

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division

No. 148

14521

Ohlson
vs
Lutzner

1863

State of Illinois }
 Stephenson County }
 of the December Term AD 1862
 Lutzin Lutzin }
 vs } No. 98 Chancery
 Berentzin Ohlins }
 et al }

This cause having this day been brought on & heard upon the pleadings and the proof taken therein and it appearing to the Court that the said Defendants on the fourth day of December AD 1855 sold to the Complainant the land and premises described in the Complainant's Bill, as the South East quarter of Section number twenty five (25) in Township number twenty six (26) of Range Number Eight (8) situated in Stephenson County Illinois for the consideration of two thousand five hundred and fifty dollars and that the said Defendants on the tenth day of December AD 1855 made executed and delivered to said Complainant their certain deed commonly called a warranty deed for said land & premises and in which deed the said Defendants for themselves

and their heirs executors and administrators
 covenanted to and with the said Complainant
 his heirs and assigns that they were law-
 fully seized in fee simple of said
 above described premises and that
 the same were free from all
 incumbrances and that the said
 defendants for themselves and their
 heirs executors and administrators
 further covenanted to and with the
 said Complainant in and by said
 deed to defend said premises to
 the said Complainant his heirs
 and assigns against the lawful
 claims and demands of all
 persons whomsoever, and it also
 further appearing to the Court that
 at the time of the sale of the said
 premises and the execution and
 delivery of said deed by said defend-
 ants to said Complainant as afore-
 said that said Complainant paid to
 said defendants as part of the pur-
 chase money for said premises the
 sum of one thousand dollars cash
 in hand and for the balance of
 the purchase money the said
 complainant made executed

and delivered to the said Defendants his three several promissory notes, the first one calling for four hundred dollars bearing date December 4th A.D. 1855 & due in one year after the date thereof, and the second & paid note bearing date the fourth day of December A.D. 1855 calling for six hundred dollars and due in two years from the date thereof and the third & paid notes, bearing date the fourth day of December A.D. 1855 calling for five hundred and fifty dollars and due in three years after the date thereof. Said notes amounting in the aggregate to the sum of fifteen hundred and fifty dollars, and it further appearing to the Court that said notes were at the time of the Commencement of this suit and of the hearing of this cause out standing against said Complainant and that said notes have never been delivered up to said Complainant by said Defendants, upon the four hundred dollar note mentioned, of which said notes said Complainant paid said

Defendants, the further sum of two
 hundred and Eighty four & $\frac{4}{10}$ dollars
 on the third day of August 1857
 and it further appearing to the Court
 that at the time of said Conveyance
 of said premises from said defend-
 ants to said Complainant there
 was existing upon said premises
 a prior incumbrance by virtue
 of a mortgage therein dated Aug-
 ust 8th AD 1854 securing the sum of
 four thousand dollars with interest
 thereon and it further appearing
 to the Court that the title to said
 premises in the said Complainant
 has been defeated and that the
 Complainant has been evicted from
 said premises under a paramount
 title existing upon said premises
 by virtue of said incumbrance resting
 upon said premises at the time of said
 Conveyance from said defendants to
 said Complainant. It is therefore
 ordered, adjudged and decreed
 that the Complainant have and
 recover of and from the said defend-
 ants the sum of two thousand five
 hundred and fifty dollars the consid-

eration money mentioned in said deed and interest thereon at six per cent from the fourth day of December AD 1855 amounting in the aggregate to the sum of three thousand six hundred and twenty six dollars. It is therefore ordered, adjudged and decreed by the Court now here, that the said Defendants do pay or cause to be paid to the said Complainant the sum of three thousand six hundred and twenty six dollars within ten days after the rising of this Court together with interest thereon from the date of filing of this decree and that in default of such payment Execution be issued from this Court against the goods and Chattels, land and tenements of the said defendants for the collection thereof, and it is further ordered adjudged and decreed that the said Complainant have and recover of the said defendants his costs and charges about this suit in this behalf expended and that he have execution thereupon

Benj R. Sheldon

Filed Dec 20. 1862

J. H. Thoburn CLK
per E. P. Hodges Dep

Sutzin Sutzin

vs.

Benetzie Okling

Et. al.

K. Co. Cir. Ct. Ill.

December 5. 1862

Dec. Term 1862

Bright reads BillMeacham reads Lfto aneder.Urban D. Meacham

Declines answering whether
he has the notes described in the Bill or not.

- Excepted to -

Heike Okling

Knows Compt. Ruled by the
Court that H. K. need not testify as a witness.

- Excepted to -

Benend Diddus

Known Compt from childhood,
Knows Benzi Okling & Heike & Paul & Adde
Borchus. Knows the land in dispute. Land in
Sec. 25. North East quarter 25. Township, don't
know it. Was present when Compt paid \$1000 on
the land - at Sadyus - when the deed was
made - in Freeport - don't recollect the land -
\$1000 in gold & some in paper - don't know
how much of each; Heike & his brothers, Meichen,
all who signed the deed. Couldn't read
english. Compt is a German & cannot read
German or English. - Is a Hollander.

Compt. moved on the land 6 years ago next spring. Vacant prairie - unimproved.
 Compt. lived on the land 6 years last spring.
 Knew Raoul Ohling decd. Died about -
 can't say how many years. Don't know
 whether Compt. gave any notes or not.
 Can't tell whether notes given or not.
 Something to that effect was given.
 (Dud of Defts copied in Bill of Compt
 here offered in evidence)

Cross Examined

\$1000 paid at the Landys
 office. wit saw it paid. Paid in gold
 & notes. Can't say how much of each.
 Saw all the papers drawn up. Besides,
 Parties, cannot tell who was present.
 Office on this side of Stephenson Street.
 Have seen Meacham before - might
 have been him - many times.
 Saw \$1000 was paid, think Lutzin, son
 of Compt. was present - not certain.

Wm Callman

Know parties. Know land
 in dispute. S.E. 1/4 Sec 25. T 26. R 8.
 Compt. moved on in 1856. Not present
 when bargain made or money paid.

Only knows what he has heard about it.
 Never heard Benentzin or Mike or Paul
 or Borcher say any thing about giving a
 note. Went in possession in '56 - wild fra-
 nie - in possession till Mitchell bot. Don't
 know year. Compt. broke it. Broke 146 acres.
 Fenced it all on 2 sides. Built 3 houses.
 wood houses. Made a well. Trees planted. -
 Twenty trees - can't say - I examined im-
 provements. Compt. wanted me to appraise
 houses & improvements - worth \$1077 ³/₁₀₀ -
 worth \$20 to \$25 per acre when it was taken
 from Compt. Much as he knows it was taken
 from Compt. Mitchell told wit. he bot. it.
 was not at public sale. Ohling when he
 died left children - Paul - Mike - Jonnie.
 My land corners on land in dispute.
 I am a farmer. I have a list of improve-
 ments made on the land by Compt.
 Compt. made them - they are fence on
 south side - 291 post holes. 500 odd
 stakes - 291 posts & setting up - 582 posts -
 This on south side - on west side - 571 board
 & post & rail & stake fence - 113 posts without
 holes - 880 odd feet of fencing - 360 stakes
 Breaking 145 acres badly done by Sutzy -
 \$3.50 per acre - Houses. one \$125. one \$120. one
 \$100 - stabling not appraised -

Ulye Collman Contd

Broke in '56, '57, & '58.

Crop '57. wheat. Good crop one year - Can't tell what year. Think '57 crop middling. Land not all in cultivation in '57. Can't say whether part broke all down - think it was. Can't tell how much. Very poor crop '58. Oats poor, wheat & corn middling. '59 crops some better. All in crop in '59. '60 good crop. '61 crop not very good. Can't tell what land is worth per acre. Pretty good land, Land rents for $\frac{1}{3}$ - Tenant finds every thing - Son of Cimpl son in law lived on the place & old man lives with his son. I have lived there 6 or 7 years. Cimpl went on in '56. Now live on it. Looked out by man never lived on land. Think D. broke part of the land - but don't know. Sutzen had no other farm this Cimpl knew of

John Karm

Know parties. Knows land. Live near it. Lived there 13 years. Cimpl moved on the land in '56 - Unimproved - it prairie at the time. Knows what improvements Sutzen made. Improvements are breaking - fencing - building houses - digging well - setting out trees. Saw it

18th Nov 1860 - Improvements worth \$1077 $\frac{1}{2}$ $\frac{3}{4}$.
 Collman with me at the time. Small
 stable on the land. Did not see Compl
 pay money. Ohling had six children
 Niike - Paul & Beryl wife to J. Smith - widow
 Buntz - Don't know how long Compl
 was in possession. Fence on North side
 worth \$86 - South side \$72 $\frac{3}{4}$ -

Riecke Ribkes

Know parties. Know land
 in dispute. Compl moved on land in
 May 1856. I am now in possession.
 Took possession 2 years ago in Sept 60.
 Compl gave up possession at that time.
 Heard testimony of Kearn & Collman in
 this case. Know improvements. Compl
 made them in 56 & 57. I got part of the
 land from Mitchell - Produces deed
 to him from Mitchell. Wild prairie when
 Compl took possession in May 56. I paid
 \$20 per acre for 60 acres of the land.
 Putnam came & told Sutzger he had
 to give up possession of the land.
 Putnam told him not to plow - that he
 must rent or lose the land or do
 no more farming - this he told to
 Sutzger -
 Here Compl introduced and gave in

witness the deed by James Mitchell & wife to Reibke Reibkas - was deed - dated Sept 29th 60. of which the following is a copy. viz.

This Indenture made this twenty ninth day of September in the year of Our Lord One thousand Eight Hundred and ~~Fifty~~ Sixty - Between James Mitchell & Catherine his wife of the City of Freeport County of Stephenson and State of Illinois of the first part and Reibke Reibkas of the aforesaid County of Stephenson and State of Illinois of the second part ~~do hereby~~ that the said party of the first part for and in consideration of the sum of Twelve Hundred Dollars to them in hand paid the receipt of which is hereby acknowledged, have granted, bargained, sold, conveyed and confirmed and do hereby grant, bargain, sell, convey and confirm unto the said party of the second part, and to his heirs and assigns forever all that tract or parcel of land situate and being in the aforesaid County of Stephenson and State of Illinois and known and described as follows, to wit: Sixty acres off of the North side of the south east quarter

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of Section No Twenty five (25) Township No
 Twenty six (26) North of Range Eight (8) East
 of the 4th Principal Meridian in the State
 of Illinois. Together with all and singular
 the appurtenances thereto belonging or in
 any wise appertaining to have and to hold
 the above described premises unto the said
 party of the second part and to his heirs
 and assigns forever and the said parties
 of the first part for themselves their
 heirs, executors and administrators do
 covenant and agree to and with the said
 party of the second part, his heirs and
 assigns that they are well seized of
 the premises above conveyed as of
 a good and undefeasible inheritance
 in the law in fee simple and that
 said premises are clear from all
 incumbrances whatever, and the
 said parties of the first part the
 of the said premises unto the said
 party of the second part and his heirs
 and assigns against the claim and
 claims of all and every person
 whomever so and will warrant
 and forever defend by these presents
 except taxes of 1860. In witness whereof
 the said parties of the first part have

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hermits set their hands and seals the day
and year first above written
Executed in presence of.

James Mitchell *ESQ*

Catharine Mitchell *ESQ*

State of Illinois }
DePaulus County }^{ss}

I, Eustave Doon a Justice
of the Peace in and for said County, do hereby
certify, that James Mitchell and Catharine
Mitchell personally known to me to be
the persons whose names are subscribed
to the foregoing deed as having executed
the same appeared before me this day in
person and acknowledged that they signed
sealed and delivered the same as their
free and voluntary act, and for the
uses and purposes therein set forth.
And the said Catharine Mitchell
personally known to me to be the wife
of the said James Mitchell and as the
person who subscribed said deed
and as such have been by me made
acquainted with the contents and
meaning of said instrument of
writing, separate and apart from
her said husband acknowledged
that she had executed the same

and relinquished her dower to the lands and tenements therein mentioned voluntarily, freely and without compulsion of her said husband and that she does not wish to retract the same.

Given under my hand and seal at Freeport this second day of October A.D. 1860 Gustav Dorn J.P. *G.D.*

Sutjin did not consent that I might take possession. Had no talk with Compl about it. I talked with Compl about buying if Compl could give a good deed.

Henry Sutjin

Know parties. Know land in dispute. I am son of Compl. Compl took possession in May 56. Remained in possession about 3 years or till Sept 60. Compl made the improvements while on the land in 56 + 57. I got part of the land from Mitchell - produces deed - Took possession when I got deed from Mitchell. Putnam came out & notified Compl not to plow or do more

on it without buying. I got 100 acres.
 Ribble Ribbles got 60 acres. I paid 20 per
 acre. Compl lived with me. I am married
 and keep my father & Mother - Wild prai-
 rie land when Compl took possession in
 May 56. Not present when Compl got of Defto.
 I & Ribbles took possession of the land as
 soon as we bought it. Then Compl gave in
 evidence the deed from James Mitchell
 & wife & Henry Lutzin - warranty deed - dated
 Sept 29.th 1860. of which the following is a
 copy viz:

This Indenture made this Twenty-ninth
 Day of September in the year of Our Lord one
 thousand Eight hundred and Sixty, Between
 James Mitchell and Catharine his wife of
 the City of Freeport County of Stephenson and State
 of Illinois of the first part and Henry Lutzin
 of the aforesaid County of Stephenson 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 Two thousand
 dollars to them in hand paid, the receipt
 of which is hereby acknowledged, have
 granted, bargained, sold, conveyed and
 confirmed, and do hereby grant,
 bargain, sell, convey and confirm
 unto the said party of the second part

and his heirs and assigns forever all tract or parcel of land situate and being in the aforesaid County of Stephenson and State of Illinois and known and described as follows to wit: The South East quarter of Section No Twenty five (25) Township No Twenty six (26) North of Range No Eight (8) East of the fourth principal meridian in the State of Illinois. Except fifty acres off of the North side of said quarter Section this day deeded and conveyed to Reuben Ribble together with all and singular the appurtenances therunto belonging or in any wise appertaining. To have and to hold the above described premises unto the said party of the second part and his heirs and assigns forever. And the said parties of the first part for themselves and their heirs, executors and administrators do covenant and agree to and with the said party of the second part his heirs and assigns that they are well seized of the premises above conveyed as of a good and indefeasible inheritance in fee simple, and that the said premises are clear from all incumbrances whatever. And the said parties of the first part the aforesaid premises

unto the said party of the second part
and his heirs and assigns, against the
claim and claims of all and every
person whomesoever do and will
warrant and defend by these
presents, except taxes of 1860. In witness
whereof the said parties of the first part
have hereunto set their hands and
seals the day and year first above
written

Executed in presence } James Mitchell Seal
of } Catharine Mitchell Seal

State of Illinois }
Stephenson County }
I, Gustav Dorr a Justice
of the Peace in and for said County, do hereby
certify that James Mitchell and Catharine
Mitchell personally known to me to be the
person whose names are subscribed to
the foregoing deed, as having executed the
same, appeared before me this day in per-
son and acknowledged that they signed, sealed
and delivered the same as their free and
voluntary act for the uses and purposes therein
set forth. And the said Catharine Mitchell
personally known to me to be the wife of the said
James Mitchell and as the person who ack-
nowledged said deed, and as such having

been by one made acquainted with the contents and meaning of said instrument of writing separate and apart from her ~~said~~ husband, acknowledged that she had executed the same, and relinquished her dower to the lands and tenements therein mentioned voluntarily, freely, and without compulsion of her said husband, and that she did not wish to retract the same. Given under my hand and seal at Kneepert this second day of October A.D. 1860

Gustav Dorr H. Secy

Cross Examined

Father lives with me;
I bot land on credit at \$20 per acre

Direct resumed

Paid cash \$700. Paid balance in fall. Borrowed the money and paid Mitchell for the land.

D.M. Funderland

Am Co. CLK. Proves nil

of R. R. Ohling as Probated, Will offered in evidence. Given in evidence— As follows
viz:

A few days since Mr R. R. Ohling gave me to understand that he on account of sickness wished by will and testament to dispose of his property. To this end he called upon me, the subscriber, a minister, besides both the undersigned witnesses today to come to his house. We found Mr. R. R. Ohling sick, and in bed, notwithstanding in enjoyment in his full senses, which Mr. Reichenbach a physician who was present attested to, and concluded with his free will, and without Compulsion by any one, he gave us his last will considered will to understand and desired me to write the same as following:

I the undersigned Roolf Knies Ohling wish hereby expressly, that after my decease my beloved wife Berentze, whose maiden name was Pauli, to become the sole heir of all my goods, property and effects, and in such manner that she during her life can use and Control the same according as she thinks best and likes. Should she however marry again, then she shall hold and have no more than one third or as

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much as the law allows her. After the death of my aforesaid wife, the following division of my property shall take place,

1st My first born son Niels Roof Ohling shall have the farm with the appertainments thereunto belonging of 160 acres of land on which he now resides,

2^d My second son, Paul Janssen Ohling shall have the farm on which he now has erected the lime stone house besides 160 acres of land, The streams of running water between the aforesaid farms which forms the line between said farms shall belong to both of my sons for the joint benefit of both farms.

3^d My Daughter Jannike Gerds Ohling united and married to Birchers shall have also after the death of my wife Berend's, whose maiden name was Pauli, the farm containing 160 acres of land as her personal inheritance on which she now resides, but in as much as the buildings are more costly and expensive than those of the brothers, she shall be compelled to pay to her brothers upon her coming in possession of said farm \$500 five hundred dollars, namely \$250 to each one. The aforesaid farm which I have willed to my daughter Jannike Gerds

is occupied by herself and husband Addo Borchus, namely the one half and the other half by me and my wife, This farm my son in law has rented from me for the term of Eight years, and my express wish is that this Contract shall remain in force in case of my death before the term expires.

Should my aforesaid daughter Jannette Bents married D Borchus die without leaving Children, then I do hereby ordain and order that the said farm, Cum annexis, fall back to my ~~two~~ aforesaid ~~sons~~ two sons, except that my son in law shall claim as much as the law of the Country shall give him.

My 40 acres of timber land shall be divided among the three aforesaid farms, and casting lots for the same, so that each of the children come in possession of $13\frac{1}{3}$ acres.

Should my two sons aforesaid who are born in our wedlock wish to buy the 160 acres of land which I have bought from Miller, and which is situated by or by the side of Neys Rint's land at eight dollars per acre, they shall have the privilege to do so, and I approve

hereby expressly this probable purchase, they shall be obligated after the death of my wife to pay to their sister her proportionate share

All other real estate, demands, Cattle and stock, Household furniture, and other possessions which belong to me, shall belong to my aforesaid wife, and she shall have the unlimited Control over the same, and I do hereby again to prevent any mistake or misunderstanding, and by my signature declare that my cherished wife Berendin whose maiden name was Pauli, during her life in case she does not marry again shall have and hold the aforesaid inheritance undisturbed and Control them as she thinks best,

According to her wish and desire that our first born son Dicki Rooff, Ohling shall become her assistant. I therefore not only approve thereof, but it is my ardent wish and my Conclusion. I pray that this my testament shall remain unchanged and unaltered, in as much as it is my last will which I have made upon due deliberation and freely, which I the physician and two witnesses, through their own signatures attest the truth thereof.

Ridott, Neptension Comtz, August 21st
1855 the twenty first day of August
Eighteen Hundred and fifty five.

Q^{uod} R. K. Ohling

Q^{uod} N. Reichenbach M.D. as witness
of the signature of his own hand.

Q^{uod} D. Dirksen as witness of this
signature of his own hand.

Q^{uod} G. Dirksen as witness of the
signature of his own hand.

Q^{uod} In fidem. G. D. Blesener, Minister,
as witness the signature of their own
hands. and writers of the testament

Dieser ist mirigen Tugun und Jura
R. K. Ohling mir zu erkennen, daß er
Druckfestschreiber sein über sein Vermögen
Infermentlich zu verfügen. Zu dem Ende
beistand ich, daß ich, den undatirten und unterschriebenen
Folger, habe den besten glücklichen Tugunförmig
unterschriebenen Tugun, für die mich seinen
Tugun

Die Jorden den Jura R. K. Ohling zu
krank und im Ende, daß bei völligen
Krankheitsvermögen, selbst gleichzeitig
der Tugunvermögen Arzt, Jura Reichenbach
beistand, und auflossen und Jura Witten,
und Jura Jura von Jura Jura Jura Jura

werden zu sein, und seinen letzten
wollkühnsten Willen zu erkennen zu
geben und respektvoll denselben vöthlich
und bündig mitzutheilen, sein Solcht:

- " Ich, der eigenständig unterzeichnete Koop
" Kriens Ohling verfüge hiermit mit
" drücklich und auf das Bestimmteste, daß
" auf meinem Absterben meine liebe
" Gattin Beate Joh. Karli, Witwe
" habe meine ganze Nachlassenschaft
" voll, also, daß die Zeit ihres Lebens
" in gutem und allem Einkommen mit denselben
" gehalten und erhalten kann und darf
" sein so ihr beliebt. Sollte sie gut zu
" einer anderen Ehe schreiten, so soll sie
" mir den ihr zukünftigen gesetzlichen
" Anteil von einem Drittel beibringen
" können.

