

No. 13653

# Supreme Court of Illinois

Harris

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vs.

Mills

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120  
STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division.

No. 200

*Harris*  
*vs*  
*Mill*

1852

1853

John H. Harris	} In the Circuit Court of the County of the County of Marshall and State of Illinois of the October Term thereof A. D. 1861.
vs	
Edwin Mills	
Julia Mills	
James J. Lucas	
William H. Millers	
John G. Mills	Bill to foreclose Mortgage

Be it remembered that in this cause the complainant on the 8<sup>th</sup> day of February A. D. 1856, filed in said Court, the following bill of complaint to wit:

In the Circuit Court of Marshall  
County, April Term A. D. 1856

To the Hon. M. E. Colliater, Judge of the Circuit Court of Marshall County In Chancery, Sitting

Humly, Complaining sheweth unto your Honor your Orator John H. Harris of the County of Tazewell in the State of Illinois that on the 12<sup>th</sup> day of May A. D. 1857, One Edwin Mills of the City and County and State of New York being indebted to your Orator in the sum of Seven Hundred Dollars for the purchase money owing by said Mills to your Orator for the purchase of the South East quarter of section Twenty seven (27) in Township Thirty (30) North of Range One (1) West of the third principal meridian in Marshall County (then Putnam County) Illinois — made, executed

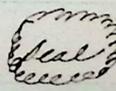
2  
and delivered to your Orator a certain deed of Mortgage to secure the payments of the said sum of money so due and owing as aforesaid; which said deed of Mortgage is in substance as follows.

This Indenture made and entered into this twelfth day of May, A. D. 1857. Between Edwin Mills of the City of New York of the first part and John H. Harris of the town of Fremont County of Sagwell and State of Illinois of the second part Witnesseth: That the said party of the first part for and in consideration of the sum of \_\_\_\_\_ Dollars in hand paid by the said party of the second part the receipt whereof is hereby acknowledged, has granted, bargained and sold, and by these presents does grant, bargain and sell unto the said party of the second part his heirs and assigns, all of those certain tracts or parcels of land known and designated, as the South East quarter of Section Twenty Seven, Township, Thirty North of Range One West of the third principal Meridian also Lots 9, 19, 9 + 19 in Blocks No 15. & 16, in the town of Lyons; all of the above property lying and being in the County of Putnam and State of Illinois Together with all and singular the privileges and appurtenances, thereunto belonging or in anywise appertaining. To Have and to Have and to Hold

the above described property with the appurtenances unto him the said John H. Harris, his heirs and assigns forever. And the said party of the first part covenants, to warrant and defend said tracts of land from the claim of him the said party of the first part and from the claim or claims of all persons whatsoever. Nevertheless the condition of the above obligation is expressly this, that if the above named Edwin Mills his heirs or assigns shall well and truly pay, unto the said John H. Harris, or order, the sum of Seven Hundred Dollars on or before the ninth day of September 1838, according to the tenor of a certain note of hand bearing date 9<sup>th</sup> Sept, 1836 drawn by the said Edwin Mills, <sup>and</sup> payable to the said John H. Harris, then the above obligation to be void and null and void any thing to the contrary herein contained notwithstanding.

In Witness Whereof the said party of the first part, has hereunto set his hand and seal the day and year first above written.

In presence of  
Nathl G. Montrop

Edwin Mills 

and then and there delivered the said Mortgage Deed so by him executed, as aforesaid to the said John H. Harris (four Coator); Which said Mortgage Deed was on the 8<sup>th</sup> day of November A.D. 1835 duly recorded in the recorders office of Marshall County in

4 the State of Illinois aforesaid.

And your Orator charges that the said debt of Seven Hundred dollars in said mortgage mentioned, has never been paid nor any part thereof; nor any portion of the interest due thereon, but that the same with all the interest thereon from the ninth day of September 1838, is still justly due, owing, and unpaid to your Orator. And your Orator refers to the said Mortgage Deed, and makes the same a part of this bill & will produce and prove the same upon the hearing of this cause.

And your Orator further Charges that after the making, and execution and delivery of the said Mortgage Deed as before stated to wit: On the 13<sup>th</sup> day of January A. D. 1839, for a pretended indebtedness of Two Thousand Dollars, alledged to have been due and owing from the said Edwin to his Brother Harlow Mills, then a resident of the said City of New York but recently a resident and Citizen of Marshall County Illinois, and to secure such pretended indebtedness. Her the said Edwin Mills and Eliza his wife then and there made executed and delivered to said Harlow Mills a Mortgage Deed upon the following described Real Estate to wit: The South East quarter of section Twenty Seven in Township (30)

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Thirty, North of Range (1) One West of the third principal meridian being the same land mortgaged to your Orator as before stated, also the North East quarter of Section four (4) Township Twenty Nine North Range One West as aforesaid, also the North East quarter of Section Eight, Township Twenty nine North in Range One West, Also the North West quarter of Section four, in Township Twenty Nine North and Range One West as aforesaid, and also of Lots No (19) in Block (28) and Thirty, and also lots also Lots (20) in Block (23) and (30) also Lot No 18, in Blocks (15) and (16) also Lots No (19) in Blocks (15) and (16) in the town of Lyon in the County of Marshall aforesaid, a copy of which said Mortgage duly certified is hereto attached marked "E" and made part of this bill. The Original is in the possession of the Defendants or some of them who are hereby notified to produce the same upon the hearing of this cause.

And Your Orator further states that he is informed and believes, and therefore charges that at the time the said Mortgage was made and executed by the said Edwin to the said Harlow Mills he the said Edwin was not in fact indebted to the said Harlow in the sum of Two Thousand Dollars nor in any sum of money whatever. But that the same was made and executed with

C  
an intention to hinder and delay and defraud  
your Orator in the collection of his just debts.

That although the said Mortgage was recorded  
on the 2<sup>nd</sup> day of March A. D. 1837, in the Recorder's  
Office of Marshall County and before the Recording  
of the Mortgage aforesaid to your Orator — Yet  
your Orator Charges that at the time of the recor-  
ding, and at the time of making and executing the  
same by the said Edwin to the said Harlow Mills  
He the said Harlow Mills had full and actual no-  
tice and knowledge of the existence of your Orator's  
Mortgage aforesaid and that the same was due  
and unpaid, and then and there and often after-  
wards promised the said Edwin Mills and your  
Orator that he would pay and satisfy the same.

And the said Harlow Mills then and there and  
often times afterwards in conversations with various  
persons stated and admitted that at the times  
aforesaid when his said Mortgage was made and re-  
corded that he well knew of the existence and  
validity of your Orator's Mortgage that the same was  
due and unpaid, and that he had promised, and  
agreed to pay the same.

And your Orator further Charges that on the 17<sup>th</sup>  
day of February A. D. 1842, the said Edwin Mills

and Eliza Ann his wife by their deed of that date  
In consideration as expressed in said deed of Two  
Thousand One Hundred Dollars sold granted  
bargained, remised, released, confirmed & con-  
veyed the land last before described in fee simple  
to the said Harlow Mills - But purporting to make  
said conveyance subject to the mortgage of the said  
Harlow Mills, held by him as aforesaid upon the  
land aforesaid executed by the said Edwin Mills  
as aforesaid, and stating therein expressly that  
said Mortgage formed a part of the consideration  
for the said conveyances

And Your Orator charges that at the time of  
the conveyance aforesaid and of the recording of  
the same the said Harlow Mills had full know-  
ledge of the existence and validity of your Ora-  
tors Mortgage aforesaid and promised and agreed  
to pay the same; and then and there and oftentimes  
before at and after the making of the said last  
mentioned Deed to the said Harlow Mills stated  
and admitted that he had promised and agreed  
to pay the same.

A Copy of the said Deed of Conveyance  
is herewith filed Subj Certified, marked B., and  
made part of this Bill. The Original Your Orator  
can not produce the same being in possession

of the Defendants who are notified to produce the same upon the hearing of this cause.

And your Orator submits, that the taking of the said Conveyance in fee simple by the said Harlow from the said Edwin Mills in law and equity operated as an extinguishment and merger of the said Mortgage by said Edwin to said Harlow Mills before referred to.

And your Orator charges that the said Harlow Mills departed this life intestate on or about the 20<sup>th</sup> day of October A. D. 1845, and that Julia Mills his widow who was since intermarried with One John Wilson of the said County of Marshall was in due form of law appointed administratrix of his estate, and that said John Wilson also died intestate on or about the year  
A. D. 1845.—

And your Orator charges that the said Harlow Mills at the time of his death left the following named Children born in lawful wedlock surviving him and who are still living and are all minors under the age of twenty one years. Viz:  
Julia now intermarried with James S. Lucas of the County of Woodford Illinois and William Henry and John Gale— Residents of the County

9 of Marshall aforesaid— His Only, Legal Representatives and heirs at Law.

And Your Orator Charges that the said heirs at Law and the said widow of the said Harlow Mills deceased are still the legal owners of the said land before described mortgaged to your Orator and that in justice and equity they ought either to pay your Orator his said mortgage money and the interest due thereon, or that the said land, in the said mortgage to your Orator described, ought to be sold or subjected to the payment of the said mortgage and interest and that your Orators mortgage ought in justice and equity to take precedence of and be paid out of the proceeds of the said Real Estate, in preference to the mortgage aforesaid from the said Edwin to the said Harlow Mills deceased— And your Orator further Charges that in fact no new or other consideration, either good or valuable passed between the said Harlow Mills and said Edwin Mills, at the time of the execution of the said deed of Conveyance aforesaid, and that the only consideration for said Conveyance was the pretended mortgage debt of Two Thousand Dollars aforesaid mentioned, in the said mortgage from the said Edwin to the said Harlow Mills aforesaid

10  
And your Orator charges that the said Edwin Mills  
and the said heirs & legal representatives, of the  
said Harlow Mills wholly neglect and refuse  
to pay the said sum of money so due your  
Orator upon his mortgage aforesaid or any part  
thereof. All which actings and doings on their part  
are contrary to equity and good conscience—and  
tend to the wrong and injury of your Orator in  
the premises

Forasmuch then as your Orator is remedi-  
less in the premises at Law, and can only have  
redress in Chancery where such matters are  
properly relievable and cognizable, He prays  
that the said Edwin Mills Julia Wilson admin-  
istratrix of the estate of Harlow Mills deceased—  
Julia Lucas James P. Lucas William Henry  
Mills and John Gale Mills may be made defen-  
dants to this Bill that they may severally be com-  
pelled to answer the same (but not under oath  
the Oaths of the said defendants being waived),  
That a Guardian ad Litem may be appointed  
for said minors, and that upon the final  
hearing of said cause a decree may be  
made and entered that defendants pay  
the amount due on the said mortgage and

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interest, or that the mortgaged premises  
 be sold for the payment of the same, & that the  
 proceeds of such sale be first applied in the  
 payment of the principal and <sup>interest</sup> due on your  
 aforesaid mortgage, and for such other and  
 further relief as to justice and equity shall ap-  
 pertain. He prays also for the usual process  
 of Subpoenas and He will pray &c

Surple & Pratt  
 For Complainant

State of Illinois }  
 Marshall County } ss.

cf. H. Surple being duly

Sworn Says that he is informed and believes  
 that Edwin Mills one of the defendants in this  
 suit is a now resident of the State of Il-  
 linois, and further saith not

Subscribed & Sworn to }  
 before me this 8<sup>th</sup> day }  
 of February A. D. 1856 }  
 J. L. Fort Clerk  
 John H. Harris

H. H. Surple

Edwin Mills, Julia Wilson }  
 Julia Lucas, James P. Lucas }  
 William Henry Lucas and John Gray Lucas }

In the Circuit Court

12  
of Marshall County Term 1856 Issue Subpoena for Ed-  
win Mills Julia Wilson and all the other defendants to  
and John P. Lucas  
Sheriff of Marshall County and for Julia Lucas to  
the Sheriff of Hoodford County Returnable to next term  
Advertise immediately as to Edwin Mills

13  
Feb. 1856

G. S. Fort Esq

Clerk

Jurple & Pratt

for Compt

And that on the 18<sup>th</sup> day of April 1856 the defendants  
in said bill filed their answer thereto, as follows, to wit,

John H. Harris

vs

Edwin Mills

Julia Wilson

Julia Lucas

John P. Lucas

William Henry Mills

& John Gale Mills

In Marshall Circuit Court April

Term A. D. 1856

In Chancery

The joint and several answers of Ju-  
lia Wilson and John P. Lucas, and Julia Wilson  
William Henry Mills & John Gale Mills five of the above  
named defendants to the complainants bill of complaint  
filed in this cause, said defendants saving and reserving  
all manner of exceptions to the many errors and in-

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Edwin Mills

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Julia Lucas

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William Henry Mills

+ John Gale Mills

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+ John Gale Mills

In Marshall Circuit Court April

Term A. D. 1856

In Chancery

The joint and several answers of Ju-  
lia Wilson and John P. Lucas, and Julia Wilson  
William Henry Mills + John Gale Mills five of the above  
named defendants to the complainants bill of complaint  
filed in this cause, said defendants saving and reserving  
all manner of exceptions to the many errors and in-

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consistences in said Bill contained for answer to the same or to so much thereof as they are advised it is necessary for them to answer unto, answering say

They do not admit, but deny that one Edwin Mills on the 12<sup>th</sup> day of May, or at any other time owed or was indebted to the Complainant in the sum of seven hundred dollars or any other sum as the purchase money of the South East quarter of Sec 27. in Township thirty north Range, One West of the third principal meridian, and said defendants deny that said Edwin Mills on the said 12<sup>th</sup> day of August, or at any other time made to Complainant a Mortgage Deed as set out in said bill to secure the payment of the sum of seven Hundred Dollars or any other sum and defendants charge that indeed, if any Mortgage was ever made by said Edwin Mills to said complainant there was no consideration whatever for said Mortgage, Defendants admit that a certain paper claimed to be a Mortgage made by said Edwin Mills to Complainant was recorded in the Records office of Marshall County on the 8<sup>th</sup> day of November 1855 a copy of which paper or pretended Mortgage is set out in said Bill.

Said Defendants deny that the said seven hundred Dollars named in the condition of Mortgage or any other sum of money together with interest thereon from the date of said pretended Mortgage remained due

14 to the complainant at the time of filing said Bill  
Said Defendants admit that on the 13<sup>th</sup> day of Jan-  
uary A. D. 1839, said Edwin Mills and Eliza his wife made  
executed and delivered to one Harlow Mills a Mort-  
gage deed on the South East quarter of section Twenty  
seven (27) in Township thirty north Range One West of  
the 3<sup>d</sup> principal Meridian, and also on the other tracts  
of land & lots named in said Bill, but said defendants  
do not admit but deny the allegations in said Bill  
that said last named Mortgage was given to secure a  
pretended indebtedness of two thousand Dollars from  
said Edwin to said Harlow Mills but the said Defs  
charge and allege that the said consideration of two  
thousand dollars named in said Mortgage was at the  
time of making said mortgage, just and due to said  
Harlow Mills from said Edwin, and that the same had  
been due from and after the 28<sup>th</sup> day of June A. D. 1837  
said defendants deny that said last named mortgage  
was made for the purpose of hindering or defrauding  
the complainant in the collection of his just debt, or of  
any debt against said Edwin Mills, or any of the rest  
of mankind.

2<sup>d</sup> Defendants admit that said Mortgage was recorded  
on the 2<sup>d</sup> day of March A. D. 1839, in the Records office  
of Marshall County, but said defendants do not

15 admit but deny that at the time of the recording of and the making of the said Mortgage the said Harlow Mills had no notice or knowledge either actual or constructive or of any kind of the existence of the said pretended mortgage from said Edwin to Compt) or that any thing was then or ever due on said pretended Mortgage and they deny that said Harlow Mills ever promised said Edwin Mills or the Complainant to pay or satisfy the said pretended Mortgage.

Said defendants do not admit but deny that said Harlow Mills ever in conversation or in any ~~other~~ manner admitted a knowledge of the existence of said pretended mortgage or of his having at any time promised to pay the same. Said defendants admit that on the 17<sup>th</sup> day of February A. D. 1842, the said Edwin Mills and Eliza Ann his wife by their deed that dates for the consideration of two thousand One hundred dollars sold granted and conveyed the land named in said Mortgage of Edwin Mills to Harlow Mills in fee simple to said Harlow Mills and that the said two thousand Dollars named in said last named Mortgage not only purported to be a part of the consideration for said deed, but the defendants charge the same to be true.

These defendants do not admit, but deny that at the time of <sup>the</sup> making of said deed or at any other time the said Harlow Mills had any knowledge of the existence

of the said Compts pretended Mortgage, or that he ever promised or agreed to pay the same.

Said defendants admit that said Harlow Mills departed this life intestate on or about the 2<sup>d</sup> day of October A. D. 1845, that Julia Mills his widow since intermarried with one John Wilson of said County of Marshall, <sup>was</sup> in due form of law was appointed administratrix, and that said John Wilson departed this life in the year 1855, and not in 1845.

Said defendants admit that said Harlow Mills at the time of his decease left surviving him the children who are now living as named in said bill, and that Julia intermarried with James P. Lucas.

Said Defendants admit that said heirs at Law and the said widow of said Harlow Mills deceased are still the legal owners of the said land which the complainant claims to have been mortgaged to him by said Edwin Mills and said defendants deny that in justice and in equity, they the said heirs and widow ought to pay the money and interest pretended to be due on said mortgage, or that the said land ought to be sold or subjected to the payment of the same.

Said Defendants deny that <sup>the</sup> said Compts Mortgage should take precedence of the mortgage made by said Edwin to said Harlow. Said defendants do not admit

17 but deny that no new consideration passed between the said Edwin and the said Harlow at the time of the making of said deed.

Said Defendants charge that the consideration named in said deed, of Two Thousand One Hundred Dollars was good and valid and due said Harlow from said Edwin at the time of the making of said deed Defendants also charge that the consideration named in said mortgage from said Edwin to said Harlow was at the time of making said mortgage was bona fide valid and due the said Harlow, and that the same never was paid only by way of the said deed of conveyance made in 1842 as aforesaid.

Said Defendants charge that not only in law but in justice and equity, the said tract of land described in said pretended mortgage of Compt belongs to the Widow of said Harlow Mills + his heirs at law free from any incumbrance claim or demand by way of the said complainants mortgage or of any other claim of Complainant; that Defendants charge that Edwin Mills never owed said Compt any sum of money what ever, or ever made executed + delivered to said Harris any deed of Mortgage whatever, that if indeed any such ever existed the same was wholly unknown to the said Harlow Mills up to the time of his decease and wholly unknown to the said widow + heirs at law

10 of said Harlow until the aforesaid paper or pretended Mortgage to Compt) was recorded in the records office of Marshall County last November about nineteen years after said pretended Mortgage purports to have been made, that if the same was made on the 12<sup>th</sup> of May 1837, then the said complainant though living in a neighboring county with Marshall Co. the residence of said widow & heirs, for the past fifteen years permitted and suffered the said Harlow in his life time, and said Widow & heirs since to pay all taxes levied on said land since 1839 and never made known to said Harlow or his widow & heirs, or either of them the fact (if any such existed) of his having a Mortgage or claim to said land.

