deed of Trust of Thompson wife to Johnson of same date

to secure \$880. on same lots as deed of Thompson & wife to Aiken.

Agreement on back of deed of Trust to extend time of its payments for one year

G. L. Fort Sworn; Testified that he knows compl<sup>y</sup> Thompson was present when exhibit one was made. I wrote it the agreement was given in part for some money Johnson claimed, ~~Thompson~~ <sup>Thompson</sup> owed him on the suit of him against Thompson & me, the judgment in which <sup>suit</sup> was offered <sup>in evidence</sup> by <sup>complainant</sup> The agreement is the one offered in evidence by complainant & compl<sup>y</sup> \$41.10 of <sup>the</sup> agreement only was given on acct of that judgment he allowed also attys fees in said suits. Don't know whether it was 5, 10. or 15, dollars, ballance of agreement, Johnson paid Thompson in cash.

The \$100. City order was paid in part settlement of suit of Johnson vs Thompson & me

Cross Examined — The transaction was July 30. 1858 —

Re Examined —

The \$400 dollar note was given for money (gold) borrowed by Thompson of Johnson, it was a transaction entirely from the deed of Trust and note of \$800. given in connection with and <sup>from</sup> the \$0 dollar note

Wrote Exhibit No 2 dated July 30/58 and Witnessed it, it is the same instrument, is to have the same effect as extension on back of Deed of Trust did, It was written

to secure \$800. on same lots as deed of Thompson & wife to Aiken.

Agreement on back of deed of Trust to extend time of its payment for one year

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93  
for Thompson, as he wanted one to keep,  
Wrote Exhibit No 3, did not write all of it, the  
words "hundred and seventy, and figures 176" with two  
Cyphers over line, I did not write, I signed instrument  
as witness, Johnson + Thompson were present when I wrote  
instrument, and both directed me to put a "one dollar"  
or consideration, the interlined words are written in differ-  
ent ink, and I made such an "h" or 1. I know said  
words, & figures were not there where I signed the instrument  
think it was made at its date, dont know certainly in  
whose hand writing the said words, think I would know  
Johnson's writing, cant tell whether said words were writ-  
ten by Johnson or not, <sup>parties</sup> Johnson + Thompson were together  
a good deal

### Cross Examined

Dont know what Thompson gave Johnson for the  
extension, I did the business as their atty, For any thing  
I know, the words might have been put in about same  
time, Exhibits 1 + 2 I think likely were made at same  
time

Re Examined — I wrote extension both parties  
being present, so that Johnson could not sell under his  
Deed of Trust — Johnson in fall of 59, showed me, Thomp-  
son being present a paper of the kind of exhibits they  
then had a conversation about some wheat transactions, Johnson  
had bought some land of King & was to pay him some money

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for it, think \$300, Thompson + Johnson had been trying to speculate a little in wheat Johnson had advanced to Farmers money to the amount of several hundreds of dollars for partnership wheat and Johnson wanted the money back, think amount advanced was over three hundred dollars, They had paper Exhibit "A" was then present at the time of conversation, don't know that Dever saw it, but if I did, the memorandum at lower left hand corner was not on it, it is in Thompson's hand writing in wheat transaction, I understood from both of them that Thompson was indebted to Johnson over \$300, this indebtedness from what was said to me by Thompson + Johnson was a different transaction from the \$800 dollar note

I know of the loaning of the money in the \$800 dollar note and 80 dollar note saw the money mentioned in said notes transferred from one to the other, from ~~Thompson~~ <sup>Johnson</sup> to ~~Johnson~~ <sup>Thompson</sup> money was in gold, and there was \$880, delivered, I drew Trust Seed and both said notes Johnson had a note for the deficiency on the wheat matter, think it over \$300, he also had a smaller note he had bought of some, <sup>and</sup> think it 35. or 37. dollars

### Crop Examined

I saw the other note for the wheat transaction in 58 or 59 Wheat transaction was when Thompson was carrying