- " Auf dem Absterben meiner gütlichen
" Gattin aber will ich, daß nachfolgende
" Heilung statte.

1. Mein erstgeborener Sohn Heide Koops
Ohling soll die Farm mit Ländereien
und 160 Acre Land haben, wovon er
jetzt besitzt

2. Mein zweiter Sohn Carl Jansen Ohling

soll die Summe worauf er setzt das
 Volkfrunnen Haus gebaut hat mehr
 100 Acker Land völlig eingekauft werden;
 Das Kloster greiffen diesen beiden
 Summen mit welcher die Grängen
 greiffen beiden so eben gekauften
 Summen bildet, soll beiden Häuser
 zum gemeinschaftlichen Gebrauch anbleiben

3. Meiner Tochter Fanneke Gerds
 Ohling, verheiratete Borchers soll gleich-
 falls nach dem Ableben meiner Eltern
 Berendse, geb. Pauli die Summe mehr
 100 Acker Land eingekauft werden mit
 ihrem gespendeten Gehaltsstil, worauf
 sie setzt; das da die Beförderung ihrer
 ist, soll sie erhalten sein ihrem Leiden
 \$ 500.00 (fünfhundert Dollars beim Antritt
 anzunehmen, d. h. in ganzen \$ 500, also
 von jedem ihrer Leiden \$ 250.00. —
 Diese Summe, welche ich meiner Tochter
 Fanneke Gerds vermache, wird von
 ihr und ihrem Mann Ado Borchers
 zu einem Gült, und zu anderen
 Gült von mir und meiner Eltern
 befreit. Diese Summe hat mein Vorgesetzter

sofern nun mir auf 8 Jahren zugesagt,
und will ich ausdrücklich, daß dieser
Punkt in der Taufe bleiben soll, falls
ich also mit Tod abgehen sollte.

Sollte aber ^{verfügung} meine Tochter Fanneke
Jedes, verheiratete Borchers, ohne Winter
zu heiraten, mit Tod abgehen, so
will ich ausdrücklich bestimmt festsetzen
und versetzen, daß die Färn cum ann:
an meine hinterlassenen Töchter
fallen soll, ohne daß mein Erbsinger
sofern nicht bezeugen kann, als wenn
ich also die Gutszu dieser Lande
zugehört.

Wenn 40 acre Gutland soll pro. Loos
den 3 bezeugten Töchtern zugehört
werden, also daß meine Töchter jeder
bei ihrem Leitzthum 13 1/3 acre bekommt.
Sollten meine hinterlassenen Töchter, welche schon
verheiratet verstorben und welche in meiner
Ehe geboren worden, die 160 Acre Land,
welche ich von Willeke angekauft habe,
und welche bei oder neben Heze Reints
Land liegt zu 8, Acht Dollar zu sich
kaufen wollen, so soll es ihnen frei
stehen und geneigen ich ausdrücklich und
drücklich diesen abzuweisen. Die
waren also dem abzugeben auf

Abgeben in dem Hause ihres Vaters
den ihr comitatanten Aufseher
anzugehen.

Was ich sonst nach den Ländereien, An-
gehörigkeiten, Krieg, Mobilien und
Immobilien besitzt meine nach-
geordneten Häuser zur freien Verfügung
beschränken Verfügung und will ich nach-
mal zur Verfügung irgend einer Person
finden und Kraft meiner eigenständigen
Unterschrift nebstmal bestimmen, daß
meine obgedachte Häuser Berendse
geb. Pauli, mit ihrem Mann, sollte
sie sich nicht verschieben sollte, in-
geordnet und nach ihrem Ermessen
sollten und sollten erhalten sein.

Ihren Wünsche gemäß, daß meine
aufgezeichneten Häuser Heide Rodels
Sohn als Aufsicht beizustellen
sollten soll, genehmige ich nicht bloß,
sondern es ist auch die mein aufseher
Willen und Einfluß.

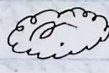
Ich bitte, dieses mein Testament neu-
geordnet zu lassen, weil es mein
letzter Willen ist, den ich ausdrücklich
und mit freier Willen also zu erkennen
gegeben, welches ich, der Herr Doktor,
Friedrich und beiden Jungen, mich

ihre eigenhändigen Unterschriften der
Majorsität gemäß bezeugen.

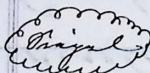
Ridott, Stephenson County den
21. Aug. 1855, den vier und zwanzig
August achtzehnhundert fünf und
fünfzig.

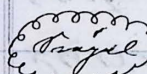
R. K. Ohling

H. Reichenbach M.D. als

 Zeuge der eigenhändigen Unterschrift.

D. Dirksen als

 Zeuge der eigenhändigen Unterschrift.

 in fi J. Dirksen als Zeuge
der eigenhändigen Unterschrift.
in fidem



J. D. Blesene, Notar, als

Zeuge der eigenhändigen
Unterschriften und Offizier vor-
stehender Instrumente.

State of Illinois

Stephenson County

}
I. Berentzi Ohling & Heike
Ohling do severally solemnly swear that the
annexed writing contains the true last will &
testament of the within named Rooff Krins
Ohling deceased so far as I know or believe
and that I will well & truly execute the same
by paying first the debts and then the
legacies mentioned therein as far as his

goods & Chattels will hereunto extend, and the law charge me, and that I will make a true and perfect inventory of all such goods & Chattels, rights & Credits as may come to my hands or knowledge belonging to the estate of the said deceased and render a final and just account of my administration when thereunto required by law, to the best of my knowledge and abilities, To help me God,

Subscribed & sworn to in open } Berentz Ohling
Court this 2^d day of Oct A.D. 1855. } H. R. Ohling

David H. Henderson

Clark

State of Illinois }
Stephenson County }^{ss} We Derrecus Dirksen, G.
Dirksen and G. D. Blesse being severally
sworn according to law upon their several
oaths, severally say that the paper writing
hereto attached this day presented to the County
Court of Stephenson County in said State by
Berentz Ohling is the last will and testament
of Raolf K. Ohling late of Silver Creek in
said County deceased, that the said last
will and testament was made by the said
deceased in his life time in said County,
that is to say on the 21st day of August
A.D. 1855, that at the time the same was made
the said deceased was of sound mind and

memory, that the same was written by the above named G. D. Blum and by the direction of the said deceased, that they saw the deceased sign the same with his own hand, and witnessed his signing the same by his request, and that they signed the said last will and testament as witnesses in the presence of the said Rolf K. Ohling, and by his express request, and then affiants further say that the said Rolf K. Ohling at the time he signed the same declared in their presence that the same was his last will and testament & further these affiants say not

Subscribed & sworn to

G. D. Blum

before me this 2^d day of

Diricus Dirksen

Oct 1855

Gerriet Dirksen

David H. Sm Durland

Chap.

State of Illinois }
 Stephenson County }

To the Honorable the County Court of
 Stephenson County, in the State of Illinois

The undersigned Berenty Ohling would respectfully represent to this Hon. Court that she is the widow of Rolf K. Ohling late of the Town of Stoen Creek in said County, deceased, that the said deceased departed this life on the 26th

56 day of August AD 1855. That before his death he made his last will and testament which is here now presented to his Honorable Court, and asks that the same be recorded and entered of Probate according to law. That the said deceased at the time of his death was possessed of personal estate of the value of four hundred & fifty dollars & a considerable amount of real estate. and she asks this Honorable Court that letters of administration with the will annexed be granted by this Honorable Court to the undersigned

Benetz Ohling

State of Illinois }
 Jefferson County }^{ss} Benetz Ohling being
 duly sworn says that the matters and things
 stated in the foregoing petition are just and
 true according to her best knowledge & belief.
 Subscribed & sworn before

me this 2^d day of October
 1855. David A. Underland

Clk.

State of Illinois }
 Jefferson County }^{ss} William W. Hargraves
 and Cyrus A. Shutz being 1st duly sworn
 upon their oaths severally say that the paper
 writing hereto attached purporting to be the
 last will and testament of Rolf N. Ohling

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deceased, and written in the German language has been by them translated from the German language into the English language that the paper writing purporting to be the last will and testament of the said Rolf R. Ohling hereto attached is the translation of the said last will and testament into the English language, and that the said translation hereto attached is a true and just translation of the said last will and testament into the English language according to their best skill & knowledge & belief. & further these affiants oath not.

Subscribed & sworn to
before me this 2^d day
of October 1855.

David A. Sunderland Clerk.

} William Wagner
} Cyrus A. Shultz

Filed Oct 2^d 1855 D.A. Sunderland
Clerk-

Papers of R. R. Ohling estate in Co. Ct. in evidence. Shows receipt signature of Berenz Ohling (here receipt for \$284.41 dated Aug 3rd 57 signed B. Ohling given in evidence, of which the following is a copy. viz:

Recd this 3^d day of August AD 1857. of Lutzin Lutzin the sum of Two hundred and Eighty four & 4/100 dollars supply on note I hold

against him + this sum is this day endorsed on the note. August 3^d 1857. B Ohling.

Col James Mitchell

Have a deed from the master in Chancery for the lands. Putnam was interested in the lands. Same as I was. —
 (Deed from J. A. Crain, Master, to Mitchell dated March 10th. 59 for land in evidence as follows,
 viz: This Indenture made this tenth day of March in the year of Our Lord One thousand Eight Hundred fifty nine. Between J. Addison Crain Master in Chancery in and for the County of Stephenson and State of Illinois of the first part, and James Mitchell of the County and State aforesaid of the second part, Witnesseth That whereas at the September Term of the Circuit Court in and for said County of Stephenson and State of Illinois AD 1857 said Court sitting in Chancery, it was among other things, Ordered, Adjudged and Decreed by the said Court in a certain Cause then pending in the said Court, Between James S. Neil Complainant and Benentz. Ohling executrix and Heike R. Ohling administrator of Roolf K. Ohling deceased Paul Ohling, Garretts Heide Bercher, Adde Bercher, surviving heirs of Roolf K. Ohling deceased, Defendants, that the mortgaged

premises in the said Complainant's Bill of Complaint herein after particularly described be sold by the Master in Chancery for said County of Stephenson at public auction, the said Master first giving four weeks notice of the time and place of such sale, in one of the Public Newspapers printed in the City of Annapolis, in said County of Stephenson. And whereas Homer N. Hibbard the acting Master in Chancery for the time being in pursuance of said order and decree of said Court did on the fifth day of December A.D. 1857 sell at public auction, at the door of the Court house in Annapolis in said Stephenson County the said mortgaged premises in part herein after ^{particularly} described having first given four weeks previous notice of the time and place of sale, with a brief description of the premises agreeable to the order, and decree of the said Court, at which sale the whole of said mortgaged premises were sold (each tract having by said Master been offered separately and then being rebid for the same) to the said Complainant James L. Kuder for the sum of three thousand two hundred and eleven dollars and seventy four cents, that being the highest and best bid for the said lands and premises to wit:

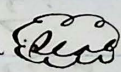
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The south half of Section number twenty in Township number Twenty six North Range number nine, East of the fourth principal Meridian Containing three hundred and twenty acres more or less, and also the south east quarter of Section number Twenty five in Township number Twenty six Range Eight East of the said fourth principal meridian Containing one hundred and sixty acres more or less all of said lands being situated and lying in said County of Stephenson and State of Illinois, the said lands being sold by the terms of said decree. Subject to the equity of redemption therein. Do it: that said defendants or any of them should have the right to redeem said lands from said sale for the space of twelve months from the day of sale, and that Judgment Creditors for fifteen months from said day of sale, and that in case no such redemption was made within the space of time ~~specified~~ ^{above}, then and in that case, the Master in Chancery at such time acting, should make, execute and deliver to the purchaser at such sale, or his assignee or assigner a deed for the same according to law. The said master being ordered by said decree to make a certificate of purchase to the

purchaser of the said, all of which more
 fully appears of the records and files of
 said Court, in the office of the Circuit
 Clerk of said County of Stephenson, And
 whereas said premises have not been
 redeemed according to the terms
 of said decree by any of the parties
 entitled to redeem as aforesaid, and
 the said period of fifteen months from
 said day of sale having elapsed, and
 the said James L. Hill having assigned
 his certificate of purchase to James
 Mitchell who having produced the
 said J. Addison Crain Master in
 Chancery as first aforesaid, the said
 certificate of purchase for the Tracts
 of land and being now entitled, to a
 conveyance therefore, by the terms of
 said decree notice and sale, Now
 therefore this Indenture Witnesseth that
 the said J. Addison Crain Master in
 Chancery as aforesaid and party
 of the first part do here presents in
 order to carry into effect the said sale
 so made as aforesaid in pursuance
 of the said decree of said Court of
 Chancery, and in consideration
 of the premises and of the said sum

of three thousand two hundred and eleven dollars, twenty four cents paid to the said Homer N. Hibbard Master in Chancery as aforesaid at the day of said Sale, and the execution and delivery of said certificate of purchase by the said Homer Mitchell party of the second part and of the sum of five dollars, the party of the first part paid the receipt whereof he does hereby acknowledge hath granted, bargained and sold, conveyed and confirmed, and doeth hereby grant bargain sell convey and confirm, unto the said party of the second part and to his heirs and assigns forever, all the aforesaid Tracts or parcels of land situated and lying in the County of Stephenson and State of Illinois to wit, the North half of Section number Twenty in Township number twenty six (26) North of Range number nine East of the fourth principal meridian containing three hundred and twenty acres more or less, also the South East quarter of Section number twenty five in Township number twenty six Range Eight East of the said fourth principal meridian containing

one hundred and sixty acres, more or less, together with all and singular the appurtenances therunto belonging or in any wise appertaining. To have and to hold all and singular said premises above mentioned and described and hereby granted and conveyed with their appurtenances unto the said party of the second part his heirs and assigns when only proper use and behoof forever. In witness whereof said J. Addison Crain Master in Chancery as aforesaid has herewith set his hand and seal the year and day first above written

J. Addison Crain 
Master in Chancery
Stephenson Co. Ills -

State of Illinois }
Stephenson County } ss J. Homer A. Hibbard
a Notary Public in and for the City of Freeport
County of Stephenson and State aforesaid
do hereby certify that J. Addison Crain
Master in Chancery in and for said
County is personally known to me to
be the person whose name is subscribed
to the foregoing deed as having
executed the same. appeared

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before me this day in person and acknowledged that he signed sealed and delivered the same as his free and voluntary act for the uses and purposes therein set forth, Given under my hand and Seal Notarial this 11th day of March A.D. 1859

Seal

Hiram A. Hibbard

Notary Public

Recorded March 11th 1859 at 4.40
o'clock P. M. L. W. Guitman CLK

Deeds to Sutzin & Reibkas from Mitchell in evidence, conveying the lands - 100 acres to one & less acres to other - No recollection of hearing Ohling say they had notes from Sutzin's

Cross Examined

We took the certificates of purchase for the land from Jas. L. Neil & gave the money to him, in arrangement with the Ohling. at the time we took, Neil brought the certificates himself in person. Presume Neil indorsed the certificates. Don't remember of John B. Johnson ever having any thing to do with it. Think offered to deed if any body would pay. Don't recollect of ever seeing Compt. Prepared the deed in whole or in part

Our offers were made after we took the certificate, Mitchell told the parties if they would pay their proportion, they would deed them their proportions. These offers were made after they got the certificates.

Erastus Lorry

I am a L. Recd. I took the acknowledgment of the deed. If I recollect part of the parties signed deed in Freeport, & I went to their houses for part. Some money paid and some notes at the time. Can't tell how much notes & how much money, Can't tell amount of notes, Should think \$1000 paid in money & balance paid in notes. Money & notes given before deed acknowledged. Was present when money paid & notes given.

Said deed from Benentz & Ohling et al to Lutzin Lutzin given in evidence, Papers in a suit at law offered and given in evidence. Papers in foreclosure suit by James L. Kil off Br Ohling et al offered and given in evidence. Decree and all the orders in the case given in evidence. Book of Circuit Court record pag 344 & all the orders in the case of James L. Kil vs Benentz & Ohling et al given in evidence. Receipt for \$284.49 per

offered & given in evidence from B. Ohling
to Lutzin Lutzin. date Aug 3^d 1857. as
follows viz:

Know all men by these Presents that
Benentze Ohling, Heike R. Ohling and his
wife Mechettze, Paul Ohling and his wife Setze
Addo Borchus and his wife Jancke, widow
and heirs at law of Ralf N. Ohling deceased
Comity of Stephenson and State of Illinois party of
the first part in consideration of Two thousand
two hundred and fifty dollars to them in
hand paid by Lutzin Lutzin of Comity
Stephenson and State of Illinois party of the
second part, the receipt of which is hereby
acknowledged, have granted, bargained, sold,
conveyed and confirmed, and do hereby
grant, bargain, sell, convey and confirm
to the said party of the second part and to
his heirs and assigns forever the following
described tract or parcel of land situated
in Stephenson Comity and State of Illinois to-wit:
The south east quarter of Section twenty five
(25) in Township Twenty Six (26) North of Range
Eight, East in the District of lands subject to
sale at Dixons Illinois containing one hundred
and sixty acres, With the hereditaments and
appurtenances thereto belonging or in
any wise appertaining, to have and to hold

said premises above described to the said party of the second part his heirs and assigns forever, and the said party of the first part for themselves and their heirs, executors and administrators do covenant to and with the said party of the second part his heirs and assigns that he is lawfully seized in fee simple of the said above described premises, that the aforesaid premises are free from all incumbrances, and that said party of the first part, will, and their heirs, executors and administrators shall warrant and defend said premises to the said party of the second part his heirs and assigns, against the lawful claims and demands of all persons whomsoever, And Mechetti, Kety and Janeki wives of the said Aike R. Ohling Paul Ohling, Adde Borchers in consideration of the payment made as aforesaid do hereby release to said party of the second part, their heirs and assigns forever all their right of dower in the above described premises

In testimony whereof said grantor have hereunto subscribed their hands and seal at Kneepot this fourth day

of December AD 1885

Benentz Ohling Seal Mike R. Ohling Seal
 Addo Borchus Seal Nichettz H. Ohling Seal
 Janette Borchus Seal Paul I. Ohling Seal
 Teuty Ohling Seal

Executed in presence of }
 E. Torrey }

State of Illinois } I. Erastus Torrey, Justice of
 Stephenson County } the Peace in and for said
 County, do hereby certify, that Benentz Ohling,
 Mike Ohling, + wife Mahalla, Paul Ohling
 + wife Pyne, Addo Borchus + wife Janette
 personally known to me the persons whose
 names are subscribed to the foregoing deed
 as having executed the same, appeared
 before me this day in person and ack-
 nowledged that they signed, sealed and deliv-
 ered the same as their free and voluntary
 act and deed for the uses and purposes
 therein set forth, and the said Mahalla
 Ohling, Pye Ohling, Janette Borchus,
 personally known to me the wife of the
 said Mike Ohling, Paul Ohling + Addo
 Borchus, and as the persons who
 subscribed said deed as such having
 been by me made acquainted with the
 contents and meaning of said instru-
 ment of writing and examined

separate and apart from her husband
acknowledges that she had executed the
same and relinquished her dower to the
lands and tenements therein mentioned
voluntarily, freely and without com-
pulsion from her husband and that
she does not wish to retract the same
given under my hand and seal at
this tenth day of December AD 1855

Erastus Perry H. Esq.

Recorded September 2. 1857 at 4 1/4 P.M.

26. 97-

State of Illinois $\supset$ In the Circuit Court of
Stephenson County $\supset$ Stephenson County of the State
Term AD 1857.

To the Honorable Benjamin R. Sheldon
presiding Judge of the fourteenth Judicial
Circuit in the County of Stephenson in the State
of Illinois. In Chancery,

Your orator James L. Hill a resident of
the County of Stephenson and State of Illinois
sheweth unto your honor that on or about the
Eighth day August in the year of Our Lord
One thousand Eight hundred and fifty-
four Roelf R. Ahling of the County of Stephenson
and State of Illinois was the owner and

seized in fee simple of the lands and premises herein after mentioned and set forth lying and being in Stephenson County in the State of Illinois. Your orator would further show unto your Honor that on the said Eighth day of November AD 1854 the said Rolf K. Ohling by his two certain promissory notes in writing duly made and executed, became and was justly indebted unto Thomas K. Milliken in the just and full sum of twenty five hundred dollars, one thousand dollars thereof he paid on the first day of October AD 1855 after the date of one of said notes of one thousand dollars with interest at the rate of ten per cent which said promissory note is in the words and figures following to wit:

" \$1000 I receipt August 8th 1854 On the first of October 1855 after date for value received I promise to pay to the order of Thomas K. Milliken one thousand dollars with interest at ten per cent R. K. Ohling " and fifteen hundred dollars he paid on the first day of October AD 1856 after the date of the other of said notes of fifteen hundred dollars with interest at five per cent. which said promissory note is in the words and figures following to wit:

" \$1500 I receipt August 8th 1854. On the first day

of October 1856 after date for value received I
promise to pay to the order of Thomas R. Milliken
fifteen hundred dollars with interest at five
per cent.