Defendants also charge that the said quarter section of land described in said, <sup>pretended</sup> Mortgage deed to complainant was vacant and unoccupied land in 1839 at the time of the making of said mortgage to said Harlow in 1842. When the deed aforesaid was made to him, and that the same still continues vacant and ~~unoccupied~~ <sup>unoccupied</sup> that the same still continues vacant and unoccupied, and never has been occupied and said defendants charge that said Harlow will had a color of title to, and made in good faith, and also the legal title to said land from and after the 17<sup>th</sup>

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day of February A. D. 1843 until the time of his decease as aforesaid, and his widow & heirs aforesaid from and since the time of the decease of the said Harlow as aforesaid, that the said widow and heirs at law of Harlow Mills aforesaid have paid all taxes legally assessed on said land for seven successive years last preceding the commencement of this suit, and also together with said Harlow in his lifetime for fifteen successive years next preceding the commencement of this suit, and by virtue of section 9 of Chapter 24. of the Revised Statutes of the State of Illinois the said Widow and heirs of said Harlow Mills are the legal and absolute owners of said land free from any and all claims or incumbrance to said Complainant or to anyone else. — Said Defendants further charges that if any indebtedness of seven hundred dollars was on the 12<sup>th</sup> day of May A. D. 1837. due from said Edwin Mills to said Complainant, which fact, <sup>the</sup> said defendants do not admit but denie them said indebtedness, charged in said bill consisted of a note of hand drawn by the said Edwin Mills, and payable to the said John H. Harris under date of 9<sup>th</sup> September A. D. 1837 and payable on or before the 9<sup>th</sup> day of September 1838 as alleged in said Bill of complaint, and that said

20  
indebtedness having accrued and said note having  
been made more than fifteen years before the com-  
mencement of this suit the said defendants set up and  
insist upon the Statute of Limitations in such case  
made and provided by the law of this State as a full  
defence to this suit. Said defendants further charge  
that at the time of the making of the said mortgage deed  
from Edwin Mills to Harlow Mills on the 13<sup>th</sup> day of  
January 1839, all of said land described in said Mort-  
gage and the Lots in Lyons together were worth in cash  
to exceed One Thousand Dollars and that the value  
of the same had not increased any from that time  
up the said 17<sup>th</sup> day of February 1842 when the same  
was deeded to said Harlow by said Edwin that from  
1838 to the year 1850 the said quarter section of land  
named in Compt. pretended Mortgage would not  
have sold for cash for more than four hundred dollars  
and that since the year 1850 said last named land  
has increased in value and is at the time of the com-  
mencement of this suit was worth about ten dol-  
lars per acre, and having fully answered all al-  
legations in said Bill that they are advised is  
material for them to answer unto, and pray  
to be hence dismissed with their costs and  
& charges in this behalf most wrongfully sus-

tamed.

Julia Wilson  
Julia Lucas  
James S. Lucas  
Mrs Henry Mills &  
John Gale Mills

By their Co's Ramsey & Fleming

To which the complainant filed his Replication  
as follows to wit:

John H. Harris  
vs  
Edwin Mills  
Julia Wilson  
Julia Lucas  
James S. Lucas  
Mrs Henry Mills  
John Gale Mills

In the Circuit Court of Mar-  
shall County  
In Chancery

This Complainant for Repli-  
cation to the answers filed herein by the said  
Julia Mills, Julia Lucas, James S. Lucas, Mrs  
Henry Mills, John Gale Mills, says that he will  
aver and maintain his said Bill to be true cer-  
tain and sufficient, and the said Defendants  
answers are untrue, uncertain, evasive, irrele-

want and insufficient & the said plaintiff  
prays, as in and by his Original Bill he has prayed  
and  
Turple & Pratt  
for Compt)

And that on the 15<sup>th</sup> day of April 1856 the following  
Decree was made by said Court appointing a  
guardian ad Litem for the minor defendants in  
said cause. To Wit:

John H. Harris

vs

Edwin Mills

Julia Wilson

Julia Lucas

John P. Lucas

William Henry Mills

John Gale Mills

In the Circuit Court of Wood-  
ford County

In Chancery

13  
This day came the parties by  
their Solicitors, and it appearing to the Court  
that process had been duly served on all of the  
Defendants except Edwin Mills and that the ap-  
pearance of all the parties defendants had been  
entered herein by their Solicitors Ramsey and  
Fleming, It is ordered adjudged and decreed

that Samuel S. Fleming be and he is hereby  
 appointed guardian ad litem for the said Julia  
 Lucas, William Henry Mills and John Gale Mills  
 minor heirs of Harlow Mills deceased and that  
 he file the answer of the said minors herein by Fri-  
 day next. It is also further ordered that the said  
 defendants, Edwin Mills, Julia Wilson and John P.  
 Lucas, file their answers herein by Friday next  
 April 14 1856.

M. E. Hollister

And now on this fifteenth day of April AD 1856, Comes  
 Samuel S. Fleming Guardian ad litem for the minor defendants in the  
 Cause and files their answer in the words and figures following  
 "to wit,"

John H. Harris

vs

Edwin Mills

Julia Wilson

Julia Lucas

James P. Swers

William Henry Mills

John Gale Mills

In the Circuit Court of

Marshall County

In Chancery

The answer of Samuel S. Fleming  
 Guardian ad litem for Julia Lucas

William Henry Mills and John Gale

Mills, minor heirs at Law of Harlow

Mills, deceased to the Complainants

Bill filed in this cause, said Guardian for answer to said  
 Bill, says that he has no personal knowledge of the matters  
 and things in said Bill charged, and that said minors  
 are ignorant of their rights in the premises, and <sup>he</sup> therefore  
 on their part and behalf, denies the statements and each  
 and every of them, in said Bill contained, and calls  
 for the proof thereof & submits the case of the said minors  
 to the care and consideration of the Court, and prays that  
 he and they may be hence dismissed with their costs &c

Saml. S. Fleming  
 Guardian ad litem

That on the 16<sup>th</sup> day of January 1861 the complainant  
filed in said cause his amended Bill as follows to wit  
State of Illinois

Marshall County, and Circuit Court thereof of the  
January Term A. D. 1861

To the Honorable M. Ballou Judge of the Circuit  
Court of Marshall County In Chancery Sitting

Humbly Complaining sheweth unto your Honor  
your Orator John H. Harris of the County of Sage-  
well and State of Illinois by leave of the Court  
first had and obtained that at the April Term  
of this Court A. D. 1856 the said Complainant ex-  
hibited his Bill of Complaint setting forth among  
other things, that on the 12<sup>th</sup> day of May A. D. 1837

are Edwin Mills of the City, County and State of New York was indebted to your Orator in the sum of seven hundred Dollars for the purchase money owing by said Mills to your Orator for the purchase of the South East quarter of section Twenty seven (27) in Township Thirty North of Range One West of the third principal meridian in Marshall County (then Putnam County) Illinois, and that he made executed and delivered to your orator a certain deed of Mortgage, to secure said sum <sup>of money</sup> to your Orator which Original mortgage is copied & set out in substance in said Original Bill and conveys to your Orator the land above described and Lots Nos 9, 19, 9, & 19 in Block No 15 & 16 in the town of Lyons in said County and is signed by <sup>said</sup> Edwin Mills, alleging also that said Mortgage was on the 5<sup>th</sup> day of November A. D. 1855 duly recorded in the Recorders office of Marshall County in said State — Charging also that said Mortgage Debt has never been paid or any part thereof nor the interest due thereon; but that the whole of the said Debt & interest remained due which had accrued thereon from the 9<sup>th</sup> day of September 1855 was still then due and owing to your Orator which mortgaged is referred to and made parts of said bill.

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Charging that on the 18<sup>th</sup> day of January 1839, for a pretended indebtedness of Two Thousand Dollars alleged to have been due from said Edwin Mills to his Brother Harlow Mills then resident in New York City & recently a resident of Marshall County Illinois and to secure such pretended indebtedness said Edwin Mills & Eliza his wife made executed & delivered to said Harlow Mills a Mortgage deed upon the said South East quarter of section twenty seven in Township thirty North in Range One West of the third principal meridian also the North East quarter of section four in Township Twenty nine North in Range One West as aforesaid, also the North East quarter of section eight in the township and Range last aforesaid, also the North West of section four in said last mentioned town & Range also lots 19, in Block 28 and 30 and lots 20 in Block 28 and 30, also lot 18, in Block 15 & 16 also lot 19, in Block 15 and 16, in the town of Lyons in the County of Marshall aforesaid a copy of which last described Mortgage is exhibited in said Bill and marked "A" and made part thereof.

Charges that said Edwin Mills at the time of the execution & delivery of said last mentioned mortgage was not indebted to said Harlow Mills as pretended as aforesaid, or in any sum whatever

but that said Mortgage was made with intent to hinder delay, & defraud your orator in the collection of his just debts that although the mortgage aforesaid to the said Harlow Mills was first recorded that he had notice at the time of the execution & delivery of the mortgage to your orator and that the same was due & unpaid and then & there & often promised the said Edwin Mills & your Orator that he would pay your orator mortgage which notices and promises he often admitted in conversations with various persons

That on the 17<sup>th</sup> day of February A. D. 1842 the said Edwin Mills and Eliza Ann his wife for the consideration expressed in said deed of two thousand & One hundred Dollars conveyed the last above described lands by deed in fee simple to said Harlow Mills but stating in said deed the consideration mentioned in the aforesaid mortgage to the aforesaid Harlow Mills as a part of the consideration for the conveyance by the deed last aforesaid. — That at the time of the delivery and recording the last mentioned deed said Harlow Mills had notice of the existence and validity of the Mortgage of your Orator and promised to pay the same and then & there & often times before & after

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the making of the said deed last aforesaid stated and admitted that he had promised & agreed to pay the same; a copy of said last mentioned deed duly certified being filed with & made an exhibit of in said Bill & marked "B" & made part thereof

Charges that the taking of the said last mentioned deed in fee extinguished & merged the said mortgage made to the said Harlow Mills as aforesaid. That said Harlow Mills died on or about the 20<sup>th</sup> day of October A. D. 1845, that Julia his widow since married with John Wilson was duly appointed administratrix of his estate; that said John Wilson died intestate on or about the year A. D. 1845

That said Harlow Mills left him surviving as his only heirs at law & legal representatives, the following minor children; Julia now intermarried with James P. Lucas William Henry & John Gale; that the said widow & heirs at law are still the legal owners of the land described in your Orotors Mortgage, that they should be compelled to pay said Mortgage debt & interest to your Orotor or that the land therein should be sold & the proceeds of the sale thereof applied to the payment of your Orotors mortgage in preference to the Mortgage of the said Harlow Mills. Charges that no new or other consideration passed

between the said Harlow + Edwin Mills for the last named conveyance excepting the pretended mortgage debt aforesaid, mentioned in the mortgage to the said Harlow Mills; Charges that the said Edwin Mills + his heirs + legal representatives refuse + neglect to pay said mortgage debt to your Orator or any part thereof contrary to equity and good conscience. Prays that said Edwin Mills Julia Nelson administratrix of the estate of Harlow Mills Julia Lucas James P. Lucas William Henry Mills and John Gale Mills be made defendants to said Bill, and be required to answer the same but not under oath, and that they be decreed to pay the mortgage debt + interest due your Orator, and that in case of default therein said mortgaged property described in your Orator's mortgage be sold + the proceeds thereof applied to the payment thereof first, and for general relief. Your Orator further alleges by way of amendment to the Original Bill herein filed, as aforesaid, that on or about the seventh day of September A. D. 1836, the said Edwin Mills made and delivered to your Orator his certain promissory note of that date in writing under his hands for the sum of seven hundred Dollars, due on or before

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the ninth day of September, A. D. 1833, and that the Mortgage deed made by the said Edwin Mills to your Orator as described in the Original Bill was executed and delivered to your Orator the better to secure the said sum of money mentioned in said promissory note with the interest which should accrue thereon that said promissory note herein before mentioned is the identical promissory note mentioned in the mortgage deed last aforesaid;

Your Orator further saith that said promissory note was left by your Orator in the hands of one Nathaniel Montross, then of the City, County and State of New York, for the purpose of getting the same secured by the execution and delivery of the mortgage to your Orator last aforesaid, on or about the time of the execution and delivery of said note as aforesaid to your Orator that said Nathaniel Montross was acting as the agent of your Orator in said City, County and State of New York where he then resided and was doing business, Your Orator being at the same time a resident of the State of Illinois, that since the time when the said promissory note <sup>was left</sup> with said Montross, your Orator has never had the actual possession thereof nor has he ever since the time last aforesaid seen the said promissory note, that the same was kept

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by said Nathaniel Montross in his office among his papers in the said City of New York from the time of leaving the same there as aforesaid by your orator till the time of the execution and delivery of said last mentioned mortgage which mortgage was drafted by said Montross and obtained for your orator by said Montross as his agent as aforesaid that at the time of the execution and delivery of said mortgage, said Montross still had said note in his office and on or about the time last aforesaid lost the same; that he never after receiving the same as aforesaid delivered the same to your orator, nor had your Orator ever after the delivery thereof to said Montross any actual control of the same, but the same has accidentally been lost without the fault of your Orator, or his said agent.

Your Orator saith he never assigned or transferred said promissory note, but the same and the proceeds thereof, still remain his property, wherever it may be; that said promissory note was never endorsed by your orator and was not therefore negotiable by any other person into whose hands it might come.

Your Orator further saith he has no knowledge as to where said note now is, nor does said Montross know where the same is, but he saith the same re

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mains lost, and that at the time of filing this amendment the collection thereof is barred by the Statute of limitations as against all persons excepting your Orator.

Your Orator saith further that he has made diligent search among all his papers, and in every other place where the said promissory note could be deposited at various times for the said note, and that the said Nathaniel Montross has also at various times made diligent search among all the papers in his said office where said promissory note was last deposited and in all places where the same could be deposited by him for the said note, and could not find the same, and that said promissory note never was deposited or kept in any other place by your Orator or his agent aforesaid except said office of said Montross.

Your Orator further says that said sum of seven hundred Dollars with interest thereon from the ninth day of September A. D. 1838 till this date, at the rate of six per cent per annum, remains wholly due and unpaid to your orator. He therefore prays relief and for the decree as in his Original Bill he has demanded, and that the said defendants Edwin Mills, Julia Wilson, James P. Lucas William Henry Mills and John Gale Mills,

be required to answer the allegations in this amended Bill contained but not under oath, the oath of said Defendants being hereby waived and as to the said Julia Lucas he suggests her death on or about the fifteenth day of day of September in the year of Our Lord One Thousand eight hundred and Sixty intestate and without any children and without any heirs excepting the aforesaid defendants

John H. Harris

By Richmond + Burns

His Solicitors

And that on the 23<sup>d</sup> day of March 1861 the defendants to said amended bill filed their answer thereto as follows, to wit,

State of Illinois }  
 Marshall County } ss.

John H. Harris

vs

Julia M. Wilson

& others.

In the Marshall Circuit Court

Term A. D. 1861

In Chancery

The joint & several answers of Julia Wilson



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James P. Lucas, William H. Mills and John W. Mills  
to an amended Bill in Chancery filed in the Cir-  
cuit Court of Marshall County Illinois in Chan-  
cery against them by John H. Harris.

The Respondents for answer to said Bill admit  
that they are the owners in fee simple of the lands  
described in said Bill & were such owners at the time  
said Bill was filed. They also admit that Har-  
low Mills died on or about the 20th day of Octo-  
ber, 1845, that his widow Julia afterwards married  
John Wilson who died as set forth in the Bill &  
that she still survives her said husband. That  
the heirs of ~~said~~ Harlow Mills & his wife Julia are  
correctly set forth in said Bill, that the said Julia  
Mills intermarried with James P. Lucas as set forth  
in said Bill, and that she has since died, and that  
the said heirs claim to be the legal owners of the  
lands and premises described in said Bill.

And for further answer to said Bill your Re-  
spondents deny fully and unequivocally and expressly  
every other charge and statement in said Bill con-  
tained, and they fully and expressly deny that  
said Edwin Mills ever was indebted to said John  
H. Harris, (or if he was such indebtedness has long  
since been paid) they also deny that any evidence

of such indebtedness exists, and that said Edwin Mills ever conveyed said lands and lots to Harlow Mills with the intent, and for the purpose set forth in said Bill, and they also deny that said Complainant has any legal or equitable claim or lien upon the lands described in said Bill or any part or parcel thereof. They also deny that said Complainant ever had any notes against the said Edwin Mills, or if ever had, they insist that it has long since been paid and that the claim of the said John H. Harris is unjust, inequitable and fraudulent, and is a mere pretence got up and prosecuted without any foundation in law or equity. And now having fully answered they pray to be discharged hence with their reasonable costs

By their Solicitor

H. M. Head

H. M. Head Solicitor

Thereupon Complainant on 17<sup>th</sup> October 1861 filed his replication to the said Answer as follows, to wit

John H. Harris

vs

Julia M. Wilson

et al

Marshall County Circuit Court  
Of the October Term A.D. 1861

And now comes the said Complainant by Richmond & Burns his Solicitors and for Replication to the answer of said Defendants to said Complainant's amended Bill of Complaint says that the said answer and the matters and things therein contained, so far as the same admits the allegations in said amended Bill is true and that so far as the said answer denies the allegations in said amended Bill, the same is untrue, as this Complainant will aver maintain and prove as this Honorable Court shall direct

Richmond & Burns  
Solicitors for Compt

And now this cause on this 17<sup>th</sup> day of October A.D. 1861 coming on finally to be heard upon the issues aforesaid, the complainant to maintain the issue on his part offered to read in evidence the deposition of Edwin Mills which is in the words and figures following "to wit"

John Harris

vs

Edwin Mills

Julia Wilson

Julia Lucas

John J. Lucas

William Henry Lucas

John Gale Lucas

In the Circuit Court of Marshall County

In Chancery

Take notice that on the 25<sup>th</sup>

day of August 1856 the complainant will apply to the clerk of the Circuit Court of Marshall County for a commission to be issued in this cause to be directed to any Judge, Justice of the peace or Commissioner authorized to take depositions, residing in the city & State of New York to take the depositions of Edwin Mills, and Nathaniel Montross of said city of New York upon interrogatories herewith filed

Meigs Ramsey & Fleming  
Depts Solicitors

Aug. 12<sup>th</sup> 1856.

Of course  
Purple & Pratty  
Compts Solicitors

1<sup>st</sup> Interrogatory:

Are you acquainted with the parties to this suit, and if so how long have you known them, or either of them?

2. Look at the mortgage now shown to you marked it

Noted May 12, 1837, and state whether the same was executed by Edwin Mills, and whether the signature to said Mortgage is in the hand writing of said Edwin Mills and what means you have of knowing that fact.

3. Where is your place of Residence

4. To Edwin Mills

Are you the person who executed the said Mortgage,

5. Where does Nathaniel Montross reside

6. Are you acquainted with his hand writing If so state your means of Knowledge, and whether his signature as subscribing witness to said Mortgage is genuine.

7. State whether said Mortgage has ever been paid.

8. State whether you sold the Land described in said Mortgage, or any part thereof, or mortgaged the same, to Harlow Mills, and if so when or about what time, <sup>and whether at each time</sup> you so mortgaged and sold the

39. same said Harlow Mills, knew or had information that the same had been previously mortgaged to the complainant, and whether or not he agreed to see to, or take care of said mortgage and all that was said upon the subject.

9. To Nathaniel Montross

State whether you were a subscribing Witness to said mortgage and whether you saw the same executed by the said Edwin Mills. Purple + Pratt  
for Compls.

