

No. 12961

Supreme Court of Illinois

Cushman

vs.

Morrison

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 21.

Cushman
vs
Morrison

1860

12961

Supreme Court - 3^d division
June Term A.D. 1858.

William H. W. Cushman
Louise Leland, John V. A. Hoos
& George H. Norris }
vs. } Error to
Theodore N. Morrison } La Salle

The following is the
substance of the allegations of
the Bill -

On the 19th day of June 1851 each
of the defendants below gave to Peter
O'Higinin his promissory note for
\$525. On the same day, Norris
gave to said O'Higinin
a mortgage on a certain tract of
land to secure the payment of
said notes.

On the 27th day of April 1854, Norris
conveyed to complainant Morrison
by quit-claim deed the same land
so mortgaged to O'Higinin.

On the 3^d day of June 1854
said depts. gave to said complainant
their covenants (see pages 34 & 49 record)
1st - to save said complt. harmless

From all costs, charges & expenses on account of the said mortgage.

I^o to have said mortgage cancelled on the records within one year from said date.

Upon the above state of facts Complainant filed his Bill alleging that said defendants had failed to keep said covenants & asking that they be decreed to cancel said mortgage.

The Bill was taken for confessed for want of an answer & the Court decreed (pg. 20) that defts. perform said agreement, & that they cancel, or cause said mortgage to be cancelled, on the records of said La Salle County -

The objection to the decree is, that the relief of the Complainant should be by an action at law.

The defendants cannot specifically perform an act that is to be done by Hargnum & Can

only be done by him. The only remedy
is, by action at law for a breach
of the contract ~~to pay up the~~
~~mortgage to Benjamin & have it~~
~~canceled by him.~~

Sel and Sel and
for ppts in error

21. ~~38~~
Cushman et als,
vs.
Morrison

Measours for a
Super sedas -

Filed June 3. 1858
L. Delany
clerk

State of Illinois } Thus before the Honorable Madison
LaSalle County } E. Hollister Judge of the Circuit
Judicial District of the State of Illinois
and the Presiding Judge of the LaSalle County Circuit
Court at a term of said Court commenced and held
at the Court House in Ottawa in said County on
the second Monday in the month of June the same
being the eighth day of June in the year of our Lord
one thousand eight hundred and fifty seven and of
the Independence of the United States of America
the eighty first.

Present

The Honorable Madison E. Hollister Presiding Judge
John T. Smith Clerk
Washington Becknell State Attorney
Eli L. Waterman Sheriff

It is remembered that on the 29th day of May
A.D. 1857 a Bill in chancery was filed in the office
of the Clerk of the Circuit Court of said County in the
words and figures following to wit:

"State of Illinois } The Circuit Court of said County
LaSalle County } In the year term thereof A.D. 1857

Thereto N. Monism as William H. W. Leachman
George Schaud, John V. A. News George H. Norris =
Bills for Specific performance - To the Honorable
Madison E. Hollister Judge of the LaSalle County Court
in chancery sitting - Recently complaining
Sheneth onto our Honor jurator Theodore N.
Monism that in the month of April in the year
of our Lord one thousand eight hundred and fifty seven
jurator being a member of the Ottawa Regiments
Company and being the owner of one third of the
water power owned by said Company sold and

Conveyed all of his four eighths interest in and to the said water power to the said William H. W. Leachman, Lemuel S. Seward, John B. A. Hays and George H. Norris and that for and in consideration of said sale and conveyance to the said William H. W. Leachman, John B. A. Hays, Lemuel S. Seward and George H. Norris by joint estate of all his interest in and to the said water power, they the said William H. W. Leachman, John B. A. Hays, Lemuel S. Seward and George H. Norris sold and conveyed or caused to be conveyed to joint estate the undivided one half of the following tracts or parcels of land situated in the County of Sable and State of Illinois described as follows to wit: the East portion of the South West quarter of section No one (1) in Township No thirty three (33) North range No three (3) East of the third principal meridian. Also the South portion which lies South of Fox River of the South East quarter of the same section being in all one hundred and thirty one acres more or less.