R. N. Ohlins "

And then and then delivered said promissory
note above mentioned unto the said Thomas R.
Milliken who then and then transferred and
assigned said notes to your orator, by an
indenture on the backs thereof as follows to wit:
"For value received I assign the within note to
James S. Kil or order. Thomas R. Milliken

Thos. R. Milliken "

which said note is now in the custody of your orator
and ready to be produced as this Honorable
Court shall direct, and for greater certainty
your orator begs leave to refer to the same when
necessary. Your orator further shews unto
your Honor that the said Rolf N. Ohlins in
order to more fully secure the principal
sum of money with the interest therein
mentioned in manner aforesaid in and
by a certain deed of mortgage bearing date
the same day and year aforesaid and also
in consideration of four thousand dollars
to him in hand paid by the said Thomas R.
Milliken at and before the making and
delivery of said deed or indenture of mortgage
did grant bargain and sell, convey and

Confirm unto the said Thomas R. Milliken his heirs and assigns, which said deed of mortgage was signed with his hand and sealed with his seal and acknowledged and recorded in due form of law, the date whereof is the day and year aforesaid for and in consideration of the sum of four thousand dollars did convey and assign unto the said Thomas R. Milliken of Stephenson County, Illinois his heirs, executors, administrators and assigns, the following pieces or parcels of Land to wit: situated and being in the County of Stephenson and State of Illinois and known and described as follows to wit: The South half of Section Number Twenty (20) in Township number Twenty, six (26) of Range Number Nine East of the fourth principal meridian, containing three hundred and twenty acres more or less, also the South east quarter of Section number twenty, five (25) in Township Number Twenty, six (26) of Range Number Eight (8) East of the fourth principal meridian containing one hundred and fifty acres more or less, together with all and singular thereto belonging or in any wise appertaining thereto. To have and to hold the above described premises unto the said Thomas R. Milliken his heirs and assigns forever

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with a proviso therein contained that if the
said Rolf K. Ohling his heirs, executors, admin-
istrators or assigns shall well and truly pay
or cause to be paid unto the said Thomas R.
Milliken his heirs, executors, administrators
or assigns the just and full sum of
four thousand dollars according to the ~~three~~ terms
of three notes described in said mortgage, two
of which said notes are herein before set forth, and
the other note of fifteen hundred is merged in a
Judgment in the Circuit Court of Stephenson
County, Illinois in favor of Thomas R. Milliken
and to be paid in due course of administration
of the estate of Rolf K. Ohling deceased, then this
deed of Mortgage shall be void and of no effect
otherwise to remain in full force and virtue
Your orator would further shew unto your
Honor that after the execution delivery and
recording of said deed of mortgage aforesaid
to secure the payment of said promissory notes
aforesaid, Thomas R. Milliken did indorse
the said promissory notes herein before set
forth to your orator herein and then and
there delivered said notes to your orator,
so endorsed and assigned as aforesaid
and the said Thomas R. Milliken then and
then at the time of endorsing and assigning
said promissory notes he assigned his

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interest in the said mortgage to the
two notes above recited to James S. Mill
Your orator further sheweth unto your
Honor, that the aforesaid sum of money
in the two notes herein before mentioned &
being a part of the consideration of said
mortgage deed has not paid at the time
therein mentioned, nor has the same
nor any part thereof since been paid
but the same or the said two notes are
now due and wholly unpaid with the
interest at the rate of ten per cent.
per annum due and wholly unpaid.
Your orator further shews unto your
Honor, that by the terms of said mortgage
deed and the note therein described
the last installment has become due and
is now unpaid. Your orator further
sheweth unto your Honor that the said
Rolf K. Ohling, since the execution of
the aforesaid notes and mortgage deed
on or about the 26th day of August
AD 1855, in the County of Stephenson and
State of Illinois, departed this life leaving
as his heirs Perentze Ohling his widow
and executor of the last will and testa-
ment of the said Rolf K. Ohling, and
Hilke Rolf Ohling who is administrator

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with the will annexed of the testator of the
said Rolf K. Ohling deceased, Paul
Janssen Ohling, Sammie Guste Ohling,
lately, intermarried to Addo Bercher
and Addo Bercher, whom your orator
prays may be made defendants to
this his Bill,

Your orator further sheweth unto your
Honor, that the said defendants utterly
neglected and refused to pay the said
notes, herein inserted and the inter-
est thereon now due, and owing
unto your orator notwithstanding the
repeated requests made by your orator
for payment of the same,

Your orator would further shew unto
your Honor, that at the time of the execu-
tion of the notes and mortgage and
ever since the said Rolf K. Ohling
and his surviving heirs as aforesaid
has by him or themselves and tenants
been in the possession of said land, grounds
and premises and have derived all
the advantage benefit and profit there-
from. And your orator will hoped
that the said defendants would have
paid and satisfied said note and
the interest thereon so your orator

could have satisfied and released his interest in said mortgaged premises, and every part thereof unto the said defendants their heirs and assigns.

To the end therefore that the said defendants may if they can, show cause why your orator may not have the relief herein prayed for, and may upon their corporal oaths, and according to the best and utmost of their information and belief full true and perfect answers make to all and singular the matters and things contained in your orator Bill of Complaint and particulars that they answer and state if ROLPH, Ohlens in his life time did not make and execute the mortgage and note herein above named, and a copy of which mortgage and note is hereto attached and made a part of this Bill of Complaint marked exhibit "A" and that they set forth and answer if any part of said notes so indexed as aforesaid by your orator or their interests thereon has been paid and if the same is not now due and wholly unpaid by our orator.

Your orator prays that an account may be taken of what is due

your orator upon said Mortgage and
 Note, and that the Defendants may
 be decreed to pay the same by your
 orator by some short day, to be app-
 ointed by your orator, together with
 your orator's Costs, and in default
 thereof that the said Defendants,
 and all person claiming under them
 may be foreclosed of all right, title
 interest and equity of redemption in
 and said mortgaged premises, and
 that said premises may be sold to satisfy
 the claims and demand of your orator
 together with the Costs in this his suit.
 And that your orator shall have generally
 such other and further relief in the
 premises as the nature of the case
 may demand, and Courts of Equity can
 grant.

Your orator would further pray your
 Honor to grant unto your orator the
 People writ of Subpoena (summon in
 Chancery) to him issuing out of and
 under the seal of this Honorable Court
 to be directed to the said Berentzi Ohling
 executor. Nick Rolf Ohling administrator
 of the estate of Rolf R. Ohling deceased
 Paul Jansen Ohling, James K. Lera

Bercher, and Addo Bercher surviving
 heirs of Rolf R. Ohling deceased
 defendants herein. Commanding
 them on a certain day to be therein
 inserted and under a certain penalty
 then inserted to appear before your
 Honor in the Circuit Court of Stephenson
 County, Illinois, held at Freeport and
 then and there answer the premises
 and abide the order and decree
 of your Honorable Court therein, and
 your orator as in duty bound will
 ever pray &c

H. Bright Solys }
 H. Bright Smith of Counsel } James L. Hill

Exhibit A

\$1000

Freeport August 8th 1854

On the first of October 1855 after date for value
 received I promise to pay to the order of Thomas
 R. Milliken One thousand Dollars with interest
 at ten per cent (endorsement on said note ^{R. R. Ohling})
 for value received I assign the within note
 to James L. Hill or order, Thomas R. Milliken,

\$1500

Freeport August 8th 1854

On the first day of October 1856 after date
 for value received I promise to pay to the order

of Thomas R. Milliken. Fifteen Hundred dollars with interest at five per cent

R. K. Ohling

(endorsement on said note)

For value received I assign the within note to James L. Neil or order Tho: R. Milliken

This Indenture made this Eighth day of August in the year of Our Lord One thousand eight hundred and fifty four. Between Roolf K. Ohling of the County of Stephenson and State of Illinois of the first part, and Thomas R. Milliken of the County and State aforesaid of the second part witnesses That the said party of the first part for and in consideration of the sum of Four thousand dollars which in hand paid the receipt whereof is hereby acknowledged, has granted, bargained, sold, conveyed and Confirmed, and does hereby grant, bargain sell, convey and Confirm, unto said party of the second part and his heirs and assigns forever all that tract or parcel of land situate and being in the County of Stephenson and State of Illinois and known and described as follows *viz*: The South half of Section number twenty (20) in Township twenty six (26) Range nine (9) east of the fourth principal meridian containing three hundred and twenty acres more or less. Also the South east quarter of Section

number twenty five (25) in Township twenty six (26)
 Range Eight (8) East of the fourth principal meri-
 dian. Containing One hundred and fifty acres
 more or less. Together with all and singular
 the appurtenances thereto belonging or in
 any wise appertaining. I have and to hold
 the above described premises unto the said
 party of the second part, and to his heirs and
 assigns forever. And the said party of the first
 for himself and his heirs, executors and administrators
 do covenant and agree to and the said party
 of the second part his heirs and assigns, that he is
 well seized of the premises above conveyed as of
 a good and indefeasible inheritance in the
 law in fee simple, and that the said premises
 are clear of all incumbrances whatsoever.
 And the said party of the first part the aforesaid
 premises unto the said party of the second part
 and his heirs and assigns against the claim or
 claims of all and every person whomsoever
 does and will warrant and forever defend
 by these presents. Provided always that if
 the said party of the first part or his heirs, Ex-
 ecutors, or administrators shall well and truly
 pay or cause to be paid to said Thomas R.
 Milliken his executors, administrators or assigns
 the just and full sum of four thousand
 dollars with interest according to the tenor and

effect of three notes signed by said Rolf K. Ohling
 payable to said Thomas R. Milliken or order, to wit:
 one note for fifteen hundred dollars due on
 the first of October next after date with ten
 per cent interest, also one note for one thousand
 and dollar due on the first day of October
 A.D. 1855 with interest at the rate of ten per
 cent, also one note for fifteen hundred dollars
 due on the first day of October A.D. 1856
 with five per cent interest, these three presents
 shall be null and void, any thing herein
 contained to the contrary notwithstanding -
 This mortgage is given to secure the payment
 of the purchase money for the above described
 tracts of land. In witness whereof the said
 party of the first part hath hereunto set his
 hand and seal on the day and year first
 above written
 Signed sealed and delivered } R. K. Ohling, (Seal)
 in presence of

State of Illinois }
 County of Stephenson }
 I, Joseph B. Smith Clerk of
 the Circuit Court in and for said County, do
~~hereby~~ certify that Rolf K. Ohling personally
 known to me to be the person whose name is
 subscribed to the foregoing deed as having
 executed the same appeared before me

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this day in person, and acknowledged that he
signed sealed and delivered the same
as his free and voluntary act, and for
the uses and purposes therein set forth
Given under my hand and official seal
at Keokuk this Eighth day of August
A.D. 1854 Joseph B. Smith Clerk

State of Illinois }
County of Stephenson }^{ss} Office of Clerk of Circuit
Court. I certify that this deed was filed
for record in my office on the fourth day
of October A.D. 1854 at 12 o'clock M. Recorded
in Book "G" of Mortgages, Page 373 and
examined, Joseph B. Smith Clerk
by N. R. Cr Dway Sep-

(Endorsement on said Mortgage)
For value received I assign my interest
in the within mortgage to the note of one
thousand dollars due October the first
1855. and the note of fifteen hundred dollars
due the first of October 1856 to James S. Hill
James R. Miller Clerk

Filed Feb. 20, 1857

L. H. Guiteau Clerk.

State of Illinois }
Stephenson County }^{ss} In the Circuit Court of
Stephenson County of the Spring term
A.D. 1857

James L. Neil

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Berentzi Ohling, Executive
 Mike Rooff Ohling, Administrator
 of the estate of Rooff K. Ohling deceased
 Paul Lansen Ohling, Gamcke
 Herds Borchus, Adols Borchus
 surviving heirs of Rooff K.
 Ohling, deceased

Upon filing the accom-
 panying Bill, the Clerk of the Court will
 please issue a summons in Chancery in
 the above cause returnable according
 to law.

To L. H. Guiteau Clerk &c } Bright & Smith
 February 20th 1857. } Compt Sols —

Filed Feb 20. 1857

L. H. Guiteau C.K.

State of Illinois }
 Stephenson County } ss

The People of the State of Illinois
 to the Sheriff of said County - Greeting:

We command you, that you Summon
 Berentzi Ohling, Executive, Mike Rooff Ohling
 Administrator of Rooff K. Ohling deceased,
 Paul Lansen Ohling, Gamcke Herds Borchus,
 Adols Borchus surviving heirs of Rooff K.
 Ohling deceased if they shall be found in

Your County, personally to be and appear before the Circuit Court of said County on the first day of the next term thereof to be holden at the Court House in Freeport in said County on the first Monday of April next to answer unto James L. Hill upon a Bill filed in said Court on the Chancery side thereof to foreclose a mortgage. And have you then and there this writ with an endorsement therein in what manner you have executed the same.

Witness, Luther W. Guiteau Clerk of our said Court, and the seal thereof at Freeport this 20th day of February AD 1857



L. W. Guiteau Clerk

Filed Feb. 20. 1857.

L. W. Guiteau Clerk

Served this writ on the within named Berenty Ohling, Seyke R. Ohling, Paul L. Ohling, Hermann H. Bercher & Adde Bercher by delivering a copy thereof to them this 18th day of March 1857. Wilson Shaffer Sheriff -

And afterwards to wit. of the 13th day of April AD 1857. the same being one of the days of the April term AD 1857 of said Court, the following appear of record in said Cause. viz:

James L. Neil

vs

Berentzi Ohling Executor. and Niike
Rooff Ohling Administrator of Rooff K
Ohling deceased. Paul Jansen Ohling,
German Kerts Borchus. surviving heirs
of Rooff K Ohling deceased

And now on
this day comes the said Plaintiff by his
attorneys and moves the Court that the
defendants be ruled to plead. Whereupon
the Court being fully advised in the premises
it is ordered by the Court that the defen-
dants plead by the incoming of Court
tomorrow morning. (E. 499)

And afterwards to wit of the 18th day
of April AD 1857. the same being one of
the days of the April term AD 1857 of said
Court ~~there appear~~ of the following appear
of record in said Cause viz:

James L. Neil

vs

Berentzi Ohling Ex- & Niike	} Bill of foreclosure mortgage
Rooff Ohling admr of Rooff	
K. Ohling deceased & others	

On motion of the said Complain-
ant by his solicitor it is ordered by the Court

that the Defendants be and they are ruled to answer the Complainants Bill of Complaint by Monday morning next.

And afterwards to wit of the 20th day of April AD 1857 the same being one of the days of the Spring Term AD 1857. of said Court, the following appears of record in said Cause viz:

James L. Neil	} Bill in Chancery to fore close Mortgage
vs	
Berentzi Ohling Executrix	
Hecke Rooff Ohling administrator of Rooff K. Ohling decd & others	

And now on this day comes the said defendants by their solicitor and file their answer to Complainants Bill of Complaint herein.

Berentzi Ohling	} In chancery The answer of Berentzi Ohling to the Bill of
ats	
James L. Neil	
James L. Neil.	

And now on this day comes the said Def. by Meacham her Atty. and says that she has paid the whole sum mentioned in the Bill in this Cause and the same is fully discharged and paid.

W D Meacham
her solicitor

by W D Meacham
her solicitor

Filed April 20, 1857

L. H. Guiteau CLK.

And afterwards Revit of the 21st day of April AD 1857 the same being one of the days of the April Term AD 1857 of said Court the following appears of record in said Cause viz:

James L. Neil	} Bill to foreclose Mortgage
vs	
Berenty Ohling Exor & Heirs	
Rudolf Ohling, Admr of the Estate of Rudolf K Ohling deceased & others	

And now on this day Comes the Complainant by his Solicitor and files his exceptions to the answer of Berenty Ohling in this Cause. C. 566

State of Illinois	} In the Circuit Court of
Stephenson Cnty	
	} Stephenson Cnty of the
	} April Term AD 1857.

James L. Neil	} 1040 Chancery
vs	
Berenty Ohling Et al.	}

Exceptions taken by the Complainant to the insufficient answer

of the Defendant Benentzi Ohling
 1st That the Defendant has not answered and
 set forth under her oath as to the payment
 of any part of said Mortgage or notes, or
 whether it was executed as in said Bill
 mentioned.

2^d That the said Defendant has not answered
 the Complainant's Bill under oath

3^d That it is no definite answer to the
 Bill of Complaint. In all which
 particulars the said Complainant insists
 that the said answer of the said Defendant
 is evasive, imperfect and insufficient
 wherefore he excepts thereto and prays
 that the said Defendants may be compelled
 to answer the same and put in full
 and sufficient answer to the said Bill

Bright & Smith

Cnft Solrs

Filed April 21. 1857

L. H. Guiteau CLK.

And afterwards to wit of the 23^d
 day of April AD 1857 the same being one
 of the days of the April term AD 1857
 the following appears of record in said
 Cause viz:

James S. Neil

vs

Berentzi Ohling Executrix &
 Nicks Rooff Ohling Adm^r of
 Rooff K. Ohling decd Paul
 Jansen Ohling. Garmek
 Herds Berchus Adde Berchus
 surviving heirs of Rooff K. Ohling, decd

Bill in Chancery

to foreclose

mortgage

On Motion of U.D. Meach
 am Solicitor for Defendant Berentzi
 Ohling Ex^{tr} It is ordered by the Court
 that the Complainants exceptions to Defendants
 answer be referred to the master in Chancery

6 582

And afterwards part of the 25th day
 of April AD 1857 the same being one of the
 days of the April term AD 1857 of said Court
 the following appears of record in said
 Cause viz.

James S. Neil

vs

Berentzi Ohling Executrix &
 Nicks Rooff Ohling administrator
 of the Estate of Rooff K. Ohling
 deceased. Paul Jansen Ohling
 Garmek Herds Berchus Adde
 Berchus surviving heirs of
 Rooff K. Ohling deceased

Bill to

foreclose

mortgage

in Chancery

And now on this Day Comes H. N. Hibbard
 Master in Chancery and files his report
 upon the exceptions taken by the Complain-
 ant. to the answer of Defendant Benentzi
 Ohling & P. And on motion of the
 Complainant by his solicitor it is
 ordered by the Court, that the report
 be confirmed. And by the agreement
 of the parties it is further ordered by
 the Court that all of the Defendants
 file their answers to the Complainant's
 Bill of Complaint by the 10th day of
 June next. 6.592

State of Illinois }
 Stephenson County }
 In the Circuit Court of
 Stephenson County of the State
 Term AD 1857-

James L. Keil
 vs
 Benentzi Ohling et al }
 In Chancery
 To the Honorable Benjamin
 R. Sheldon Judge of the fourteenth Judicial
 Circuit of the State of Illinois

In pursuance of an order of this Court
 made in the above entitled cause on the
 twenty third day of April AD 1857 whereby it
 was referred to the subscriber master in
 Chancery of this Court, to look into the

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Complainant's Bill of Complaint. the answer of the said Defendant Berentzi Ohling and the exceptions taken to said answer by said Complainant and report whether said exceptions were well taken or not. I the said Master do hereby respectfully certify and report that having been attended by the Counsel of the respective parties and, having looked into said Bill and answer and the exceptions taken thereto, and having duly considered the same. I find that all the exceptions to said answer are well taken. all which is respectfully submitted.

H. N. Hibbard

Master in Chancery

Filed April 25. 1857

L. H. Guitau CLK.

And afterwards writ. of the 11th day of September AD 1857. the same being one of the days of the September Term AD 1857 of said Court the following appears of record in said cause viz:

James S. Neil }

vs }

Berentzi Ohling Ex^{tr}, Plaintiff }

Roof Ohling admr of }

Bill to foreclose

Rooff K. Ohling deceased } mortgage
 Paul Hansen Ohling Hermest
 Gerds Berchus, Adde Berchus
 Surviving heirs of Rooff K. Ohling deceased }

On motion of the said
 Complainant by his solicitor, the said Defen-
 dants being three times solemnly called, came
 not but made default. It is thereupon con-
 sidered and ordered by the Court that the
 Complainants Bill be taken as confessed
 and that the same be referred to the master in
 Chancery to take proofs. 1139

And afterwards writ: of the 22^d day of
 September AD 1857 the same being one of the
 days of the September term AD 1857 of said
 Court. the following appears of record in
 said Cause viz:

James L. Neil

vs

Berentz Ohling Executrix
 & Nick Ohling Administrator
 of the Estate of Rooff K. Ohling
 deceased & Paul Hansen Ohling
 Hermest Gerds Berchus, Adde
 Berchus Surviving heirs of
 Rooff K. Ohling deceased

In Chancery

And now at this day came

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H. N. Hibbard Master and files his report
herein. It is thereupon considered and
ordered by the Court that the same be confir-
med.