We admit service by Copy

August 13. 1856

Ramsay + Flemming's  
Depts

Prop questions to be put to the Witnesses named in the foregoing Commission to Edwin Mills.

1. If you give any answer to the 7th Interrogatory, and state that said mortgage has not been paid, then state from whom you have your information and whether from hearsay or not + when you got said information.

2<sup>d</sup> Do you know of One Hundred Dollars or any other amount having been paid on said mortgage from you to said Complainant, if so state as near as you can, when the same was paid

3<sup>d</sup> If you answer the 8<sup>th</sup> Interrogatory in the affirmative, then state what the consideration was for the said mortgage & conveyance from you, to your brother Harlow Mills, whether the same was not a balance due on a settlement between you & said Harlow Mills, made on or about June 28<sup>th</sup> 1837. if so state the amount of said indebtedness as appears from said settlement.

4<sup>th</sup> Do you not know that said Harlow Mills did not agree to pay, or assume the said Mortgage, from yourself to said Complainant & did you not always alledge that said Mortgage was void & illegal & of no effect whatever, & state when said Harlow first knew of the existence of the pretended mortgage to Harris.

5<sup>th</sup> Do you know any other matter or thing tending to the interests of the defendants in this case, state the same as fully as though you were particu-

4/ clearly interrogated thereto.

6<sup>th</sup> are you one of the Defendants in this case

By Ramsey + Fleming  
Solicitors for Defts

State of Illinois, Marshall County, ss.

The people of the Statute of Illinois,  
Do any Justice of the peace or commissioner, au-  
thorized to take Depositions residing in the City  
and State of New York,

Greeting:

Know Ye, that we, confiding in your ability, skill  
and fidelity, have appointed you, and by these pres-  
ents do appoint, authorize and empower you at a cer-  
tain time and place, to be by you appointed for  
that purpose, to cause the witnesses whose names are  
mentioned in the caption of the annexed interroga-  
tories, to come before you, and then and there dil-  
igently and faithfully to examine them on oath upon  
the said interrogatories, in the order in which they  
are propounded; and you will cause the answers  
of the Witnesses thereto, to be reduced to writing  
in the order in which they shall be proposed and  
answered; and you will then cause the Witnesses  
to sign their names to the same in your presence  
You will also annex a certificate, subscribed by  
yourself at the foot of the depositions stating that

the same were sworn to and signed by the deponents and the time and place when and where the same were taken; The Depositions thus taken and subscribed, and all exhibits produced or referred to by the Witnesses together with this commission and the annexed interrogatories, you will enclose seal up and direct to the clerk of the Circuit Court of the County of Marshall in the State of Illinois with the names of the parties litigant endorsed thereon.

Witness J. L. Fort, Clerk of the Circuit Court of said County of Marshall and the seal of said Court being hereto affixed this Twenty fifth day of August in the year of Our Lord One Thousand eight hundred and fifty six

Greenberry L. Fort Clerk

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The Deposition of Edwin Mills  
of Astoria of Dussens County, and State of New  
York a witness of lawful age, produced sworn and  
examined upon his corporal oath, on the eleventh  
day of September, in the year of our Lord, one  
thousand eight hundred and fifty six, at the of-  
fice of Moses B. Ma Clay, 51 Liberty Street, in the  
City of New York in the County of New York  
and State aforesaid, by me Moses B. Ma Clay a  
commissioner of the State of Illinois in the  
said City to take depositions or duly commission-  
ed qualified & by virtue thereof, duly appointed  
by a Subpoena Protestatum, or commission, is-  
sued out of the Clerks Office, of the Circuit  
Court of Marshall County, in the State of Il-  
linois, bearing Teste, in the name of G. L. Fort  
Fort Esq. Clerk of the said Circuit Court  
with the seal of said Court affixed thereto, and  
to me directed as such commissioner, for the

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examination of the said Edwin Mills Witness in  
certain aspect and matter, in controversy, now pending  
and undetermined, in the said Circuit Court  
wherein John H. Harris is complainant and Ed-  
win Mills, Julia Wilson, Julia Lucas, John P  
Lucas, William Henry Lucas and John Gale  
Lucas are Defendants, in behalf of the said  
Complainant, as well upon the cross-interroga-  
tories of the defendant, as on the interrogatories  
of the Complainant which were attached to or in-  
closed with the said Commission and upon none  
others. The said Edwin Mills being first duly  
sworn, by me as a witness in the said cause  
previous to the commencement of his examina-  
tion to testify the truth, as well on the part  
of the complainant as the defendant in rela-  
tion to the matters in controversy, between  
the said Complainant and defendant, so far  
as he should be interrogated, testified and de-  
posed as follows,

Interrogatory First: To the 1<sup>st</sup> Direct interrogatory  
he answers & says, I am acquainted with plaintiff  
& Julia Wilson, I am also named as a defen-  
dant - others I dont know

Interrogatory Second: To the Second Direct

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Interrogatory he answers & says, The said Mortgage was executed by Edwin Mills, myself, the signature to said Mortgage is in my hand writing, it is of course within my personal knowledge.

Interrogatory Third; To the 3<sup>rd</sup> direct Interrogatory he answers and says, I reside in Astoria Queens County in this State

Interrogatory Fourth: To the Fourth direct interrogatory he answers and says, I am —

Interrogatory Fifth: To the fifth direct interrogatory he answers & says, He resides at New Orleans Louisiana, I have understood

Sixth Interrogatory To the 6<sup>th</sup> direct Interrogatory he answers & says, I am not acquainted with his hand writing, I have never seen him write to my recollection, except the signature to the Mortgage, and which I do not now remember, but have no doubt he did subscribed words with the word Cut

Seventh Interrogatory: To the 7<sup>th</sup> direct interrogatory he answers & says, It has not been paid to my knowledge, I have never paid it.

Eighth Interrogatory: To the 8<sup>th</sup> direct Interrogatory he answers & says, I mortgaged the land January 13. 1839. to him, and told it to him on the 17<sup>th</sup> day of February 1842. I have these dates from certified copies of such papers under the hand of the clerk of Marshall County Illinois & the seal of said County, which I received last year from Mrs. Wilson one of the defendants, last year the complainant called upon me on this subject of the mortgage (and my impression then was that my brother knew of its (the land) having been previously mortgaged to the complainant & that my brother was to see to it & pay for it, and at that time I addressed a letter to Mrs. Wilson, one of the Defendants, giving my impressions which is hereto annexed marked 'L'. In answer to this question I am unable to testify to any conversation or declaration made by or between my brother and myself particularly in consequence of the great lapse of time which has intervened!—no communication was ever made to me on the subject, to my recollection, from the time I executed the deed to my brother until about a year ago. I therefore speak wholly from impressions.

### Cross Interrogatories

First) To the first Cross Interrogatory he answers & says I have not stated, that it has not been paid, I only stated that I had not paid it, it has never been paid to my

47 to my knowledge

Second : To the second Cross-Interrogatory he answers and says, I am unable to testify that I have ever paid any thing upon the mortgage.

3<sup>d</sup> To the third Cross-Interrogatory he answers & says, The consideration for the said Mortgage to my brother was a supposed balance due by me to my brother on our copartnership matters as to the time, I cant answer, I dont recollect, neither do I recollect, the amount of said indebtedness, what the consideration for the deed was, I am unable to say excepting it was to take the place of mortgage to my brother

4<sup>th</sup> To the 4<sup>th</sup> Cross-Interrogatory he answers and says I do not know that he did not agree to pay or assume said Mortgage from myself to complainant I have never alleged that said mortgage was void and illegal & of no effect whatever, at any time whatever, to my knowledge recollection or belief, the consideration for the mortgage to complainant was for the payment of the land mentioned in the mortgage to complainant which I had bought of him, I do

know where my brother knew of the execution of the mortgage to complainant,

5<sup>th</sup> To the 5<sup>th</sup> Cross-Interrogatory, he answers & says I know of nothing further.

6<sup>th</sup> To the 6<sup>th</sup> Cross-Interrogatory, he answers & says, I see my name is in the title of the papers now before you (the commissioner) and further Deponent saith, notes  
 Moses B. McClay  
 Illinois Commissioner, Edwin Mills  
 in New York

State of New York }  
 and County New York } ss. I, Moses B. McClay of the City  
 of New York and State of New York of the State of Illinois  
 in said City, to take Depositions & by reason thereof a commissioner  
 or duly appointed to take the deposition of the said Edwin  
 Mills a witness whose name is subscribed to the  
 foregoing deposition do hereby certify, that previous to the  
 commencement of the examination of the said Edwin  
 Mills as witness in the said suit between the said  
 John H. Harris complainant, and the said Edwin Mills  
 Julia Hillson, Julia Lucas, John P. Lucas, William Henry  
 Lucas  
 & John Gale Lucas defendants Edwin Mills was duly  
 sworn by me, as such commissioner, to testify the truth

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in relation to the matters in controversy between  
the said John H. Harris complainant and the said  
Edwin Mills, Julia Willson, Julia Lucas John S. Lucas  
William Henry Lucas & John Gale Lucas defendants so  
far as he should be interrogated concerning the same; that  
the said deposition was taken at my office, number 51  
Liberty Street, in the State of New York on the eleventh  
day of September A. D. 1856; and that after said Deposition  
was taken by me aforesaid, the interrogatories and an-  
swers thereto, as written down were read over to the said  
witness; and that thereupon the same was signed and sworn  
to by the said Deponent Edwin Mills before  
me, the oath being administered by me, said  
Commissioner, at the place, and on the day and  
year last aforesaid.

Moses B. New Clay

Commissioner

To the reading of which the defendants by their counsel  
objected for the reasons:

- 1<sup>st</sup> That there is no proof that the person who took the same  
is a Commissioner.
- 2<sup>d</sup> There is no certificate of Secretary of State thereto attached
- 3<sup>d</sup> Mills is interested & therefore incompetent.
- 4<sup>th</sup> Because portions of the Deposition are stated as in-

expressions + as witnesses understanding, and to these portions the defendants object.

The Court thereupon excluded the last part of the answer to the 6<sup>th</sup> interrogatory commencing with the words "no doubt he did subscribe it" and that part of the answer to the 8<sup>th</sup> interrogatory after the words "my impression there was" are excluded which words excluded are <sup>included</sup> ~~are~~ <sup>in</sup> a parenthesis, and allowed the residue of said deposition to be read in evidence.

Whereupon the complainant excepted to the opinion of the court in excluding said evidence.

The complainant next offered in evidence a letter written by Edwin Mills to Julia Wilson who are defendants which is in the words & figures following:

Astoria Oct 18<sup>th</sup> 1855

My Dear Sister

I am surprised to learn that the mortgage to Mr. Harris on one of the quarter sections of land sold by me to my brother Harlow has never been paid.

I supposed that mortgage had been paid years ago, as my brother well knew of it, and it was deeded to him with the understanding that he should take care of the mortgage of course. Now I find that both the mortgage and deed are defective, and Mr. Harris claims of me (very justly I think) that which belongs to him, that is the

This is the letter referred to in my deposition marked D.

Moses B. New Clay  
Edwin Mills

51. lands or the \$700 and interest since 1839.

If you are willing and have it in your power to settle the matter with Mr Harris I shall be most happy to do all in my power to perfect your title

Yours with much Respect

Mrs Julia M. Wilson

E. Mills

Whereupon Defendants by their Counsel objected to the reading thereof in evidence which objection was sustained by the court and said letter excluded - and thereupon the complainant by his Counsel excepted to the opinion of the court in excluding said letter.

The Complainant next offered to read in evidence the deposition of Nathaniel Montross which is in the words & figures following.

State of Illinois }  
Marshall County } and Circuit Court thereof

In Chancery Bill to foreclose Mortgage

John H. Harris

vs

Edwin Mills, Julia Wilson }  
Julia Lucas, James P. Lucas }  
William Henry Mills and }  
John Gale Mills }

You are hereby notified that at ten O'clock in the forenoon of the fifteenth day of November Instant

The complainant in the above entitled cause will apply to the Clerk of the Circuit Court of Marshall County Illinois for a *Subpoena potestatem* or commission to be issued out of said Court in said cause directed to J. S. Richards a Notary public of the city of New Orleans in the State of Louisiana to take the Depositions of Nathaniel Montross of said City of New Orleans in answer to all and singular the following interrogatories when and where you can attend and file cross interrogatories if you see proper

To the said Defendants or Mr. } Richmond & Burns  
Mr. Mead their Solicitors } Solicitors for Complainant

Nov. 2<sup>d</sup> 1860

Interrogatories to be administered to Nathaniel Montross a witness to be produced sworn and examined in the foregoing entitled cause on part of the complainant in answer to the following interrogatories,

1<sup>st</sup> Interrogatory,

Are you acquainted with the parties to this suit if yes, with which of them, and how long have you known them respectively,

Interrogatory 2<sup>d</sup> Look at the copy of the Mortgage hereto attached

53 Marked A. B. C. and state whether you ever saw the original mortgage of which the one now before you is a copy? and whether you attached and signed your name to the same as a subscribing witness? State also whether you took said Original mortgage, and if yes? for whom? (if any one) did you take the same? Whether you took the same or agreed for any one, if so for whom? was there or not, any note given in connection with said Original mortgage described in the same or in said copy?

Interrogatory 3<sup>d</sup>, If in answer to the last above interrogatory you state that such a note was given; then you will state what you done with said note? whether you ever give or delivered the same to John H. Harris the complainant; if not then state where it is if you know what did you do with it immediately after it was taken? where was it deposited or kept? Have you the said note now? in your possession, if so, attach the same to <sup>this</sup> your deposition, and if not state whether you have ever made any search for the same deposition; and if so state specially and particularly what search you have made, when and where did you search for the same, state all the facts connected with such search with great particularity, Did you or not search among all your papers and in every place it is reasonable to suppose the same might be found, state also whether the said note has been lost or destroyed and all you know

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about it, State also whether the said note was ever endorsed  
by the payee, and if so whether before or after it became  
due

Interrogatory 4<sup>th</sup> Has the said note been lost, if so how do you  
know that fact

Interrogatory 5<sup>th</sup> Did you ever deliver said note to any person, (if so  
to whom)

Interrogatory 6<sup>th</sup> Do you know anything about said note, said mortgage  
debt ever having been paid (if so what)

Interrogatory 7<sup>th</sup>. State whether you was or not the agent of the com-  
plainant at the time said Original mortgage  
was executed or delivered, to transact his business  
in New York City, and whether you took said Original  
note and mortgage as his agent, and for his use and  
benefit, or for the use and benefit of any other person

Interrogatory 8<sup>th</sup>. State if you know what the consideration of  
said mortgage was, how made and what kind of in-  
debtedness it was given to secure, whether borrowed  
money, land, or what it was, and if given to secure  
the purchase money for land, state what land whether  
it was the same land that is mentioned in the orig-  
inal mortgage or some other land

Interrogatory 9<sup>th</sup>. State whether you ever knew Edwin Mills, and if you

5 State whether you did or not see him sign or execute said Original mortgage and note;

Interrogatory 10<sup>th</sup> State Whether you ever took more than one mortgage and note from Edwin Mills to the complainant or was this, referred to in the foregoing questions, the only transaction of the kind you ever ~~saw~~ had with said Mills for the Complainant

Interrogatory 11<sup>th</sup> Do you know any other matter or thing that will benefit the complainant, if so state the same fully, give a copy of the original note, given in connection with the mortgage, if you can otherwise the substance thereof

Richardson + Burns  
for Complainant

This Indenture made and entered into this twelfth day of May A. D. 1837. Between Edwin Mills of the City of New York of the first part, and John H. Harris of the Town of Tremont, County of Jayewell and State of Illinois of the second part Witnesseth that the said party of the first part for and in consideration of the sum of \_\_\_\_\_ Dollars in hand paid by the said party of the second part the receipt whereof is hereby acknowledged has granted bargained and sold, and

by these presents does grant bargain and sell unto the said party of the second part, his heirs and assigns, all of those certain tracts or parcels of land known and designated as the South East quarter of section Twenty Seven, Township Thirty North of Range One West of the third principal meridian also lots Nos. 9, 19, 20 & 19, in Block Nos 15 & 16 in the town of Lyons, all of the above property lying and being in the County of Putnam and State of Illinois, Together with all and singular the privileges and appurtenances thereunto belonging or in any wise appertaining.

To Have and to Hold the above described property with the appurtenances unto him the said John H. Harris his heirs and assigns forever the said party of the first part covenants to warrant and defend said tracts of land from the claims of him, the said party of the first part, and from the claim or claims of all persons whatsoever.

Nevertheless the condition of the above obligation is expressly this that if the above named Edwin Mills his heirs or assigns shall well and truly pay unto the said John H. Harris or order the sum of seven hundred Dollars on or before the ninth day of September 1853, according to the tenor of a certain note of hand bearing date 9<sup>th</sup> Sept 1856, drawn by the said Edwin Mills and payable to the said John H. Harris, then the above obligation to be void

57  
and null and void, anything to the contrary here  
in contained notwithstanding. In Witness Whereof  
the said party of the first part has hereunto set  
his hand and seal the day and year first above  
written

In presence of }  
Nathl. Mountrop

Edwin Mills <sup>seal</sup>

Received a copy of the foregoing notices, interroga-  
tories and mortgage

H. M. Head

Nov 3<sup>d</sup> 1860.

Atty for Defts

State of Illinois, Marshall County,

The people of the State of Illinois

To D. S. Ricards a Notary Public of the City of New  
Orleans in the State of Louisiana

Greeting:

Know ye, that we confiding in your ability, skill  
and fidelity, have appointed you, and by these pres-  
ents do appoint, authorize and empower you, at  
a certain time and place, to be by you appointed  
for that purpose, to cause the witness whose name  
is mentioned in the caption of the annexed in-  
terrogatories to come before you and then and  
there diligently and faithfully to examine him  
on oath upon the said interrogatories, in the order

58 in which they are propounded; and you will cause the answers of the witness thereto to be reduced to writing, in the order in which they shall be proposed and answered; and you will then cause the witness to sign his name to the same in your presence. You will also annex a certificate subscribed by yourself, at the foot of the Deposition stating that the same was sworn to and signed by the deponent, and the ~~times~~, and the time and place when and where the same was taken. The Deposition thus taken and subscribed, and all exhibits produced or referred to by the Witness together with this commission and the annexed interrogatories, you will, inclose seal up and direct to the Clerk of the Circuit Court of the County of Marshall in the State of Illinois with the names of the parties litigant endorsed thereon.

 Witness James Wescott, Clerk of the Circuit Court of said County of Marshall and the seal of said Court, being hereto affixed this fifteenth day of November in the year of our Lord one Thousand eight hundred and Fifty

James Wescott Clerk

The Deposition of Nathaniel Montross of the City of New Orleans, State of Louisiana, a Witness of lawful age produced sworn and examined, upon his corporal oath on the twenty

57  
seventh day of December in the year of Our Lord  
1860, at the Office of D. S. Richards, in the City of New Or-  
leans, <sup>and</sup> State aforesaid by me Daniel S. Richards Notary  
Public duly appointed by a *Procurator Patente* +  
commission issued out of the Clerks office of the  
Circuit Court of Marshall County, in the State of  
Illinois bearing test in the name of James Mescott  
Esq. Clerk of the said Circuit Court with the seal of  
said Court affixed thereto and to me directed as such  
Notary Public for the examination of said Nathaniel  
Montrass a witness in a certain suit and matter  
in controversy, now pending and undetermined in  
said Circuit Court wherein John H. Harris is plain-  
tiff, and Edwin Mills et al are Defendants, in  
chance of said plaintiff upon the Interrogatories which  
are annexed to said Certificate and more others

The said Nathaniel Montrass being first duly  
sworn by me Daniel S. Richards Notary Public as  
a witness in the said cause previous to his exami-  
nation to testify the truth as well in the favor  
of Plaintiff as the defendant in relation to the  
matters in controversy; between the said plaintiff  
and defendants as far as he shall be interrogated  
testified and affirmed as follows.