Joint Estate further shews unto joint heirs that the said William H. W. Leachman, Lemuel S. Seward, John B. A. Hays and George H. Norris were the owners of the said undivided half of the above described tracts or parcels of land but that the legal title of the same was then in the name of George H. Norris and that the said George H. Norris for and in behalf of himself and the said William H. W. Leachman, John B. A. Hays and Lemuel S. Seward executed and delivered to joint Estate a deed bearing date April 27, A.D. 1834 for the above described tracts and parcels of land a copy of which deed marked "A" is attached to and made part of this bill.

Joint Estate further shews that the said undivided one half of the above described tracts or parcels of land at the time of said conveyance of it to joint Estate was subject to a certain mortgage

dated the nineteenth day of June A.D. 1851
 given by George H. Morris and wife to Peter L. Hergunin
 to secure the payment of four promissory notes bearing
 date the nineteenth day of June A.D. 1851 one of five
 hundred and twenty five dollars given by W. H. W.
 Beechman to the said Hergunin, one of five hundred
 and twenty five dollars given by John T. A. Moss to the
 said Hergunin, one of five hundred and twenty
 five dollars given by Sonnyr Island to the said
 Hergunin, and one for five hundred and twenty
 five dollars given by George H. Morris to the said
 Hergunin, each payable one third part in one year,
 one third part in two years and one third part in
 three years with interest, a copy of which said
 mortgage is attached to and made part of this lib.

Your orator further shews unto your Honor
 that at the time of said sale of said land to your
 orator and before the delivery of the said deed from the
 said George H. Morris to your orator the said George
 H. Morris was unwilling to give any other than a
 quit claim deed for said land and that your orator
 refused to purchase said land if he was to receive
 a quit claim deed only to said land while it
 remained subject to the said mortgage as aforesaid
 and your orator further shews unto your Honor that
 the said William H. W. Beechman, John T. A. Moss
 Sonnyr Island and George H. Morris in order to turn
 your orator harmless from said mortgage and
 effectually to secure to your orator the title to said
 land free from the effects of said mortgage executed
 and delivered to your orator a contract signed &
 sealed by the said Beechman, Moss, Island and
 Morris which said contract is in the words and
 figures following to wit:

For a valuable consideration
 to us paid or to be paid by and with Theodor
 A. Hergunin to turn him harmless from all costs
 charges and expenses of all kinds on the accounts

of a certain mortgage given by George H. Davis and wife to Peter D. Hengeman bearing date the 19th day of June 1831 and recorded in Book 23 of Saballe County records page 288 which mortgage mortgage was given to secure certain promising notes given by us to the said Hengeman. We further covenant, with the said Hengeman his heirs and assigns to have said mortgage cancelled on the records within one year from this date. The covenants shall extend to and bind the legal representatives of the undersigned.

Witness our hands and seals this 3^d day of June
 AD 1834
 G. H. D. W. H. W. Leachman Secy
 M. H. S. Lorenzo Leland Secy
 John W. A. News Secy
 George H. Davis Secy

And your orator would further represent unto your Honor that the mortgage referred to in said agreement a copy of ~~which~~ ^{said} mortgage marked "B" being herewith attached and made a part of this your orator's bill has now been cancelled but still remains in full force and effect thereby greatly injuring the value of your orator's title to the said land.

Your orator further shows unto your Honor that the time within which the said respondents men of their said contract bound to cancel the said mortgage has long since elapsed and that your orator has often requested the said respondents to cancel the said mortgage in their said contract mentioned yet they have wholly neglected and refused so to do and still neglect and refuse so to do, all which neglect and refusal of the said respondents to perform the covenants of their said contract is contrary to equity and good conscience and tends to the manifest wrong of your orator in the premises.

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On consideration thereof And forasmuch as
your orator has no adequate remedy by the strict
rules of the Common Law and can only have
relief in a Court of equity where matters of this
nature are properly cognizable and redressable

It would therefore that the said William H.
W. Leechman, John P. A. Neers, Serrano Saband
and George H. Morris the said respondents may full-
bear and perfect answer make to all and
singular the premises according to the best of their
respective knowledge and belief as fully and particu-
larly as if the same were hereinafter repeated and
they thereto distinctly interposed but not under
oath (your orator hereby waiving the oath) Your
orator therefore prays that the said respondents W. H. W.
Leechman, John P. A. Neers, Serrano Saband and
George H. Morris may be compelled by the order of this
Court to specifically to perform their said
Contract with your orator for the cancelling of said
mortgage in their said Contract mentioned and that
they may be compelled as aforesaid to cancel the
said mortgage as if their said Contract with your
orator they are bound to do. And that your orator
may have such other or further relief in the
premises as the nature of this case shall require
and as shall be agreeable to equity and good
conscience.