State of Illinois }
Stephenson Comty }
James S. Neil

In the Stephenson Comty Circuit
Court. December Term 1857

vs

In Chancery

Berentze Ohling Executrix &
Mike Ohling Administrators of
the Estate of Rooff K. Ohling, deceased
and Paul Larsen Ohling. Germane
Herds Bercher. Adde Bercher sur-
viving heirs of Rooff K. Ohling, deceased

To the Honorable Benjamin
R. Meldon presiding Judge of the fourteenth
Judicial Circuit of said State in Chancery
sitting. In pursuance of an order of
this Court made in the above cause, on
the 11th day of September AD 1857 by which
it was referred to the master in Chancery in
and for said Comty, of Stephenson to compute
ascertain and report the amount due the
Complainants for principal and interest
on the notes and mortgage mentioned in
his Bill filed in this cause. I the sub-
scriber Master in Chancery of this Court
do respectively Certify and report

that I have computed and ascertained the amount due to the Complainant in this Cause as aforesaid. and that the amount so due on the said notes and mortgage for the principal and interest up to and including the date of this report is the sum of three thousand forty six dollars and Eighty Eight Cents And I do further certify and report that the Schedule herewith annexed marked A. and making a part of this report contains a statement and account of the principal and interest money due to the Complainant as aforesaid, the period of the computation of the interest and its rate and to which for greater certainty I refer all of which is respectfully submitted
 Dated September 22^d 1857. M. N. Hubbard

Martin in Charge

Schedule A" referred to in the preceding report. One note dated August 8. 1854 for the sum of \$1000 # payable to order of Thomas R. Milliken & by him indorsed to James L. Kim
 Principal now due \$1000
 Interest thereon from Aug 8. 1854 to September 22. 1857 being three years and one month & fifteen days at ten per cent

93-

one note dated August 8, 1854 for the
sum of \$1500# pay able to order of the unders
R. Milliken & by him endorsed to James L. Neil 1500
Principal sum now due 1500
Interest thereon from date to Sept 22
1857 being 3 years 1 month & 15 days 234.38
at ten per cent

Am't due Compt this 22 Sept 1857 \$3046.88

H. N. Hubbard

Master in Chancery

Filed September 22nd 1857

L. H. Guiteau clk.

In the Circuit Court of Stephenson County

In Chancery

James L. Neil

vs

Benentz Ohling Executor and
Nicks Rooff Ohling Administrator
of Rooff N. Ohling deceased
Paul Lansen Ohling, Garmick
Gerds Bercher, Adde Bercher
Surviving heirs of Rooff N. Ohling
deceased

Bills of Foreclosure
Mortgage

This cause having this day
been brought on & heard upon the Bill
of Complaint filed herein and taken
as confessed by the said Defendants

and upon the report of H. N. Dibbleard the master of this Court in and for the County of Stephenson and State of Illinois. which said report bears date the twenty second day of September AD 1857. and was made in pursuance of an order of this Court heretofore made in this cause referring it to the master of this Court to compute the amount due to the Complainant on the mortgage and promissory notes mentioned and set forth in said Bill of Complaint. on reading and filing said report from which it appears that there was due to the said Complainant at the date of said report for said principal and interest the sum of three thousand and forty six dollars and Eighty Eight cents (\$3046.88) And on motion of W. Bright Smith the Counsel for said Complainant. it is ordered, adjudged and decreed, and the said Court by virtue of the authority vested therein, doth order, adjudge and decree. that the said report and all things therein contained do stand ratified and confirmed. And it is further ordered and decreed, that the said Defendants pay the said principal sum and interest thereon within twenty days after the date of this decree to the said Complainant.

or this said solicitor. And it is further ordered
 adjudged and decreed that in default of
 such payment being made as aforesaid
 that all and singular the said mortgaged
 premises mentioned in the Bill of Complaint
 in this cause and hereinafter described, or
 so much thereof as may be necessary to raise
 the amount due to the complainant for the
 principal and interest and costs in this
 case be sold at public auction by and
 under the direction of the master of this
 Court, that the said sale be made at the door
 of the Court House in said said County in the
 City of Liverpool. That the said master shall
 give public notice of the time and place
 of said sale by publishing the same four
 weeks successively in one of the weekly news-
 papers published in said City of Liverpool
 and that the complainant in this cause may
 become a purchaser, and that the master
 shall execute to the purchaser or purchasers a
 certificate of purchase for said mortgaged
 premises, which certificate shall be in writing
 and shall describe the land sold and the
 amount paid for the same, and in case the
 complainant shall be the purchaser, the
 said certificate shall specify the amount of
 his bid, and in case the said mortgaged

premises so sold as aforesaid shall not be redeemed according to law, then it is further ordered and decreed that the master of this Court, shall execute a deed to the purchaser or purchasers of the said mortgaged premises or so much thereof as shall have been sold as aforesaid,

And that the said Master out of the proceeds of, shall retain his disbursements, fees and Commissions on said sale, and pay to the Complainant or his said Solicitor out of said proceeds his Costs in this Suit expended and also the amount so reported due as aforesaid, together with legal interest thereon, from the date of said report, or so much thereof as the purchase money of said mortgaged premises will pay of the same, And that the said Master shall take receipts for the amt. so paid and file the same with his report, and that he bring the surplus monies arising from said sale, if any there be into Court without delay to abide the order of this Court. And it is further ordered adjudged and decreed that the said Defendants their heirs and personal representatives be forever barred and foreclosed of and from all equity of redemption and claim of in and to said

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said mortgaged premises and every part
and parcel thereof from and after one
year from the date of the sale by the
Master of this Court as aforesaid, And it
is further ordered and decreed that the
purchaser or purchasers of said mortgaged
premises from and after the expiration
of fifteen months from the sale aforesaid
be let into possession of the said mortgaged
premises, and that the Defendants or any
person or persons who may be in
possession of said premises or any
part thereof and who may have come
into the possession of the same or
any part thereof under the said Defen-
dants, or either of them since the com-
mencement of this suit, release possession
thereof to the purchaser or purchasers
thereof on the production of the masters
deed for such premises. The description
of the property authorized to be sold under
and by virtue of this decree so far as the same
can be ascertained from the said mortgage
above referred to or from the Bill of Complaint
in this Cause, are as follows, to wit: The
South half of Section number twenty (20) in Town-
ship number twenty six (26), Range number
nine (9) East of the fourth principal

100

meridian. Containing three hundred and twenty acres more or less. Also the South East quarter of Section number twenty five (25) in Township twenty six (26) Range Eight (8) East of the fourth principal meridian Containing One hundred & fifty acres. Situate in the County of Stephenson and State of Illinois

Benj. R. Sheldon

Filed Sept. 22nd 1857. T. 98

L. H. Guitman CLK.

State of Illinois

In the Circuit Court of Stephenson
County. In Chancery,

James L. Neil

vs

Bereng Ohling Executrix and Heir	} Bill to foreclose mortgage
Raolf Ohling admr of Raolf R Ohling,	
deceased. Paul Lansen Ohling,	
Germett Gend Bercher and Addy	
Bercher surviving heirs of	
Raolf R. Ohling deceased	

In pursuance of a Decree
order of the Circuit Court of Stephenson County
Illinois sitting in Chancery, made and
entered in the above entitled cause at
the September term 1857. there will be

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sold (subject to the equity of redemption)
to the highest bidder for cash by the
subscriber, a Master in Chancery at
the door of the Court House in the City of
Keokuk in said County on the fifth day
of December 1857. between the hours of
9 o'clock A.M. and 4 o'clock P.M. upon
a foreclosure of a mortgage bearing
date the 5th day of August 18 4 executed
by Rolf K. Ohling to Thomas R. Milliken and
duly assigned by the said Thomas R.
Milliken to the said James L. Kirk, the
following described real estate, or so
much thereof as shall be sufficient to
pay the amount due upon said mortgage
for principal and interest, together with
costs of foreclosure, to-wit: The South half
of Section number twenty, in Township number
twenty, Six, Range number nine, East of the fourth
principal meridian, containing three
hundred and twenty acres more or less,
and also the South east quarter of Section
number twenty five in Township number
twenty six, Range Eight, East of the fourth
principal meridian, containing one
hundred and sixty acres more or less
situate in the County of Keokuk and
State of Illinois aforesaid

N. H. Hibbard Master in Chancery
 J. Bright Smith Solr
 Freeport Nov. 6th 1857.

J. H. P. Giles one of the Publishers of the
 Freeport Weekly Bulletin a Newspaper
 published in the City of Freeport Stephen-
 son County Illinois. do hereby certify that
 the affixed Decretal order notice has
 been published for four successive
 weeks: the first insertion being on the 12th
 day of November AD 1857. and the last
 on the 3^d day of December AD 1857. for
 which we charge seven dollars

H. P. Giles -

Recd. seven dollars of N. H. Hibbard
 Master in Chancery in full for adver-
 tising above notice per hand of J.
 Bright Smith Dec. 5th 1857

Giles & Scroggs -

And afterwards to-wit: of the 11th day of January
 AD 1858. the same being one of the days of
 the December term AD 1857 of said Court the
 following appears of record in said Cause viz:

James L. Steil

vs

Benentzi Ahling Executrix

} Bill in
 } Chancery

+ Mike Ohling administrator }
of Rolf K Ohling dec'd Ex. ad. }

And now at this day
Came H. N. Hibbard Esq master in Chancery
and files his report herein,

And afterwards writ of the 13th day of
January AD 1858. the same being one of the
days of the December term AD 1857 of said
Court the following appears of record in
said Cause &c:

James L. Neil Complainant

Benentzi Ohling Executor + Mike

Rolf Ohling Administrator of

Rolf K. Ohling deceased, Paul

Sanseu Ohling, Germert Herds

Bircher Adde Bircher surviving

heirs of Rolf K Ohling deceased

Defendants

Stephenson Compt

Circuit Court

of the December

term 1857

Bill in Chancery

to foreclose

mortgage.

It is ordered

by the Court that the masters report of sale in
this cause be confirmed, which report is
in the cards and files following, Dicit:

To the Honorable Benjamin R. Sheldon Judge
of the fourteenth Judicial Circuit in Chancery
sitting. In pursuance of and in
virtue of a decretal order of this Court
made in the above entitled cause on the

1864
Twenty first day of September AD 1857 by which
it was among other things ordered, adjudged
and decreed that the said Defendants to the
said Complainant the sum of three thousand
and forty six dollars and Eighty eight cents
and interest thereon within twenty days after
the date of said decree, and that in default
of such payment all and singular the
mortgage premises mentioned in the Bill of
Complaint in this Cause, to wit: The Smith half
of Section number twenty in Township twenty
six Range nine East of the fourth principal
meridian containing three hundred and
twenty acres more or less, also the Smith
east quarter of Section twenty five in town-
ship twenty six Range Eight East of the fourth
principal meridian containing one hun-
dred and fifty acres more or less, or
so much thereof as may be necessary to
satisfy the amount due to the Complainant
for principal and interest and costs
in this case be sold at public auction
by the master of said Court, that such
sale be made at the door of the Court
House ^{in said County} in the City of Newport; that the
master give public notice of the time &
place of such sale by publishing the
same four weeks successively in one of

125- the weekly newspapers published in said City of New York, that the Complainant in this Cause may become a purchaser; that the Master execute to the purchaser or purchasers a certificate of purchase which certificate should be in writing and describe the land sold and the amount paid for the same, and in case the Complainant should become the purchaser it was also to specify the amount of his bid. and that the said Master out of the proceeds of said sale retain his disbursements fees and Commission on said sale and pay to the Complainant or his solicitor out of said proceeds his Costs in this suit expended and also the amount so reported due as aforesaid together with legal interest thereon from the date of said report or so much thereof as the purchase money of the mortgage premises would pay of the same and that he bring the surplus moneys arising from such sale, if any there should be into Court without delay to abide the further order of this Court.

I the subscriber, Master in Chancery of this Court, residing at New York in said County of New York, do respectfully certify and report that having been

charged by the Solicitor for the Complain-
 ant, with the execution of said decretal
 order. I advertised said premises
 to be sold by me at the door of the Court
 House in Freeport in said Stephenson County
 on the fifth day of December AD 1857 that
 previous to said sale I caused notice
 thereof to be publicly advertised for four
 weeks successively as follows, viz. by causing
 a notice thereof to be printed for four
 weeks successively immediately preceding
 said sale in a public weekly news-
 paper printed in the City of Freeport
 in said County of Stephenson, which notice
 contained a brief description of the said
 mortgaged premises. And I do further
 report that on said fifth day of December
 AD 1857, the day on which the said prem-
 is were so advertised to be sold as
 aforesaid, I attended at the time and
 place fixed for said sale and exposed
 said premises for sale at public auction
 to the highest bidder, each of the two said
 described tracts having been offered
 separately, and no bid having been
 offered or made for either of them
 the whole of said described tracts of
 land were offered for sale at auction

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as aforesaid together, and the said
premises were then and then fairly
struck off To James L. Kirk the Complainant
out in this Cause at the sum of three
thousand two hundred and eleven dollars
and seventy four cents, he being the highest
bidder therefore and that being the highest
sum bidden for the same,
And I do further certify and report, that
I have executed and delivered said
purchaser a certificate of paid sale -
as required by said decretal order and
that I have paid over or disposed of the
purchase money or proceeds of paid sale
as follows. viz: I have paid the Solicitor
for the Complainant the sum of twenty
five (25) dollars, being the amount of
his costs of this suit, as taxed and have
taken his receipt therefore, which is
hereto annexed. I have also retained
in my hands the sum of fifty three
dollars (53) and fifty nine (59) cents, being
the amount of my fee, commission and
disbursements on said sale as will
appear by reference to the statement of
the items thereof annexed to this my
report and to which I refer,
I have received from said Complainant

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the sum of Eighty eight dollars and Sixty
nine cents which is in payment of the
costs fees, Commissions &c in this matter,
the balance of the account bid was the
sum of three thousand One hundred
and Twenty three dollars and five cents,
which was the amount due said complain-
ant on said mortgage at the date of
said sale. All of which is respectfully
submitted December 31. 1857

Amos A. Tibbords

Master in Chancery

James L. Keil

vs

Benentzi Ohling et al

Received of A. A. Tibb-
bords Master in Chancery the sum of

Twenty five ⁰⁰/₁₀₀ dollars December 31. 1857
being the amount of the Complainants
in said Cause as taxed. which Costs are
paid to me by said master by virtue
of said decree.

Wright Smith
Compt. Solicitor

Statement of Master fees, Commissions and
disbursements on the sale referred to in
the foregoing report and all other
costs not included in the taxed bill

of costs in this cause

Drawing advertisement of sale	1.00
Printing bill for publishing notice of sale	7.00
Drawing report of sale	5.00
Preparing Certificate of purchase	2.00
Commissions on \$3211. ⁷⁴ / ₁₀₀	48.69
	63.69

Filed Jan. 11. 1858.

L. H. Guiteau clk

Recd of L. H. Guiteau ten ⁸⁵/₁₀₀ dollars
in full for my fee as master in
cause of James L. Keil vs B. Ohling
to this date. Dec 31st 1857

H. A. Hibbard

Master in Chancery

Mr. Bailey.

I was present in M & Co. Bank
at the time these transactions took place.
It was a few day before the time of redemp-
tion run out. The Ohlings were there
Col. Mitchell - my impression was Putze
& Keil were there. They made arrange-
ments with M & Co. M & Co were to take care
of purchase and pay Keil the amount
of money due on it. & to give the Ohlings
further time to redeem the land and

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to pay back the money to Mitchell & Co.
I know of this negotiation going on
some time previous to that between the
Ohlins & M & Co. & resulted in their
arrangement at the Bank.

Witness, Meacham testified to the same
facts above stated by J. M. Baile, also
that Putnam one of the firm of
James Mitchell & Co. afterwards offered
to let Lutzin have a deed of his part of
the land if he would pay the amount
that was then due on his notes, and at
a subsequent time Putnam directed
me to tell Lutzin that he could have
a deed for his portion of the land in
case he would pay the amount due on
his notes. I stated this to Lutzin, but he
neglected to do it.

W. D. Meacham

Notes of Lutzin Lutzin
dated Dec 4, 1855 \$600 two years, \$550
three years, \$400 one year, after date of paid
notes. On last one \$284.40 indorsed paid
Aug 3, 1857. Notes belong to wit. Received them
before deed; took the notes as a security.
Willing to give up the notes as far as this

///
suit is concerned. Notes offered and
given in evidence as follows viz:
\$600.00 For value Received I promise to pay
Berentz's Ohling, Mike Ohling, & wife, Meck-
ett's Ohling, Paul Ohling and wife Setz's Ohling,
Addo Berchus and wife Lamuck Berchus
four hundred dollars one year from
date
Lutzin Lutzins
Freeport Ill. Dec 4, 1855.

286. 41. Recd this 3^d day of August 1857. of Lutzin
Lutzins on this note two hundred Eighty seven & $\frac{1}{100}$
dollars.

\$600.00 For value Received I promise to pay
Berentz's Ohling, Mike R. Ohling & wife, Meckett's Oh-
ling, Paul Ohling & wife, Setz's Ohling, Addo Ber-
chus & wife Lamuck Berchus six hundred
dollars two years from date. Lutzin Lutzins
Freeport Ill. Dec 4, 1855

\$550.00 For value Received I promise to pay
Berentz's Ohling, Mike R. Ohling, & wife
Meckett's Ohling, Paul Ohling & wife,
Setz's Ohling, Addo Berchus & wife Lamuck
Berchus, Five Hundred and fifty
dollars three years from date
Lutzin Lutzins
Freeport Ill. Dec. 4, 1855.

Papers in Circuit Court of the Dist of
Lutze Lutze vs Berentz Ohling et al
in Covenant given in evidence viz: -

State of Illinois }
Stephenson County }^{ss} In the Circuit Court of
Stephenson County of the September
term AD 1860

Lutze Lutze }
vs }
Berentz Ohling, Heike } Covenant
R Ohling, Paul J Ohling } Das 5000 \$
and Adde Berches }
}

The Clerk of the Circuit
Court will please issue a summons in
the above cause returnable according
to Law.

L. H. Guiteau Clerk } Bright + Brawley
Aug. 4, 1860 } Plffs attys

Filed Aug 4, 1860.

L. H. Guiteau CLK

By This North Dep -

State of Illinois }
Stephenson County }^{ss} The People of the State of
Illinois to the Sheriff of said County - Greeting
We Command you to summon Berentz
Ohling, Heike R Ohling, Paul J Ohling,
and Adde Berches, if he be found in
your County, personally see and appear
before the Circuit Court of said County of

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Stephenson on the first day of the next term
thereof to be holden at the Court house
in the City of Freeport in said County
on the first Monday in the month of
September next to answer unto Lutz
Lutz in a plea of Covenant to the
demand of the said Plaintiff as he
says in the sum of five thousand
dollars and have you then and
there this writ with an endorsement
thereon in what manner you shall
have executed the same

Witness Luther H. Guiteau Clerk of
our said Circuit Court and the seal
of said Court at Freeport in said
County this 4th day of August A.D. 1865
Attest Luther H. Guiteau Clerk

By Tho^s North Dep

The foregoing is all the testimony
in this case. Testimony of W.D.
Meacham in relation to the declara-
tions of Putnam & Putnam's & Chling's
statements & arrangements in the
absence of Complainant. excepted to
by Complainant's Counsel

Benj. R. Sheldon Esq

Stephenson County Circuit Court, Ill.

No. Ft. F.A.

Fee Book. PAGE.

Versus

FI. FA. EXECUTION.

This Writ calls for:

\$..... Debt.

\$..... Dr's.

\$..... Costs.

\$.....

\$.....

Total Amount, \$.....

Judgment,..... 18

This Writ issued..... 18

Return Day..... 18

Sheriff's Fees.

Levying Execution, 50

Advertising Property, 25

Miles Travel,

Commission on \$.....

Certificate of Purchase, 25

Returning Execution, 10

Total Amount, \$.....

..... Sheriff.

Pliff's Atty.

RECEIVED THIS EXECUTION for collection, this _____ day of _____
in the year of our Lord one thousand eight hundred and sixty _____ at the hour of _____

SHERIFF.

STATE OF ILLINOIS, }
STEPHENSON COUNTY, }

ss.

The People of the State of Illinois to the Sheriff of said County—
GREETING:

We command you that of the goods, chattels, lands and tenements of _____

you cause to be made the sum of _____ Dollars, being for the
Plaintiff's costs in the within entitled cause, and also the further sum of _____
Dollars, being the defendant's costs in said cause, as the same has been adjudged against _____ in the
Stephenson County Circuit Court, as appears of record in the office of the Clerk of said Circuit Court
—and this you are not to omit, under the penalty of what the law prescribes—and have these moneys
at the Clerk's office of said court, within ninety days from the date hereof, and also this writ.

WITNESS, J. WILSON SHAFFER, Clerk of the Stephenson
County Circuit Court, Illinois, and the seal thereof, at Freeport, this _____
day of _____ A. D. 186

Lutjen Lutjens
 vs.
 Berent's Chling, et al

PLAINTIFF'S BILL OF COSTS.

Costs Vs.

Fee Book..... Page.....

CLERK'S FEES.