To first Interrogatory he answers

I know John H. Harris  
 + Edwin Mills, and I have known Harris for the last  
 35 years, or more, and E. Mills I knew for about two  
 years sometime in the years 1836 + 1837, since which <sup>time</sup> I  
 have never seen him.

To Second Interrogatory he says

I believe I have;  
 I think I did subscribe my name as a witness  
 to the same, I do not remember at this time who  
 took said Original mortgage. I believe  
 there was, but in the absence of the papers and so many  
 years have elapsed since that, I cannot remem-  
 ber at exactly at this time.

To third Interrogatory he answers

If John H. Harris did not take the said Note and  
 papers he must have found them in the Safe at Mon-  
 trass + Howells Store where all papers belonging to him  
 were left, the Key was also left in the hands of A. D.  
 Montrass, I have not the note in my possession  
 nor do I know where it is, nor have I had it in  
 my possession, except it may have been left  
 with other papers, in the Iron safe in Montrass + Howells  
 Store, I have never had it in my possession since

1838, any papers belonging to Harris, = all that I ever had  
belonging to him were left as I have before stated,  
I do not remember whether the same has been lost  
or not, nor do I recollect whether it was endorsed  
or not, it is impossible for me at this time to re-  
collect the particulars enquired of; =

To Fourth Interrogatory he ans  
I do not know

To fifth Interrogatory he ans  
I have no recollection of it at  
this time,

To Sixth Interrogatory he ans,  
No I do not,

To Seventh Interrogatory he ans  
I was his agent; I do not recollect at this time  
whether I took it to Harris, but I believe he Harris  
took it himself,

To Eighth Interrogatory he answers  
The Mortgage if given was given in con-  
sideration of Land in Illinois; = whether it was  
the same in the deed or not, I cannot say,

To Ninth Interrogatory he ans  
I did know Edwin Mills; = I

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do not recollect whether I saw him sign it or not.

To Tenth Interrogatory, he answers

I do not recollect of taking  
any Mortgage for Harris

To Eleventh Interrogatory he answers

I know nothing further than what  
I have already stated; When I left New York in the year 1838  
all papers, Books &c belonging to Harris were left <sup>in</sup> his Iron safe in  
Montross & Howells Store, The Key of which was left with  
W. D. Montross, and I have never had access to them since;  
In 1841 John H. Harris had two persons with him in settling up  
his Books, and after settling his accounts he made no mention  
to me that any of his papers that were in the safe was lost  
except one on checks Book) and then he gave me a note dated  
Sept 8<sup>th</sup> 1841, at one days date for \$1324<sup>50</sup>/<sub>100</sub>, as being due to me  
by him and which is still unpaid to me, the reason of my stating  
this fact is because, I have the note now before me.

W. D. Montross

I Daniel S. Richards of the Parish of Orleans, City of  
New Orleans, and State of Louisiana a Notary Public duly  
appointed to take the Deposition of the said, Nathaniel  
Montross a Witness whose name is subscribed to the  
foregoing deposition do hereby certify that previous to the

68 commencement of the examination of the said Nathaniel Montrass as a witness in the said suit he was duly sworn by me as such Notary Public to testify the truth in relation to the matters in controversy between the said plaintiff and the said defendant, so far as he should be interrogated concerning the same, that the said Deposition was taken at my office in the City of New Orleans, <sup>in the Parish of Orleans</sup> and State of Louisiana on the twenty seventh day of December A. D. 1860, and that after said Deposition was taken by me as aforesaid, the answers thereto as written down were read over to the said witness and that thereupon the same was signed and sworn to by said defendant before me, the oath being administered by me as such Notary Public at the place and on the day and year <sup>last</sup> aforesaid.

E. J. S.

D. J. Ricardo

Notary Public

To the reading of which in evidence the defendants objected which objection was overruled by the Court, and said Deposition read in evidence, and the Defendants excepted to the opinion of the Court, allowing the same to be read.

Complainant next offered to read in evidence the Mortgage from Edwin Mills to John H. Harris dated May 12<sup>th</sup>, 1837 which is in the words and figures following to wit,

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This Indenture made and entered into this twentieth day of May A. D. 1837 between Edwin Mills of the City of New York of the first part and John H. Harris of the town of Fremont County of Tazewell, and State of Illinois of the second part, Witnesseth.

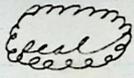
That the said party of the first part for and in consideration of the sum of, Dollars  
in hand paid by the said party of the second part the receipt whereof is hereby acknowledged, has granted bargained and sold, and by these presents does grant bargain and sell unto the said party of the second part his heirs and assigns all of those certain tracts or parcels of land known and designated as the South East quarter of section Twenty seven, Township Thirty north of Range One West of the third principal meridian Also Lots Nos 9, 19, + 9 + 19, in Blocks Nos 15 + 16 in the Town of Lyons, all the above property lying and being in the County of Putnam, and State of Illinois, Together with all and singular the privileds and appurtenances as therunto belonging, or in any wise appertaining,

To Have and to Hold the above described property with the appurtenances unto him the said John H. Harris his heirs + assigns forever + the said party of the first part covenants, to Warrant and defend said tracts of land from the Claim of him the said party of the first part + from the claim or claims of all persons whatsoever,

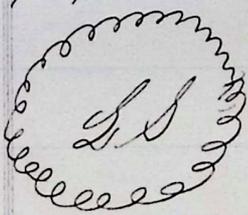
Nevertheless the Condition of the above obligation is expressly this, that if the above named, Edwin Mills his heirs or assigns shall well and truly pay unto the said John H. Harris or order the sum of seven hundred dollars or before the ninth day of September 1838, according to the tenor of a certain note of hand bearing date 9<sup>th</sup> Sept. 1836, drawn by the said Edwin Mills & payable to the said John H. Harris, then the above obligation to be void and null and void, any thing to the contrary herein contained notwithstanding.

In Witness Whereof the said party of the first part has hereunto set his hand and seal the day and year first above written

In presence of  
Nathl Mountross

Edwin Mills 

State of Illinois }  
Marshall County } ss. J. G. L. Fort Clerk of the Circuit Court of the said County of Marshall and by virtue thereof ex Officio Recorder of said county, do hereby certify that the Instrument of writing hereto attached and which purports to have been executed by Edwin Mills to John H. Harris was filed in said office for record on the 8<sup>th</sup> day of November A. D. 1855 at 8 O'clock P. M. and that the same was this



66.  
duly Recorded in Book J. page 40.

In Testimony Whereof I have hereunto set my name and affixed the seal of said Court at the City of Lawrence, in said County on this 8<sup>th</sup> day of November A. D. 1855

J. L. Fort, Clerk

To the reading whereof defendants objected for the reason that there was no person of its execution which objection was overruled by the Court, and said Mortgage read in Evidence Whereupon Defendants excepted to the opinion of the Court allowing the same to be read

The Complainants then read in evidence without objection the deed of Edwin Mills to Harlow Mills dated 17<sup>th</sup> February 1842, which is in words and figures following to wit

" This Indenture, made the seventeenth day of February in the year of Our Lord One Thousand eight hundred and forty two Between Edwin Mills of Astoria Queens Co + State of New York, Grocer + Ann Eliza his wife of the first part and Harlow Mills of the City of New York Grocer of the second part, Witnesseth, That the said parties of the first part, for and in consideration of the sum of Two Thousand and one hundred Dollars lawful money of the United States of America to them in hand paid by the said party of the second part, at or before the enrolling and delivery of these presents, the receipt whereof is hereby acknowledged have granted, bargained

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sold, aliened, remised, released, conveyed and confirmed  
and by these presents do grant, bargain, sell, alien, remise  
release, convey and confirm unto the said party of the  
second part, and to his heirs and assigns forever all  
of the following Lots, pieces, and parcels of land, lying  
and being in the County of Putnam and State of Illinois  
and described as follows viz: The South East quarter of section  
Twenty seven, Township Thirty and Range One. Also the  
North East quarter of section four, Township Twenty nine  
and Range One, Also the North East quarter of section  
Eight Township Twenty nine and Range One, Also the North  
West quarter of section four, Township Twenty nine and  
Range One. The whole containing six Hundred and fifty  
eight <sup>25</sup>/<sub>100</sub> Acres (658 <sup>25</sup>/<sub>100</sub>). Also the following described town  
lots, situated, lying and being in the town of Lyons, in  
County and State aforesaid viz: Lot No 14, in Block 23, + 30  
also lot No 20, in Block No 23 + 30 - also Lot No 18, in Blocks  
15 + 16, also Lot No 14, in Blocks 15 + 16. The said premises be-  
ing subject to a Mortgage to said Harlow Mills for  
Two Thousand Dollars the amount of which forms a  
part of the above consideration

Together with all and singular the tenements, heredi-  
taments and appurtenances thereto belonging or  
in any wise appertaining and the reversion and reversions  
remainder and remainders unto issues and profit there

68  
of. And also all the estates, right titles, interests, dower  
or right of dower property, possession, claim and demand  
whatsoever as well in law as in equity of the said parties  
of the first part, of or to the above described premises  
and every part and parcel thereof, with the appurtenances  
To Have and to Hold all and singular the above men-  
tioned and described premises, together with the appur-  
tenances unto the said party of the second part his  
heirs and assigns forever. In Witness Whereof the said  
parties of the first part have hereunto set their hands  
and seals the day and year first above written

Sealed and delivered in the presence of

Horace Holden

City & State of New York

Edwin Mills

Ann Eliza Mills

On the 10<sup>th</sup> day of April 1842 Before

Came Edwin Mills, + on the 13<sup>th</sup> May 1842 Before me came  
Ann Eliza Mills his wife, both of them to me known to be the  
same persons described in and who executed the within deed  
and they severally acknowledge that they executed the same  
and the said Ann Eliza being by me privately examined apart  
from her husband acknowledged that she executed the  
same freely without any fear or compulsion of her said hus-  
band

Horace Holden

Commissioner of Deeds

State of New York

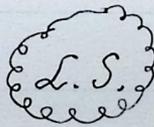
City and County of New York

ss. S. Nathaniel Jarvis, Clerk of the

of the City and County of New York, and Clerk of the Court of Common Pleas for the said City and County do hereby certify that Horace Holden whose name is subscribed to the certificate of the proof or acknowledgement of the annexed instruments and thereon written was, at the time of taking such proof or acknowledgement a commissioner of Deeds for said City and County dwelling in the said City commissioned and sworn and duly authorized to take the same, And further, that I am well acquainted with the hand writing of such commissioner, and verily believe, that the signature to the said certificate of proof or acknowledgement is genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Court and County, the 17 day of May 1842

Nathl Jarvis  
Clerk



State of Illinois }  
Marshall County } ss.

Recorders Office Lacon

I do hereby certify that the within Deed and the foregoing and annexed certificates are duly Recorded in said Office in Book B. pages 248 and 249 on this 4th day of August 1842

C. J. Spyer Recorder

The complainant next offered to read in evidence



the Deposition of William B. Green, which is in the words & figures following,

John H. Harris

as

Edwin Mills

Julia Nelson

Julia Lucas

James P. Lucas

William Henry Mills

John Gale Mills

Interrogatories to William B. Green  
by Complainant

1<sup>st</sup> Are you acquainted with the parties to this suit, and if so, how long have you known them severally.

2<sup>d</sup> Were you acquainted with Harlow Mills in his lifetime, State whether he is now dead, and if so, about what time he died?

3<sup>d</sup> Are you acquainted with the land described in the mortgage now shown to you marked "A" dated the 7<sup>th</sup> day of May 1837 attached to the Deposition of Edwin Mills filed in this cause?

4<sup>th</sup> Did you ever hear Harlow Mills in his lifetime say anything about having a Mortgage on said

land or some part thereof; and if state what you heard him say upon the subject and when? who made said mortgage? about what time was it made, state fully all your knowledge, and all the information you have derived from said Harlow Mills upon the subject.

5. Did or did not said Harlow Mills ever say anything to you in relation to his knowledge of the existence of the complainant's mortgage before shown you, at or prior to the time, that said Edwin Mills, had made the mortgage aforesaid to said Harlow Mills? State fully all you ever heard him say upon the subject, and the time and place when and where the said conversation or conversations took place. —

In answer to the first interrogatory hereto annexed I am acquainted with the parties to this suit have known the complainant about 20 years, and have known the Defendants about 13 years, except James P. Lucas, and have known him about 21 years

In answer to the 2d Interrogatory hereto annexed

I was acquainted with Harlow Mills in his lifetime I think he is dead and that he died about the 1844 or 1845.

72  
In answer to the 3<sup>d</sup> Interrogatory hereto annexed

I am acquainted with the land described in the Mortgage

In answer to the 4<sup>th</sup> Interrogatory hereto attached I do not remember of hearing Harlow Mills say that he had a Mortgage on the said land, but did hear him say that he had a deed from Edwin Mills for the whole of it, at the time that Mills was going to get his deed recorded, he stated that he would see if Mr Harris had got his mortgage ~~his mortgage~~ recorded on said land, that if he had not, he thought that he would have his deed recorded first, and that, that would make his title perfect to the land, or free from the Mortgage, after he returned from getting his deed recorded - the next day after, he said that the mortgage was not on record, and that the land was now clear of the mortgage, Harlow Mills told me that John H. Harris' mortgage was given for a part of the purchase money, or the whole of the purchase money of the land, and that he had got his deed recorded first, and that he thought, that the land was not liable for the mortgage there was something said about a Mortgage, from Edwin Mills to Harlow Mills, the particulars of which I cannot recollect - the conversation took place at my house in Marshall County.

In answer to the 5<sup>th</sup> Interrogatory hereto annexed

I know nothing further than what is stated, in answer to the 4<sup>th</sup> interrogatory.

Cross Examination by Silas Ramsey for the Defendants.

Said Witness further answering States that Harlow Mills in the conversation, alluded to the 4<sup>th</sup> interrogatory said Edwin Mills at the time of his failure was indebted to him Harlow Mills for about 1900 <sup>or</sup> dollars, and that he had given him a mortgage deed of Trust, or assignment to secure the same and that the making of the deed alleged to <sup>in</sup> answer, was a final consummation of the mortgage Trust Deed or assignment before spoken of, said conversation took place sometime during the year of 1842 and that the Mortgage Trust Deed or assignment was upon the same land before alluded to

Re-Examination,

Witness further States, that he understood from the conversation with Harlow Mills before alluded to that he knew of the existence of John H. Harris' mortgage from the time that it was first given and further say-  
(eth not) William B. Green

We agree that the foregoing Deposition may be read in evidence subject to all legal objections, to the relevancy or competency of the testimony

Oct 31, 1856

A. H. Maple  
S. Ramsey "

which Defendants counsel objected to and the Court

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excluded that part of the deposition included in a parenthesis, and marked in the margin "excluded" and allowed the residue thereof to be read where upon complainant excepted to the opinion of the Court in excluding the aforesaid part of said deposition.

The complainant next offered in evidence the affidavit of John H. Harris the complainant in connection with the deposition of Nathaniel Montrass + Edwin Mills to show the loss of the promissory note described in the mortgage which affidavit was read without objections.

State of Illinois }

Marshall County, ss. John H. Harris the complainant in the bill of complaint in a cause now pending in the Circuit Court of said County of Marshall and State of Illinois, wherein he is complainant + Julia Nelson, Edward Mills + others are defendants to foreclose a Mortgage being duly sworn says that the promissory note mentioned in the mortgage to foreclose which the Bill is filed in said cause dated the 9<sup>th</sup> day of September A. D. 1836, + due on the 9<sup>th</sup> day of September A. D. 1838 made by the said Edwin Mills to the said John H. Harris for the sum of seven Hundred Dollars was as he believes taken by one Nathaniel Montrass the persons, who signed the said Mortgage, and retained by him as the agent of Respondent

75  
for the purpose of getting the same secured by said Mortgage, that respondent has not since the time said note was so delivered to said Montross had the possession power or control thereof, that said Montross as he believes, on or about the time of the execution of said Mortgage left said promissory note in an iron safe in the Store of Montross & Howell in the City of New York, which was its last place of deposit and that on or about the time last aforesaid said note was then lost. That the said note has not been since the time the same was delivered to said Montross in the possession power or control of affiant but the same is still lost. That the said note cannot be found so as to produce the same on the trial of the said cause that affiant has made diligent search for said note among all his papers, and searched said safe where said note was last deposited by said Montross in the City of New York, on or about the year A. D. 1840 & since then, and could not find the same, affiant saith farther that said promissory note remains wholly due & unpaid with the interest thereon, and that the said note has not at any time been assigned by affiant or transferred by him to any other person but saith the said note is still his property.

Subscribed and sworn to before me this 3  
seventeenth day of October A. D. 1861 3

Sheldon Arnold  
Clerk

John H. Harris

The complainant then called William B. Green as a Witness who testified as follows, being first examined on his voir dire:

I am living at a place called Lyons, I am living on some of the Lots in Lyons described in the bill of complaint, my title comes from Sheriff of Marshall County to conveyance from Harris, He was one of three-a committee to enter the land &c, The committee entered the quarters Plat was never recorded, committee never conveyed the quarter - I live one mile from this land, no agreement with Harris in any <sup>way</sup> Have no interest in this matter.

Said Green was (then sworn in chief) and testified as follows: Mr Harlow Mills was at my house, <sup>some time in 1842</sup> Here the deed from E Mills to H. Mills was exhibited to witness & he was asked if he ever saw it & answered, I believe I did, I have no doubt about it. I have doubt I saw it - says it is the deed, - counsell says it is same - certainly - I cannot tell when Harlow Mills first had knowledge of the existence of the Harris Mortgage, Had a conversation with Harlow the year before the deed was recorded, in 1841 can't tell the language or the particulars of what he did tell me, the substance was that he - Edwin - had bought the land of Mrs Harris and gave his mortgage for it - I don't remember as he did state any date, or give any description. he told me about his settlement with his brother, and his brother owed him \$1700, and that land was all he could get for it.