94

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95

own his store, I saw note after he left, I saw it after judgment was rendered on \$400 dollars, Thompson & Johnson were together when I saw the note — I may be mistaken about that, I recollect seeing the note, and Johnson wanted Thompson to pay King, Johnson wanted Thompson to turn out to King goods for it, and King would not take them

Re Examined—

I knew of no other security Johnson had on any of the notes except deed of Trust and 400 dollar note no other name on the wheat note, heard Johnson and Thompson talk about getting the notes not secured paid

Crop Examined

I counted the Eight Hundred dollars when Thompson got it, he was by,

Re Examined— Deed was first drawn for 800 dollars Thompson took a motion that he wanted 80 more, and I drew another note <sup>for it,</sup> given. At one of the times when the eight hundred dollar note was extended Thompson talked with me about his contract to buy wheat with Johnson, before I saw the notes

objected to it

A. S. Fishburn

Knows Thompson and Johnson — Thompson left here in the fall of 57 went first to New Orleans, then he went to within a few miles of Mobile Alabama. has acted as his agent since he

96 left have received letters have received letters  
from <sup>him</sup> since he left, knows his hand writing, thinks letter  
shown him is Thompsons hand writing—

(letter referred) I told Johnson if he could rent the house  
to do so, Thompson had a farm and raised 400 acres of wheat.  
Letter referred to above is as follows "to wit":

Mr. A. J. Fishburn

Dear Sir

I received yours of the 6<sup>th</sup> inst  
a few days since, I am glad, to hear every thing goes on so well  
at your place. My family get along first rate, and are ~~fean~~  
greatly delighted with the country. They are really wild with  
delight they found me situated much better than they expected  
we have a very nice boarding place. The folks here in grand state  
are wealthy, and really one of the best families I were ever  
acquainted with, and upon the whole, we are very nicely  
situated, and I feel first rate— all well— tell Mrs Fishburne  
all about, all about the people, and every thing els I presume  
but I will tell you something about, my work. I am getting  
along very well, I want more men, I would like to have 100  
more men, and move my work faster, the weather is  
the finest to work I ever saw, I have never had men do  
better work, and they are all perfectly healthy, we now have  
a plenty of new potatoes, and other vegetables, we have had  
no weather uncomfortable to work, I really liked the climate  
have much better than in Illinois, or Mo, I reckon that your friends

suit will go all right, I think the price the commissioners  
allowed for what they have taken of the Chicago property rather low  
but if Mr Howe is satisfied with it all right, I expect to be able  
to straiten up all my matters up there by the first of Nov, there  
will be no mistake about this (providence permitting) I say it  
to you, so you may, if you should chace have an opportu-  
nity to trade for my paper, it is all good, If Jas Johnston  
does not wait, I wish you to notify Aiken of Chicago, Mr Rob-  
bins knows him, Mr Johnstons demand was even \$ 800 on  
the 7<sup>th</sup> of last March, he may have the rent if <sup>he</sup> will wait  
till I come up, I wish to redeem every dollars worth of property  
that I have in Lacon, I shall redeem the stone if I can.

Ask the Judge how long it will be, before the Second  
Insurance Co get a foreclosure on their mortgage, I am still  
under many obligations to you for your kindness to my family  
tell Mrs Fishburn I think she sent me a very fine boy, he is  
just as good as he can be, write soon, My love to your family

Truly Yours, Saml Thompson

Mrs Thompson sends a great deal of love to Mrs Fishburn  
and says she is soon to write her a very long letter, and tell her a thou-  
sand things, Angelina sends her ~~love~~ to Mrs Thompson

I Martin Ballou Judge of the 23<sup>d</sup> Judicial Circuit do hereby  
certify that the foregoing is the oral evidence, and al-  
the oral evidence, <sup>taken</sup> in the foregoing case on the trial thereof

M. Ballou Judge  
23<sup>d</sup> Circuit Ills

Thursday May 9<sup>th</sup> A.D. 1861

Tertius W. Madeworth	} of the Circuit Court of Marshall County
George M. Wells + Samuel Thompson	
no	
Joseph H. Johnson	} In Chancery