Entry Bill & Process 10	Sum of pty 40	Doc Suit 5 term 50	1.00	
Entry App & atty 15	Mot & ord for Rule on deft to Ans 40	Ply Ref 5	1.60	
Ply Proc 5	2. Supb & ply 80	Mot & ord Continu 40	1.25	
Ply Proc 5.6	Supb & of 2 40	Inv of ply 5	3.20	
Inv of Mts 35	Entry of ply	Testimony 25	Entry ply & Reg	.60
Decree 125	Cff Copy of do 125	Entry Jgt 25	2.75	
Entry dat 15	Ex of ply 45	Proc for do 5	Doc Ex 10	1.75
" Shffs ret 10	P.B. 30	C & seal 35	1.75	10.90
Shffs Leg. Youngman	Ex & return sum	6.00		
"	"	Supb 7.85		13.85
" Rabey	" do			1.50
Witnesses - Onty Collman	apl tem 62	1 day 10 mts	1.50	
Henry Lutjens	" " 1 "	10 "	1.50	
Riecke Rieckus	" " 1 "	10 "	1.50	
Same	Dec tem 62	3 " 10 "	3.50	
Charles Torrey	" " 1 "		1.00	9.00
				\$35.25

Dependant Costs

Entry App & atty 15	Entry of ply deno 25	Entry with do of dent 20	1.60	
" of ply stip 25	Ply Ans 5	Entry Inv of ply app 35	1.65	
Inv of Mts 15	P.B. 30	C & S 35	Free bill Ex of ply 45	1.25
Transcript to Supreme Court	\$25	(65 by deft)		20.00

I, J. WILSON SHAFFER, Clerk of the Stephenson County Circuit Court, State of Illinois, do hereby certify that the above is a true copy from my Fee Book. Witness my hand and the seal of said Court.

J. W. Shaffer CLERK.
 (In C. R. Lodge's Lys)

State of Illinois
Third Grand Division

Supreme Court

April Term A.D. 1865

Berente Ohling et al
Plaintiff in Error

Lutgin Lutgens
Defendant in Error

And the said Plaintiff
by Mertham & Bailey, their attorney by leave
of the Court for that purpose first heard and
admitted. Come now assign the following
additional errors in said Record Court.
1st That said Decree orders that Defendant
have and recover of ~~defendant~~ ^{plaintiff}, the ac-
mount of the purchase money of the
land in question and interest from the
date of the conveyance from plaintiff
Defendant, instead of fixing the amount
of such recovery at merely a nominal
sum.

2nd That under the pleadings and evi-
dence in the case the Court below did not
upon its decree desmising said Bill

3rd That the amount of said ~~defendant's~~ ^{recovery}
is larger than is warranted by the proofs
in the case.

4th That the ~~plaintiff~~ ^{defendant} ^{evidence in the case} ~~with~~ shows no
Case warranting the interposition of a

Court of Equity or giving such Court jurisdiction. Defendants stand by if error, but none being at law. The Court is erroneous in giving defendant any stay in the suit.

Said plaintiffs in error therefore pray that the Court affirm for the errors of record be reversed annulled and altogether held for nothing and that they be restored to all things they have lost by occasion of said error.

Murphy & Bailey
Plaintiffs, Attorneys

George Chalmers

John S. Sargent

John S. Sargent

John S. Sargent

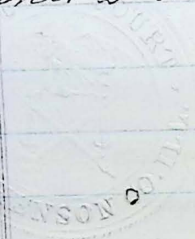
to April 29, 1863.
S. S. Sargent
Ch.

State of Illinois }
Stephenson County }

J. J. Wilson Shaffer, Clerk
of the Circuit Court in and for said County
do hereby certify that the foregoing is a full
and complete Transcript of the Record, and
papers on file in the above entitled cause, as
appears from the Record & papers in my
custody.

In Testimony whereof I have hereunto set
my hand and affixed the seal of said Court
this 2⁵ day of April AD 1863.

J. J. Shaffer Clerk
per E. P. Hodges. Dep.



148
Brentz Chluny & others

vs

Lutzen Lutzons



Record

Filed April 9th
1863

L. Selander ckr

State of Illinois

Supreme Court

Third Grand Division

April Term 1863

Benjamin Ohlberg & Hilde Ohlberg

Paul J. Ohlberg & Adair Archer } Plaintiffs in Error

or

Lutzgen Lutzgen

} Defendants in Error

Afterwards took on the ~~20th~~^{21st} day April
A.D. 1863 in this same Term before the Justices of the Supreme
Court of the State of Illinois at the City of Ottawa
in the County of La Salle in said State comes the said
Plaintiffs in Error by ~~Meuchling & Bailey~~ their attorneys
and say that in the record and proceedings
aforesaid there is manifest error in the Court that
the Bill aforesaid and the Matter therein contained are
not sufficient in Law for the said Lutzgen Lutzgen to have
the relief prayed for in said Bill and awarded to
him in said decree and also in this Court that
the said Decree is contrary to and unsupported by the
evidence in the record and proceedings aforesaid
and also in this Court that the said Decree orders
and directs the Pltffs in Error to pay the Debt in Error
more than as asked for in the Bill aforesaid and
also in this Court that in the decree aforesaid the
Plaintiffs in Error are decreed to pay the Defendants in
Error interest on the purchase money of the land in
question from the date of the deed up to the time of
the Decree and also in this Court that the said
decree recites and states Material facts not in the proof

affirmed and said decree is unsupported by the
evidence and law in the case and also in the towns
that from the Record & proceedings aforesaid the said
cause should have been decided in favor of the
plaintiffs in error and against the Defendants
in error And the said Plaintiffs, McEnery therefore
pray that the decree aforesaid for the errors aforesaid
and for other errors appearing with the Record and
proceedings aforesaid be reversed annulled
and altogether held for nothing and that they be
restored to all things they have lost by occasion
of said Decree

Meacham & Bailey

Attys for Plaintiffs
In Error

State of Illinois }
Stephenson County } ss

Read before the Hon.
Benjamin R. Sheldon Judge of the Fourteenth
Judicial Circuit of the State of Illinois at a
^{term thereof}
began and held at the Court House in the
City of Freeport in said County on ^{the} first
Monday of April A.D. 1867.

Present: Hon. Benjamin R. Sheldon, Judge

J. H. Shaffer Clerk

Smith D. Atkins, State Atty

William A. Youngman, Siff

Attest J. H. Shaffer Clerk
per E. B. Edwards, dep

State of Illinois In the Circuit Court of Stephenson
Stephenson County of 3 County of the April Term A.D. 1861
To the Honorable Benjamin A. Sheldon presiding
Judge of the Southern Judicial District in the State of
Illinois in Chancery sitting

Humbly complaining sheweth unto your Honor
Your Orator Guitzen Guitzen a resident of the County of
Stephenson and State of Illinois. That on the fourth day
of December A.D. 1855 your Orator purchased of Berentje
Ohling. Heike R Ohling. Paul J Ohling, and Adso Rorchers
all of said County & State the following described tract of
land situated in Stephenson County Illinois to wit The South
East Quarter of Section Number Twenty five in Township
Twenty six North of Range Eighth East containing One
Hundred and Sixty acres of land for the consideration
of Two Thousand Two Hundred and fifty Dollars to be
paid as follows about Six Hundred Dollars in cash and
about Four Hundred Dollars was paid by Holbrand
Witeman for your Orator in work and labor bestowed and
done for said Ohlings and Rorchers hereinbefore named
(and whom your Orator prays may be made Defendants to
this his Bill of Complaint) and which was accepted as a
cash payment of One Thousand Dollars from your Orator.
said land by said Defendants. and the balance was paid
by the Note or Notes of your Orator amounting to One Hundred
and fifty Dollars but as the Notes are not in the possession
of your Orator and were given in the month of December A.D.
1855 or thereabouts your Orator cannot state whether there was
one or more Notes given for the respective amounts of each or
what interest they bore if any or when said Notes matured
Your Orator further sheweth unto your Honor that on or about
the fourth day of December A.D. 1855 your Orator paid unto the

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said Defendants or some one or more of them for said Defendants
the sum of One Thousand Dollars aforesaid on said purchase and
at the same time your Orator made his Note or Notes for the
sum of Twelve Hundred and fifty Dollars payable to the said
Defendants or some one or more of them as they agreed upon
and delivered the said Note or Notes to the said Defendants

Your Orator further sheweth unto your Honor that upon
the payment of the said sum of One Thousand Dollars and
the execution and delivery of the Note or Notes as aforesaid
the said Defendants then and there by said agreement of
purchase to make execute and deliver to your Orator a
Warranty Deed for the land and premises described in this
your Orators Bill of Complaint and that the same was to be
free and clear of all liens and incumbrances of whatever
kind or nature

Your Orator further sheweth unto your Honor that on the
fourth day of December A.D. 1855 the said Defendants together
with Mehelije H. Ohling Wife of Heike R. Ohling, Fetsy
Ohling Wife of Paul Ohling, and Jameke Borcher Wife of
Adod Borcher in pursuance of said sale as aforesaid made
execute and delivered to your Orator a Warranty Deed properly
acknowledged for the land described in this your Orators Bill
and delivered the same to your Orator. and which your Orator
received and on the Second day of September A.D. 1857 your
Orator caused the said Deed to be filed for record in the Office
of the Clerk of the Circuit Court of Stephenson County Illinois
a copy of which is hereto attached marked Exhibit A. which
your Orator begs leave to refer to make proof thereof as this
Court shall direct your Orator submitting at the time he
has a clear and indefeasible title in the premises on said
Deed described

Your Orator further sheweth unto your Honor that he is

a German and does not understand the English language and cannot read the English writing or print and that at the time of the drafting of said Warranty Deed and at the time of the purchase as aforesaid the said Defendants represented to your Orator that they was the owners in fee of the same and had no good lawful right to sell the same to your Orator

Your Orator further sheweth unto your Honor that your Orator made said purchase of said land of the Defendants on the assurance and representations of the Defendants false and fraudulently made to your Orator in order to induce your Orator to purchase the same stating that they had a good title to the whole of said land of One Hundred and sixty acres, and your Orator believing and relying on said false and fraudulent representations as aforesaid purchased the same as aforesaid but that in truth and in fact the said Defendants had not the title to said land only as they appear as the heirs of Ross H. Ohling deceased. and as the Will of the said Ross H. Ohling sheweth which sheweth all the interest of the Defendants in said premises at the time of the purchase aforesaid subject to the outstanding liens and incumbrances placed upon said premises by the said Ross H. Ohling in his lifetime which were enforced subsequent to the death of the said Ross H. Ohling, and which Will reads in the words or figures following to wit and which your Orator asks leave to make a part of this his bill and to refer to and make proof thereof as this Honorable Court shall direct

" A few days since Mr R H Ohling, gave me to understand that
 " he on account of sickness wished by Will and testament to dispose
 " of his property To this end he called on me the subscriber a
 " Minister beside both the undersigned Witnesses today to come
 " to his house. We found Mr R H Ohling sick in bed. notwithstanding
 " in enjoyment in his full senses which Mr Ruckebach and

" a Physician who was present attended to, and concluded on the
 " his free will and without compulsion by anyone he gave us
 " his last Will considered that to understand and deemed it to
 " write the same as follows I the undersigned Rossy Rensing
 " Olling wish hereby expressly that after my decease or death
 " my beloved Wife Berentje whose maiden name was Pauli to
 " become the sole heir of all my goods, properties and effects and in
 " such a manner that she during her life can use and control
 " the same according as she thinks best, and likes should she however
 " marry again then she shall hold and have no more than one
 " third or as much as the law allows her after the death of my
 " aforesaid Wife the following division of my properties shall
 " take place.

" 1st My first born son Hecke Rossy Olling shall have the
 " farm with appertainments thereto belonging of 160 acres
 " of land on which he now resides.

" 2^d My second son Paul Jansen Olling shall have the farm
 " on which he now has erected the limestone house. Besides 160
 " acres of land. The stream of running water between the aforesaid
 " farms which form the line between said farms shall belong
 " to both of my son for the joint benefit of both farms

" 3^d My daughter Jonneke Gees Olling united and married
 " to Borchers shall have also after the death of my Wife
 " Berentje whose maiden name was Pauli the farm
 " containing 160 acres of land as her personal inheritance
 " on which she resides but in as much as the buildings are
 " more costly and expensive than those of her brothers she shall
 " be compelled to pay to her brothers upon her coming in possession
 " of said farm (\$500) Five Hundred Dollars namely \$250 to
 " each one. The aforesaid farm which I have willed to my
 " daughter Jonneke Gees is occupied by herself and husband
 " Ado Borchers namely the one half and the other half by me

5- and my Wife. This farm my son-in-law has rented from me for
 the term of Eight years and my Express wish is that this
 contract shall remain in force in case my death before the
 term Expires. should my aforesaid daughter Jannette Gerds
 married to Rocher die without leaving children then I do
 hereby Ordain and order that the said farm Cum armis
 fall back to my aforesaid sons so that my son-in-law
 shall claim as much as the law of the Country shall give him.
 My 40 acres of timberland shall be divided among the three
 aforesaid farms and casting lots for the same so that each of the
 three children come in possession of $13\frac{1}{3}$ acres should my two
 sons aforesaid who are born in our wedlock make to buy the
 160 acres of land which I have bought from Millike and
 which is situated by or by the side of Heji Point land and
 Eight Dollars per acre they shall have the privilege to do so or I
 approve hereby Expressly this probable purchase. They
 shall be obligated after the death of my Wife to pay to their
 sister her proportionate share. all the real Estate demands
 cattle and stock household furniture and other possessions
 which belong to me shall belong to my aforesaid Wife and she
 shall have the unlimited control over the same. and I do hereby
 again to prevent any mistake or mis understanding & by my
 signature declare that my cherished wife Berentje whose
 maiden name Pauli during her life in case she does not marry
 again shall have and hold the aforesaid inheritance undisturbed
 control thereof as she shall see according to her own mind and
 desire. that our friend son Heike Adolf Ohlson shall become
 her assistant. I therefore not only approve thereof but it is
 my ardent wish and my conclusion I pray that this my
 testament shall remain unchanged and unaltered in as
 much as it is my last will which I have made without
 consideration deliberation and fees which the Physicians

" Minister and his witnesses through their own signature attest
 " the truth thereof Ridley Stephenson Comy August 21st 1885
 " The Master, first day of August Eighteen Hundred and fifty
 " nine
 " Seal Rose K. Ohline
 " Seal K. Ruckebach M.D. as witness of the
 " signature of his own hand
 " Seal D. D. Dierksen as witness of the signature
 " of his own hand
 " Seal G. D. Dierksen as witness of the signature of
 " his own hand
 " Seal infidemo G. D. Dierksen Minister as witness
 " of the signature of their own hands and under of the testament

Your Orator further sheweth unto your Honor that the said Rose
 K. Ohline was the owner of said land in his lifetime and that the
 said Rose K. Ohline deeded this life previous to the purchase by
 your Orator of the said premises from the said Defendants as aforesaid
 and that the said Rose K. Ohline died leaving the Defendant
 Berentje Ohline his widow and the Defendants Heide Rose
 Ohline and Paul Jansen Ohline his two sons and Jannetje
 Berentje his daughter all lawful heirs of the said Rose K. Ohline.

Your Orator further sheweth unto your Honor that on 1st of
 May A.D. 1886 your Orator took possession of the land purchased
 by your Orator from the said Defendants and that said land at
 that time was in a wild state of nature uncultivated & uninhabited
 in any respect and that no part thereof was broken for the purpose
 of cultivation or inclosed or fenced. And that your Orator remained
 in possession of said land until May A.D. 1886 and during said time
 made valuable improvements on said land by breaking up the
 same for cultivation and built good substantial fences upon
 said land & inclosed & also improved it by the erection of
 two dwelling houses and a stable and the digging of wells and the

4/
selling out of fruit and ornamental trees and other improvements
more of great value and all which were made and done by your
Orator in good faith and before he discovered the defect in the title
to said premises as hereinafter mentioned

Your Orator further sheweth unto your Honor that the said Defend-
ants never were the owners of the land described in the Warranty
deed as aforesaid from the Defendants to your Orator that your
Orator was obliged to leave said premises in May, A.D. 1860. by and
through the foreclosure proceedings hereinafter mentioned

Your Orator further sheweth unto your Honor that at the time
he purchased said land he paid therefor at the rate of Twenty five
hundred and fifty Dollars and that at the time he abandoned
quit said premises they were worth the sum of Four Thousand
Dollars net to the improvements

Your Orator further sheweth unto your Honor that your Orator
had said Warranty deed in his possession until the month of February
A.D. 1860 before your - had any knowledge that his title to said land
was not perfect & before your Orator was aware that the Defendants
were not the owners of said land at the time they sold it to your
Orator. And your Orator had no knowledge at the time of the
purchase that there was any outstanding liens or incumbrances
upon the said premises placed there by the said Ross H. Collins in
his lifetime or any one else or that any other person or persons
had any interest in said land. but as soon as your Orator had
any knowledge of any defect in his title to said land or that
the Defendants could not give your Orator a free and unincumbered
title to said land your Orator declared to said Defendants that
said purchase was void and your Orator employed an attorney
and commenced an action of Covenant in the Stephenone County
Circuit Court of Illinois against said Defendants to recover
his damages that afterwards your Orator discovered said suit
for the purpose of filing this bill

Your Orator further sheweth unto your Honor that on the Eighth day of August A.D. 1854 Rory K. O'Leary in his lifetime made Executed and delivered to one Thomas B. Milliken a Mortgage for the sum of Four Thousand Dollars upon the following real Estate in Stephenson County Illinois to wit The South half of Section Number Twenty (20) in Township Number Twenty six Range Nine East also the South East Quarter of Section Number Twenty five in Township Number Twenty six of Range Number Eight East which said deed was properly acknowledged and was afterwards brought on the fourth day of October A.D. 1854 filed in the Office of the recorder of Stephenson County Illinois for record and to which Your Orator begs leave to refer and to make such proof thereof as this Honorable Court shall direct

Your Orator further sheweth unto your Honor that after the Execution and delivery of said Mortgage deed as aforesaid the said Thomas B. Milliken assigned his remaining interest in said Mortgage deed to one James S. Neil and that on the twelfth day of February A.D. 1855 the said James S. Neil filed his Bill in Chancery in the Circuit Court of Stephenson County Illinois to foreclose said Mortgage and that afterwards to wit on or about the twenty second day of September A.D. 1855 the said James S. Neil obtained a decree of the Circuit Court of Stephenson County Illinois for sale of said land described in said Mortgage deed to all of which proceedings the decree and the papers in said cause your Orator begs leave to refer and to make such proof thereof as this Honorable Court shall direct

Your Orator further sheweth unto your Honor that the said land described in said Mortgage deed and also in said decree in law and covers the one hundred and eight acres of land described in said deed from the said Defendants to your Orator and sold as aforesaid by the said Defendants to your Orator as aforesaid

Your Orator further sheweth unto your Honor that on the Eighth day

9 of December A.D. 1854 Homer W. Hubbard Master in Chancery for Stephens & Co. County Illinois sold the said descended in said Mortgage deed and decree to James E. Neil for the sum of Three Thousand Two Hundred and Eleven Dollars and seventy four cents.

Your Orator further sheweth unto your Honor that after the sale as aforesaid the said James E. Neil assigned his said certificate of purchase James Mitchell & Co. or James Mitchell or Holden Putnam individually, and that neither the Defendants or any persons for them ever redeemed said land from said sale but that the same became forfeited to the holder of said certificate of purchase and that afterwards said Mitchell and said Putnam or one or the other of them being the holder of said certificate obtained a deed for said land of said Master and sold the tract of land purchased by your Orator as aforesaid from the said Defendants One thousand acres thereof to Henry Luitjens and Sixty acres thereof to Robert Ribkas and made them the necessary deeds therefor and to which deeds your Orator has no access such effects and wishes to make such proof thereof as this Honorable Court shall direct and in the mean time in possession of said premises and have been since your Orator was compelled to abandon said premises as aforesaid. And to all which proceedings and decree of sale and deeds as aforesaid your Orator begs leave to refer and to make such proof thereof as this Honorable Court shall direct.

Your Orator further sheweth unto your Honor that on the Third day of August A.D. 1854 and before the said defect in the title to the premises purchased by your Orator as aforesaid was discovered by your Orator your Orator paid on his said Note to one of said Defendants the sum of Two Thousand and Eighty four Dollars and forty one cents.

Your Orator further sheweth unto your Honor that the said Defendants or some more of them at the present time hold the said Note or Notes of your Orator and refuses to deliver them up to your Orator for cancellation and to refund said sum of

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One Thousand Dollars to your Orlator into the legal rate of interest from the time of the payment of the same up to the time of refunding of the same and refuses to pay your Orlator for his improvements which he made upon said land and premises which he was in possession of the same or to pay your Orlator the increased value of said land over and above what your Orlator paid for the same although your Orlator has often requested them to do so and he hopes that the said Defendants would have complied with his most reasonable request.

But now so this may it please your Honor that the said Defendants combining and confederating with ^{other} divers persons to your Orlator yet unknown but whose names when discovered your Orlator fears may be inserted herein as Defendants and they made parties hereto into proper and able words to charge them how to injure your Orlator the said Defendants do now absolutely refuse to refund to your Orlator the said sum of One Thousand Dollars with lawful interest from the date of the payment thereof paid by your Orlator as aforesaid and refuses to pay your Orlator for the improvements on said premises aforesaid or the increased value of said premises in consequence of the improvements of your Orlator as aforesaid and refuses to deliver up to your Orlator the said Note or Notes for cancellations pretending that they are not indebted to your Orlator. And that your Orlator has no claims upon them.

All which actions and doings and pretences of the said Defendants and their confederates are contrary to Equity and good conscience and tend to the manifest wrong and injury of your Orlator of your Orlator in the premises.