There was particulars spoken of, but I cannot give the particulars, He knew that I knew of the purchase, He knew that Edwin Mills had purchased land of Mr Harris that fact appeared to be notorious in the City of Newport where the parties then lived, Mortgage from Edwin Mills to Harris was spoken of as of fact, the fact of purchase being made and giving that mortgage for it was spoken of also in 1841. cant tell exactly the words he used about the mortgage - He knew about the purchase of his Brother within a few days of the time it was made - Cant tell all of the 2 hours conversation - but this purchase of Edwin from Mr Harris was freely spoken of, He spoke about the ownership of that land with uncertainty - was not certain that he would hold it, appeared to depend upon some uncertainty (meaning the mortgage to Harris) He did explain that uncertainty, He spoke of the Mortgage Mr Harris had - dont know how the Harris Mortgage was to be paid only the way the papers read, Harlow Mills conversation was to the effect, that the land had got to pay the Mortgages, In the year 1842 when Mr Mills was at my house + conversing about the land and mortgage, I knew what mortgage he meant by common report when the mortgage was made - I knew what piece of land he meant, I first saw the Harris mortgage in the latter part of 1842 at Harris' House in Tunon

after the deed was recorded, Harris showed me his mortgage

On Cross-examination Green testified as follows  
I have lived in Town 30 N. 1. West, 3<sup>d</sup> P. M. in this County since 1838, in December E. Mills & H. Mills, previous to 1840 lived in New York City, Fish St. in 1837, when I left, there I left in Nov. I bear no relationship to them — was not in business with them before I came here, Edwin Mills never resided here, nor has he ever been here to my knowledge, Harlow Mills first came here I think in 1840, or thereabouts, to Tremont in Sagewell County, and from Sagewell he in 1841 to Marshall County, this has been Marshall County since 1839, — He came here in latter part of Summer of 1841, he went to breaking prairie in latter part of summer, on Sec. 9, Town 29, 1. West, of 3<sup>d</sup> P. M. I think his family came here at that time, moved into a cabin with <sup>Wm</sup> Gray, on Crow Creek. — He built a house in this county & lived there till he died, — Harris lived all this time in Tremont, was there before I came to the county, that was then in 1834 or 1835, I think that has been his general residence ever since, I left New York City in 1837. — I did by common Report know of the existence of the Mortgage from E. Mills to Harris — Had never seen it, — I had two conversations with H. Mills, the first was at my house <sup>sometime</sup> in 1841, cant tell the time of year, before he got that deed from his

79  
brother - I have read, or heard the matter in my  
deposition - think I swore to it, but dont recollect distinctly  
If I did swear to it, cant say before whom I swore to it,  
cant tell where if sworn, - as far as I can recollect it was  
in the Records office below, & in Court times, - I think H.  
Mills & myself had more than one conversation before  
1842, - Cant tell who was present - didnt see the deed in  
1841 - he had not any - was made 17 February 1842, - He  
told me these things, that which I have sworn to before, when  
he came to get his deed recorded he told me the same  
things - this testimony is conferred, to 1841. When he came to get  
the deed Recorded (1842) he came from his own house I  
suppose - He came from his own house 3 miles south  
of me  
for his way to Hennepin, to search the Records to see if  
the mortgage was Recorded, In 1842, Harlow came to my  
house with the deed from E. to H. Mills, on his way to  
Hennepin, to search Records to see whether the mortgage  
was Recorded, and showed me that deed before it  
was recorded, at that time the deed from Edwin to  
Harlow Mills, - I suppose it was in August 1842, I sup-  
pose it was the 20 - possibly the 1<sup>st</sup> of August 1842 -  
at that time Harlow Mills lived 3 miles south of my  
house - dont think any body was with him,

Here witness was asked by defendants counsel this question -

Didnt you swear before that you didnt know  
any thing about, conversation - answered - I dont think  
I did -

I suppose the first conversation was in 1841. - I had a conversation with N. Mills before he came to get the deed Recorded and that is the conversation I have detailed - that was in my own house, and Mills then lived in this county with his family

The Defendants then offered in Evidence the mortgage from Edwin Mills wife to Harlow Mills which is in the words & figures following to wit:

This Indenture made the thirtieth day of January in the year One Thousand eight hundred and thirty nine Between Edwin Mills of the City of New York Grocer and Ann Eliza his wife of the first part and Harlow Mills of the same place Grocer. - of the second part: Whereas the said Edwin Mills is justly indebted to the said party of the second part, in the sum of Two Thousand dollars lawful money of the United States.

which said sum of two thousand dollars is to be paid as follows viz: One third part with interest, on the first of January 1840. one third part on the first of January 1841. and the remaining part with lawful interest on the first day of January 1842,

Now therefore this Indenture Witnesseth, that the said parties of the first part for the better securing the payment with interest thereon, according to the true intent and meaning thereof, and also, for and in consideration

of the sum of one dollar to them in hand paid, by the said party of the second part, at, or, before the enclosing and delivery of these presents, the receipt whereof is hereby acknowledged have granted, bargained, sold, aliened, released, conveyed, and confirmed, and by these presents do grant, bargain, sell alien, release, convey and confirm, unto the said party of the second part and to their heirs and assigns forever, all of the following lots, pieces and parcels of land lying and being in the County of Putnam, and State of Illinois and described as follows viz: The South East qrs. of section twenty seven Township Thirty and Range One. also the North East quarter of section four Township twenty nine, and Range one. also the North East quarter of section eight Township twenty nine, and Range One. also the North West qrs. of section four, Township Twenty nine and Range One. The whole containing six Hundred and fifty eight <sup>2</sup>/<sub>100</sub> (658<sup>2</sup>/<sub>100</sub>) acres also the following described Town Lots situated lying and being in the Town of Lyons in County & State aforesaid viz: Lot No 19 in Blocks 28+30, also lot No 20, in Blocks 28+30, also lot No 18, in Blocks 15+16, also lot No 19, in Blocks 15+16. Together with all and singular the tenements hereeditaments and appurtenances therunto belonging or in any wise appertaining, and the reversion and reversions, remaines and remaines, rents issues

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and profits thereof. And also all the estate right  
title, interest, dower and right of dower property, pos-  
session claim and demand whatsoever as well in law  
as in equity, of the said party of the first part, of in-  
and to the same, and every part and parcel thereof  
with the appurtenances: To Have and to Hold the above  
granted and described premises with the appurtenances  
unto the said party of the second part his heirs and as-  
signs, to his or their own proper use benefit, and behoof  
forever. Provided Always and these presents are upon  
this express condition, that if the said parties of the first  
part their heirs, executors, or administrators, shall well  
and truly pay unto the said party of the second part  
his executors, administrators, or assigns, the said sum  
of money mentioned and the interest thereon, at the  
time and in the manner mentioned according to the  
true intent and meaning thereof, that then these presents  
and the estate hereby granted, shall cease, determine, and  
be void. And the said Edwin Mills and Ann Eliza his  
wife for themselves, their heirs, executors, and administra-  
tors, do covenant and agree to pay unto the said party  
of the second part, his executors, administrators or assigns  
the said sum of money and interest, as mentioned above  
and expressed. And if default shall be made in the  
payment of the said sum of money above mentioned, or  
the interest that may grow due thereon, or of any

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part thereof, that then and from thenceforth it shall  
be lawful for the said party of the second part his ex-  
ecutors administrators, and assigns, to enter into and  
upon all and singular the premises hereby granted, or  
intended so to be, and to sell and dispose of the same  
and all benefit and equity of redemption of the said  
parties of the first part their heirs, executors admin-  
istrators or assigns therein, at public auction according  
to the act in such case made and provided. And as the  
attorney of the said parties of the first part, for that  
purpose by these presents duly authorized, con-  
stituted and appointed, to make and deliver, to  
the purchaser or purchasers, thereof, a good and suf-  
ficient deed or deeds of conveyance in the law for the  
same, in fee simple, and out of the money arising from  
such sale, to retain the principal and interest, <sup>which</sup> shall  
then be due the said bond or obligations together with the  
costs and charges of advertisement and sale of the same  
premises, rendering the overplus of the purchase money  
(if any there shall be) unto the said parties of the  
first part their heirs, executors, administrators or as-  
signs which sale so to be made, shall forever be a per-  
petual bar, both in law and equity, against the said  
parties of the first part their heirs and assigns, and  
all other persons claiming or to claim the premises

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or any part thereof, by from or under them, or either of them, In Witness Whereof the parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written.

Sealed and delivered, in the presence of  
all the parts of the mortgage relating to a bond struck out before signing, witnessing or acknowledging  
W. K. Thorn

State City and }  
County of New York } ss.

Edwin Mills

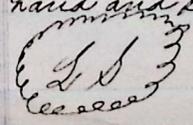
Ann Eliza Mills



I, William K. Thorn a Notary Public

duly admitted and sworn in and for the State of New York dwelling in the City of New York do hereby certify that on this 23<sup>rd</sup> day of February 1839, personally came and appeared before me Edwin Mills & Ann Eliza his wife known to me to be the individuals described in and who executed the within mortgage and who severally acknowledged that they executed the same for the uses and purposes therein mentioned, and the said Ann Eliza <sup>Mills</sup> being examined by me privately and apart from her said husband acknowledged that she executed the same freely and voluntarily and without fear or compulsion of or from her said husband which is to be satisfactory evidence of the due execution thereof. In Witness Whereof I have hereunto affixed my

hand and seal of office the said 23<sup>rd</sup> day of February 1839



Wm K. Thorn, Notary Public  
City of New York

State of New York }  
City and County of New York } ss. I. Joseph Kopic, Clerk of  
the City and County of New York and also Clerk of the  
Court of Common Pleas for the said City and County, do  
hereby certify, that Wm. K. Thorn whose name is sub-  
scribed to the certificate of the proof or acknowledgement  
of the annexed instrument, and thereon written, was,  
at the time of taking such proof or acknowledgement  
a Notary Public, in and for the City and County aforesaid  
dwelling in the said City commissioned and sworn.  
And further that I am well acquainted with the hand-  
writing of such Notary, and verily believe that the sig-  
nature to the said certificate of proof or  
acknowledgement is genuine. In Testimony where-  
of I have hereunto set my hand and af-  
fixed the seal of the said Court and County, the 26 day of  
Feb'y 1839  
Joseph Kopic  
Clerk

State of Illinois }  
Putnam County } Records Office 22<sup>nd</sup> March 1839  
I hereby certify that the within or foren-  
going mortgage is this day duly recorded in said office  
in Book 2, page 146  
M. J. McAllister Recorder  
per Oats Turner Deputy

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The Defendants then introduced Oliver P. Wolcott as a witness who testified as follows.

Now a brother of Mrs Wilson one of the Defts - knew E. Mills - lives at Astoria Long Island New York, Has lived there since 1839. Before that I don't <sup>know</sup> where he lived I knew Harlow Mills in his lifetime, knew him first in Columbia Co N. Y. was about 1835, or 1836 - I knew him in N. Y. City in fall 1839 up to the 7<sup>th</sup> July 1842 - He resided all that time in N. Y. City I was living in his family He left N. Y. City 1842, the 7<sup>th</sup> day of July with his family, He came to Tremont Sagwell Co Ills, arrived there the 27<sup>th</sup> day of July 1842 - I came with him and family: He remained there till the fore part of Aug before he came up to Marshall Co, he remained in Tremont till that time, he then came to Marshall County - I did come with him, He started the fore part of August from Tremont in a Suggy, he and I. We came to Peoria and from Peoria to Lacon, He had the deed from Edwin Mills to Harlow Mills along with him at that time (Deed is shown to witness) that is the same deed - date of it is 17. July, 1842 - It was recorded on the 4<sup>th</sup> day of August 1842 - We came here to the Records office, and then went to Col. Bells and staid over night, out on Crow Creek - about ten miles from here, from Greens it is about 5 miles, a little west of South. The next day went out with Col Bell, to see some of Mrs Mills Land

and called round to Squire Greens. We left the deed here for Record the day before - The deed was left here at Lacom in the Records Office, Harlow Mills & Green had a talk about Mortgages - I was at that time all day with Mills except about 3 minutes - I heard nothing about the deed at that time - I heard a conversation about the mortgage, Mr Mills told Mr Green that he was on his way to Hennepin, to examine the Record to see if Mr Harris had got his mortgage Recorded - He thought if his mortgage was recorded first before Mr. Harris mortgage was recorded, he would hold the land - I heard nothing of the kind that Mills knew of Harris mortgage when it was executed or any thing of that sort - I was present all the time with the exception of about 3 minutes, We went from Greens to Hennepin same day, did not find Harris' mortgage recorded there, - We examined the Records, then we came back from Hennepin to Greens, We staid overnight in Hennepin & went back to Greens next day - stopped there - they had a conversation about this quarter and Eeg Green went out and showed it to us

In that conversation after we came back at the House Mr Mills requested Mr Green to go and show him the land - Mr Mills told Mr Green that he could not find the Mort. of Mr. Harris on Record, Mr

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Harlow moved his family to this County first in  
in May 1843  
Spring of 1843. - he employed a man to break some  
land for him in Aug. 1842. That was the first breaking  
he had done in this County - I was in his employ all  
this time - When he moved here, to this County  
he moved from Tremont, and settled or stopped  
in Spring of 1843. till fall on Wm. Gray's place -  
I was with him in N. Y. till 7<sup>th</sup> July 1842.

Said Witness was here Cross-examined by the Com-  
plainants and testified as follows,

I am in my 40<sup>th</sup> year, I saw the deed in his  
Mills hands, - I dont know that I took it my hand  
I know it by the hand writing of Mr Mills - on the back of  
it, I saw it here at the Court House, and at Tre-  
mont before we started. We stopped at Mr. Blatter  
Brother in Law of Mr Mills, a little out from Tremont  
I saw the deed - saw him leave it at the Court House  
I knew the deed, he said he was going to fetch it and  
knew it to be that deed, - I knew that Mr. Mills had  
nothing from E. Mills - Edwin conveyed all he had - I  
knew it by report, and by what they said - I saw the  
deed repeatedly - I learned the fact that this was  
all the land E. Mills had from hearsay, I saw the  
deed in his hands, and from what he said &c - When  
he brought the Deed for Record I saw it, Mr. Mills  
came by way of Georgia the first time, the first time

that he came to Marshall County from Tremont  
it is in the neighborhood of 40 miles from Greens  
to Tremont - Mills was there visiting at Tremont  
all the time before he came up to Marshall Co.  
I was not away over night, nor was Mr. H. Mills

Went to Hennepin to see if Harris had a mort-  
gage on record, & Mr Mills heard a report that  
Mr Harris had a mortgage and he was going to see  
if it was on record, He said he thought if his  
mortgage was recorded before Harris mortgage  
was recorded he could hold the land, The deed  
was not mentioned to me, I might have pre-  
ferred to have my brother in Law get the land rather  
than Harris I had no other interest, - The de-  
fendants here introduced John Brevoort who tes-  
tified as follows.

Knew H. Mills in his lifetime first knew him in N.Y.  
City in 1841. I was in his employ in Spring & early part of  
summer of 1842, Lived in N.Y. City at that time - I left  
N.Y. either the 3<sup>d</sup> or 5<sup>th</sup> of July 1842, they had made  
preparations to follow soon & I did not come  
immediately to Ills. His family were in N.Y. till I  
left - I knew nothing of Harris mortgage - did not  
know Mr Harris came to Ills April 1843, the family of H.  
Mills was still in Tremont, and I found Miller Woolcut

90  
up in Marshall County in May 1843. I came to  
Marshall County & found the family here, Edwin  
Mills, in 1835 I was not in N.Y. was in mercantile  
business  
Dont know who set him up in business, I was a clerk  
for Harlow, he was a Grocer, - They were reasonably  
intimate, <sup>but</sup> nothing more so than brothers usually are,  
Did not know of his buying lands of Harris, knew  
nothing of Edwin buying land of Harris, dont think  
I ever heard Land spoken of between them or mortgage either.

The Defendants here stated their case

and Mrs B. Green Recalled by Comp and testified -

That Edwin & Harlow Mills were both in 1836 & 1837 at the  
same time in some business, both in Fulton St. N.Y.  
City only a few rods apart, know nothing except what  
Harlow told me about their transactions therein, did  
not see them frequently together, Harlow had a  
business connection with the Land Company Edwin  
Mills was also connected with said association

This was all the evidence offered in the case and  
upon the cause being submitted to the Court upon the ev-  
idence aforesaid, the court did determine, that the right  
of recovery upon the said Mortgage, was when said  
suit was instituted barred by lapse of time and  
did thereupon render a decree in the words & figures

following to wit:

John H. Harris

vs

Julia S. Wilson

Julia Lucas

James S. Lucas

William H. Mills

John G. Mills

Edwin Mills

In the Marshall Co. Ct. October

Term W. O. 1861

In Chancery

Decree

And now this cause having come on for a hearing, and the court having heard the Bill answer replication and all the evidence and the arguments of Counsel and being fully advised in the premises doth order adjudge & decree that said Bill be dismissed & that the respondents have and recover of & from the complainant their costs in this behalf expended & that execution issue therefor

M. E. Hollister

Judge

Whereupon the complainant excepted to the opinion of the Court in rendering said decree and prayed for an appeal to the Supreme Court of this State which is allowed upon his entering into bond in the sum of Three Hundred Dollars with G. J. Thompson his Surety to be filed in Sixty days

and asks that this his Bill of Exceptions, be signed sealed & allowed and filed in thirty days which is done

M. E. Hollister (Seal)  
Judge,

Know all men by these presents that we John H. Harris  
and L. G. Thompson are held and firmly bound unto Edwin  
Mills, Julia Wilson, James P. Lucas, William H. Mills  
and John G. Mills in the penal sum of Three Hundred  
Dollars 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 this that whereas, on the  
18th day of October A. D. 1861, in the Circuit Court of Marshall  
County Illinois in a suit therein heard & tried on the Chancery  
side thereof wherein said John H. Harris was complainant &  
Edwin Mills, Julia Wilson, James P. Lucas, William H. Mills  
& John G. Mills, were defendants, the said defendants recor-  
ered a decree against the said John H. Harris, dismissing his  
bill of complaint & for the costs of suit, from which said Harris  
prayed for & obtained an appeal to the Supreme Court of  
said state on his entering into bonds within 60 days with said  
L. G. Thompson his surety in the sum of three hundred dol-  
lars conditioned as the law directs

Now if said John H. Harris shall prosecute his appeal  
with effect & without delay and if pay such judgment costs  
interest & damages as may be awarded against him on such  
appeal in case the judgment shall be affirmed in the Supreme  
Court then this bond shall be null and void, otherwise to be and  
remain in full force and effect

Witness our hands  
Lecon Nov. 20th, 1861

John H. Harris  
L. G. Thompson

Mills November 20, 1861  
Children Amos  
Charles

State of Illinois }  
Marshall County } I Sheldon Arnold Clerk of the Circuit  
Court in and for the said County of  
Marshall do hereby Certify that the foregoing Record  
Contains a full and correct copy of all the papers filed  
in the Circuit of said County in said Cause, and also a  
Copy of all the proceedings had in said Cause in said  
Court as appears of Record in my Office and a full  
Statement of all the Evidence given in the trial of said  
Cause in said Circuit Court, all of which appears from  
the Records & files in my Office

In Witness whereof I have hereunto set  
my hand and affixed the seal of said  
Court this sixth day of January  
AD 1862, Sheldon Arnold  
Clerk

State of Illinois

In Supreme Court. 3<sup>rd</sup> Grand  
Division. April Term AD 1862

John H Harris, Appellant

vs

Bill to Foreclose Mortgage  
Edwin Mills, et al Appellees

Appeal from Marshall County

And now comes the Complainant.  
The Appellant and assigns for error  
why the decree in the Court below  
should be reversed and a decree  
rendered in favor of the Appellant  
by this Court:

1<sup>st</sup>- The Court below erred in rejecting a portion  
of the evidence of Edwin Mills the  
Mortgagor and witness for complainant.  
Also in rejecting part of the  
testimony of Wm B Green

2<sup>nd</sup> The Court below erred in rejecting  
the letter from Edwin Mills the Mortgagor  
to Lucia Mills one of the defendants  
the same being the Admission of

an important fact by the person who executed the Mortgage to the Complainant -

3<sup>rd</sup> The Court erred in deciding that the foreclosures was barred by the Lapse of time.