Accepted before your Honor to grant unto
your orator a writ of summons issued out of and
under the seal of this Honorable Court against the
said respondents W. H. W. Leechman, John P. A. Neers
Serrano Saband and George H. Morris exterrable to
the next term of this Court in manner and
form required of law. Thomas S. Merriam
By Thomas Pugh his
petitioner

This Deed was made this twenty seventh day of April in the year of our Lord one thousand eight hundred and fifty four between George H. Norris and L. Maria Norris his wife of the County of Madison in the State of Illinois and Phredon A. Morrison of the County of Morgan and State of Illinois Witnesses that the said George H. and Maria L. Norris in consideration of the sum of three thousand dollars to them in hand paid by the said Phredon A. Morrison the receipt whereof is hereby acknowledged do by these presents remise release and give claim unto the said Morrison all the the tracts or parcels of land situated in the County of Madison and State of Illinois described as follows to wit: the East portion of the South West quarter of Section No. one (1) in Township No thirty three (33) North range No three (3) East of the third principal. Also the South portion which lies South of Fox River of the South East quarter of the same Section - Also the North portion which lies North of Fox River of the said South East quarter of the same section aforesaid. Being in all one hundred and thirty one acres more or less. Subject however to a certain Release made to the Ottumwa Hydraulic Company bearing date the 28th day of July 1832 and recorded in Book 34, of deeds pages 201 & 2 and subject also to the rights of the grantor herein their heirs and assigns at all times to divert the water in Fox River flowing over and by the margin of said tracts of land into the Illinois and Michigan canal to be used for such purposes as they or their heirs or assigns may see fit. And being the same lands conveyed to the said George H. Norris by Peter D. Hegmann by two deeds the one dated January 15th 1832 and the other dated June 29th 1831 both recorded in the Madison

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County records) reference to which is hereby made. And
 Of the said George H. Smith for myself my heirs
 Executors and administrators do hereby consent and
 agree to and with the said Monism his heirs and
 assigns that I have made no other or ^{former} ~~former~~ conveyance
 of said lands or any part thereof and that they are
 free from all encumbrances caused therein by any
 affirmation act of mine. Except however a mortgage
 dated June 19th 1857 given to said P. D. Hergum
 which is recorded in Book A 23 of the said records
 page 288 To Have and to hold the premises above
 set forth with all the privileges and appurtenances
 therunto belonging to him the said Theodore N.
 Monism his heirs and assigns forever.

George H. Smith *Seen*
 L. Maria Smith *Seen*

State of Illinois By Thomas R. Montgomery Notary Public
 County of Adams for the City of Ottawa in the County
 and State aforesaid do hereby certify
 that George H. Smith and L. Maria Smith his wife
 personally known to me as the same persons whose
 names are subscribed to the foregoing and appeared
 before me this day in person and acknowledged that
 they signed sealed and delivered the said instrument
 of writing as their free and voluntary act and for the
 uses and purposes therein set forth. And the said
 L. Maria Smith wife of the said George H. Smith having
 been by me examined separately and apart and out of
 hearing of her husband and the contents and meaning
 of the said instrument of writing having been by me
 fully explained and made known to her she acknowledged
 that she freely and voluntarily executed the same and
 relinquished her dower to the lands and tenements
 therein mentioned without fear or compulsion of her
 said husband and that she did not wish to retract
 the same.