In tender amerciations thereof and for as much as your Orlator is remediless in the premises at hand by the strict rules of the common law and is only redressable in a Court of Equity where matters of this nature are properly cognizable and redressable To the end therefore that the said Beentje Olling, Berke R Olling

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Paul J. Ohling and Addo Brokers and their confederates may each respectively, full true direct and perfect answer make according to the best of their respective knowledge informations and belief to all and singular the matters and charges aforesaid (your Orator minding hereby pursuant to the Statute the necessity of the answer of such Defendants or either of them being put in under the oath of said Defendants or either of them) and that as fully in every respect as if the same were here again repeated and they thereunto particularly interrogated.

And that the said Berenty Ohling, Hecke A Ohling, Paul J Ohling & Addo Brokers may be decreed to refund to your Orator the said sum of One Thousand Dollars the purchase money paid aforesaid and the said sum of Two Hundred and Eighty four Dollars and forty Cents paid with lawful interest from the date of the respective payments up to the time of refunding the same. and that the purchase or purchase of your Orator from the said Defendants aforesaid may be rescinded and that the said Defendants may be decreed to pay to your Orator all the Expenses that he may be put to relative to said purchase and sale together with an allowance for any money that your Orator laid out in repairs and improvements during the time he was in possession of said premises and that the said premises and that the said Defendants may be decreed to deliver up to your Orator for cancellation the Note or Notes mentioned in this your Orators bill. and that in the mean time the said Defendant may be restrained and enjoined from selling, assigning, assigning, collecting or in any manner disposing of the said Note or Notes until the final order and determination of the Court thereon. and that the said Defendants may be decreed in case of a refusal to deliver up said Note or Notes to pay to your Orator the commutations of Two Thousand Two Hundred and fifty Dollars mentioned in said Decree and interest up to the time of the payment of the same to your Orator And that the said Defendants

may be decreed to pay to your Orator the increased value of said land
 at the time your Orator was ejected from the same on and above
 what your Orator has agreed to pay said Defendants for the same
 And that your Orator may have such further relief or such other
 relief as the nature of his case shall require and as shall be agreeable
 to Equity. And that the said Berntz Ohlins, Hecke B Ohlins,
 Paul J Ohlins, Ado Borchers their counsellors, Attorneys, Solicitors
 Officers or agents may be restrained by an injunctions issuing
 out of this Court from selling, assigning, transferring or in any
 manner disposing of said promissory Note or Notes made by your
 Orator to the said Defendants, and also from instituting or
 proceeding in any action at law for the collection of said Note or
 Notes. May it please your Honor to grant unto your Orator the
 Prohibitory Injunctions issuing out of and under the seal of
 this Honorable Court directed to the said Berntz Ohlins, Hecke B
 Ohlins, Paul J Ohlins, and Ado Borchers, their counsellors, Attorneys,
 solicitors and agents, commanding them and each of them absolutely
 to desist and refrain from selling, transferring, assigning or disposing
 of said Note or Notes and from instituting any suit or suits for
 the collection of said Note or Notes.

May it please your Honor to grant unto your Orator the writ of
 Subpoena (Summons in Chancery) issuing out of and under the
 seal of this Honorable Court to be directed to the said Berntz
 Ohlins, Hecke B Ohlins, Paul J Ohlins, and Ado Borchers
 commanding them by a certain day and under a certain penalty
 to be therein inserted to be and appear before your Honor in our
 Court of Chancery, and then and there to answer the premises
 and further to stand to or abide such Order and decree therein
 as shall be agreeable to Equity and good conscience
 And your Orator shall ever pay, &c. *Luitjen Luitjens*
McRough Sol Complainant
J W Ramsey of Counsel

4
18
State of Illinois

Stephen W. Morris & Co. I do remember that on this day of
ad. 18 before me personally appeared Quincy Quincy, whose name appears subscribed to the foregoing bill made on the
that he has read and the above and foregoing bill by him subscribed
and is acquainted with the contents thereof and that the same are
true as of his own knowledge except those matters therein stated
to be on his information and belief and as to those matters
he believes them to be true

Exhibit A

Warrantee Deed Pullman Job Office Freeport Illinois.

Know all Men by these presents That Percy O. Oline, Heirs &
Oline, another Wife Nellie. Paul Oline, another Wife
Fetji. Ado Becker, another Wife Jennie McDonald
heirs at law of Robert Oline deceased. Comers of Stephen W.
and State of Illinois parts of the first part in consideration
of \$1000 and \$1000 and fifty dollars to them on
hand paid by Quincy Quincy of Morris of the same and
State of Illinois parts of the second part the receipt of which
is hereby acknowledged Have granted bargained sold conveyed
and confirmed and do hereby grant bargain sell convey and
confirm to the said parts of the second part and to his heirs and
assigns forever the following described tract or parcel of land
situated in Stephen W. County and State of Illinois to wit The
Lot 6 East Quarter of Section Twenty five (25) in Township
Twenty six (26) North of Range Eight East in the Des Moines
subject to sale at Dixon Illinois containing One Hundred and
Sixty acres. With the hereditaments and appurtenances thereto
belonging or in anywise appertaining To Have and to Hold
said premises above described to the said parts of the second part

his heirs and assigns forever. And the said party of the first
 part for themselves and their heirs & executors and administrators
 do Covenant to and on the said party of the second part his heirs
 and assigns that he is lawfully seized in fee simple of said above
 described premises that the aforesaid premises are free from all
 incumbrances and that said party of the first part and their
 heirs & executors and administrators shall warrant & defend said premises
 to the said party of the second part his heirs and assigns against
 the lawful claims and demands of all of all persons whomsoever
 and Meekette. Tety and Jannete Mavis of the said State of
 Illinois. Paul J. Olin, Ado. Borchers, in consideration of the
 payment made as aforesaid do hereby release to said party of the
 second part their heirs and assigns forever all their right of former
 in the above described premises. In Testimony Whereof said
 grantor have hereunto subscribed their hand and seal on
 New York this fourth day of December A.D. 1855.

Executed in presence of
 T. Torrey



Perentje Olin	
Heike Olin	
Paul J. Olin	
Ado. Borchers	
Meekette M. Olin	
Tety Olin	
Jannete Borchers	

State of Illinois

County of Stephenson

I, Erasmus Torrey Justice of the
 Peace in and for said County do hereby certify that Perentje
 Olin, Heike Olin, & wife Meekette Paul Olin, & wife Tety
 Ado. Borchers & wife Jannete personally known to me to be the
 persons whose names are subscribed to the foregoing deed as having
 executed the same appeared before me this day in person and
 acknowledged that they signed sealed and delivered the same as

15-

their free and voluntary act & deed for the uses and purposes
 herein set forth. And she said Metally Olling. The Olling
 Janka Borchers personally known to me to be the wife of the
 said Mike Olling. Paul Olling, & Ado Borchers and as the
 person who subscribed said deed and as such having been by
 me made acquainted with the contents and meaning of said
 instrument of writing & Examined separate and apart from her
 husband acknowledged that she had executed the same and
 relinquished her dower to the lands and tenements therein mentioned
 freely and without compulsion from her husband and that
 she does not wish to retract the same. Given under my hand
 and seal at this Tenth day of December and 1855

Erasmus Torres J. C. Seal

State of Illinois, Office of Clerk of Circuit Court
 County of } I certify that this deed was filed
 for record in my Office on the Second day of September and
 1857 at 4 1/2 o'clock P.M. and received in Book 26 of Deeds on
 page 98 and Examined

L. H. Guiteau Clerk

By J. H. Lewis Deputy

Filed Feb 11. 1861

J. H. Shaffer Clerk

per L. H. Guiteau Deputy

14

State of Illinois } In the Circuit Court of Stephen W. Combs
Stephen W. Combs } of the April Term A.D. 1861

Luizy Luizy

vs.

Berengé Oline, Heide R

In Chancery

Oline, Paul J Oline

Ado Borchers

Upon filing the accompanying

bill the clerk of the court will please issue a summons into

chancery in the above cause returnable according to law

To L. M. L. L. L. L.

Wright T. L. L.

Feb 11th 1861

Sol for Comblk

M

Filed Feb 11. 1861

J. M. L. L. L.

per L. M. L. L. L.

State of Illinois

Stephen W. Combs

The People of the State of Illinois

to the Sheriff of said County, directing the command you that

you summon Berengé Oline, Heide R Oline, Paul J

Oline, Ado Borchers if he shall be found in your County, personally

to be and appear before the Circuit Court of Stephen W. Combs on

the first day of the next term thereof to be holden at the Court

House in Freeport in said County on the first Monday of April

next to answer unto Luizy Luizy in his certain bill

of Complaint filed in the said Court on the Chancery side thereof

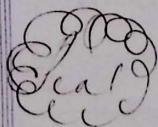
and have you then and there this writ with an endorsement thereon

in that manner you shall have executed the same

Witness My hand and seal of our said Court

and the seal thereof at Freeport in said County this

11th day of February A.D. 1861



J. M. L. L. L.

per L. M. L. L. L.

Served the within writ by reading it to and delivering a true
 copy of it to the within named Berntzi Ohline, Heir to
 Ohline, Adm'r of the same this 11th day of February A.D. 1861. Served
 the within writ by leaving a true copy of same (and explaining
 the contents of it) on to a white person over the age of ten years
 at the place of residence of within named Paul J. Ohline. This
 11th day of February A.D. 1861

W. A. Youngman, Sheriff
 By M. Hood, Deputee

Service 1.50

Mileage 2.10

Return 10

Copy 2.00

\$ 6.10

*

*

State of Illinois } In the Circuit Court of Stephenson
 Stephenson County } County In Chancery
 Berenty Olline, Exat }
 ad }
 Luzen Luzene }
 vs }

The Demurren of Berenty Olline
 Heike Olline, Paul J Olline, and Ado Rocher, Defendants
 to the Bill of Complaint of Luzen Luzen Complainant
 These Defendants, respectively by protestations
 not confessing or acknowledging all or any of the matters
 and things in the Complainant's Bill to be true in such
 manner and form as the same are therein set forth and
 alleged do Demur thereto and for cause of Demurren
 shew that the said Complainant hath not in and by his
 said Bill made or stated such a case as doth or ought to
 entitle him to any such discovery or relief as is thereby
 sought and prayed for from and against these Defendants
 Wherefore these Defendants demand the Judgment of this
 Hon Court whether they shall be compelled to make any
 further or other answer to the said Bill or any of the matters
 and things therein contained and pray to be hence dismissed
 with his reasonable Costs

U D Meacham

Sol for Defendants

Filed April 3. 1861
 J. W. Shaffer Clk

State of Illinois
 Stephenson County
 Lutzene Lutzene
 &c.

Rientje Ohlue,
 Heike & Ohlue,
 Paul J. Ohlue, &
 Ados Forcher

In the Circuit Court of
 Stephenson County

The joint and several answers
 of the above named Defendants to the Bill of Complaint
 of Lutzene Lutzene Complainant

These Defendants now and at all times
 hereafter saving and reserving to themselves all manner
 of benefit and exceptions to the many errors and insufficiencies
 in the Complainant's said Bill of Complaint contained for
 answer thereto want to so much or such parts thereof as
 these Defendants is advisable for these Defs to make answer
 unto the answer and say that the Complainant did not
 purchase of these Defendants the land mentioned in said Bill
 as therein stated nor did not make the payments as therein stated
 and no notes were given as therein stated. That the said
 Complainant did not pay to the Defs or either of them on the
 1st day of Dec 1855 the sum of One Thousand Dollars nor any
 sum whatever on the said purchase.

These Defs deny that there was ever any agreement for them
 to convey the said land mentioned in said Bill to the Compla-
 inant clear of all encumbrances

These Defs deny that they or the other persons named in said
 Bill ever executed or delivered the deeds mentioned in said Bill
 These Defendants deny that Complainant is a German that
 any false or fraudulent representations were made to
 Complainant as stated in said Bill. The Complainant well
 know the title of these Defendants that they were the heirs or

representatives of RKO Ohlins, deceased. These Defts deny that the Complainant took possession of the said land as stated in said Bill. That all the improvements on said land made by the Complainant were made with a perfect understanding of the conditions of the title to said land:

These Defts say that they were the owners of the premises on the date the other persons mentioned in the Bill the said deed was made & delivered to the Complainant. The statements in the Bill in respect to the Mortgage to Milliken are not true. Defts deny all in said Bill that relates to the said Mortgage & deny that there was any assignment of said Mortgage to James G. Neil & also deny everything relating to the foreclosure of said Mortgage by Neil & the sale under decree by Hebbard the giving, certificate of sale & the assignment of certificate to James Mitchell. These Defts say that Complainant ought have had a deed of his parcel had he paid his notes as he agreed. These Defts tried several times to induce the Complainant to pay to James Mitchell the amount of his note given for said land & take a deed of his land but Complainant absolutely refused to do it.

These Defts did not at the filing of the Bill in this cause own or have possession of the said Notes but had transferred them to another person & the Complainant never demanded the said Notes of these Defendants. These Defendants deny all unlawful combinations & pray to be discharged with their reasonable costs &c.

W D Meacham
Sol

Brentji Ohlins
Heike Ohlins
Paul J Ohlins
Adas Brothers

Miles Aug 6 1861

J W Shaffer Clerk
per E R Hodge, Deft

State of Illinois } In the Circuit Court of Stephenson
 Stephenson County } County of the September Term
 A.D. 1861

The replication of Luitzen Luitzen Complainant to
 the answer of Berengé Ohlens, Heide R. Ohlens, Paul J
 Ohlens & Ado Becker Defendants

This repliant saving and reserving to himself all
 and all manner of advantage of Exceptions to the manifold
 insufficiencies of the said answer for replications
 thereto saith. That he will aver and prove his said Bill
 to be true, certain and sufficient in the law to be answered
 unto. And that the said answer of the said Defendant
 is uncertain untrue and insufficient to be replied unto
 by this by this repliant on both this that any other matter
 or thing whatever in the said answer contained material or
 effectual on the law to be replied unto confessed and avowed
 traversed or denied is true. all which matters and things
 this repliant is and will be ready to aver and prove as
 this Honorable Court shall direct and hear as in and by his
 said Bill. he hath already prayed

Luitzen Luitzen

August Ramsey

Solr Counsel

Filed Aug 28 1861

J. W. Shaffer Clerk

per L. L. Luitzen Deft

STATE OF ILLINOIS,
THIRD GRAND DIVISION. } ss.

SUPREME COURT.

APRIL TERM, A. D., 1863.

BERENTJE OHLING, HEIKE R. OHLING, PAUL J. OHLING, AND ADDO BORCHERS, <i>Plaintiffs in Error,</i>	}	BRIEF OF PLAINTIFFS IN ERROR.
<i>vs.</i> LUITJEN LUITJENS, <i>Defendant in Error.</i>		

The decree in this case is erroneous for the following reasons :

I.

The decree is for a larger sum than the defendant shows himself entitled to by his bill.

The bill alleges the consideration paid for the land in question to be \$2,250, and prays for a decree for the re-payment of *that specific sum*. The decree, however, orders that defendant recover of plaintiffs the sum of \$2,550, as the amount of said consideration, with interest thereon. It may be said that the cash payment proved, and the notes from defendant to plaintiffs, read in evidence, together, make up the sum of \$2,550. "The defendant, however, if he recovers at all, he must do so upon "the case made by his bill. He is not permitted to state one case in the bill, and "make out a different one in proof. Although a good case may appear in the "evidence, yet, if it be variant from the one stated in the bill, the bill will be "dismissed." McKay vs. Bissett, et al, 5 Gil., 505; White vs. Morrison, et al., 11 Ill., 361.

II.

The variance between the bill and proofs must be fatal to the defendant's recovery.

The bill sets forth the purchase of the land for the consideration of the \$2,250, of which \$1,000 was paid down, and \$1,250 by defendant's notes. The proofs show the actual consideration to be \$1,000 paid down, and defendant's three notes to plaintiffs for the several sums of \$400, \$600, and \$550, making in all \$2,550. See same cases above cited; also, Morgan vs. Smith, et al., 11 Ill., 194; Rowan vs. Bowles, et. al., 21 Ill., 17. The statement in the bill of the consideration of the contract between the parties is *matter of description*, and this Court has frequently decided that any material variance between the contract alleged, however slight, and the one proved is fatal. Buckmaster vs. Grundy, 1 Scam., 312.

III.

The decree allows defendant interest upon said consideration from December 4th, 1855, the date of said conveyance; whereas interest should have been allowed only from March 10th, 1859, the date of the Master's Deed, under the foreclosure proceedings.

The title conveyed to defendant by plaintiff's deed was in fee, subject only to be defeated by the foreclosure of the outstanding mortgage to Milleken. Under this conveyance defendant enters immediately into possession of the land, which he occupies, cultivates, uses and enjoys, until May, 1860, at which time he surrenders possession to Mitchell, the Grantee in the Masters deed. Up to the execution of the Masters deed there is no liability on the part of defendant to account for mesne profits. Even if such liability ever existed in favor of the mortgagee after condition broken, such liability was extinguished by the subsequent sale of the mortgaged premises under the decree for the full amount due on the mortgage and costs. In legal contemplation the use of the land is equal to interest on the purchase money, and until defendant becomes liable to account to the holder of the title paramount for mesne profits, the use of the land will countervail defendants right to interest.

In *Staats vs. Executors of Ten Eyck*, 3 Caines, 114, Ch. J. Kent says: "The seller is generally bound to answer for the interest of the purchase money, and the interest ought to be commensurate in point of time with the legal claim to the mesne profits. This right to interest rests on very plain principles. The vendor has the use of the purchase money, and the vendee loses the equivalent by the loss of the mesne profits. The interest ought to commence from the time of the loss of the mesne profits."

In *Caulkins et. al. vs. Harris*, 9 John 324, where the grantee had been in the actual enjoyment of the land, and taken the mesne profits for fifteen years without any valid title from the grantor, it was held that the grantee was entitled to recover the consideration money and interest thereon for six years only.

In *Bennett vs. Jenkins*, 13 John, 50, it was held that the damages which the grantee is entitled to recover, are the consideration money with interest for such time as he is liable for the mesne profits.

In *Hale vs. New Orleans*, 13 La. An. 499, it was held that the purchaser who went into possession of the property sold is entitled to recover from his warrantor, interest on the price paid from the date of the eviction.

In *Fernander vs. Dunn*, 19 Geo. 497, it was held that when a purchaser of land is evicted after several years enjoyment of the estate, the paramount title then first accruing the measure of his damages, is the purchase money, with interest for the period only for which there was liability for mesne profits, to wit: from the accruing of the title paramount.

To same effect see also *Cox vs. Henry*, 32 Penn. State R., 18; *Kyle vs. Fauntleroy* 9 B. Monroe 620; *Clark vs. Poor*, 14 Ohio, 118.

IV.

The decree gives defendant interest on the entire purchase money from the date of the deed, while defendant's notes, given for said purchase money, run one, two, and three years *without interest*.

V.

The defendant seeks to recover in this case by showing an eviction by *paramount title*. Such title is attempted to be deduced through a mortgage placed on the land by Ralph K. Ohling, the ancestor of plaintiffs and the subsequent foreclosure of said mortgage.

To such foreclosure suit, however, the proof shows that defendant in error was not made a party.

The mortgage bears date August 8, 1854; the deed, from plaintiffs to defendant, December 5th, 1855. Defendant went into actual possession and occupancy of the land in May, 1856, and the bill to foreclose the mortgage was filed February 20, 1857, making only the heirs and executors of Ralph K. Ohling, deceased, defendants. Defendant in error was not a party to said bill. It is clear that no interest of defendant was affected by said foreclosure proceedings, and that all his rights remain precisely as though *no such foreclosure had ever taken place*.

In *Watson vs. Spence*, 20 Wend., 260, it was held that a decree of foreclosure of the equity of redemption, and a sale in pursuance thereof on a bill filed *against the mortgagor alone* do not affect the rights of purchasers deriving title to the premises, from and under the mortgagor, and who are not made parties to the bill.

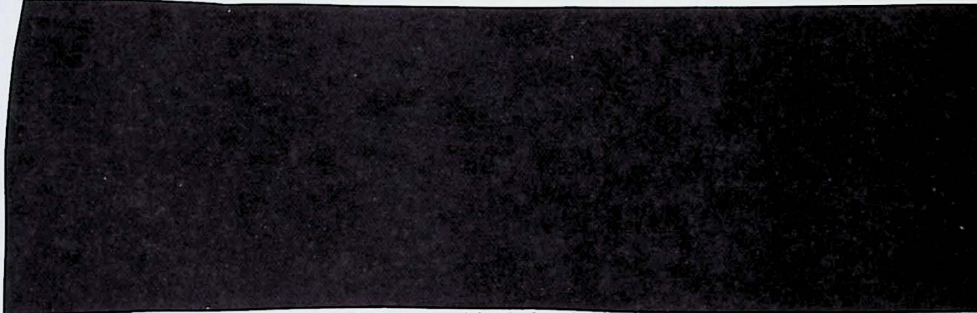
In *Bradley vs. Snyder*, 14 Ill. 263, it was held that the holder by conveyance of an equity of redemption is not barred from redeeming the premises when sold under a decree of foreclosure, if such holder was not made a party to the proceedings taken to foreclose.

In *Fuller vs. Van Geesen*, 4 Hill, 171, it was held that a decree of foreclosure is inoperative by way of estoppel upon one not made a party to the suit, and who entered into possession of the mortgaged premises before the suit was commenced, nor can he be turned out of possession by an execution on the decree. See also, *Reed vs. Marble*, 10 Paige 409.