4<sup>th</sup> The Court below erred in dismissing the Complainant's Bill and by rendering a decree against him for the costs in this suit -

5<sup>th</sup> The Court below erred in not rendering a decree in favor of the Complainant for the Amount of the Mortgage debt and interest on the same at 6 per cent. per Annum from the time it was due

For these errors the Counsel for the Appellants <sup>insist that</sup> the decree rendered by the Court below ought to be reversed and a decree entered in this Court for the Complainant

for said mortgage Debt for seven  
hundred Dollars and interest  
on the same from the 9<sup>th</sup> day  
of September 1898. with costs of  
suit -

W H Holmes & J M Scott  
Attys for Appellant  
John W Harris } Supreme Court of Illinois  
as } Third Grand Juror  
Edwin Mills et al }

And the said Appellees by  
Wheat & Powell their attorneys come and say  
that in the record and proceedings afores-  
aid and in the recitation of the decree  
aforesaid there is no error wherefore they  
pray that the judgment and decree  
rendered therein may in all things be  
affirmed

Wheat & Powell

Attys for appellees

John H. Harris appt  
or

Edwin Mills and Apples  
~~~~~

Record of  
Asst. of Enrs  
~~~~~

Appeal from Marshall Co.

Filed April 22, 1862  
L. Leland  
Clerk.

John H. Harris, Supreme Court Clerk  
vs  
Harlow Mills } Grand Division  
ET al } April Term AD 1861

And the said defend-  
ants by Wead & Powell their attor-  
neys moves the court to extend  
the term for joining in error.

And also for a certiorari to send  
up the evidence contained in the  
Bill of exceptions for the reason  
that it appears by the record  
that this has not been done.

Wead & Powell  
attys for Defts

See Page 91 of Record

120 200  
Harris vs Mills et al  
aff'd.

Filed April 24 1862  
L. Seland  
Clk.

~~Motion with prayer~~  
Powers,  
Motion Denied

Harris } Motion to extend time to  
vs } join in now and for a  
Meill's Est } certiorari to send up the  
evidence contained in Bill of ex-  
- ceptions

I call the attention of the court that all the record up to page 91. contains the pleadings and evidence partly by depositions and partly evidence taken in open court

On page 91. The record shows that the Bill was dismissed and on the same page it appears that the complainant excepted to the decree of the court, and prayed an appeal which appeal was granted and ~~also~~ asked also that "This his Bill of exceptions be signed sealed and allowed and filed in thirty days which is done" But the record nowhere shows such Bill of exceptions or that it was filed in 30 days. ~~or~~ Now does the record show that the evidence in the record taken in open court was so taken or that it was all the evidence in the case All that is shown is on page 91

E. A. Powell



6 Charges that at the time of the execution and delivery of said mortgage from Mills and wife to Harlow Mills, he, Harlow Mills, had full and actual notice and knowledge of said Harris' previous mortgage, and that the same was due and unpaid, and that said Harlow then and afterwards, promised said Edwin Mills and the complainant, Harris, that he would pay and satisfy the same; and said Harlow afterwards, in conversation with divers persons, stated and admitted that at the time his mortgage was made and recorded, he well knew of the existence and validity of complainant's mortgage, and that the same was unpaid, and that he had promised and agreed to pay the same.

6 Bill charges that on the 17th day of February, 1842, said Edwin Mills and wife, by their deed of that date, and for the expressed consideration of two thousand dollars, sold and conveyed, in fee-simple, to said Harlow Mills, but purporting to make said conveyance subject to said mortgage to Harlow Mills, all the lands mentioned in said mortgage to Harlow Mills, and stating that said Harlow Mills' mortgage formed a part of the consideration for said conveyance.

7 The bill again charges knowledge of complainant's prior mortgage by said Harlow Mills at the time he took the deed in fee-simple; and that he again promised to pay said debt, &c.

8 The deed aforesaid, complainant charges operates as a merger and an extinguishment of said mortgage by Edwin Mills to Harlow Mills.

The bill charges that said Harlow Mills died intestate, October 20th, 1845, and that Julia Mills, his widow, since intermarried with one John Wilson of said Marshall County, and that she was duly appointed Administratrix of his estate, and that said Harlow Mills at the time of his death, left Julia Mills, (now intermarried with James P. Lucas,) William M. Mills and John G. Mills, his children, sole heirs at law, all of whom were minors, and that said widow and heirs are still the owners of said real estate. That the only consideration for said conveyance in fee, was said pretended mortgage debt of \$2000,00, and that the defendants neglect and refuse to pay complainant's debt.

10 The bill makes said parties defendants—waives the oaths of all of the defendants, and prays for foreclosure and sale. &c., and for further relief.

11 Affidavit of N. H. Purple, as to the non-residence of Edwin Mills.

12 to 20 The answer of the defendants, which denies that said Edwin Mills, on the 12th day of May, or at any other time, was indebted to the complainant Harris in the sum of \$700,00, or in any other sum for the purchase of the S. E. quarter of section 27, Town 30, North of Range one, West, and denies that Harris' mortgage was made to secure said sum of \$700,00 or of any other sum, and charges if such mortgage was made, it was without consideration. They admit the execution and delivery of the mortgage from Edwin Mills to Harlow Mills, and insist that that Mortgage is valid. They deny notice, as to Harlow Mills of complainant's mortgage.

15 Defendants admit the Deed from Edwin Mills and wife, to Harlow Mills—admit the death of Harlow Mills intestate—the intermarriage of the widow Julia Mills to John Wilson—the death of said John Wilson—that said Julia is Administratrix, as charged in the bill, and that the children named were the sole heirs at law of said Harlow Mills, and that said Julia, one of his heirs, married said James Lucas. They admit that defendants are still the owners in fee of said real estate.

19 Defendants set up the payment of taxes for 15 years, and plead the Statute [Chapter 24, Revised Statues,] in bar of the complainant's

19 suit, BECAUSE THE COMPLAINANT'S BILL WAS NOT FILED until after  
20 more than sixteen years had elapsed next after the note described in  
the complainant's mortgage had become due and payable. *also the lapse of time*

21 Replication to the defendants' answer by complainant, Harris.

22 Order of the Circuit Court, which sets forth that ALL OF THE DEFENDANTS, except Edwin Mills, had been duly served with process in the cause, and that the appearance of all of the parties defendants had been entered by their Solicitors, Ramsey & Flemming.

The order also appoints Samuel L. Flemming guardian ad litem for Julia Lucas, William H. Mills, and John Gale Mills, minor heirs of Harlow Mills, deceased, April 14th, 1856.

April 15th, 1856, Samuel L. Flemming files the answer of the infant defendants, and asks for proof.

22 On the 16th day of January, 1861, the complainant filed his amended bill.

29 He recapitulates the statements made in his original bill, and adds: That on or about the 9th day of April, A. D. 1836, that said Edwin Mills made and delivered to the complainant, his promissory note of that date, in writing, for the sum of seven hundred dollars, due on or before the 9th day of September, A. D. 1838, and that the Mortgage Deed made by said Edwin Mills to Harris, as described in the original bill was made to said Harris to secure the payment of the said promissory note with the interest, and that said note is the identical note mentioned in said mortgage.

That said note was left by complainant, Harris, in the hands of one Nathaniel Montross, then of the City, County and State of New York, for the purpose of getting the same secured by the execution and delivery of the mortgage to him, (Harris,) on or about the time of the execution and delivery of the aforesaid note to orator; and that said Montross was then acting as agent for orator in said City and State of New York, where he then resided. That orator was at that time a resident of the State of Illinois, and that since the time orator left said note with said Montross; orator never had the actual possession thereof, nor has he ever since that time seen said note; that said note was kept by said Montross in his office, among his papers, in said City of New York from the time orator left it with him until the time of the execution of and delivery of said mortgage; that the said mortgage was drafted by said Montross and obtained by said Montross for orator, as his agent; that at the time of the execution and delivery of said mortgage, said Montross still had said note in his office; that after receiving said note, he, (Montross,) never delivered the same to orator, nor had orator after that time, any actual control of said note, but that said note has been accidentally lost, without the fault of orator or his agent; that orator had never assigned or transferred said note, but the same, and the proceeds thereof, still remain his, orator's property wherever it may be; that said note was never endorsed by orator, and was not, therefore, negotiable by any other person into whose hands the same might come; that neither orator nor said Montross had any knowledge where said note was, but that it was lost, and at the time of filing his amendment to the bill, the collection of said note was barred by the Statute of limitations as against all persons except orator; that orator had made diligent search among all his papers, and in every other place where said note could be deposited; that said note was never deposited or kept in any other place by orator or said Montross, except in said office of said Montross.

Orator further shows that said sum of seven hundred dollars, with

the interest thereon, the 9th day of September, 1838, till date, at six per cent., remains still due and wholly unpaid.

31 Prayer for relief and decree as in the original bill, and that the defendants answer WITHOUT OATH.

32 Suggests the death of Julia Lucas, one of the defendants, about the 15th day of September, 1860, intestate and without children or heirs, except the other defendants.

32 The Record states that the defendants to the amended bill, filed their answer.

33 The joint and several answer of Julia Wilson, James P. Lucas, William H. Mills, and John G. Mills.

33 The said answer admits that defendants are the owners in fee-simple of the lands described in said bill, and that they were such owners at the time the bill was filed.

33 They also admit that Harlow Mills died on or about the 20th day of October, 1845, and that his widow, Julia, afterwards married John Wilson, who died as set forth in the bill, and that she still survives her said husband; that the heirs of Harlow Mills and his wife Julia, are correctly set forth in the bill; that said Julia Mills intermarried with James P. Lucas, as set forth in the bill, and that she has since died, and that said heirs claim to be the legal owners of the lands described in the bill.

ADMIT. 33 Defendants deny all of the other material allegations of the amended bill, and say, that if, in fact, any indebtedness ever did exist, it has long since been paid off.

DENY. 34

35 On the 17th day of October-1861, the complainant filed his replication.

RECORD. 35

36 RECORD Replication by complainant.

36 RECORD Cause comes on for trial on the 17th day of October, 1861. The complainant offered to read, in evidence, the deposition of Edwin Mills.

NOTICE. 38 & 39 Notice to take depositions. Here follows the interrogatories of the complainant.

1st Interrogatory :  
Are you acquainted with the parties to this suit—and if so, how long have you known them or either of them ?

2d. Look at the mortgage now shown you, marked "A," dated May 12, 1837, and state whether the same was executed by Edwin Mills, and whether the signature is in the hand writing of said Edwin Mills, and what means you have of knowing that fact ?

3d. Where is your place of residence ?

4th. To Edwin Mills: Are you the person who executed the said mortgage ?

5th. Where does Nathaniel Montross reside ?

6. Are you acquainted with his hand writing—if so, state your means of knowledge, and whether his signature as subscribing witness to said mortgage, is genuine ?

7th. State whether said mortgage has ever been paid ?

8th. State whether you sold the land recorded in said mortgage, or any part thereof, or mortgaged the same to Harlow Mills, and if so, when, or about what time, and whether at such time you so mortgaged and sold the same, said Harlow Mills knew or had information that the same had been previously mortgaged to the complainant, and whether or not he agreed to see to, or take care of said mortgage, and all that was said on the subject ?

39 9th. To Nathaniel Montross: State, &c.  
Ramsey & Flemming, the defendants' Attorneys, admit the service

of the notice and interrogatories August 13th, 1856, and file five cross interrogatories, as follows :

1st Cross Interrogatory :

If you give any answer to the 7th interrogatory and state that said mortgage has not been paid, then state from whom you have your information, and whether from hearsay or not, and where you got said information ?

2d Cross Interrogatory :

Do you know of one hundred dollars, or any other amount having been paid on said mortgage from you to complainant—if so, state as near as you can, when the same was paid ?

39

3d Cross Interrogatory :

If you answer the 8th interrogatory in the affirmative, then state what the consideration was, for the said mortgage and conveyance from you to your brother Harlow Mills, and whether the same was not a balance due on a settlement between you and said Harlow Mills made on or about June 28th, 1837—if so, state the amount of said indebtedness as appears from said settlement ?

40

4th Cross Interrogatory :

Do you not know that said Harlow Mills did not agree to pay or assume the said mortgage from yourself to said complainant ; and did you not always allege that said mortgage was void and illegal, and of no effect whatsoever ; and state when said Harlow Mills first knew of the existence of the pretended mortgage to Harris ?

40

5th Cross Interrogatory :

Do you know anything further, &c.?

6th Cross Interrogatory :

Are you one of the defendants in this case ?

41

Signed by

RAMSEY & FLEMMING,

Solicitors for Defendants.

The commission issued by the Clerk of the Circuit Court of Marshall County, Illinois, on the 25th day of August, 1856, to take the depositions referred to above, and directed to any Justice of the Peace or Commissioner authorized to take depositions residing in the City and State of New York.

42

Certificate and seal.

43

Caption of the deposition of Edwin Mills of Astoria, Queens County, and State of New York, and who is of lawful age, produced and sworn and examined upon oath, on the 11th day of September, 1856, at the office of Moses B. McClay, 51 Liberty street, in the CITY OF NEW YORK, in the County of New York and State of New York, by Moses B. McClay, a Commissioner of the State of Illinois, in said City of New York, to take depositions.

Said Edwin Mills testifies as follows : To the first direct interrogatory he answers and says : I am acquainted with the plaintiff and Julia Wilson ; I am also named as a defendant—others I don't know.

To the second direct interrogatory, he says : The said mortgage was executed by Edwin Mills, to myself ; the signature to said mortgage is in my hand writing ; it is of course, written by my personal knowledge.

45

To the third direct interrogatory, he says : I reside in Astoria, Queens County, in this State.

To the fourth direct interrogatory, he says : I am.

To the fifth interrogatory, he says : He, (meaning Montross, the other witness,) resides at New Orleans, Louisiana, I have understood.

To the sixth interrogatory, he says : I am not acquainted with his hand writing ; I have never seen him write a line to my recollection, except the signature to the mortgage, and in it I do not

now remember—[but have no doubt he did subscribe it.] The words in brackets were ruled out by the court in the trial below.

45 To the seventh interrogatory, he says: "It" [the mortgage.] has not been paid to my knowledge; I have never paid it.

To the 8th interrogatory, he says: I mortgaged the land January, 13, 1839 to him, and sold it to him on the 17th day of February, 1841. I have these dates from certified copies of such papers, under the hand of the Clerk of Marshall County, Illinois, and the seal of said County, which I received last year from Mrs. Wilson, one of the defendants. Last year the complainant called upon me upon the subject of the mortgage, [and my impression then was that my brother knew of its (the land) having been previously mortgaged to the complainant, and that my brother was to see to it and pay for it; and at that time "I addressed a letter to Mrs. Wilson, one of the defendants, giving my impressions," which is hereto annexed, marked "L." In answer to this question I am unable to testify to any conversation or declaration made between my brother and myself particularly, in consequence of the great lapse of time which has intervened. No communication was ever made to me on the subject, to my recollection, from the time I executed the Deed to my brother, until about a year ago—I therefore speak wholly from impressions.]

(The words included in brackets in this answer, were ruled out in the Court below on trial.)

46 To the cross interrogatory in behalf of the defendants, said Edwin Mills testifies as follows:

47 To the first cross interrogatory: I have not stated that it has not been paid; I only stated that I have not paid it—it has never been paid to my knowledge.

To the second, he says: I am unable to certify that I have ever paid anything upon the mortgage.

To third, he says: The consideration for the said mortgage to my brother, was A SUPPOSED BALANCE due by me to my brother in our co-partnership matters—as to the time, I cannot answer—I don't recollect; neither do I recollect the amount of said indebtedness—what the consideration of the Deed was, I am unable to say, except it was to take the place of mortgage to my brother.

47 To the fourth, he says: I do not know that he did not agree to pay or assume said mortgage from myself to complainant; I have never alleged that said mortgage was void and illegal, and of no effect whatever, at any time whatever to my knowledge, recollection or belief.

48 THE CONSIDERATION FOR THE MORTGAGE TO COMPLAINANT, WAS FOR THE PAYMENT OF THE LAND MENTIONED IN THE MORTGAGE to the complainant, which I had bought of him. I do not know when my brother knew of the execution of the mortgage to complainant.

To fifth, he says: I know nothing further.

To the sixth, he says: I see my name is in the title to the papers now before you, (the Commissioner,) and further, deponent saith not.

48 (Signed,) EDWIN MILLS.

48 MOSES C. M'CLAY, Ill. Com'r, in New York.

48 Certificate of Moses B. McClay, the Commissioner, dated September 17th, 1856, in proper person, and attested with his proper seal.

49 To the reading of the above deposition of Edwin Mills the defendants objected on the trial, for reasons here given, as follows:

49 1st. That there is no proof that the person who took the same, is a commissioner.

50 2d. There is no certificate of the Secretary of State thereto added.

3d. Mills is an interested witness, and therefore incompetent.

50 4th. Because portions of the deposition are stated as impressions, and as witness' understanding, and to these points the defendants object.

50 The Court thereupon excluded the last part of the answer to the 6th interrogatory, commencing with the words "no doubt he did subscribe it, &c.," and that part of the answer to the 8th interrogatory after the words "my impression then was," are excluded, which words excluded are (in the record,) included in a parenthesis, and allowed the residue of said deposition to be read in evidence, whereupon the complainant excepted to the opinion of the Court in excluding said evidence :

50 The complainant then offered, in evidence, a letter written by Edwin Mills to Julia Wilson, who are defendants, which is in the words and figures following :

" ASTORIA, Oct. 18th, 1855.

50 MY DEAR SISTER :—I am surprised to learn that the mortgage to Mr. Harris on one quarter section of land sold by me to my brother Harlow, has never been paid. I supposed that mortgage had been paid years ago, as my brother well knew of it, and it was deeded to him with the understanding that he should take care of the mortgage, of course. Now I find that both MORTGAGE and Deed are defective, and Mr. Harris claims of me—very justly, I think—that which belongs to him—that is, the land, or the \$700,00 and interest, since 51 1839. If you are willing, and have it in your power to settle with Mr. Harris, I shall be most happy to do all in my power to perfect your title.

Yours, with much respect, E. MILLS.

Mrs. JULIA M. WILSON."

*This is the letter referred to by me in my deposition, as marked L.*

MOSES B. M'CLAY,

EDWIN MILLS.

Whereupon defendants objected to the reading thereof, which objection was sustained by the Court, and said letter excluded, and thereupon the complainant excepted to the opinion of the Court, excluding said letter.

The complainant next offered to read, in evidence, the deposition of Nathaniel Montross.

52 Notice to take deposition.

52 53 54 55 56 57 Interrogatories with copy of Harris' mortgage annexed.

57 58 Dedimus.

Deposition of Nathaniel Montross.

60 To first interrogatory, he says: I know John H. Harris and Edwin Mills, and I have known Harris for the last 35 years or more; and E. Mills I knew for about two years some time in the years 1836 and 1837; since that time I have never seen him.

To the second interrogatory, he says: I believe I have; think I did subscribe my name as a witness to the same; I do not remember at this time who took said original mortgage; I believe there was, but in the absence of the papers, and so many years have elapsed since that, I cannot remember exactly at this time.