Given under my hand and seal this third day of
January 1834 J. R. Lindley
Notary Public

"B"

Mortgage This Indenture made this
George H. Smith wife nineteenth day of June in the
year of our Lord one thousand
Eight hundred and fifty one
Between Geo. H. Smith and L.
Maria Smith wife of the said George H. of the County of
Sabala and State of Illinois party of the first part and
Peter D. Hergunin of the County of Winnebago and State of
Wisconsin party of the second part Whereas the persons
hereafter named are jointly indebted to the said party
of the second part in the sum of One thousand one
hundred dollars secured to be paid by four certain
promissory notes bearing even date herewith one for the
sum of five hundred and thirty five dollars given by
George H. Smith to the said Hergunin one for the
same sum given by W. H. W. Leckman to said
Hergunin one for the same sum given by John P.
A. Hoots to said Hergunin, one for the same sum
given by George Sabala to said Hergunin each
payable one third part in one year, one third part in
two years and one third part in three years with
interest. Now therefore this Indenture witnesseth
that the said party of the first part for the better securing
the payment of the money aforesaid with interest
thereon according to the tenor and effect of the said
promissory notes above mentioned, and also in
consideration of the further sum of one dollar to them in
hand paid by the said party of the second part at the
dissolving of these presents the receipt whereof is hereby
acknowledged have granted bargain sold and
conveyed and of these presents do grant bargain

sell and convey unto the said party of the second part
 his heirs and assigns forever all the following described
 pieces or parcels of land to wit: The one equal
 undivided moiety or half of the East portion of the
 South West quarter of section number one in
 Township number thirty three North of range
 number three East of the third principal meridian
 Also the undivided half of the South portion which
 lies South of Fox River of the South East quarter of the
 same section both portions together containing eighty
 four acres of land. Also the undivided half of the
 North portion which lies North of Fox River of the
 said South East quarter of the same section aforesaid
 containing forty seven acres of land being in all one
 hundred and thirty one acres more or less the whole lying
 and being in the County of Madison and State of Illinois.

It is expressly understood and agreed that this mortgage
 is not to extend to the water or river that and the parties
 of the first part reserve the right to grant to the Trustees
 of the Illinois and Michigan Canal and to their
 successors in office and to the State of Illinois the right
 free from this mortgage to divert the water flowing in
 Fox River into said Canal for the purpose of feeding
 the same and to create a surplus to be used for
 hydraulic and other purposes in the town of Attain
 and also to release to the same parties all damages for
 having directed the water into said Canal for the
 purpose of feeding the same and for creating a
 surplus at Attain. I have and to hold the same
 together with all and singular the tenements heredit-
 aments privileges and appurtenances therewith belonging
 or in anywise appertaining. And also all the estate
 interest and claim whatsoever in law as well as in
 equity which the party of the first part have in and to
 the premises here conveyed unto the said party
 of the second part his heirs and assigns and to their
 only proper use benefit and behoof.

Bonded along and these presents are sufficient
 Express condition that if the said makers of said
 note their heirs Executors or administrators shall will
 and suffer or cause to be paid to the said party of the
 second part his heirs Executors or administrators or
 assigns the aforesaid sum of money with such interest
 thereon at the time and in the manner specified
 in the above mentioned promissory note according to
 the true intent and meaning thereof that then and in
 that case these presents and every thing herein expressed
 shall be absolutely null and void.

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

Sealed and delivered

Geo. H. Smith

Seal

in presence of

L. Maria Smith

Seal

George S. Fisher

State of Illinois I, George S. Fisher Notary Public
 County of Adams do hereby certify that in and for the County of Adams
 in and for the said County in the
 State aforesaid do hereby certify that George H. Smith and
 L. Maria Smith who are personally known to me
 as the said persons and whose names are subscribed
 to the above mortgage appeared before me this day in
 person and acknowledged that they executed and delivered
 the said mortgage as their free and voluntary act for
 the sum and purposes therein set forth. And the said
 L. Maria Smith wife of the said George H. Smith having
 been by me examined separately and apart and out of
 hearing of her husband and the contents and meaning
 of said mortgage having been by me made known
 and fully explained to her acknowledged that she had
 freely and voluntarily executed the same and acknowl-
 edged her debts to the said and tenements therein
 mentioned without compulsion of her said husband
 and that she does not wish to retract the same

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Given under my hand and seal Notarial this
20th day of June A.D. 1837
Geo. S. Fisher Notary Public

On the same day and after the filing of said
Bill a summons was issued out of and under the
seal of said Court in the words and figures following
to wit:

State of Illinois The People of the State of Illinois
Sadale County To the Sheriff of said County Greeting
We command you to summon William
H. W. Beckman, Lorenzo Schaud, John B. A. Hays and
George H. Morris if to 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 Ottawa on the 8th day of June next to
answer to a certain Bill of Complaint filed in our said
Circuit Court on the Chancery side thereof against them
of Theron A. Morrison and hear you then and there
this writ and make return thereon in what manner
you execute the same.