At the commencement of said foreclosure suit, the entire ownership of the equity of redemption was in defendant. The bill to foreclose was brought against persons who at the time had no interest whatever in the land. The court thereby obtained no jurisdiction over the land, and its decree so far as the land is concerned is a *mere nullity*.

In the case of *Watson vs. Spence* above cited, which was a bill of foreclosure filed against the mortgagor alone he having previously conveyed the equity of redemption, the court say: "He (the complainant) obtained a decree which was a nullity, because against a mere stranger. This void decree directs an account and foreclosure, a sale and deed by a master, the latter equally void, of course, with the decree from which it emanated. It passed nothing. In short the objection is that

"the whole proceedings in the Court of Chancery and in the master's office passed
"without the Court acquiring jurisdiction. It is a conceded fact that not a soul
"having a particle of interest in the equity of redemption was ever served with
"process."



The mortgage to Milliken covers 320 acres of land, beside the land in question. This 320 acre tract does not appear, from the evidence, ever to have been conveyed by the heirs of Ralph K. Ohling, deceased. It will therefore be presumed that the equity of redemption in said tract remained in said heirs at the time of the foreclosure. The master's report shows that all the land included in the mortgage was offered for sale and sold together in one parcel, for the full amount of the mortgage, and costs. By that sale the mortgage was extinguished. That sale conveyed a good title to the 320 acres, but was void as to the 160 acres in question. The purchaser being the complainant in the foreclosure suit, was charged with notice of all proceedings in that suit and must have bid in view of the interests capable of being passed by the sale. He must have bid with the understanding that he was to take a good title to the 320 acres, but that no interest in the 160 acres could pass to him by the sale. By bidding then the full amount of his mortgage, the mortgage became satisfied out of the 320 acre tract, leaving the land in question unencumbered.

There is no attempt in this case to prove title by the first of these methods. The proofs are altogether silent as to the title of Ralph K. Ohling to the land in question, except that he assumes to execute a mortgage on it. He is not even shown to have been in possession of it, or to have any right to it whatever. Has the defendant then succeeded in showing a derivation of title to both Mitchell and himself from Ralph K. Ohling? The evidence of Mitchell's title is the mortgage and the foreclosure proceedings. The proof, however, fails to show any privity of title between Ralph K. Ohling and defendant as to the land in question. There is evidence of a deed of this land from plaintiffs to defendant; also evidence that plaintiffs are heirs of Ralph K. Ohling. The proof also shows the will of Ralph K. Ohling, by which he gives "all his goods, property, and effects," to his wife, Berentje Ohling, one of the plaintiffs, for and during her life. After her death his real estate, described as farms on which one or another of his children resided, &c., to be divided among said children. There is no description in the will *identifying* any land thereby disposed of with the land in question; and as there is no proof that the testator owned this land, it cannot be deemed to have passed to plaintiffs under the general description "all my property." There is no proof outside the will aiding the identification. The title of defendant fails to be carried back to the common source, and the Court is left quite in the dark as to the relative strength of the titles of defendant and Mitchell.

VII.

The Court erred in rendering its decree in favor of defendant for that portion of the purchase money for which defendant's notes were still unpaid.

True, the evidence shows that the notes had been passed to witness, Meacham, who was plaintiff's Solicitor in the Court below. Meacham, however, swears that "*he is willing to give up the notes so far as this suit is concerned.*" This amounts to an offer on the part of the witness made in open Court on the trial, to surrender the notes if such surrender could be of any avail, or subserve any purpose in the suit. For all purposes, whether to be used as evidence or given up for cancellation, these notes were thus placed at the disposal of the parties. It was the duty of defendant to receive the notes instead of seeking a recovery of their amount from plaintiffs.

VIII.

Before defendant can properly ask the interposition of a court of equity he should show that he himself has *done equity*.

At the expiration of the equity of redemption the whole amount of the incumbrance was \$3 613 20, one third of which, or \$1,204 40 would fall to the share of defendant's land. At the same time he was owing on his notes a trifle less than \$1400. Mitchell, after obtaining the certificate of purchase, offered defendant to deed him his share upon payment of his proportion of the redemption money. Also, Putnam, the partner of Mitchell, and interested with Mitchell in the land offered to let defendant have a deed for his land if he would pay the amount that was then due on his notes. Afterwards Putnam directed witness, Meacham, the holder

of the notes, to communicate to defendant the same offer. This was done, but the offer was declined by defendant. He neglected to make the payment, and so lost his land. Had he done what he was legally and equitably bound to do, his land would have been saved to him. Ought he now to complain when, had he performed his part of the very contract out of which this suit has grown, the title to his land would have been made precisely what the plaintiff covenanted it should be. The defendant instead of bringing his action at law has sought his relief in a court of equity. He should be compelled to show himself, without default, before calling upon the plaintiffs to respond to him in damages.

IX.

The Court below decided correctly in refusing to remunerate defendant for his improvements, or the enhanced value of the land. This rule seems too well settled to admit of discussion.

Staats vs. Ten Eyck, 3 Cames, 111; Pitcher vs. Livingston, 4 John, 1; Bennett vs. Jenkins, 13 John, 50; 4 Kent. Com., marginal paging, 475 and 476 and notes. Major vs. Dunnevens, 25 Ill., 262; Sedgwick on Meas. of Dam, 159 and following pages, where the principle is fully discussed. Fraud, although alleged in the bill, does not appear in proof, and cannot be taken into consideration in determining the question of damages.

Upon the record before the Court the decree of the Court below should be reversed and a decree entered here dismissing the bill.

J. M. BAILEY,

Att'y. for Plff's. in Error.

148-61
Ohlwig & Co.

⁵
Sutgers
R/Pr. Brief

Filed Oct. 28, 1863.
Leland
Ch.

See 14 or 18 U.S. as
to question of interest
& mere profits - on
eviction - 40.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION, . APRIL TERM, A. D. 1863.

BERENTJE OHLING, *et. al.*,
vs.
LUITJEN LUITJENS. }

Points and Authorities for Defendant.

The first and third positions of the plaintiff in error, we think, after careful reflection, are well taken. The consideration money mentioned in the deed and interest, not the aggregate of the down payments, and with the face of the notes added thereto and interest on the same so made should be the measure of recovery.

We think also that the owner of the equity was entitled to the possession until the execution of the master's deed, and that he should not have rents and profits and interest, too, before that time.

We concede, therefore, that the recovery should be for no more than \$2,250, and interest from March 10th, 1859 to the date of the decree rendered here if this court renders a decree for that amount.

The second point is not well taken. The fact that \$1,000 paid down and the notes for \$400, \$600 and \$550 made an aggregate amount of \$2,550, instead of \$2,250 as stated in the deed, does not disprove the allegation that \$2,250 was the consideration, of which \$1,000 was paid down, and notes for the balance of \$1,250 were given. The notes are payable at a future time without interest, and the interest between date and maturity is undoubtedly included in the face of the notes. The difference is \$300, and this will be readily accounted for in this way. There is, therefore, no variance between the allegations and proof.

We will consider the fifth and sixth points together. Undoubtedly as far as the covenants against incumbrances is concerned, though the existence of the prior mortgage is a breach, the damages are nominal till the complainant has paid it off and been evicted under it, and unless there is an eviction, we cannot recover under this covenant more than nominal damages, not having paid off the mortgage. The deed, however, contains a covenant of warranty, and if there is an eviction under a breach of this covenant, the damages are not nominal. We claim that the measure of damages under such a breach is the consideration money and interest from March 10th, 1859.

By the recovery, the right of redemption is gone as to the complainant. Having recovered, under this breach, his consideration money of his grantors, of course his right to redeem would be lost. A grantee in a deed containing covenants of warranty by a recovery of his consideration money back from his grantor, would be estopped from claiming any title to the equity of redemption through the deed. In an analogous case, in the 8th of Pickering, 557, it is held that the amount necessary to redeem is the measure of damages, and not the value of the land. In Mass., the value of the land, not the consideration money, is the general rule in cases of breaches of covenants, of seizin and warranty, but the idea that a recovery should destroy or waive the right to redeem, is not considered, and yet we think the complainant ought to have the right to adopt the foreclosure as against his grantors. See 3d Metcalf, 81, and it would seem that he ought have the right, after the mortgage on the land had been foreclosed, in a suit against the heirs of the mortgagors, and they had failed to redeem from the sale under the decree as they ought, in justice to the grantee of the equity to have done, to waive his right to redeem and sue for his purchase money. He ought not to be required to pay off a mortgage, which it was the duty of his grantors to have done, if he prefers to acquiesce

in the decree of the foreclosure from which his grantors would not redeem, and, whether we regard the grantee in the master's deed as the owner of the legal estate or only of the mortgage, after condition broken, he could have maintained ejectment against the complainant, and, therefore, the surrender of the possession was to one who by virtue of paramount title was in a position to evict him legally, and he was therefore justified in surrendering voluntarily; having so surrendered he is evicted by title paramount, and the measure of damages should be the consideration money and interest, because the unavoidable effect of recovery here is to deprive him of the right to redeem.

He cannot, of course, have his purchase money back and also be in equity in a condition to redeem from the sale under the mortgage.

We claim therefore, that he may waive a right to redeem after his grantors have refused to do so, as it was their duty, and on eviction, recover back his purchase money and interest, as one who has lost his legal title, which he would have obtained by his deed if there had been no mortgage; and that he has lost his equity of redemption by electing to acquiesce in the foreclosure of his equity by bringing the suit on the covenant.

It is said that it is not proved that the title under the deed of the master is paramount, because it was not shown that there was title in the mortgagor—Ralph K. Ohling. There is evidence that a life estate was devised to the widow of the deceased mortgagor and if there is no devise of the land in controversy to the other grantees in the deed to the complainant, there is evidence that the grantors were the widow and only heirs of Ralph Ohling. Therefore, the grantee in the master's deed, and the complainant, do claim, from a common source, and the mortgage title is the older and paramount one from the same source. The grantors of the complainant, claim by descent, not by purchase it is true, but that we take it makes no difference. If it be as contended, that this land was not devised, they then take by descent.

Then, by the eviction by paramount title, the measure of damages was right. If the court should think the suit premature before the complainant has redeemed, and that the only breach is that of the covenant against incumbrances, and the damages nominal, we claim a reversal of the decree, rather than one here for the nominal damages, as the latter might bar a recovery hereafter when we shall have redeemed if we do. Rawle on covenants for title 84.

The point in relation to the Jurisdiction of the court of equity, is abandoned on the other side, because it was not set up in the answer that the relief, if any, was at law. The authorities are so. See the following:

We do not think the complainant was obliged to take a deed from those claiming under the master's deed, and pay up his notes.

He is not compelled to do this legally, though perhaps it would have been a good thing for him to have done so if he had had the money to pay his notes. He has this legal right to make his own bargains, however.

BRIGHT & BRAWLEY,
LELAND & BLANCHARD,
For Defendant in Error.

Perentje Oehlmeier
vs

Luftten Luifkins
Jugendungs Brief

Filed May 13, 1893
Lecane
CWR

May 13, 1863
CNR

[illegible]

For Advertising in **THE LANCET & LANCET**
TRAVEL & TRAVEL
TRAVEL & TRAVEL

14521

No. 14521

Supreme Court of Illinois

Moore

vs.

Hoisington et al

STATE OF ILLINOIS,
SUPREME COURT.

} ss. The People of the State of Illinois,

To the Sheriff of Stephenson County, GREETING:

BECAUSE, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Circuit Court of Stephenson County, before the Judge thereof, between Lutzen Lutzens

plaintiff..., and Berenty Ohling, Heike Ohling, Paul J. Ohling & Adde Berchers

defendants..., it is said that manifest error hath intervened, to the injury of the said defendant

as we are informed by their complainants... the record and proceedings of which said judgments we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said Lutzen Lutzens

that he be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April 1883 next, to hear the record and proceedings aforesaid, and the errors assigned, if he shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Lutzen Lutzens

notice, together with this writ.

Witness, The Hon. John T. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 2 day of April in the year of our Lord One Thousand Eight Hundred and Sixty-three.

L. Seland

Clerk of the Supreme Court.

J. M. B. B. B.



State of Illinois
Stephen Lutzgen vs. David Lutzgen
to the within named Lutzgen Lutzgen this 11th
day of April A.D. 1863.
April 11th 1863

W. W. Robery Sheriff State of Ill.
By W. Woods Graham Deputy

61 148

Deputy Ohling vs.

No. 1 Lutzgen Lutzgen

SOIRE FACIAS.

FILED... CH. 11. 28... A. D. 1863
L. Deland Clerk.

Sheriff's fees \$3.00
Paid by Ad. W. W. W.
atty for Deland in even

State of Illinois, Third Grand Division.

SUPREME COURT,

APRIL TERM, 1863.

JOHN M. MOORE,
vs.
JASPER A. HOISINGTON, ET AL. } *Error to Cook.*

ABSTRACT.

The plaintiff in error filed his bill in Chancery, in the Cook County Circuit Court, and set forth therein that an election was held on the 4th day of November, 1862, under and in pursuance of the laws of this State, for town officers for the town of South Chicago, Cook County; that said town is divided into nine election precincts, in each of which the polls were opened, boards of election qualified, and votes received for the different town officers; that said election was conducted according to the usual custom in said county, under the supervision of three judges or inspectors of election, and two clerks, at each poll, and each of said boards kept two ballot boxes, in one of which it was designed to put the ballots for State and county officers, and members of Congress and the Legislature, and in the other ballots for town officers: that the two clerks kept two poll lists which were duplicates of each other, on which was entered the name of each voter, without discrimination as to whether he voted one or both ballots, each voter having the right to cast both if he chose, and after the polls were closed the ballots were counted separately, and town ballots placed in a paper bag, sealed up, and delivered to the town or county clerk, and the general ballots in another paper bag, likewise sealed, and delivered to the county clerk.

3 The bill shows that votes were cast at said election for supervisors, assessor, collector, clerk, five justices of the peace, five constables, &c., and

attaches a tabular statement showing the result as exhibited by the returns for justices, except as hereafter stated, which is marked Exhibit A, whereby it appears, and the fact is, that Aaron Haven, Calvin De Wolf, Nicholas Berdell and the plaintiff in error were elected justices, and it further appears therefrom that Charles McDonell was also elected, but whether such is the fact or not he does not state, but he had been informed and believed that Charles McDonell was elected instead of Jasper Hoisington, who claims to be elected.

11 The tabular statement shows that Haven received 2,927 votes, De Wolf, 2,910; Milliken, 2,907; Moore, 2,896; Burdell, 2,887; McDonell, 2,873; Hoisington, 2,869; Caldwell, 2,851; Summerfield, 2,850; and Diehl, 2,837.

4 The bill shows that returns were delivered to Leonard Lamperts, who was then town clerk, on or before the 10th Nov., 1862, from all the precincts in said town.

5 The bill avers that it so happened, by design or mistake of the judges, that ballots were interchanged and put in the wrong box, and when the polls were closed, ballots of both kinds were found in the wrong box, and at some of the polls such ballots were counted and returned, and at others they were rejected, and of the latter class, at the poll for the 2d Precinct of the 2d Ward the judges found 32 ballots for town officers in the box intended for the ballots for general officers, which they did not count or include in their usual certificate and return (and at the same time found 35 ballots for general officers in the box intended for town ballots,) but counted the same, sealed them up in an envelope, deposited them in the county clerk's office, and made a special return, stating the facts, to the town clerk, and of these 32 ballots the plaintiff in error received 25, Hoisington 10, Haven, McDonell, Burdell, and Caldwell each 25; De Wolf, Milliken, Summerfield, and Diehl each seven votes, for justice of the peace; and at the poll for the 1st Precinct of the 4th Ward, 25 ballots were cast for Haven, Burdell, Caldwell, McDonell and the plaintiff in error, and seven for their competitors, which were rejected, not counted or returned: and counting these votes in addition to those shown by the tabular statement, the majorities of Haven, Burdell and the plaintiff in error will be increased, and the said McDonell will be entitled to the office of justice instead of Milliken, who now claims to be elected from the declared result.

6 The Bill shows that the town Clerk refused, for insufficient reasons, to call two justices and canvass the returns, until he was compelled by a writ of mandamus given by the Cook Circuit Court, and after said writ was ordered, on the 2d day of December, 1862, he called to his assistance

7 two justices and canvassed the returns and declared the result, and in so doing they held that the certificate of returns from the 1st precinct of the 2d Ward showed that 369 votes were cast for A. M. Moore, for the office of Justice, and none for the plaintiff in error, John M. Moore, and rejected said votes from the count for the plaintiff in error; they declared that Haven received 2927 votes, Berdell 2887, McDonnell 2873, each and were elected, and further that the plaintiff in error received 2527 votes, Caldwell 2851, Summerfield 2850, Hoisington 2869, Diehl 2837, and A. M. Moore 369 votes for the same office.

8 The Bill shows that the plaintiff in error had no notice of the canvass or knowledge thereof until Dec. 4th, 1862, and had no information that any error existed in the return from the 1st precinct of the 2d Ward until Dec. 5th, 1862.

The Bill avers that the 369 votes were in fact cast for the plaintiff in error, that the ballots were counted for him, that the tally sheet and poll books, with the certificates thereto attached, show that said votes were cast and counted for the plaintiff in error, and that no ballots were cast for A. M. Moore, and avers that the name A. M. Moore was written by one of the Clerks of election at said poll for the name of the plaintiff in error in preparing a certificate of the result to be sent to the town Clerk, by mistake, and that said mistake was not discovered until the canvass aforesaid.

9 The Bill avers that except for said mistake the plaintiff in error would have been declared elected instead of Charles McDonell, and if the said ballots, rejected because in the wrong box, had been counted, the said Charles McDonell would have been declared elected instead of Isaac L. Milliken, but by reason of said mistakes certificates of election have been given said McDonell and Milliken, and they, with the said Jasper A. Hoisington are now claiming the right to exercise the powers and perform the duties of said offices.

10 The Bill prays that the returns of the votes cast at said election may be produced and canvassed, the ballots cast properly counted, and the result declared, and order and decree made as equity shall require, and that said defendants who may be ascertained to be exercising the duties of the office of Justice of the Peace illegally may be enjoined from performing said duties.

13 Summons was served on all the defendants 26th Feb., 1863, returnable to 3d Monday March.

15 Milliken and Hoisington appeared and filed a general demurrer.

17 The Circuit Court sustained the demurrer *pro forma*, and dismissed the Bill at the costs of the plaintiff in error, who brings the case to this Court and assigns the following errors, to-wit :

1. The Circuit Court erred in sustaining the demurrer to the Bill.

2. The Circuit Court erred in dismissing the Bill and rendering judgment against the plaintiff in error.

W. C. GOUDY,
Atty. for Plaintiff in Error.

149

John M. Moore

by
Garner A. Hoisington
Leol

Abstract

Filed April 27th 1883

L. Delaney
Clerk

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~~opinion of the Court by~~
Mr. Justice Breese, delivered the opinion of the Court.

~~Prima facie~~. The bill in this case, as appears by the record, was filed to correct an alleged mistake in the canvass of certain vote given for town officers at an election held on the fourth day of November 1862, for the town of North Chicago in the County of Cook. A general demurrer was filed to the bill which was sustained, ^{and the bill dismissed.} and the case brought here by writ of error and ^{alleging} ^{the} ^{alleged} ^{is in} error, ^{sustaining} the demurrer to the bill and dismissing the bill.

As the facts stated in the bill are admitted by the demurrer to be true, and the questions arising, being a court of Chancery, on those facts, any jurisdiction to try the cause and afford the relief sought.

The cause has been favored with no authorities on the point by either party, save a reference to ^{the} a case decided by this Court, of The People ex rel. Mitchell vs. Haugland 20 Ill. 159. That case was an application for a mandamus to compel the respondent, who was the clerk of Saline County, to issue a warrant because, application having been made to him at Hannsburgh, ^{then} claimed to be the County Seat. There was a controversy which was the County Seat, Raleigh or

Harrisburgh, and an injunction had been granted restraining the County officers from transacting official business at Harrisburgh but requiring them to hold their offices at Raleigh. Harrisburgh claimed to have received a majority of the votes for the County Seat at an election held under the act of Feb. 7 1857 entitled, "an act to relocate the County Seat of ~~York~~ Adams County". The case made by this title for an injunction, was pending ~~and~~ undetermined, when the application for the mandamus was made, and this Court said, we would not undertake under such circumstances, to say that the County Clerk was subject to a mandamus, but would leave the rights of the contending towns to be determined in the Chancery suit, the bill therein, being so framed, & to reach the merits of the controversy.

We find in some States, by express enactment Courts of Chancery can ^{enquire} ~~ascertain~~ into the validity of elections by bill, but we have found no case, in which it has taken jurisdiction of such a case under its general powers. Nor do we perceive a remedy for it, the general election law of the State, being sufficient to meet

most cases, if not this very case. Section
from 42 inclusive to section 50 inclu-
sive, of the general election law
never seem to provide for all cases
of contested election, which would demand,
by the literal application, of sufficient
importance to be provided for. (Stats. Corp.
472.