61 To third interrogatory, he answers: If John Harris did not take the said note and papers, he must have found them in the safe a Montross & Howell's store, where all papers belonging to him were left; the key was also left in the hands of A. D. Montross; I have not the note in my possession, nor do I know where it is, nor have I had it in my possession, except it may have been left with other papers in the iron safe, in Montross & Howell's store; I have never had in my possession, since 1838, any papers belonging to Harris—all that I ever had belonging to him were left, as I have before stated; I do not remember whether the same has been lost or not, nor do I

recollect whether it was endorsed or not; it is impossible for me at this time to recollect the particulars inquired of.

To fourth interrogatory, he answers, I do not know.

To fifth interrogatory, he answers: I have no recollection of it at this time.

To sixth interrogatory, he answers: No, I do not.

61 To seventh interrogatory, he answers: I was his agent; I do not recollect at this time, whether I took it to Harris, but I believe he, Harris, took it himself.

To eighth, interrogatory, he answers: The mortgage, if given, was given in consideration of land in Illinois; whether it was the same in the deed or not, I cannot say.

62 To ninth interrogatory, he answers: I did know Edwin Mills; I do not recollect whether I saw him sign it or not.

To tenth interrogatory, he answers: I do not recollect of taking any mortgage for Harris.

62 To eleventh interrogatory, he answers; I know nothing further than what I have already stated; when I left New York in the year 1838, all papers, books, &c., belonging to Harris, were left in his iron safe in Montross & Howell's store, the key of which was left with A. D. Montross, and I have never had access to them since. In 1841 John Harris had two persons with him in settling up his books, and after settling his accounts he made no mention to me that any of his papers that were in his safe was lost, (except one on check book,) and then he gave me a note, dated September 8th, 1841, at one day's date, for \$1,324,50, as being due to me by him, and which is still due and unpaid to me. The reason of my stating this fact, is, because I have the note now before me. N. MONTROSS."

63 The defendants objected to the reading of said deposition of N. Montross, which objection the Court overrule, and the defendants excepted.

63 The complainant then read, in evidence, the mortgage from Edwin  
64 Mills to John H. Harris, dated May 12, 1836, filed for record in the  
65 Recorder's office of Marshall County, Illinois, on the 8th day of November, 1855; the substance of which, (said mortgage,) is set out in the complainant's bill. The mortgage was never acknowledged by the said Mills.

66 To the reading of which mortgage deed the defendants objected,  
66 which objection the Court overruled, and the mortgage was read, to which reading of the Court the defendants excepted.

66 67 The complainant then read, in evidence, without objection, the  
68 69 Deed from Edwin Mills, and to Harlow Mills, dated the 17th day of February, 1842.

70 The defendants then read, in evidence, the deposition of William  
71 B. Green, who testified as follows:

In answer to the first interrogatory hereto annexed: I am acquainted with the parties to this suit; have known the complainant about 20 years, and have known the defendants about 13 years, except James P. Lucas, and have known him about 2 years.

71 In answer to the 2d interrogatory hereto annexed: I was acquainted with Harlow Mills in his lifetime; I think he is dead, and that he died about the year 1844 or 1845.

72 In answer to the 3d interrogatory hereto annexed: I am acquainted with the land described in the mortgage.

72 In answer to the 4th interrogatory hereto annexed: I do not remember hearing Harlow Mills say he had a mortgage on the said land, but did hear him say that he had a deed from Edwin Mills for the whole of it. At the time that Mills was going to get his deed re-

72 corded, he stated that he would see if Mr. Harris had got his mortgage recorded on said land; that if he had not, he thought that he would have his deed recorded first, and that would make his title perfect to the land, or free from the mortgage. After he returned from getting his deed recorded—the next day after, he said that the mortgage was not on record, and that the land was now clear of the mortgage.—Harlow Mills told me that John H. Harris' mortgage was given for a part of the purchase money of the land, and that he had got his deed recorded first, and that he thought that the land was not liable for the mortgage; there was something said about a mortgage from Edwin Mills to Harlow Mills, the particulars of which I cannot recollect—the conversation was at my house, in Marshall County.

72 In answer to the 5th interrogatory hereto annexed: I know nothing further than what is stated in answer to the 4th interrogatory.

73 Cross-examination by Silas Ramsey, for the defendants.

73 Said witness further answering, states that Harlow Mills in the conversation alluded to in the 4th interrogatory, said Edwin Mills at the time of his failure, was indebted to him, Harlow Mills, for about \$1,900 dollars, and that he had given him a mortgage Deed of Trust, or assignment, to secure the same, and that the making of the deed alleged to in said answer, was a final consumation of the Mortgage, Trust Deed or Assignment before spoken of; said conversation took place sometime during the year of 1842, and that the Mortgage, Trust Deed or Assignment, was upon the same land before alluded to.

73 Re-Examination. Witness further states that he understood from the conversation with Harlow Mills alluded to, that he knew of the existence of John H. Harris' mortgage from the time that it was first given, and further sayeth not.] WM. B. GREEN.

74 On motion of defendants, the Court excluded the last answer of the witness, Green, and the complainant excepted.

74 The complainant then read, in evidence, the affidavit of John H. Harris, as follows:

74 STATE OF ILLINOIS, }  
MARSHALL COUNTY, } ss. John H. Harris, the complainant  
74 in a cause now pending in the Circuit Court of said County of Marshall and State of Illinois, wherein he is complainant and Julia Wilson, Edward Mills and others are defendants to foreclose a mortgage, being duly sworn, says: That the promissory note mentioned in the mortgage to foreclose, which the bill is filed in said cause, dated the 6th day of September, A. D. 1837, and due on the 9th day of September, A. D. 1838, made by the said Edwin Mills to the said John H. Harris, for the sum of seven hundred dollars, was, as he believes, taken by one Nathaniel Montross, the person who signed the said mortgage; and retained by him as the agent of respondent, for the purpose of getting the same secured by said mortgage; that respondent has not, since the time said note was so delivered to said Montross, had the possession, power or control thereof; that said Montross, as he believes, on or about the time of the execution of said mortgage, left said promissory note in an iron safe in the store of Montross & Howell, in the City of New York, which was its last place of deposit, and that on or about the time last aforesaid, said note was then lost: that the said note has not been, since the time the said note was delivered to said Montross, in the possession, power or control of affiant, but the same is still lost; that the said note cannot be found so as to produce the same on the trial of the said cause: that affiant has made diligent search for said note among all his papers, and searched said safe where said note was last deposited by said Montross, in the City of New York, on or about the year

75 A. D. 1840, and since then, and could not find the same. Affiant saith farther, that said promissory note remains WHOLLY due and unpaid, with the interest thereon, and that the said note has not at any time been assigned by affiant, or transferred by him to any other person, but saith the said note is still his property.

JOHN H. HARRIS.

Subscribed and sworn to before me, this seventh day of October, A. D. 1861. SHELDON ARNOLD, Clerk."

76 The complainant then introduced William B. Green, who testified in open Court, as follows :

76 "I am living at a place called Lyons; am living on some of the lots in Lyons described in the bill of complaint; my title comes from Sheriff of Marshall County—no conveyance from Harris; he was one of three, a committee, to enter the land, &c.; the committee entered the quarters—plat was never recorded; the committee never conveyed the quarter; I live one mile from this land; no agreement with Harris in any way; have no interest in this matter." Said Green was then sworn in chief, and testified as follows :

76 "Mr. Harlow Mills was at my house some time in 1842. (Here the deed from E. Mills to H. Mills was exhibited to witness, and he was asked if he ever saw it, and answered:) I believe I did; I have no doubt about it; I have no doubt I saw it; says it is the deed; counsel says it is the same, certainly; I cannot tell when Harlow Mills first had knowledge of the Harris mortgage; had a conversation with Harlow the year before the deed was recorded, in 1841; can't tell the language or the particulars of what he did tell me; the substance was that he, Edwin, had bought the land of Mr. Harris, and gave his mortgage for it; I don't remember as he did state any date, or give any description; he told me about the settlement with his brother, and his brother owed him \$1,900, and that land was all he could get for it; there was particulars spoken of, but I cannot give the particulars; he knew that I knew of the purchase; he knew that Edwin Mills had purchased land of Mr. Harris; that fact appeared to be notorious in the City of New York where the parties lived; mortgage from Edwin to Harris was spoken of as a fact; the fact of purchase being made, and giving that mortgage for it, was spoken of also, in 1841; can't tell exactly the words he used about the mortgage; he knew about the purchase of his brother within a few days of the time it was made; can't tell all of the 2 hours conversation, but this purchase of Edwin from Harris was freely spoken of; he spoke about the ownership of that land with uncertainty; was not certain that he would hold it: appeared to depend upon some uncertainty, (meaning the mortgage to Harris.)

77 He did explain that uncertainty; he spoke of the mortgage Mr. Harris had; don't know how the Harris mortgage was to be paid, only the way the papers read; Harlow Mills' conversation was to the effect that the land had yet to pay the mortgage. In the year 1842, when Mr. Mills was at my house and conversing about the land and mortgage, I knew what mortgage he meant by common report; when the mortgage was made, I knew what piece of land he meant; I first saw the Harris mortgage in the latter part of 1842, at Harris' house, in Tremont, after the deed was recorded; Harris showed me his mortgage."

77 On cross-examination Green testified as follows :

78 "I have lived in Town 30, N. 1 West, 3d principal meridian, since 1838, in December. E. Mills and H. Mills, previous to 1840, lived in New York City, Fish street; in 1837, when I left there; I left in November; I bear no relationship to them; was not in business with

them before I came here; Edwin Mills never resided here, nor has he ever been here, to my knowledge.

78 Harlow Mills first came here, I think, in 1840, or thereabouts, to Tremont, in Tazewell County, and from Tazewell County in 1841 to Marshall County—this has been Marshall County since 1839—he came here in latter part of summer of 1841; he went to breaking prairie in latter part of summer, on section 9, Town 29, 1 West of 3d principal meridian; I think his family were here at that time; moved into a cabin with Wm. Gray, on Crow Creek; he built a house in this county and lived there till he died. Harris lived all this time in Tremont; was there before I came to this county; that was there in 1834 or 1835; I think that has been his general residence ever since; I left New York City in 1837; I did by common report, know of the existence of the mortgage from E. Mills to Harris; had never seen it; I had two conversations with H. Mills, the first was at my house, sometime in 1841; can't tell the time of year—before he got that deed from his brother; I have read, or heard the matter in my deposition; think I swore to it, but don't recollect distinctly; if I did swear to it, can't say before whom I swore to it; can't tell where, if sworn; as far as I can recollect, it was in the Recorder's office below, and in court time; I think H. Mills and myself had more than one conversation before 1842; can't tell who was present; didn't see the deed in 1841; he had not any; was made 17th February, 1842; he told me these things which I have sworn to, before; when he came to get his deed recorded he told me the same things. This testimony is conferred to 1841; when he came to get his deed recorded, (1842,) he came from his own house, I suppose; he came from his own house, 3 miles South of me, on his way to Hennepin, to search the records to see if the mortgage was recorded; in 1842, Harlow came to my house with the deed from E. to H. Mills, on his way to Hennepin, to search records to see whether the mortgage was recorded, and showed me the deed before it was recorded—at that time, the deed from Edwin to Harlow Mills; I suppose it was in August, 1842; I suppose it was the second—possible, the first of August, 1842; at that time Harlow Mills lived 3 miles South of my house—don't think anybody was with him."

Here witness was asked by defendants' counsel, this question:

80 "Didn't you swear before, that you didn't know anything about conversation?" Ans. "I don't think I did; I suppose the first conversation was in 1841; I had a conversation with H. Mills before he came to get the deed recorded, and that is the conversation I have detailed; that was in my own house, and Mills then lived in this county with his family."

80 81 82 The defendants then offered, in evidence, the mortgage from Ed-  
83 84 85 win Mills and wife to Harlow Mills, dated the 30th day of January, A. D. 1839, covering the land in controversy, and also other lands.

86 The defendants then introduced Oliver P. Wolcott, who testified as follows:

86 "Am a brother of Mrs. Wilson, one of the defendants; know E. Mills, lives at Astoria, Long Island, New York; has lived there since 1839; before that I don't know where he lived; I knew Harlow Mills in his lifetime; knew him first in Columbia County, N. Y.; was about 1832 or 1836; I knew him in Y. Y. City in fall of 1839, up to the 7th of July, 1842; he resided all that time in N. Y. City; I was living in his family; he left N. Y. City 1842, the 7th day of July, with his family; he came to Tremont, Tazewell Co., Illinois; arrived there the 27th day of July, 1842; I came with him and family; he remained there till the forepart of August before he came up to Marshall Co.; he remained in Tremont till that time; he then came to Marshall

86 Co.; I did come with him ; we started the forepart of August from  
Tremont, in a buggy, he and I; we came to Peoria, and from Peoria  
to Lacon; he had the deed from Edwin Mills to Harlow Mills, along  
with him at that time; (Deed is shown witness;) that is the same deed;  
date of it is 17th February, 1842; it was recorded on the 4 day of  
August, 1842; we came here to the Recorder's office, and then went  
86 to Col. Bells and staid over night, out on Crow Creek, about 10 miles  
from here; from Green's it is about 5 miles, a little West of South; the  
next day went out with Col. Bell to see some of Mr. Mills' land, and  
called round to Squire Green's ; we left the deed here for record the  
87 day before; the deed was left here at Lacon, in the Recorder's of-  
fice; Harlow Mills and Green had a talk about the mortgage ; I was  
at that time all day with Mills, except about 3 minutes; I heard noth-  
ing about the deed at that time; I heard a conversation about the  
mortgage; Mr. Mills told Mr. Green that he was on his way to Hen-  
nepin, to examine the record to see if Mr. Harris had got his mort-  
gage recorded; he thought if his mortgage was recorded first, before  
87 Mr. Marris' mortgage was recorded, he would hold the land; I heard  
nothing of the kind that Mills knew of Harris' mortgage, when it was  
executed, or any thing of the kind; I was present all the time with  
the exception of about 3 minutes; we went from Green's to Hennepin  
same day; did not find Harris' mortgage recorded there; we examin-  
ed the records, then we came back from Hennepin to Greens; westaid  
over night at Hennepin, and went back to Greens next day ; stopped  
there; they had a conversation about this quarter, and Squire Green  
went out and showed it to us; in that conversation, after we came  
back to the house, Mr. Mills requested Mr. Green to go and show  
87 him the land; Mr. Mills told Mr. Green that he could not find the  
mortgage of Mr. Harris on record; Mr. Harlow moved his family to  
this county first in spring of 1843, in May 1843 ; he employed a man  
88 to break some land for him in August, 1842; that was the first break-  
ing he had done in this county; I was in his employ all this time—  
when he moved here to this county, he moved from Tremont, and set-  
tled or stopped in spring of 1843, till fall, on Wm. Gray's place; I  
was with him in N. Y., till 7th July, 1842."

Said witness was here cross-examined by the complainant, and tes-  
tified as follows :

88 "I am in my 40th year; I saw the deed in his, Mills', hand; I don't  
know that I took it in my hand; I know it by the hand writing of  
Mr. Mills on the back of it ; I saw it here at the court house, and at  
88 Tremont before we started; we stopped at Mr. Platts, a brother-in-  
law of Mr. Mills, a little out of Tremont ; I saw the deed ; saw him  
leave it at the court house; I knew the deed; he said he was going to  
fetch it, and knew it to be that deed; I knew that Mr. Mills had noth-  
88 ing from E. Mills—Edwin conveyed all he had; I knew it by report,  
and by what they said; I saw the deed repeatedly; I learned the fact  
that this was all the land E. Mills had, from hearsay ; I saw the  
deed in his hands, and from what he said, &c. ; when he brought the  
deed for record I saw it; H. Mills came by way of Peoria, the first  
89 time that he came to Marshall County from Tremont; it is in the  
neighborhood of 40 miles from Green's to Tremont; Mills was there  
visiting at Tremont all the time before he came up to Marshall Co.; I  
89 was not away over night, nor was Mr. Mills ; went to Hennepin to  
see if Harris had a mortgage on record, &c.; Mr. Mills heard a report  
that Mr. Harris had a mortgage, and he was going to see if it was on  
record; he said he thought if his mortgage was recorded before Har-  
ris' mortgage was recorded, he could hold the land; the deed was not  
mentioned to me ; I might have preferred to have my mother-in-law

get the land rather than Harris; I had no other interest."

The defendants here introduced John Brevort, who testified as follows :

89 "Knew H. Mills in his lifetime; first knew him in N. Y. City, in  
1841; I was in his employ in spring, and early part of summer of  
1842; lived in N. Y. City at that time; I left N. Y. either the 3d or  
4th of July, 1842; they had made preparations to follow soon, &c.; I  
89 did not come immediately to Illinois; his family were in N. Y. till I  
left; I knew nothing of Harris' mortgage; did not know Mr. Harris  
came to Illinois April, 1843; the family of H. Mills was still in Tre-  
90 mont, and I found Mills and Wolcott up in Marshall County; in May,  
1843, I came to Marshall County and found the family here; Edwin  
Mills, in 1835, was in N. Y., in mercantile business; don't know who  
set him up in business; I was clerk for Harlow—he was a grocer; they  
were reasonably intimate, but nothing more so than brothers usually  
are; did not know of his buying lands of Harris; knew nothing of Ed-  
win's buying lands of Harris; don't think ever heard land spoken of  
between them, or mortgage either."

90 The defendants here rested their case, and Wm. B. Green re-called  
by complainant, and testified :

90 That Edwin and Harlow Mills were both, in 1836 and 1837 at the  
same time in some business, both in Fulton street, N. Y. City, only a  
few rods apart; know nothing except what Harlow told me about  
90 their transactions therein; did not see them frequently together;  
Harlow had a business connection with the Land Company—Edwin  
Mills was also connected with said association.

90 This was all of the evidence offered in the case, and upon the cause  
submitted to the Court upon the evidence aforesaid, the Court did de-  
termine that the right of recovery upon said mortgage, was when said  
suit was instituted, barred by lapse of time, and did therefore render  
a decree, as follows :

91 Decree dismissing the bill, &c.

91 Whereupon the complainant excepted to the opinion of the Court  
in rendering said decree, and prayed an appeal to the Supreme Court  
of this State, which is allowed upon his entering into bond in the sum  
of \$300,00 with L. G. Thompson, his surety, to be filed in sixty  
days, and asks that this, his bill of exceptions, be signed, sealed and  
allowed and filed in thirty days, which is done.

M. E. HOKISTER, JUDGE. [L. s.]

And on the 20th day of November, 1861, the complainant filed in  
the office of the Clerk of said Circuit Court his appeal bond in the sum  
of three hundred dollars, with said L. G. Thompson as his surety.

92 APPEAL BOND dated Nov. 20th, 1861.

93 Certificate of the Clerk of the Circuit Court of Marshall County,  
93 State of Illinois : [L. s.]

And now comes the complainant, the Appellant, and assigns for  
error, why the decree in the Court below should be reversed, and a  
decree rendered in favor of the Appellant, by this Court:

1st. The Court below erred in rejecting a portion of the evidence  
of Edwin Mills the mortgager and witness for the complainant; also  
in rejecting part of the testimony of Wm. B. Green.

2d. The Court below erred in rejecting the letter from Edwin  
Mills the mortgager, to Julia Mills, one of the defendants, the same  
being the admission of an important fact by the person who executed  
the mortgage to the complainant.