Witness John F. Ashb Leach of said Court and
the seal of said Court at Ottawa this 29th
day of May A.D. 1837
J. F. Ashb Leach

Said summons was returned & placed on file on the
2^d day of June 1837 with the Sheriff's endorsement
thereon in the words and figures following to wit:

"Said of making to the within named William H.
W. Beckman, Lorenzo Schaud, and John B. A. Hays
and delivering a copy to each George H. Morris
not found in my County May 29th 1837
E. L. Waterman Shy"

On Wednesday June 10th 1837 the same being one of the days of the term of said Court for said year an order was made and entered of record in said cause in the words and figures following to wit:

"Theodor N. Morrison }
 William H. W. Leckman } *Bills for Specific performance*
 Sprague Island, John V. D. Moss and George H. Norris

On motion of the complainant of Pico & Red his Solicitor it is ordered by the Court that this cause be continued and that alias summons issue to George H. Norris."

The Alias summons was issued out of and under the seal of said Court on the 24th day of July 1837 in the words and figures following to wit:

"State of Illinois } The People of the State of Illinois to the
 LaSalle County } Sheriff of ^{Sadale} ~~said~~ County Greeting;

We command you as we have before commanded you to summon George H. Norris if to be found in your County personally to be and appear upon the Circuit Court of said County on the first day of the next term thereof to be holden at the Court house in Ottawa on the 2^d day of September next to answer to a certain bill of Complaints filed in our said Circuit Court on the chancery side thereof against him & others of Theodor N. Morrison and hear you then and there this writ and make return thereon in what manner you shall see the same

Witness John F. Nash Clerk of said Court and
 the Seal of said Court at Ottawa this 24th day
 of July AD 1837 J. F. Nash Clerk

On Wednesday June 10th 1837 the same being one of the days of the first term of said Court for said year an order was made and entered of record in said cause in the words and figures following to wit:

"Theodor N. Morrison }
 William H. W. Leckman } Bills for Specific performance
 Sprague Island, John V. D. Moss and George H. Norris }

On motion of the complainant of Prie & Reed his Solicitors it is ordered by the Court that this cause be continued and that alias summons issue to George H. Norris."

The Alias summons was issued out of and under the seal of said Court on the 24th day of July 1837 in the words and figures following to wit:

"State of Illinois } The People of the State of Illinois to the
 LaSalle County } Sheriff of ~~said~~ ^{Sadale} County greeting;

We command you as we have before commanded you to summon George H. Norris if to be found in your County personally to be and appear upon the Circuit Court of said County on the first day of the next term thereof to be holden at the Court house in Ottawa on the 2^d day of September next to answer to a certain bill of Complaints filed in our said Circuit Court on the chancery side thereof against him & others of Theodor N. Morrison and hear you then and there this writ and make return thereon in what manner you shall see the same

Witness John F. Nash Clerk of said Court and
 the Seal of said Court at Ottawa this 24th day
 of July AD 1837 J. F. Nash Clerk

Said summons was returned and filed in
said clerk's office on the 29th day of October 1837
with the Sheriff's endorsement in the words
and figures following to wit:

D. J. P. "Served by reading the
 within summons to George H. Davis this 7th day of
 August 1837 and delivering to him a copy thereof
 Eric L. Waterman S. J.

Eric L. Waterman Esq.

For A. E. Green Sept 27

And afterwards to wit: on Wednesday November 4th 1837 the same thing was of the days of the present term of said Court for the year 1837 another order was made and entered of record in said cause in the words and figures following to wit:

'Brother N. Munroe'

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In Schanitz

William H. W. Leachman

Samuel S. Isaac, J. M. B. A. News George H. Morris

This day comes the complainants of Rice & Rice, his solicitors and the defendants being each three times solemnly called in open Court come not nor any one for them but make default. Although they are each duly summoned more than ten days before the first day of the present term of this Court. Therefore on motion of complainants solicitors it is ordered by the Court that the bill herein be taken pro confesso against the defendants for default for non appearance, and that this cause be referred to the master in chancery to take the necessary proofs and report the same to this Court.