This day this cause came on to be heard upon the Bill, answer  
Replications, exhibits depositions and evidence in the cause  
and its appearing to the court from the bill answer, Exhibits  
depositions and evidence in the cause, that the said court

98. bill described dated on the said 10<sup>th</sup> day of July 1857

And it further appearing to the court that the said Johnson defendant aforesaid has since the delivery of the said deed of Trust & said notes to him by the said Thompson corruptly and unlawfully taken and received from the said Thompson as interest for the loan and forbearance of the said sum of eight hundred dollars, the full sum of four Hundred thirty nine dollars and seventy five cents (\$439<sup>75</sup>), substantially as stated and set forth in the Complainant's Bill, which said sum greatly exceeded the sum of Ten per cent per annum for the loan or forbearance of the said sum of Eight hundred dollars aforesaid.

It is therefore ordered, adjudged and decreed by the Court that the said sum of four hundred and Thirty nine dollars and seventy five cents, so usurious<sup>Corruptly</sup> and unlawfully contracted to be taken and received by the said defendant, of and from the said Complainant Samuel Thompson, he and the same is hereby decreed and declared to be forfeited to the said complainant and that the same be deducted from the said sum of Eight Hundred originally loaned by the said defendant to the said Samuel Thompson complainant aforesaid

And it further appearing to the court that upon such deduction being made as aforesaid, that there will still be due, and owing to the said Defendant Johnson upon his

99 note and deed of Trust aforesaid, the sum of Three hundred and sixty dollars, and Twenty five cents, and that he has a prior lien upon the said premises for the same. It is ordered adjudged and decreed that the complainants pay the same to the said Johnson with legal interest thereon from the date of this decree, on or before the tenth day of June A. D. 1861. and that upon such payment by said complainants or either of them, that such complainants, <sup>paying</sup> the same be substituted to, and vested with all the rights, interest and privileges which the said Defendant Johnson, now has in; or by virtue of his deed of Trust aforesaid, to enforce the payment and collection of the said sum of money so due and unpaid to the said Defendant Johnson.

And it is further ordered, adjudged and decreed that in case such payment shall be made as aforesaid, the <sup>said</sup> defendant shall be perpetually restrained and enjoined from, in any manner proceeding to enforce the collection of his said notes or deed of Trust in said complainants. All decided.

And it is further ordered adjudged and decreed, that in case of failure on the part of the complainants to pay said sum, so found and adjudged to be due to the defendant on his notes & deed of trust aforesaid, that then the said defendant may proceed to sell the same according to the terms and conditions in his said deed of trust con-

tained, to make the money & interest so found and adjudged to be due and unpaid to him as aforesaid. It is further Ordered adjudged and decreed, that the said defendant pay one half of the costs of this proceeding and the complainants pay the other half of such costs and that execution issue therefor, as in cases of judgments at Law.

Samuel Thompson  
Tertius W. Madaworth  
George M. Wells,  
vs  
Joseph H. Johnson

And now again comes the Defendant and prays } No. B.  
an Appeal to the Supreme Court of this State, which prayer is granted upon Defendants filing a Bond in the sum of Three Hundred Dollars conditioned according to Law with Abram S. Fishburn as security within twenty days from this date

Know all men by these presents that we Joseph H. Johnson and Abram S. Fishburn are held and firmly bound unto Samuel Thompson, Tertius W. Madaworth & George M. Wells in the special sum of Three Hundred Dollars lawful money for the payment of which well and truly to be made we bind ourselves our heirs executors and administrators jointly severally and firmly by these presents. The condition of this bond is such that whereas on the Ninth day of May in the year of our Lord, One Thousand eight hundred & sixty one the above named Joseph H. Johnson recovered a decree in the Circuit Court of the County of Marshall and State of Illinois by the consideration of the Judge of said Court for the sum of three Hundred & Sixty dollars & twenty five cents with legal interest there on from the date of said decree, and one half the costs of