If this case is not exactly met by
that law, we are disposed, rather than
to exercise a doubtful power, to consider
this particular case ^{as} ~~an~~ ^{one} ~~of~~ ^{of} the
operation of the general law,
but not on that account, conferring
jurisdiction upon this Court.

Finding no case, in which a court
of chancery has exercised jurisdiction on
the facts stated, ~~and holding that election~~
~~law does not~~ ~~have been~~ ~~applied to the~~
~~case~~ ~~and the rights of the plaintiff~~
~~are not at stake and said law under~~
~~etc.~~ we must affirm the ~~proper~~ decree.

Decree affirmed.

Mr. Chief-Justice Cator, and Mr. Justice
Walker concurring.

149 - 62

John Moore
vs

Lepa & Houghton
et al.

Opinion by
Morse Jr.

C. 15.

Recorded Book 13
pp 52, - 53,

Comp?

SUPREME COURT.

JASPER A. HOISINGTON,

ads.

et al.

Points of Def'ts in Error

JOHN M. MOORE.

1st.

The defendants in error assume as an undisputed rule of equity—that if parties have an adequate remedy at law, they cannot en-
voke the aid of a court of equity.

If either of the defendants are improperly discharging the duties
of, or have usurped the office of Justice of the peace, the law gives
as remedy to try such questions the writ of QUO WARRANTO.

2 Purple's statutes 849.

2 Scam 79.

2d.

The statutes have provided, the way by which to try who was
lawfully elected to said office.

Scates statute 472, sec. 42.

says; "when any candidate shall desire to contest the validity of
any election", shall &c.

This language is broad and covers the office in question.

The complainant should have proceeded as required by this
act.

The equity rule being

"A party cannot come in a court of equity and ask the aid
thereof, when no special fraud is shown, and which by the exercise
of diligence on his part, he could have protected himself against in
the proper place."

5 Paige 249.

1 J. C. R. 466, 49, 320.

1 J. Cases 436.

6 J. C. R. 479.

3 Comstock 446.

3 Vol. Graham & Waterman on N. T. 1487, 1488, 1493, 1469,
1489, 1498.

7 Cranch 510.

2 P. Wms. 424.

8 Gill & John 170.

1 Breese 147.

4 Geo. R. 175.

7 Paige 157.

It must be fraud or accident beyond his control that prevents him from having his trial, and great diligence is required on his part.

The defendants were elected as justices of the peace by virtue of the following provision in the constitution of this state.

Art. 5, Section 27.

1 Purple S. 59.

"There shall be elected in each county in this state, in such districts as the general assembly may direct, by the qualified electors thereof a competent number of justices of the peace, who shall hold their offices for the term of four years, and until" &c.

Now if the above statute is not broad enough to cover contests of election in regard to justices of the peace, we then hold as law, so far as the question of such contests of election is concerned, that justices of the peace are elected as county officers by virtue of the above Section 27.

3d.

A court of chancery cannot give the relief asked, in fact cannot give any relief in the premises.

To oust defendants quo warranto is the remedy.

To count the votes the statutes says who must do such canvassing—a court of chancery cannot.

The complainant cannot act as justice of the peace nor have right to fees, until he has received a commission from the Governor, and a court of law or chancery has no power to compel him to issue such commission.

People vs. Bissell 19 Ill. 229.

4th.

The case cited by plaintiff in error, People vs. Warfield 20 Ill. 159, has no application to this case—that was a contest for locating a county seat. And as the court say in the case, the act provided no mode for determination of the question if a contest arose—and the aid of the court was invoked to determine a fact how a majority voted.

A. GARRISON,

For Defendants in Error.

149
Supreme Court
Jaspar A Hoisington
advs et al
John M Moore

Part of Dept in Error

Filed June 9, 1863
L Leland
clerk

A. Garrison

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1868.

JOHN M. MOORE

vs.

JASPER A. HOISINGTON *et al.*

} *Error to Cook.*

POINTS AND BRIEF FOR PLAINTIFF'S.

I.

The office of Justice of the Peace for the town of South Chicago is a town office, created by the township organization law. The justices are chosen by the voters of the town and perform their duties within the town limits, and have no power beyond, except to send process to other parts of the country.

Scates Statutes, 326, § 2.

No method is prescribed by statute for contesting the right to hold a town office.

The general election law of 1845, passed before the existence of the township organization, provides: "When any candidate shall desire to contest the validity of any election, or the right of any person declared duly elected, to hold the office to which such candidate claims the right, such candidate shall give notice," &c.

Scates Statutes, 472, § 42.

The Act then provides for the selection of three justices of the peace, and prescribes their duties in regard to such contest. If the contest relates to a *county* office, they hear, decide and enter judgment; if to a seat in the Legislature, they certify the testimony to the speaker of the proper house.

It is clear that the general language of the 42d section is not to be taken in the broad sense which its words import, because the same act prescribes the mode of electing the State officers, members of Congress, presidential electors, as well as county officers and members of the General Assembly, while the justices are limited in their proceedings to *county* officers and members of the Legislature.

If it did not include all the officers then known to the law, *a fortiori*, it does not include those authorized by laws passed thereafter.

The office of justice is a *town office*, not a *county* office, and therefore there is no provision of the statute by which the plaintiff in error could contest the right to hold the office.

But even if the statute does authorize a contest for the office of justice elected in a town, the plaintiff could not avail himself of it in this case, because the thirty days allowed to give notice expired before the plaintiff had any knowledge of the result, and without any fault or neglect on his part.

II.

In proceedings by *quo-warranto*, the only issue is as to the right of the defendant to the office, and the only judgment that can be rendered in favor of The People is one of *ouster* and for costs. The relator cannot be admitted to the office by the Court, unless authorized by statute.

III.

The application for a *mandamus* will not avail the plaintiff in error. The board of election performed their duties and adjourned; the board of canvassers, consisting of the town clerk and two justices, met, performed their duties, and adjourned; and the clerk issued certificates of election, before the mistake was discovered by the plaintiff. It was then too late to resort to a *mandamus* against the inspectors. The board of canvassers was guilty of no wrong; they decided correctly on the returns as made to the town clerk; therefore *mandamus* would not lie against them. The town clerk issued his certificates of election properly on the declared result; therefore *mandamus* would not lie against him. The County Clerk certified to the Secretary of State the persons elected, who were certified to him as such by the town clerk; therefore *mandamus* would not lie against him. The Governor issued his commission according to the certified result in the Secretary's office; therefore *mandamus* would not lie against him.

The plaintiff in error is without certificate or commission, and cannot get them by any proceeding at law.

IV.

One of the grounds of chancery jurisdiction, even where there may be remedy at law, is to prevent a multiplicity of actions.

In this case *five* justices were to be elected and *ten* persons were candidates; every man was the competitor of five other men. Only two of the successful candidates hold without question. It is doubtful which three men are to hold the other three places. If the plaintiff should *oust* McDonnell by *quo warranto*, it does not follow that he is to be admitted; *non constat* that consistent decisions would be made in the different cases. The plaintiff cannot tell who is occupying the place he is entitled to; he therefore files his bill, bringing all these parties before the Court to determine the rights of all in one proceeding.

V.

The difficulty under which the plaintiff labors originated entirely in the *mistake* of the clerk of the election, in writing the name of the plaintiff *A. M. Moore* instead of *John M. Moore* or *J. M. Moore*. Mistake is always a ground of chancery jurisdiction.

VI.

A Court of Chancery has jurisdiction of the bill upon the facts set out; because the plaintiff has no effectual remedy afforded by statutory provisions or common law to avoid a multiplicity of actions, to correct a mistake and to determine the rights of all the parties interested, and protect the plaintiff from the effects of a legal if not an actual fraud.

That a Court of Chancery has jurisdiction to determine the result of an election, has been decided by this Court.

People ex rel. Mitchell vs. Warfield, 20 Ill. 159.

W. C. GOUDY,
Attorney for Plaintiff in Error.

149.

John M. Moore

vs

Gasper A. Howington

200

Plaintiffs Points

Filed April 29, 1863
S. Leland ckr

State of Illinois, Third Grand Division.

SUPREME COURT,

APRIL TERM, 1863.

JOHN M. MOORE,
vs.
JASPER A. HOISINGTON, ET AL. } *Error to Cook.*

ABSTRACT.

The plaintiff in error filed his bill in Chancery, in the Cook County Circuit Court, and set forth therein that an election was held on the 4th day of November, 1862, under and in pursuance of the laws of this State, for town officers for the town of South Chicago, Cook County; that said town is divided into nine election precincts, in each of which the polls were opened, boards of election qualified, and votes received for the different town officers; that said election was conducted according to the usual custom in said county, under the supervision of three judges or inspectors of election, and two clerks, at each poll, and each of said boards kept two ballot boxes, in one of which it was designed to put the ballots for State and county officers, and members of Congress and the Legislature, and in the other ballots for town officers: that the two clerks kept two poll lists which were duplicates of each other, on which was entered the name of each voter, without discrimination as to whether he voted one or both ballots, each voter having the right to cast both if he chose, and after the polls were closed the ballots were counted separately, and town ballots placed in a paper bag, sealed up, and delivered to the town or county clerk, and the general ballots in another paper bag, likewise sealed, and delivered to the county clerk.

attaches a tabular statement showing the result as exhibited by the returns for justices, except as hereafter stated, which is marked Exhibit A, whereby it appears, and the fact is, that Aaron Haven, Calvin De Wolf, Nicholas Berdell and the plaintiff in error were elected justices, and it further appears therefrom that Charles McDonell was also elected, but whether such is the fact or not he does not state, but he had been informed and believed that Charles McDonell was elected instead of Jasper Hoisington, who claims to be elected.

11 The tabular statement shows that Haven received 2,927 votes, De Wolf, 2,910; Milliken, 2,907; Moore, 2,896; Burdell, 2,887; McDonell, 2,873; Hoisington, 2,869; Caldwell, 2,851; Summerfield, 2,850; and Diehl, 2,837.

4 The bill shows that returns were delivered to Leonard Lamperts, who was then town clerk, on or before the 10th Nov., 1862, from all the precincts in said town.

5 The bill avers that it so happened, by design or mistake of the judges, that ballots were interchanged and put in the wrong box, and when the polls were closed, ballots of both kinds were found in the wrong box, and at some of the polls such ballots were counted and returned, and at others they were rejected, and of the latter class, at the poll for the 2d Precinct of the 2d Ward the judges found 32 ballots for town officers in the box intended for the ballots for general officers, which they did not count or include in their usual certificate and return (and at the same time found 35 ballots for general officers in the box intended for town ballots,) but counted the same, sealed them up in an envelope, deposited them in the county clerk's office, and made a special return, stating the facts, to the town clerk, and of these 32 ballots the plaintiff in error received 25, Hoisington 10, Haven, McDonell, Burdell, and Caldwell each 25; De Wolf, Milliken, Summerfield, and Diehl each seven votes, for justice of the peace; and at the poll for the 1st Precinct of the 4th Ward, 25 ballots were cast for Haven, Burdell, Caldwell, McDonell and the plaintiff in error, and seven for their competitors, which were rejected, not counted or returned: and counting these votes in addition to those shown by the tabular statement, the majorities of Haven, Burdell and the plaintiff in error will be increased, and the said McDonell will be entitled to the office of justice instead of Milliken, who now claims to be elected from the declared result.

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The Bill shows that the town Clerk refused, for insufficient reasons, to call two justices and canvass the returns, until he was compelled by a writ of mandamus given by the Cook Circuit Court, and after said writ was ordered, on the 2d day of December, 1862, he called to his assistance

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The Bill avers that the 369 votes were in fact cast for the plaintiff in error, that the ballots were counted for him, that the tally sheet and poll books, with the certificates thereto attached, show that said votes were cast and counted for the plaintiff in error, and that no ballots were cast for A. M. Moore, and avers that the name A. M. Moore was written by one of the Clerks of election at said poll for the name of the plaintiff in error in preparing a certificate of the result to be sent to the town Clerk, by mistake, and that said mistake was not discovered until the canvass aforesaid.

9 The Bill avers that except for said mistake the plaintiff in error would have been declared elected instead of Charles McDonell, and if the said ballots, rejected because in the wrong box, had been counted, the said Charles McDonell would have been declared elected instead of Isaac L. Milliken, but by reason of said mistakes certificates of election have been given said McDonell and Milliken, and they, with the said Jasper A. Hoisington are now claiming the right to exercise the powers and perform the duties of said offices.

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13 Summons was served on all the defendants 26th Feb., 1863, returnable to 3d Monday March.

15 Milliken and Hoisington appeared and filed a general demurrer.

17 The Circuit Court sustained the demurrer *pro forma*, and dismissed the Bill at the costs of the plaintiff in error, who brings the case to this Court and assigns the following errors, to-wit :

1. The Circuit Court erred in sustaining the demurrer to the Bill.
2. The Circuit Court erred in dismissing the Bill and rendering judgment against the plaintiff in error.

W. C. GOUDY,
Atty. for Plaintiff in Error.

149-67
John M. Moore
vs
Jasper A. Hoisington
2d
Abstract.

Filed Apr 27 1863
J. Secum
Clerk

State of Illinois 3^d Grand Division
Supreme Court April Term 1863.

John N. Moore
vs

Jasper A. Hoisington

vs
Isaac L. Milliken

vs
Charles M. Donald

} Error to Cook
} Circuit Court.
}
}

The Clerk will give Sci.
fa. to Cook.

April 9. 1863

M. C. Condy
cty for H. in Error.

149
John Ch. Moore
J. A. Harrington sat.
Prince

Filed April 9, 1863.
L. Island
Ch.

STATE OF ILLINOIS,
SUPREME COURT. } ss. The People of the State of Illinois,

To the Sheriff of Cook County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of Cook County, before the Judge thereof, between John M. Moore, complainant

~~plaintiff~~, and Charles Mc. Donnell, Jasper A. Hoisington, and Isaac G. Milliken

defendants, it is said that manifest error hath intervened, to the injury of the said John M. Moore

as we are informed by his complaint ~~by writ of error~~ the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We command You, That by good and lawful men of your County, you give notice to the said Charles Mc. Donnell, Jasper A. Hoisington, and Isaac G. Milliken

that They be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April ~~instant~~ ~~next~~, to hear the record and proceedings aforesaid, and the errors assigned, if They shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Charles Mc. Donnell, Jasper A. Hoisington, and Isaac G. Milliken

notice, together with this writ.

Witness, The Hon. John W. Eaton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 10th day of April in the year of our Lord One Thousand Eight Hundred and Sixty-Three

L. Leland

Clerk of the Supreme Court.
J. M. Rice Deputy

149

John W. McCre

No. vs.

Charles McCre

SCIRE FACIAS.

FILED April 21st A. D. 1863

J. H. Clark Clerk.

Served this writ on the within named Jasper A. Hoisington and Isaac S. Milliken by reading the same to them this Eleventh day of April A. D. 1863. Charles McDonald not served by order of Plaintiffs Attorney.

David S. Hammond Sheriff Cook Co
By A. Nelson deputy

Fees 1.30
Pd by Pliffs Atty

W. L. Gough
Atty for Pliffs

STATE OF ILLINOIS,
SUPREME COURT.

} ss. The People of the State of Illinois,

To the Sheriff of

Cook County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the *Circuit* Court of *Cook* County, before the Judge thereof, between *John M. Moore* Complainant

plaintiff, and *Jasper A. Hoisington, Charles McDonald and Isaac L. Milliken*

defendant.s., it is said that manifest error hath intervened, to the injury of the said *John M. Moore*

as we are informed by *his* complaintant by writ of error the record and proceedings of which said judgments we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said *Jasper A. Hoisington, Charles McDonald and Isaac L. Milliken*

that *they* be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if *they* shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *Jasper A. Hoisington, Charles McDonald & Isaac L. Milliken*

notice, together with this writ.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *9th* day of *April* in the year of our Lord One Thousand Eight Hundred and Sixty-*Three*

L. Leland

Clerk of the Supreme Court.
J. D. Rice

149

John M. Moore

No. vs.

Jasper A. Moisington

SCIRE FACIAS.

FILED... April 21... A. D. 1863

Edmund Clerk.

M. E. Condy
attorney at law.

Served this writ by reading to the within Jasper A. Moisington this 10th day of April A.D. 1863.

D. S. Hammond Sheriff Cook Co

By A. Nelson Deputy

Fees 70

Per by Plaintiff's Atty.

Isaac L. Milliken and Charles McDonald not served by order of Plaintiffs Attorney

~~Opinion of the Court, delivered by~~
delivered the opinion of the Court:

Mr. Justice Reese, ~~delivered~~ This was an action of replevin for a Canal boat, to which the defendant pleaded 1. non detinet, 2. That the boat was the property of the defendant and the following plea:

—And for a further plea in this behalf, defendant says *actio non*, &c., because he says that heretofore, to wit, at the September Term of the LaSalle County Court, A. D. 1858, to wit, on the 9th day of September A. D. 1858, one Alfred Deane, and one Marvin Blanchard, recovered a judgment against the said plaintiff, for the sum of two hundred and six dollars and thirty-eight cents, besides costs, which judgment remained in full force on the 13th day of October, A. D. 1858, on which day an execution was issued out of the office of the Clerk of said Court, under the seal of said Court, which execution was in due form of law, and issued upon the judgment aforesaid, which execution was then and there delivered to Eri L. Waterman, who was then and there Sheriff of LaSalle County, duly qualified and commissioned; and said Waterman afterward, to wit: on the 18th day of December, A. D. 1858; he being then and there acting sheriff of said County, levied upon said canal boat, which was then and there the property of said plaintiff, by virtue of said execution which was then and there in his hands wholly unsatisfied; and said Waterman, by virtue of said execution, afterwards, to wit: on the 19th day of January, sold said property at public auction to the defendant, he being the highest and best bidder therefor, and then and there delivered said boat to said defendant, and that said Waterman duly advertised said property for sale according to law, at the time aforesaid; all of which he is ready to verify, wherefore he prays judgment.

There were four applications to this plea, the first, that Waterman was not acting as Sheriff; Second, that he did not make sale of the boat by virtue of the execution but of his own wrong; Third, that Waterman did not, by virtue of said execution levy upon said boat, but of his own wrong; and fourth, that on the eighteenth day of December Francis Warner was Sheriff of LaSalle County, and alone authorized to make a levy.

That Sheriff Waterman himself and his deputies Groom and Chapman through and by whom the sale and delivery of the boat

were
 made been examined as witnesses on the trial
 of these issues, and had we been sitting as the jury,
 we should have found that the date of the levy of this
 commission had been altered from the Dec. 1
 to Dec. 18 by adding the figure 8, and by
 the addition of the word "late" to the
 return of Watson. The proof certainly
 preponderates greatly in favor of such
 a finding. Before that time, ~~was~~
 all the issues upon this plea were found for
 the plaintiffs.

The following instructions were asked by
 the plaintiffs:

If the jury believe, from the evidence, that the canal boat in contro-
 versy, down to the time of the sale thereof on the execution in evidence,
 was the property of the Union Line Transportation Company, and defend-
 ant, O'Connor, has shown no title to said boat, or right to the possession
 thereof except by virtue of the sale on the execution in evidence, then
 said O'Connor must recover, if at all, upon evidence to the satisfaction of
 the jury, of the truth of his averment in his 3d plea; and said O'Connor
 having averred in his said plea that the levy endorsed upon said execution
 was made on the 18th of December, 1858, he is estopped from now deny-
 ing that said levy was made on the said 18th day of December, 1858.

To this instruction, the defendant desired the
 following qualification: "Under the plea
 of property, the defendant is at liberty
 to move any Cape Rule to him of
 the Canal boat before the beginning of
 this suit without reference to the date
 mentioned in the 3d plea". This qualification
 was refused and an exception taken.
 The defendant then asked this instruction

Under the plea of property in the defendant, it is not necessary to prove that the boat was levied on or sold on any particular day; it is sufficient to sustain this plea if it appears that, before this suit was commenced, the boat was sold to defendant under a valid judgment against the plaintiff, by virtue of a valid execution, by a proper officer.

This motion was also ^{and exception taken} refused, and these are the principal errors assigned on the record.

We are satisfied the qualification to plaintiff's plea instruction should have been given, for although he had pleaded and specially in the 3^d plea, the caution and the proceedings under it, it was his privilege to show under the second plea, any legal title to the property he claimed now denied. The whole field was open to him under the plea of property in himself, and therefore the Court should have qualified the instruction as the defendant desired. By refusing to do so, the jury was precluded from entering into the ~~defendant's~~ title, which he had a right to assert upon.

~~Explains and settles the facts of the case.~~ If this fact had been legally proved on and sold by a valid execution issued and valid process, ~~before~~ before the commencement of this suit, and the defendant ^{had} become the purchaser, it was all sufficient to sustain

the plea of proximity in himself. The Court
therefore, ended in reversing the instruction.

~~The judge is wrong and the~~
~~cause remanded.~~ A valid judgment
and a decision, and a valid sale
were all that was necessary to make
a title for the respondent. ~~But there~~
~~over the whole was made on the date~~
~~of the registration.~~

The judgment is wrong and
the cause remanded.

~~Chief Justice~~
In this opinion the whole Court concurred.

Judgment reversed.

143-35

O'Connor

as

The Union Trust
Publication Co.

Opinion by

Meese J.

Recorded 12 B. 176

Complete