On the 3^d day of December 1837 the said King on of the day of said Summer term of said Court forbaid from the master in Chancery filed his report in the words and figures following to wit:

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"Sabala leineith leineith November term AD 1837
In Chancery - Frederick A. Morrison vs William
H. W. Leuchman, George S. Leuchman, John C. A. Moss &
George H. Norris - Bill for Specific Performance -

To Hon. Mr. E. Melliston Judge &c - The undersigned
master in Chancery to whom this cause was referred to
take proofs would report - that on this 3^d day of December
AD 1837 the production of Compliments occur upon now
and adduced proofs satisfactorily establishing the fact
that the said defendants did execute the contract set out
in Compliments bill which contract is hereto attached
& made a part of this report mentioned "A"

Dec 3, 1837 Respectfully Submitted
W. H. S. Wallace
Master in Chancery

A

For a valuable consideration to wit price not do hereby
covenant to & with Frederick A. Morrison to bear him
harmless from all costs, charges & expenses of all kinds
on account of a certain mortgage given by George H.
Norris & wife to Peter D. Hergunin bearing date the
19th day of June 1831 & recorded in Book No 23 of
Sabala County records page 288 which mortgage was
given to secure certain promissory notes given by us to
said Hergunin We further covenant to & with the
said Morrison his heirs & assigns to have said
mortgage cancelled on the records within one year
from this date - The covenants shall extend to & bind
the legal representatives of the undersigned
Witness our hands & seals this 3^d day of June AD 1837

Me. H. S.

Wm. H. W. Leuchman

G. S. Leuchman

John C. A. Moss

Geo. H. Norris

us

Leuch

Leuch

Leuch

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And afterwards to wit: on the same third
day of December AD 1837 a decree was entered
of record in said cause in the words and
signs following to wit:

Theodore N. Morrison
 vs
 William H. W. Cushman
 Lorenzo Leland, John V. A. Hoes and George H. Norris
 In Chancery

On this day came the said complainant Theodore N. Morrison by Rice and Reed his Solicitors, and the said defendants William H. W. Cushman, Lorenzo Leland, John V. A. Hoes and George H. Norris having been three times solemnly called in open Court, came not but made default, and it appearing to the Court that a Summons had been duly issued to each of said defendants and that the same had been duly served according to the law in such case on each of said defendants, and the said defendants having failed to file an answer herein or in any way to enter their appearance herein, the Court on motion of Complainant's Solicitors ordered and decreed that said bill be taken as ^{and for} Confessed by said defendants. And thereupon this cause came on to be heard upon said bill so taken as Confessed, and upon the proofs in support of the truth of the allegations thereof.

And it appearing to the Court, that in the month of April in the year of Our Lord one thousand Eight hundred and fifty four the said Complainant Theodore N. Morrison was a member of the Ottawa Hydraulic Company, and being the owner of one third of the water power owned by said Company, sold and conveyed all of his interest in and to the said water power, to the said William H. W. Cushman, Lorenzo Leland, John V. A. Hoes and George H. Norris the defendants aforesaid, and that for and in consideration of

the Sale and conveyance to the said William H. W. Cushman, Lorenzo Leland, John V. A. Hoos and George H. Norris, they the said William H. W. Cushman, Lorenzo Leland, John V. A. Hoos and George H. Norris, sold and conveyed or caused to be sold and conveyed to the complainant Theodore N. Morrison, the undivided one half of the following described tracts or parcels of land, lying in the County of LaSalle and State of Illinois, described as follows to wit: The East fraction of the South West quarter of Section No one (1) in Township No thirty three (33) North, Range three East of the third principal meridian, also the South fraction which lies South of Fox River, of the South East quarter of the same Section, being in all one hundred and thirty one acres more or less. And it further appearing to the Court that at the time of said conveyance by the said defendants, although they, the defendants were the owners of the lands above described, the legal title to the same was alone in the name of George H. Norris — affirmed, and that he the said George H. Norris for and in behalf of himself and the said William H. W. Cushman, John V. A. Hoos and Lorenzo Leland executed and delivered to the said Complainant a quit-claim deed, dated April 27th A.D. 1854, for the above described tracts and parcels of land, and that at the time of said conveyance of said tracts of land, the said lands were subject to a certain mortgage dated the nineteenth day of June A.D. 1851 and recorded in Book twenty three of LaSalle County Records page 288, given by George H. Norris and wife to Peter D. Haganin to secure the payment of four promissory notes, bearing date the nineteenth day of June A.D. 1851