3d. The Court erred in deciding that the foreclosure was barred  
by the lapse of time.

4th. The Court below erred in dismissing the complainant's bill, and by rendering a decree against him for the costs in this suit.

5th. The Court below erred in not rendering a decree in favor of the complainant, for the amount of the mortgage debt and interest on the same, at 6 per cent. per annum, from the time it was due.

For these errors the Counsel for the Appellant insists that the decree rendered by the Court below ought to be reversed, and a decree entered in this Court for the complainant for said mortgage debt for seven hundred dollars and interest on the same from the 9th day of September, 1838, with costs of suit.

W. H. HOLMES & J. M. SCOTT:

ATT'YS FOR APPELLANT.

120 200

John H. Harris

vs

Edwin Mills et al

Abstract of Record

Filed April 2<sup>nd</sup> 1862.

George Ireland  
Clark

# SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1882

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JOHN H. HARRIS }  
          <sup>vs,</sup>      } *Appeal from Marshall.*  
EDWIN MILLS *et al.* }

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## POINTS AND AUTHORITIES FOR APPELLEE.

BY WEAD & POWELL.

### I.

This very case was before this Court in 1858. See 20th Illinois Reports, 165.

The Court there held that the "non-production of the note must be clearly and satisfactorily accounted for."

Afterwards the complainant amended his bill, and states: "The note was left by complainant in the hands of one Nathaniel Montross, then of the city of New York, for the purpose of getting it secured by mortgage, *on or about the time* of the execution of the note."

Nathaniel Montross, page 60, says he has seen the original mortgage, and signed his name as a witness to it, but he cannot say who took the mortgage. "If John Harris did not take the note and papers, he must have found them in the safe of Montross & Howell's store, where all papers belonging to him were left. The key was left in the hands of A. D. Montross. I have not the note in my possession, nor do I know where it is, NOR HAVE I HAD IT IN MY POSSESSION." Again he says, he thinks he did not take the note, *but that Harris took it himself*. He further states, that when he left New York, in 1838, all the papers and books belonging to Harris were left in his iron safe in Montross & Howell's store, the key of which was left with A. D. Montross.

That in 1841, "complainant had TWO PERSONS with him in settling up his books, and after settling his accounts HE MADE NO MENTION TO ME THAT ANY OF HIS PAPERS THAT WERE IN HIS SAFE WERE LOST, except a check, &c."

Now, Nathaniel Montross proves that he did not have the note, or if he had it, he left it in the safe, and the key was kept by A. D. Montross. *Two persons* assisted Harris in 1841 in settling his accounts, and had access to the *safe*. If the note was in the safe, the proper persons to ask about it were A. D. Montross and the *two men* who aided Harris in 1841, *when he failed to notify any one of the loss*.

By the proof as made, no other persons had access to the safe, and yet Harris has made no inquiries of either. A. D. Montross may have the note in his possession now, or either of the other two persons may have it in their possession. Before he can recover, he must produce the note, or account for its non-production. He does neither. He fails to inquire of the proper persons who had it in custody, and therefore he is not entitled to recover.

Again, Harris in his affidavit swears that the note was taken by Nathaniel Montross, and retained by him for the purpose of getting it secured by mortgage, &c. If this be true, the note never was in the possession of Harris. But Montross contradicts all this, because he says he believes the note was taken by Harris himself. Harris also swears that he believes the *note was lost after it was deposited in the iron safe*. *How could it be lost?* He has not inquired of any one who had access to the safe, and therefore he is not authorized to believe it is lost. The general tenor of the evidence of Montross contradicts the affidavit of Harris, and leaves the mind in such doubt, as to induce a belief that there is something wrong about the matter.

We conclude, then, that Harris has not accounted satisfactorily for the loss of the note.

## II.

The complainant is equally unfortunate in his attempt to prove notice of his deed to Harlow Mills, before the execution of the mortgage by Edwin Mills to Harlow Mills, dated 13th January, 1839.

His counsel attempt to evade this question by saying they have proved that the mortgage from Edwin to Harlow Mills was executed to secure an old indebtedness, and therefore Harlow Mills was not entitled to notice. But the complainant is in no position to raise this point. He does not, in his bill, claim that the consideration was an old debt or defective, and he does not call upon the defendants to disclose what the consideration of the mortgage was. That point was not in issue, and all proof showing what the consideration was, is irrelevant and improper.

## IV.

The following statements or allegations contained in the bill are not proved:

- 1st. It is not proved that the land was well known and reputed to be complainants'.
- 2d. It is not proved that taxes were paid by complainants for 25 or 30 years.
- 3d. No proof of possession of the land until the spring of 1837, long after the filing of the bill.
- 4th. No proof that any of the children of Amasa Barbour knew of the prior conveyance; and
- 5th. No notice or pretense of notice to Hankinson.

## V.

We contend that the complainants have no equitable or moral right to recover in this case. They resided in the state of Indiana and not in Illinois. The laws of Illinois are made to protect her own citizens, and not the citizens of other states or countries.. The *deed* under which complainants claim, was made in 1832; the bill in this case was filed March 7, 1856. Up to that time the deed had not been recorded; the complainants kept it in their possession during the whole of this long period of TWENTY-FOUR YEARS; they did not take possession of the land, or exercise any acts of ownership over it. They suffered it to be sold for taxes, and instead of redeeming it, as they should have done, they purchased the tax-title, *and did not put it upon record*, to notify the world of any claim whatever, as they should have done. The payment of taxes was not a matter of record, and could not be known under these circumstances. We say that the conduct of complainants was such, and so long continued, as to supersede the necessity of making any inquiries by any one desirous of purchasing the land.

The deed to complainants was made on the 13th January, 1832, and the law in force at that time in relation to the recording of deeds, required that all deeds and conveyances of land should be recorded within twelve months, (or *six* months, see laws 1829, page 25,) or they should be void as to *bona fide* purchasers, &c.

The complainants, in open violation of the law, kept their deed in their pocket, for twenty-four years, and so conducted themselves, by suffering the land to be sold for taxes, and purchasing the tax title by a

conveyance which they still refused to *record*, as to lead to the conclusion that they had no title, now ask that the defendants shall be bound by that very law which they have set at defiance.

He who asks equity should do equity; he who calls upon others to obey the laws should himself obey the law.

It is not to be endured that men should act as the complainants have acted, and then call upon those who have been led astray by their conduct, and parted with their money, to surrender rights which they have acquired by the laches and bad faith of the complainants.

If complainants had recorded their deed, or had paid the taxes so as to keep the land from sale, or if, after their purchase of the tax title, they had caused that deed to be recorded, their conduct would have been less reprehensible, and less liable to lead others to believe they had no claim to the land; but, failing in these, they have been guilty of such *bad faith* that they are not entitled to relief. They ask for a kind of equity which they have persistently refused to accord to others.

## VI.

I hold that no man is bound to go out of the state, or to a foreign country, to inquire if a citizen of that country has a deed for a tract of land. The law of vigilance does not go that far. It was the duty of the complainants to have their deed recorded in twelve months; failing in this, no equity should require a citizen to travel to another state or kingdom to hunt them. Suppose the complainants had lived in France; did equity require Hankinson to go to France to hunt them up? Or is there any sense in requiring him to go beyond the limits of the state? and yea, how far beyond? and where is the limit? Suppose he had gone to Indiana, and the complainants had been absent in Europe, would he have to wait until their return before he could purchase the land? I trow not. If the Court shall hold that a *citizen of the state* who has an unrecorded deed shall be protected against a subsequent purchaser who has notice, it will be going far enough. We cannot protect foreigners—our laws are not made for them; it is sufficient if we protect our own citizens.

II. M. WEAD,  
*For Plaintiff in Error.*

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Heavis

by

Mois

Cappellas Point

Filed May 14 1862

J. L. Leland  
C/M

# SUPREME COURT, STATE OF ILLINOIS.

OTTAWA, APRIL TERM, 1862.

JOHN H. HARRIS, } APPELLANT,  
vs. }  
EDWIN MILLS, and others, } APPELLEES.

APPEAL FROM MARSHALL COUNTY.

BILL TO FORECLOSE.

## POINTS AND AUTHORITIES BY APPELLANT.

This case is fully stated in the abstract, and naturally. the following questions remain to be decided :

1st. Has the complainant, Harris, sufficiently accounted for the non-production of the note ?

2d. Has he proved the execution of the mortgage ?

3d. Was Harlow Mills, the mortgagee of Edwin Mills the mortgagor, a BONA FIDE purchaser, so as to be entitled to notice? and if yes, had he notice of the prior mortgage at the time he executed his conveyance from Edwin Mills ?

4th. Is the debt barred by the lapse of time, or by the Statute of limitations ?

4th. We think that the affidavit of Harris sufficiently shows the loss of the note, and the testimony of Edwin Mills, the mortgagor, and his admissions, clearly and sufficiently shows that the debt is unpaid, and it is nowhere pretended that either Harlow Mills, or any of the defendants, ever paid any thing on it.

The testimony of Edwin Mills and of Montross and Green, sufficiently prove of the execution of, and the existence of the mortgage.

Harlow Mills, from whom the defendants derive their title as heirs at law, was not a BONA FIDE purchaser—his mortgage of the same lands, (with other lands) was given, according to the testimony of Edwin Mills his grantor, who is a competent witness for the complainant, as he testifies AGAINST his own interest, for a SUPPOSED balance due him upon a former co-partnership. No settlement appears to have ever been made between them; but for this SUPPOSED indebtedness a mortgage for four quarter sections of land, (including that covered by Harris' mortgage,) and a number of town lots was first made, and subsequently without any other consideration, a deed, in fee-simple, is made by Edwin Mills to Harlow, his brother, for the entire property. In his deposition he states that he cannot state what the consideration for the deed was, except that it was to TAKE THE PLACE OF THE MORTGAGE.

To constitute a BONA FIDE purchase for a valuable consideration, such, purchase, says Chancellor Kent, must be without notice, and WITH THE MONEY ACTUALLY PAID, or else, according to Lord Hardwicke, you are not hurt.

The argument must be, not only that the purchaser had not notice at or before the time of the execution of his deed, but that the purchase money was paid before notice. Jewett vs. Palmer, 2d Jonson, Chancery Rep., 160, 191.

As a general rule, says Chancellor Walworth, a purchaser of the legal title, who receives his conveyance merely in consideration of a PRIOR indebtedness, is not entitled to protection, BECAUSE HE HAS LOST NOTHING BY HIS PURCHASE but the relinquishment of a val-

id security, which he before held for his debt, and which cannot be revived so as to place him in the same situation, substantially, as to security, as he was in prior to his purchase, may, of itself, be sufficient to enable him to protection as a BONA FIDE purchaser.

~~Case, 18th page, 180.~~ 10 Paige v R p 80

Harlow Mills did not come within these exceptions, and his heirs claiming under and without ever having, before notice, had any actual possession or made any improvements on the land, are in equity in no better position than was their ancestor, from whom they claim title.

Again, suppose it be admitted that Harlow Mills was a bona fide purchaser, how stands this case upon the question of prior notice as to him ?

It is obvious, from the whole tenor of Edwin Mills' deposition, that his brother Harlow, at the time he took his mortgage deed, knew all about the prior incumbrance. But that fact is conclusively proved by the testimony of Wm. B. Green, who says in his deposition: (page 71 of record.)

"At the time that Mills (Harlow) was going to get his deed recorded, he stated that he would see if Mr. Harris had got his mortgage recorded on said land; and that if he had not, he thought that he would have his deed recorded first, and that would make his title perfect to the land, free from the mortgage. After he returned from getting his deed recorded, the next day after, he said the mortgage was not on record, and that the land was now clear of the mortgage." In his (Green's) testimony, (page 78 of the record,) he says "I had two conversations with H. Mills, sometime in 1841, before he got that deed from his brother;" again he says (page 79,) "he told me then the deed was made Sept. 17th, 1842, which I have known to before—when he came to get his deed recorded, he told me the SAME THINGS."

In his testimony, pages 76-77, Green says "he (Harlow Mills) knew that I knew of the purchase; he knew that Edwin Mills had purchased the land of Harris; that fact appeared to be notorious in the City of New York, where the parties lived. The mortgage from Edwin Mills to Harris, was spoken of as a fact; the fact of purchase being made and giving a mortgage for it, was spoken of also, in 1841; can't tell exactly the words he (Harlow Mills) used about the mortgage; he knew also, about the purchase of his brother within a few days of the time it was made; can't tell all of the two hour's conversation, but this purchase of Edwin from Harris, was freely spoken of."

The defendants in the Court below, relied principally upon the fact that the complainant's bill was not filed within 16 years next after his mortgage debt became due, and pleaded the Statute of limitations in bar of a recovery; and also the lapse of time. Upon this question alone the Court below decided the cause in favor of the defendants, and dismissed the complainant's bill, upon which this appeal was taken.

We are not aware that this point, unsustained as it is by any authority bearing DIRECTLY upon the QUESTION, was ever before raised in this State. The defendants cite 12th Ill., 441; Angel on Limitations, 29; 20th Ill., (this case) 169; 4, Bouvier 4, 446 and 7; Story, Eng. Pld., 536 and 7; 4, Kent Com., 200; 12th Ill., 438: not one of which is in point, or sustains the judgment below.

The Statute of Limitations of this State, which bars a recovery at law after sixteen years on the note, DOES NOT DISCHARGE THE DEBT, but operates on the remedy at law merely.

In the State of New York, where the note was made, the Statute of Limitations limited a recovery on the note to SIX years, but no one will pretend that by that Statute the DEBT was discharged.

Hubbard on Mortgages, 2d, page 14, says that the foreclosure of a mortgage is NOT barred by the Statute of Limitations.

In the case of *Hughes et. al., vs. Edwards and wife*, 9th Wheaton, 489, which is so far as this question is concerned a case in point.— The bond was dated on the 10th day of September, 1793, and payable on the 12th of the same month. The mortgage to secure the same, was dated on the 14th day of February, 1794, with a defeasance that the mortgagor should pay the bond which was previously due. The bill to foreclose was filed June 8th, 1816, more than 23 years after the money became due.

The third objection raised to the foreclosure of the mortgage was : That the plaintiffs were barred by lapse of time. Upon this point the Supreme Court of the United States says :

“ It is not alleged ” (and the same is true in this case,) “ or pretended that there is any Statute of Limitations in the State of Kentucky which bars the right of foreclosure or redemption, and the Counsel for the Appellants placed this point entirely upon these general principles, which have been adopted by the Courts of Equity, in relation to this subject. In case of a mortgagor coming in to redeem, that Court has by analogy to the Statute of limitations, which takes away the right of entry of the plaintiff, after TWENTY YEARS adverse possession, fixed upon that as a period after forfeiture, and possession taken by the mortgagee, no interest having been paid in the mean time, and no circumstances to account for the neglect appearing, beyond which right of redemption shall not be favored. In respect to the mortgagee, who is seeking to foreclose the equity of redemption, the general rule is, that where the mortgagor has been permitted to retain possession, the mortgage will, after a length of time, be presumed to have been discharged, by the payment of the money, or a release, unless circumstances can be shown sufficiently strong to repel the presumption, as payment of interest, a promise to pay, AN ACKNOWLEDGMENT BY THE MORTGAGOR, that the mortgage is still existing, and the like.” 9 Wheaton, 489-490.

In the case of *Jackson, vs. Price*, 10 Johnson's Reports, 413, the Court decided that the period of TWENTY YEARS is only a circumstance on which to found PRESUMPTION, and is not of itself a bar.

The books are full of authorities that AFTER TWENTY YEARS, a Court of Equity in analogy to the Statute of Limitations barring the right of entry in the absence of proof on the non-payment of the debt, will PRESUME that the debt is paid or released; but nearly all concur that even that presumption may be rebutted. *Blether vs. Downal*, 35; *Maine 556*, as referred to in *U. S. Dig., Vol. 14, page 445*. In *North Carolina, 8 Nedell Eg., 287*, the mortgage was presumed to be satisfied after twenty years. In *New Jersey*, same presumption, (which may be rebutted,) 1 *Halstead, Chancery Rep., 354*. In *Massachusetts*, after 40 years, if not enforced, the mortgage is presumed to be discharged. 12 *Mass., 379*.

In *Ohio*, on a bill to redeem, *Robinson, et. al., vs. Fife, et. al.*, the Court permitted the rendees of the mortgagor to redeem after 20 years possession by the heirs of the rendee.

Mr. Story in his *Equity Jurisprudence, Vol. 2, page 296, Lect. 1028*, says :

“ If he ” (the mortgagee,) “ has suffered the mortgagor to remain in possession for TWENTY YEARS after the breach of the condition, without any payment of interest or ADMISSION of THE DEBT, or other duty, the right to file a bill for a foreclosure will generally be deemed to be barred and extinguished. However, in cases of this sort, AS THE BAR IS NOT POSITIVE, but is founded on presumption of payment, it is open to be rebutted by circumstances.” See also 5 *John.*

C. R., 546; in 4 Paige, (or letter in U. S. Eg. Dig.) 441. The Court, unless admitted otherwise by the mortgagor, would presume the mortgage satisfied AFTER 20 years.

So in Paige C. R., 578, after the lapse of 23 years. Same in N. Jersey, Saxton, 685, Vanmaker vs. Van Baskirk, after 20 years. In the absence of facts to rebut the presumption of payment, the debt is barred AFTER 20 years, where the mortgagor is in possession; Chick vs Robins, 44 Maine, 104.

A case apparently precisely like the case now before the Court, is referred to in 12 U. S. Dig., 448, as being reported in 10 Rich. (S. C.) It says, where it clearly appears by the admissions of the mortgagor, or otherwise, that the mortgage debt is still subsisting and due, payment or release of the debt will not be presumed in favor of the GRANTEE of the mortgage, although he has been in open possession of the mortgaged premises, unless an absolute deed from the mortgagor, for more than twenty years.

The decisions upon this point are in fact so numerous and unanimous, that I cannot believe that they will be seriously questioned by the defendants' Counsel in THIS Court.

Again, for the sake of argument, supposing that in this case the lapse DID raise a presumption that the debt had been paid! Has not the complainant in this case completely rebutted such supposed presumption by the testimony of Edwin Mills, the mortgagor, who has testified in this case against his interest?

He proves the execution of the note and mortgage, and that he has never paid them. The defendants do not anywhere pretend that either themselves or Harlow Mills, under whom they claim, ever paid the mortgage debt or any part of it. In his letter to Mrs. Mills, which we insist ought to be received in evidence, as an admission of ~~the the mortgagor of the fact of non-payment—he also distinctly admits~~ of the validity of the mortgage, and that it was unpaid.

The deposition of Edwin Mills was objected to on the trial below, because there was no certificate of the Secretary of State annexed to the commission. This objection, even were such certificate necessary, came too late, not having been made previous to the trial; so with the objections raised to the other depositions—except as to where some of them speak of IMPRESSIONS, &c.

From the consideration of all the testimony in connexion with the authorities cited, we confidently claim from this Court, a reversal of the Decree below, and a Decree of this Court for the amount of the mortgage debt, \$700,00, and interest on the same, and the costs of this Court, and in the Court below.

W. H. HOLMES & J. M. SCOTT,  
COUNSEL FOR APPELLANT.

*Wright vs Eaves 10 Rich  
(S C) Page 594*

=200=

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John H Harris  
vs

Ellison Mills & Co

Particulars

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

L. L. Leland  
Clerk