Filed May 28 1861  
J. H. Johnson  
A. S. Fishburn  
Clerk

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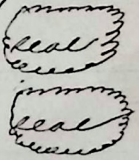
suits and the said Circuit Court also decreed that, that the said Joseph H. Johnson pay one-half of the costs of suit in a certain cause, then & there in said Circuit Court heard and determined wherein the said Samuel Thompson, Tertius W. Madaworth & George Mc. Wells were complainants and the said Joseph H. Johnson was defendant being a cause on the Chancery side of said court, and the said Circuit Court, did <sup>then</sup> & there adjudge in the aforesaid cause that the said Joseph H. Johnson forfeit the sum of four Hundred & thirty nine dollars & seventy five cents usurious interest taken & reserved & that said Johnson be restrained & enjoined from proceeding to enforce the collection of his notes or deed of trust in complainants bill described upon payment by complainant of said decree & interest & that on failure to pay the same, that said Johnson proceed to collect the amount of said decree & interest by sale of the premises in said deed of trust according to the terms and conditions of said deed of trust among other things, from which opinion <sup>& decree</sup> of this said Circuit Court the said Joseph H. Johnson prayed for, and obtained an appeal, to the Supreme Court of the State of Illinois upon his filing with the clerk of the said Circuit Court a bond in the sum of three hundred dollars, with Abram D. Fishburn as his surety therein within twenty days from the date of said decree conditioned as the law directs,

Now if the said Joseph H. Johnson shall pay the judg-

ment, costs, interests, and damages, awarded and to be awarded, against him in case said decree shall be affirmed, ~~affirmed~~ and shall prosecute said appeal with effect then this obligation shall be void, otherwise to remain in full force. Dated at Sacon this 28<sup>th</sup> day of May A. D. 1861.

J. H. Johnson

A. S. Fishburne



State of Illinois }  
Marshall County }<sup>20</sup>

Samuel Thompson } In Chancery  
Fortius W. Wadsworth }  
George M. Wells } Bill for Injunction & Relief  
vs } I Sheldon Arnold Clerk of the Circuit  
Joseph H. Johnson } Court of said County do hereby certify  
that the foregoing Record contains a full  
and correct copy of all the papers filed  
in the Circuit Court of said County in said Cause, and also  
a copy of all the proceedings had in said Cause ~~in said~~  
~~Cause~~ in said Court as appears of Record in my Office and  
a full statement of all the Evidence given on the trial  
of said Cause in said Circuit Court, all of which appear  
from the Records & files in my Office

In Witness Whereof I have hereunto set my hand and  
affixed the seal of said Court at Sacon this 5<sup>th</sup> day  
of April A. D. 1862

I Sheldon Arnold  
Clerk

State of Illinois } Third Grand Division  
Supreme Court } April term 1862

Joseph Johnston }  
vs }  
Samuel Thompson } Appeal from Marshall

Et all now comes the said Joseph Johnston Appellant by Leland Blanchard his attorney and says that in the foregoing <sup>record</sup> and proceedings there is manifest error and pray that the same be corrected and the decree entered therein be reversed & remanded in pursuance of law, and for special assignment of errors shows the following

- 1<sup>st</sup> The Court Erred in admitting improper testimony
  - 2<sup>d</sup> The Court Erred in sending a decree for complainants below
  - 3<sup>d</sup> The Court Erred in not finding a sufficient amount due defendant
  - 4<sup>th</sup> The Court Erred in reducing amount of defendant's claim
  - 5<sup>th</sup> The Court Erred in Enjoining defendant from selling the Mortgage premises
- Leland Blanchard  
Atty for Appellant

Now if the said Joseph W. Johnson shall pay the judge

And now Come the Appellants and say  
that in the Record & proceedings and in  
the Rendition of the Decree aforesaid there  
is no Error and pray that the Decree may  
be affirmed

A. H. Purple  
for Appellants

Apr 25<sup>th</sup> 1862

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Appeal from Marshall

Joseph A. Johnston  
Appellant

vs

Samuel Thompson

Filed Apr. 23<sup>d</sup> 1862  
L. Kelam  
Clk.