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one for five hundred and twenty five dollars given by the said Cushman to the said Huginin, one for five hundred and twenty five dollars given by the said Hoos to the said Huginin, One for five hundred and twenty five dollars given by said Leland to said Huginin. And one for five hundred and twenty five dollars given by said Norris to said Huginin, each payable one third part in one year, one third part in two years, and one third part in three years with interest. And it further appearing to the Court that at the time of said Conveyance of said lands, by the said Norris to the Complainant, the said Norris refused to give any other than a quit claim deed for said lands and that in order to secure the Complainant Theodore W. Morrison harmless from the effect of said Mortgage the said defendants entered into a written agreement with the Complainant, in the words and figures following, to wit:

For a Valuable Consideration to us paid we hereby ^{coventant} to and with Theodore W. Morrison, to save him harmless from all costs, charges, and Expenses of all kinds on account of a Certain Mortgage given by George H. Norris and wife to Peter D. Huginin bearing date the 19th day of June 1857, and recorded in Book 23 of LaSalle County records page 288, which mortgage was given to secure Certain Promissory Notes given by us to said Huginin. We further covenant to and with the said Morrison his heirs and assigns, to have said Mortgage Cancelled, on the next within one year from this date, these covenants shall extend to and bind the legal representatives of the undersigned,

Witness our hands and Seals this third day
of June 1854,
M.H.S.

William H. W. Cushman (Seal)
Lorenzo Leland (Seal)
John V. A. Hices (Seal)
George H. Norris (Seal)

And it further appearing to the Court that the said defendants have wrongfully refused to cancel, or cause to be cancelled on the records of said LaSalle County, the said Mortgage in said agreement mentioned, although the said Complainant has often requested them so to do.

Therefore it is ordered adjudged and decreed by the Court, that the said defendants William H. W. Cushman, Lorenzo Leland, John V. A. Hices, & George H. Norris, do specifically perform on their part the said agreement so made and entered into as aforesaid, and that they cancel, or cause to be cancelled on the records of said LaSalle County, the said Mortgage in said agreement mentioned, within sixty day from the service on them, of a certified copy of this decree.

And it is further ordered, adjudged and decreed by the Court that the said defendants pay the costs of these proceedings and that the said Complainant have and recover of and from the said defendants his costs by him in this behalf expended, and that he have Execution therefor.

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State of Illinois, I John F. Nash Clerk of the
LaSalle County of Illinois do hereby certify that

the above and foregoing comprises a true full, perfect
and complete record in the case of Theodore St.
Merrison vs William H. W. Leachman & others as
the same appears of record and on file in my office

On Testimony Whereof I have hereunto set my
hand and the seal of said County at Ottawa
this 9th day of April A.D. 1838

J. F. Nash Clerk



Supreme Court - 3^d Division
June Term 1858.

William H. W. Bushman et al.
vs
Theodore N. Morrison } Error to La Salle

Now come the said plaintiffs in error by Leland & Leland their attorneys, & say, that in the record & proceedings aforesaid, there is manifest error in the writ;

The Court erred in rendering the decree for the complainant & against the defendants -

The Court should have dismissed the Bill -

Wherefore Petrs. pray that said decree may be reversed -

Leland & Leland
Petr's attys.

³⁸⁺
William H. W. Lushman
Loring Leland
John C. A. Mors
George H. Morris

is

Frederic N. Monro
~~~~~  
Recd

Filed ~~June~~ 3. 1838  
L Leland  
clerk

Recd \$6.75 paid  
by J. V. A. Mors  
J. H. Mors  
J. H. Mors